EMPLOYMENT TRIBUNALS

Claimants: Mr Andrew Aston
Mr John Schofield
Mr John Byrne

Respondent: Chief Constable of Greater Manchester Police

HELD AT: Manchester **ON:** 18, 21-29 June; 2-13 July; 17–19 & 27-28 September; 26-30 November 2018

BEFORE: Employment Judge Tom Ryan
Mr G Pennie
Ms V Worthington

REPRESENTATION:
Claimants: Mr J Feeny, Counsel
Respondent: Mr D Hobbs, Counsel

JUDGMENT

The judgment of the tribunal is that:

1. The claimants' application to strike out the response is not granted.

2. The claimants' claims are well-founded in part.

REASONS

Introduction

1. The structure of this judgment is as follows:

   1.1. This introduction

   1.2. Factual Background – paras 3-15

   1.3. Issues – paras 16-17

1.4. Evidence – paras 18-21

1.5. Application to strike out – paras 22-27

1.6. Findings of fact – paras 28-415

1.7. Submissions – paras 416-417;

1.8. Relevant law (protected disclosures) – paras 418-463

1.9. Summary table of disclosures established – paras 464

1.10. Table of detriments relied upon – paras 465

1.11. Relevant law (detriment, causation and jurisdiction) paras 467 – 478

1.12. Conclusions on detriments – paras 480 – 589

2. We use the following abbreviations. Whilst some of them are well known we record them all for ease of reference. We refer to the claimants throughout as: DI Aston, PS Schofield, PC Byrne. Since the matters complained of the title of the IPCC has been changed to the Independent Office of Police Complaints. We refer to it by its former title throughout.

ACC	Assistant Chief Constable
CC	Chief Constable
CI	Chief Inspector
CPS	Crown Prosecution Service
CS	Chief Superintendent
DCC	Deputy Chief Constable
D(C)I	Detective (Chief) Inspector
D(C)S	Detective (Chief) Superintendent
GoC	Grounds of Complain**t**
Insp	Inspector
IPCC	Independent Police Complaints Commission
MCRU	Major Crime Review Unit
NCA	National Crime Agency
PC	Police Constable
PS	Sergeant
PSB	Professional Standards Branch
SIO	Senior Investigating Officer
Supt	Superintendent
ANPR	Automatic Number Plate Recognition

Factual background

3. This is a whistleblowing case brought by 3 police officers arising out of their involvement in the investigation of potential criminal acts and/or misconduct of other officers within Greater Manchester Police.

4. There are thus three fundamental questions for the tribunal.

4.1. Were protected disclosures made by the claimants (or any of them)?

4.2. Did they suffer any detriment afterwards?

5. Was any such detrimental treatment motivated by their having made the protected disclosures?

6. DI Andy Aston and his team (PS John Schofield and PC John Byrne) were tasked with investigating an allegation of shoplifting and common assault made against PS Richard Pendlebury, a custody sergeant on 19 September 2014.

7. The claimants' enquiries quickly led them to Zoe Wilkinson (PS Pendlebury's wife) and Natalie Leicester (her friend), who had concocted a false counter-allegation of assault against the Asda security guard and submitted it to the police on 14 October 2014.

8. PS Pendlebury and his wife, Zoe Wilkinson allegedly concocted a further false story that the Asda security guard had harassed them in road rage type incidents.

9. Finally, the claimants' enquiries led them to suspect other custody suite officers (Insp Maria Donaldson, CS Lee Bruckshaw and CI Clara Williams) of attempting to pervert the course of justice and/or misconduct in a public office by (amongst other things):

   9.1. ensuring that PS Pendlebury was not taken into custody on the day of his arrest but was instead dealt with by way of summons;

   9.2. seeking to get the case against PS Pendlebury dropped;

   9.3. making inappropriate approaches to the CPS;

   9.4. giving statements that were not supported by the evidence.

10. As the enquiries revealed these allegations the respondent referred them to the IPCC Commissioner who, in due course determined that DI Aston and his team should continue to investigate but under the supervision of an officer from the respondent's PSB and the management of the IPCC.

11. Following the not guilty verdict in the criminal trial of PS Pendlebury and the decision of the CPS not to prosecute Insp Donaldson, CS Bruckshaw and CI Williams, the respondent had to consider whether the IPCC's recommendation of gross misconduct proceedings was appropriate against any of the officers involved.

12. PS Pendlebury was ultimately dismissed for acts of gross misconduct unconnected to these events.

13. CI Williams' conduct was assessed as misconduct and dealt with by way of management advice.

14. CS Bruckshaw's conduct was initially categorised as gross misconduct but after the filing of his defence in the misconduct process (termed a Regulation 22 Response) and the raising of various procedural arguments, the case was re-assessed as amounting to misconduct only. He received management action in the form of 'words of advice' and promptly retired.

15. Insp Donaldson's conduct was initially categorised as gross misconduct but after the filing of her defence in the misconduct process (termed a Regulation 22

Response) and the raising of procedural arguments, the case was re-assessed as amounting to misconduct only. She was required to attend a misconduct meeting. At her misconduct meeting, her legal representatives managed to get the case dismissed on the grounds of unfairness in the procedures adopted.

Issues

16. The issues in the case were, in outline,

    16.1. the claimants, or any of them, disclosed information which they reasonably believed to show the commission of a criminal offence or a breach of a legal obligation;

    16.2. whether they reasonably believe that the disclosure was in the public interest;

    16.3. whether the disclosure was made to the respondent;

    16.4. whether they, or any of them, were subjected to a detriment or detriments on the ground that they had made one or more protected disclosures;

    16.5. whether the tribunal had jurisdiction to afford a remedy to the claimant or claimants having regard to the date of the detriment, the date of presentation of the claim and whether, if there was more than one detriment, it was part of a series acts or omissions ending within the relevant time period.

17. The issues in respect of specific disclosures and detriments were refined during the hearing. Those that we had to determine are set out in the course of our findings and conclusions. For convenience we refer to the allegations of protected disclosure and detriment as: PD 1 and DET 1 etc. We have retained their original numbering to avoid confusion.

Evidence

18. We heard oral evidence from each claimant and on their behalf from Mr Stephen Liston, an Operations Team Leader in the IPCC.

19. On behalf of the respondent we heard evidence from:

    Supt Nicola Spragg
    DCC Ian Pilling
    DS Philip Canavan
    Insp Michael Reid
    DI Mark Radford
    DCI John Harris
    CI Christopher Packer
    ACC Christopher Sykes
    DC John Tuer
    Mr Martin Bottomley
    DCI Melanie Hall
    DCI Julian Flindle
    Former ACC Garry Shewan
    Temp ACC Annette Anderson

20. The tribunal was provided with witness statements of all those witnesses. In addition, statements were produced for Supts Christopher Hankinson and Mark Smith but they were not called to give oral evidence. The written evidence, including supplementary statements, was in excess of 300 pages.

21. In addition to documents such as opening statements, a chronology, a cast list, closing submissions and lists of authorities the tribunal was provided with a bundle of documents which numbered, nominally more than 6000 pages but due to internal sub-pagination the actual number of pages was far greater.

Application to strike out response

22. At the outset of the hearing Mr Feeney made an application on behalf of the claimants for the response to be struck out. The details of the application were set out in a letter from the claimants' solicitors dated 15 June 2018. In summary the basis of the application was that the respondent's solicitor was seeking to disadvantage the claimants by failing to comply with orders. Even when respondent sent 15 of its witness statements on the date fixed by the tribunal 3 of those statements had yet to be finalised. The claimants also relied upon the fact that between 5 and 14 June 2018 the respondent had sent nearly 800 pages of additional disclosure.

23. Taking those matters into account with other factors set out in the letter of application the travellers invited to infer that the respondent's conduct was deliberate, that a fair trial was no longer possible and that the hearing which had already been separated into 2 tranches would be prolonged because evidence could not be concluded in the first tranche.

24. The tribunal was referred to the decisions in **Harris v Academies Enterprise Trust** [2015] IRLR 208 EAT and **Bolch v Chipman** [2004] IRLR 140 EAT.

25. The respondent resisted the application.

26. Despite Mr Feeny's attempts to persuade us that the actions and omissions of the respondent were deliberate we were unable to conclude that the conduct of the respondent was that scandalous, vexatious. We acknowledge that the parties had had a considerable time to prepare for the final hearing. We knowledge also that the scope of the task for both parties was substantial. Nevertheless, the late disclosure of such a volume of documentation did amount to unreasonable conduct of the proceedings in that respect.

27. That required the tribunal to consider whether a fair trial of the proceedings had been rendered impossible by the unreasonable conduct. In our judgment a fair trial was not impossible. We determined that we could afford the claimant additional time to examine the recently produced material during part of which the tribunal could complete its necessary preliminary reading. For those reasons we rejected the application to strike out.

Findings of fact

28. The claimants were all serving police officers. At the relevant time they were all members of the Integrated Neighbourhood Policing Team operating from Rochdale Division.

29. On 19 September 2014, PS Pendlebury, who worked out of neighbouring Bury Division, was arrested on suspicion of theft (shoplifting) and common assault (on a security guard) after being detained at an Asda supermarket.

30. PS Pendlebury was taken to Ashton under Lyne Police Station by the arresting officer (PC Bullough) but before he arrived he was contacted and asked to park outside the station and to contact Insp Donaldson, PS Pendlebury's line manager and welfare officer.

31. In due course, Insp Donaldson and a Custody Sergeant from Ashton Police Station approached the police van. PS Singh told the arresting officer that he was not authorising PS Pendlebury's detention in custody.

32. PC Bullough stated that Insp Donaldson also told him the matter was, "best dealt with by way of summons and to de-arrest PS Pendlebury".

33. Consequently, PS Pendlebury was not booked into custody at Ashton under Lyne Police Station and was instead dealt with by way of Summons (i.e. he was required to attend the police station later to assist with police enquiries).

34. On 20 September 2014, CS Bruckshaw, whose role was to oversee Custody and Criminal Justice, appointed DI Faulkner of Rochdale Division to act as Senior Investigating Officer (SIO) in the criminal investigation.

35. On 22 September 2014, CS Chris Sykes, who was then the Bury & Rochdale Territorial Commander allocated DI Aston managerial oversight of the investigation. DI Aston was then an Acting DCI in the Rochdale Division. On the same day DI Aston contacted DI James Faulkner and confirmed his position as SIO.

36. On 1 October 2014, PS Pendlebury was interviewed regarding theft and common assault. On 2 October 2014, the CPS approved charges against PS Pendlebury on both counts.

37. At a later point in time, concerns arose over Insp Donaldson's involvement in the de-arrest of PS Pendlebury. These concerns were compounded by various further actions on her part. First, she commented on the gathering of CCTV evidence from Asda by emailing CS Bruckshaw on 2 October 2014. She commented also on: statements from Asda staff and what PS Pendlebury would say that the CCTV would show; health issues of PS Pendlebury and his family and she mentioned "a face to face meeting with the CPS".

38. Insp Donaldson met Supt Alan Greene on 3 October 2014 and obtained his assistance in compiling an email to be sent to CS Sykes on 5 October 2014 setting out why she felt a criminal prosecution was not in the public interest. On 13 October 2014, Insp Donaldson provided a voluntary statement to the criminal investigation team setting out PS Pendlebury's tragic family circumstances.

39. Similarly, concerns were to arise over CS Bruckshaw's involvement in the de-arrest of PS Pendlebury. These were amplified by CS Bruckshaw's perceived

involvement in lobbying the CPS on PS Pendlebury's behalf. In particular, having been copied into Insp Donaldson's email to CS Sykes, CS Bruckshaw replied offering to approach Ian Rushton the Deputy Chief Crown Prosecutor for the North-West CPS for an early view from him on the case. CS Bruckshaw sent an email to Mr Rushton on 6 October 2014. He referred to PS Pendlebury's tragic family circumstances which he said merited that the case be reviewed sooner rather than later if Mr Rushton were able to nominate a lawyer.

40. On 14 October 2014, a witness account of the circumstances leading to PS Pendlebury's arrest at Asda was received by the criminal investigation team from Natalie Leicester. Her account, that she had witnessed PS Pendlebury's arrest, was later amplified in a formal statement (MG11) taken on 4 November 2014. She alleged that the security guard had assaulted Zoe Wilkinson whilst detaining PS Pendlebury. Ms Leicester later turned out to be a friend of PS Pendlebury's wife, Zoe Wilkinson, not merely her hairdresser. On 24 February 2015 it was identified from mobile phone positioning that Natalie Leicester had not been at the Asda store at the time of the arrest of PS Pendlebury.

41. On 15 October 2014, the Summons for theft and common assault was formally served on PS Pendlebury. Later that day CS Bruckshaw sent a further email to Mr Rushton [681] saying:

> "You will see from the below that your colleagues in Preston are dealing with this matter.
>
> As we have discussed, I have no wish or intention to sway the decision making process here, and if the decision to charge/summons is appropriate then so be it.
>
> My concern however is this. Rick's eldest child is terminally ill. His second child is also very unwell and her diagnosis is not clear. Were something to happen to either child between now and court, and then, as does happen, a prosecutor takes the decision to discontinue on the day of trial, then this process will be inextricably linked to the tragedy.
>
> I would ask that you use your influence to ensure the prosecution decision has been made at the right level and is the appropriate action."

42. CS Bruckshaw sent that email to ACC Shewan and ACC Copley also. That prompted Mr Shewan on the same day to ask ACC Copley if they could speak about it. On 21 October 2014 ACC Copley asked ACC Shewan whether he was going to speak to CS Bruckshaw or whether he wanted her to do anything further. ACC Shewan asked her to leave it with him in the first instance. In a witness statement which was prepared later ACC Shewan said that when he first saw CS Bruckshaw's email to Ian Rushton he thought it showed "poor judgment". He added that he had spoken to ACC Copley on 16 October 2014 and agreed that he would speak to Mr Rushton and advise CS Bruckshaw over his judgment. He recorded that he had told Mr Rushton over the telephone that he should ignore the email from CS Bruckshaw and that he, ACC Shewan, "felt that it was very inappropriate and that he would meet and advise Lee." [534]

43. On 27 October 2014 Insp Donaldson contacted the summons unit to discover the hearing date for PS Pendlebury's case and in order to expedite matters, thus attracting further criticism for her involvement in the case.

44. On 30 October 2014 CS Bruckshaw emailed CS Sykes saying that "we" (apparently Insp Donaldson and himself) had "tried to ensure a free flow of information between the allocated prosecutor and Rick's defence team". He raised a number of matters, such as the allegation by PS Pendlebury and Ms Wilkinson that the security guard assaulted them during the incident, and said that a statement should be a taken from "an independent witness".

45. On 3 November 2014 CS Bruckshaw emailed CS Sykes again asking him to chase up the issue with the independent witness.

46. These communications led to concerns of further interference in the investigation by CS Bruckshaw. The matters raised by CS Bruckshaw were passed on to the investigation team.

47. DI Aston told CS Sykes that he was dealing with the investigation "with fairness, integrity, diligence and impartiality" when emailing him on 3 November 2014 [746]. He provided a detailed account of what the team had done and the conclusions it had reached in relation to the matters raised by CS Bruckshaw in his emails. These included obtaining an account from the security guard that he had only used reasonable force to detain PS Pendlebury, that Natalie Leicester was Zoe Wilkinson's hairdresser and thus her independence (as she was the intimated "independent witness") could be challenged although by this stage she had not provided a witness statement. He also recorded that Insp Donaldson had suggested earlier to DI Faulkner that he would be able to make an "NFA [no further action] decision in the case".

48. PS Pendlebury entered a not guilty plea to theft and common assault on 11 November 2014.

49. On 28 December 2014, PS Pendlebury had a chance encounter with the Asda security guard whilst shopping in a Tesco supermarket and words were exchanged. PS Pendlebury contacted Insp Donaldson who arrived at the scene and later gave a witness statement of the events. The security guard notified the police. Zoe Wilkinson countered with further allegations against the security guard, saying that she and PS Pendlebury had been harassed by him in 'road rage' type incidents on 31 October 2014 and 7 December 2014.

50. The accounts of harassment appeared to the investigators to be untrue as mobile phone data suggested that neither Pendlebury/Wilkinson nor the security guard were in the relevant locations on either of the dates alleged. PS Pendlebury also suggested that following each road rage incident he had immediately called Insp Donaldson to inform her. When, in March 2015, Insp Donaldson was asked if this was true she apparently confirmed that it was - although she did say that she would have to check her phone records before providing a statement. However, mobile telephone records showed that PS Pendlebury did not call Insp Donaldson on either day.

51. In due course, Insp Donaldson and CS Bruckshaw were to attract yet further criticism in relation to discussing issues surrounding the gathering of CCTV

evidence from Asda. On 15 January 2015, Insp Donaldson emailed CS Bruckshaw stating that the CCTV gathered was incomplete and asked him whether he had any emails from the time of the arrest, prompting the criminal investigation team to ensure that all CCTV evidence was properly gathered. CS Bruckshaw replied stating that he did not have emails but had indeed asked for all CCTV to be gathered. On 16 January 2015, Insp Donaldson sent an email to PS Pendlebury's criminal defence solicitor attaching an email she had sent on the topic of CCTV evidence early in the investigation.

52. CS Sykes arranged a meeting with DI Aston to discuss the interventions of custody branch officers (including Insp Donaldson and CS Bruckshaw) in the case. The meeting took place on 19 January 2015 and a decision was made for DI Aston to take over as SIO in charge of the Pendlebury criminal investigation from DI Faulkner.

53. On 28 January 2015, DI Aston requested a statement from CI Clara Williams who had been in charge of Custody and had been present at Ashton under Lyne Police Station on the day of the arrest (and de-arrest) of PS Pendlebury. DI Aston described CI Williams as having "ordered the release of PS Pendlebury" and asked for a statement regarding how she was made aware of the arrest, the conversations she had and with whom. CI Williams questioned why he was asking about this matter because she was "under the impression" that he been asked to investigate the alleged harassment of PS Pendlebury and his wife. DI Aston responded explaining the scope of the enquiry, saying that the "three matters are intertwined and you are recorded in the statements as being involved". He stated that CI Williams was a "key decision maker". DI Aston chased the statement from CI Williams again on 9 March 2015 and a statement was eventually provided on 11 March 2015.

54. On 26 February 2015, DI Aston formally took over the SIO role from DI James Faulkner. DI Aston opened his own casebook and conducted a full review on 27 February 2015. He noted, "There has been interference by Insp Donaldson & CI Clara Williams whilst not directly corrupt is boarding on inappropriate involvement" [873]. He recorded that he suspected that PS Pendlebury, Zoe Wilkinson and Natalie Leicester might have conspired to pervert the course of justice.

55. From this point in the chronology we begin to interpolate the disclosures and detriments relied upon by the claimants.

56. Before we do so we break off to set out a summary of our conclusions on two issues of principle between the parties concerning the making of protected disclosures that we had to decide. These were: by whom a disclosure was made and whether the maker of a disclosure reasonably believed that it was made in the public interest.

57. For the reasons that we set out in our conclusions below we have, with exceptions based upon specific facts determined the first of those issues broadly in favour of the respondent. We record that at this stage so that we do not need unnecessarily to repeat it as we come to each disclosure in the chronology.

58. The issue focused on the composition of the briefing documents which DI Aston used or presented to more senior officers as the enquiry progressed. The claimants contend that these documents were compiled by the work of the team

not just DI Aston. It was not seriously in dispute that some of the information contained in the briefing documents had been obtained through the efforts of DS Schofield and PC Byrne. In the three principal documents that were relied upon by the claimants, the individual claimants were not referred to and although the documents sometimes contained references to the team by use of the expression "we", the documents appeared to be the work of DI Aston alone. So, the question for the tribunal was whether a member of the team other than DI Aston could be considered to be making a disclosure when he presented the briefing document to which they had contributed, albeit in an unacknowledged way.

59. The second issue of principle concerned whether any of the disclosures was reasonably believed to be being made in the public interest. Again, we set out below the arguments and the basis for our conclusion. In summary, we reject the respondent's argument. Where a police officer reports information which he believes tends to show the commission of a criminal offence as part of an investigation with which he is charged in order that a proper decision can be made as to whether that officer should stand trial for a criminal allegation, it is not obvious why that is not a disclosure of information which is made in the public interest. Nor do we accept that the officer making the disclosure, whose function in holding the office of constable is to support the system of criminal justice, could not reasonably believe that it was in the public interest to make such a disclosure. The fact that every day police officers throughout the country are making similar reports which might afford them protection from detriment, cannot, in our judgment, support a contrary finding which, it seems to this tribunal, flies in the face of the legislation.

PD 1 *"The claimants identifying possible criminal offences including theft and false reporting against PS Pendlebury, Ms Wilkinson and Ms Leicester."*

60. The claimants' case is that this disclosure was made by:

    60.1. DI Aston verbally to Supt Mallen on 27 February 2015;

    60.2. all the claimants in a briefing document submitted to CS Sykes and Supt Mallen on 2 March 2015;

    60.3. DI Aston verbally to CS Sykes and Supt Mallen on 2 March 2015;

    60.4. DI Aston verbally and all claimants in a briefing document submitted to DI Robertson and Supt Hankinson on 3 March 2015.

61. In respect of each of these we find:

    61.1. The meeting between DI Aston and Supt Mallen on 27 February 2015 is noted in DI Aston's casebook. It was not attended by PS Schofield or PC Byrne.

    61.2. DI Aston's briefing document [879-883] was written by him alone 'in the style Supt Mallen liked' according to DI Aston's evidence. The casebook appears to confirm that DI Aston prepared it alone. PC Byrne said he probably did not even contribute any comments as he was new to the team. It was accepted in final submissions that PC Byrne did not contribute to the document. The respondent accepts it was submitted to Supt Mallen and CS Sykes by DI Aston on 3 March 2015.

61.3. The meeting between DI Aston and CS Sykes and Supt Mallen on 2 March 2015 is noted in the officer's casebook. This meeting was not attended by PS Schofield or PC Byrne.

61.4. The document at [884] indicates that DI Aston spoke to CS Hankinson and DI Robertson on 3 March 2015. The document at [938] shows that the briefing document was sent to DI Robertson on 3 March 2015.

62. In respect of these factual allegations of disclosure the respondent did not dispute as a matter of fact that DI Aston made disclosures of information to the officers named that tended to indicate criminal offences of theft and false reporting (in the sense of an act tended to pervert the course of justice) by PS Pendlebury, Zoe Wilkinson and Natalie Leicester.

63. So, in respect of DI Aston the only issue remaining was that of public interest (as we will describe it for brevity) and it follows from our rejection of the respondent's argument of principle that protected disclosures by him in these 4 instances were established.

64. The briefing document summarises the facts from 19 September 2014, the statement given by Natalie Leicester, the subsequent allegations of exchanges with the security guard and the conclusion that there was no evidence to support that the security guarded harassed PS Pendlebury or Zoe Wilkinson. Beyond that, the report summarised enquiries in the form of obtaining ANPR data concerning the vehicles belonging to the security guard and PS Pendlebury and cell site and call data from the mobile phones of those involved. That information tended to show that the accounts given by the security guard of his whereabouts were correct and that those of the other protagonists were not correct. In addition, the call data showed that Natalie Leicester was not just Zoe Wilkinson's hairdresser but, as in fact transpired to be the case, a personal friend.

65. These matters led to a conclusion that PS Pendlebury, Zoe Wilkinson and Natalie Leicester would be arrested in respect of offences of perverting the course of justice.

66. On 4 March 2015, Natalie Leicester was arrested and taken to Bury Police Station on suspicion of perverting the course of justice. She was moved at the intervention of CI Williams to Pendleton Police Station. She gave a "no comment" interview and was bailed.

67. On 5 March 2015, PS Pendlebury and Zoe Wilkinson were arrested for perverting the course of justice. DI Aston emailed CS Sykes to tell him 2 arrests had been made. They also gave no comment interviews and were bailed. It appears that DI Aston updated various other officers by telephone about the arrests including DI Robertson.

PD 2 *"DI Aston informed DI Robertson of PS Pendlebury's arrest for perverting the course of justice."*

68. DI Aston verbally disclosed that information to DI Robertson on 5 March 2015.

69. The respondent accepted that an entry in DI Aston's casebook indicates that this disclosure (which suggested a criminal offence had been committed) was probably made by DI Aston. It is a repeat of the disclosure made to DI Robertson at PD1.

70. On 11 March 2015 the team received a witness statement from CI Williams that appeared to imply that Insp Donaldson had made the decision to de-arrest PS Pendlebury.

71. On 12 March 2015 DI Aston noted in his casebook that he had made a policy decision to declare Insp Donaldson a suspect for perverting the course of justice.

PD 4 *"Alleging to CS Sykes [and others] that Insp Donaldson was a potential suspect in an allegation of perverting the course of justice and / or misconduct in a public office."*

72. The claimants' case is that they made the following (individually or cumulatively) disclosures of information:

    72.1. DI Aston verbally to CS Sykes on 13 March 2015;

    72.2. All the claimants in a briefing document submitted for the Gold meeting on 18 March 2015, and

    72.3. DI Aston verbally at the Gold meeting on 18 March 2015 to CS Sykes, Supt Mallen, Supt Hankinson, Supt Jackson, DCI Hussey, DS Sanderson, and DS Soutter.

73. According to his casebook, DI Aston updated CS Sykes about the status of the investigation on 13 March 2015. It was accepted by the respondent that at the meeting DI Aston updated CS Sykes that Insp Donaldson was a potential suspect in an allegation of perverting the course of justice and/or misconduct in a public office and that amounted to information concerning a potential criminal offence so was potentially a protected disclosure if made in the public interest.

74. There was a Gold (i.e. Senior Officers') Meeting on 18 March 2015. DI Aston attended. PS Schofield and PC Byrne did not attend. In oral evidence it transpired the relevant briefing document for the Gold meeting was not the one relied on in DI Aston's witness statement but a further briefing document dated 16 March 2015 [981-988]. DI Aston accepted that he wrote this document. He took the Gold meeting attendees through the briefing document. He could not recall if he handed out copies.

75. The report was duplicative of the earlier briefing. He provided information about the more recent arrests of PS Pendlebury, Ms Wilkinson and Ms Leicester and their interviews. In addition, the briefing was critical of Insp Donaldson. It suggested that she had lied in a witness statement and that she had given conflicting accounts to the SIO on PS Pendlebury's release and that she had ignored orders of the SIO and PSB. An email from DCI Hussey of the same date asks DI Aston to provide further evidence to support a potential criminal case against Insp Donaldson. The respondent accepted that DI Aston made a verbal disclosure of information at the Gold meeting (supported by the written briefing document) that suggested that Insp Donaldson was a suspect for the offence of perverting the course of justice.

76. The minutes of the Gold meeting also show that CI Williams was mentioned in the context of the de-arrest of PS Pendlebury. They refer also to ACC Shewan as having "had involvement in this in relation to Chief Supt Lee Bruckshaw contacting CPS regarding the investigation".

77. The outcomes included the need for PSB to undertake a severity assessment which would include PS Pendlebury, Insp Donaldson, CI Williams and CS Bruckshaw and for Supt Spragg to agree the most appropriate course of action and brief ACC Copley.

78. CS Sykes apparently expressed the view that the investigating team required support to review the investigation and Supt Jackson confirmed that he would provide support and resource for an independent review for which terms of reference would need to be agreed.

79. DI Aston was then absent on leave until 30 March 2015.

80. On 18 March 2015 (following the Gold Group Meeting) ACC Copley was updated of developments by DCI Mark Hussey. This appears to have prompted ACC Copley to ask ACC Shewan whether he had met with CS Bruckshaw to reprimand him over the email he had sent to the CPS (and into which he had copied them both in October 2014). He replied that he had not. ACC Copley then said that the criminal investigation was getting more 'interesting' and that it had not been a PSB investigation "up to now". She emailed Supt Spragg to tell her that ACC Shewan had not had the mooted conversation with CS Bruckshaw [1009]. ACC Shewan had though spoken to Ian Rushton of the CPS [534].

81. ACC Copley provided the email chain between her and ACC Shewan concerning CS Bruckshaw's email to the CPS to Supt Spragg & DCI Mark Hussey (PSB) on 18 March 2015. She informed ACC Shewan that there were now PSB issues (i.e. misconduct issues) but the criminal issues against Insp Donaldson were less clear.

82. DCI Hussey's email to DI Aston of 18 March 2015 asked DI Aston to prepare an update for ACC Copley explaining why Insp Donaldson was a suspect for the criminal offence of perverting the course of justice.

PD 5 *"[By] setting out (i) the nature of the allegations relating to [Insp Donaldson] as a suspect; (ii) the refusal of [CI Williams] to provide a statement; (iii) the allegations relating to PS Pendlebury, Ms Wilkinson and Ms Leicester."*

83. The claimants' case is that they made the following (individually or cumulatively) disclosures of information:

    83.1. DI Aston in a written report dated 19 March 2015;

    83.2. DI Aston verbally and all claimants when the earlier briefing document and DI Aston's subsequent report were sent to DCI Hussey on 19 March 2015;

    83.3. DI Aston verbally and all claimants when the earlier briefing document and DI Aston's subsequent report were sent to Supt Mallen on 19 March 2015; and

83.4. DI Aston verbally and all claimants when the earlier briefing document and DI Aston's subsequent report were sent to CS Sykes on 19 March 2015.

84. DI Aston did create a written update report on 19 March 2015. The report detailed DI Aston's rationale for deciding that Insp Donaldson should be the subject of a criminal investigation. DI Aston accepted the report was all his own work. PC Byrne said he possibly proof read it for spelling mistakes. The respondent accepts this information tends to show a criminal offence has been committed by Insp Donaldson.

85. DI Aston accepted in evidence that the refusal of CI Williams to provide a statement could not amount to a disclosure of a criminal offence. He relied alternatively upon a breach of a legal obligation - a breach of a Professional Standard of Behaviour (such as Honesty and Integrity). In answer to a question by the tribunal he agreed this had never occurred to him at the time.

86. The respondent, for that reason, denies that this element of the disclosure is could be a qualifying disclosure.

87. Further the respondent contended that a breach of an expected standard of behaviour is not a breach of a legal obligation. We record here that for the reasons given below we do not accept that as a general proposition in the factual and regulatory context of this case. However, that point is moot at this stage of the history. DI Aston could not be making a qualifying disclosure of information if, at the time of disclosure, it had not even occurred to him that the information amounted to a breach of a legal obligation.

88. As to the allegations relating to PS Pendlebury, Ms Wilkinson and Ms Leicester, the respondent accepts this information tended to show a criminal offence had been committed by them.

89. DI Aston said he phoned DCI Hussey and said his report of 19 March 2015 was ready and would be sent to him. There was no verbal disclosure in that telephone call. DI Aston then sent his written report dated 19 March 2015 to DCI Hussey (which was then forwarded to ACC Copley and CS David Hull along with his earlier report of 16 March 2015 (see PD 4 above). In sending the report(s) to DCI Hussey (who had been present at the earlier Gold meeting) DI Aston was essentially repeating earlier disclosures of a criminal nature relating to Insp Donaldson and PS Pendlebury and therefore made a protected disclosure.

90. There was no corroborative evidence of the report(s) going to Supt Mallen. DI Aston said he gave it to him to check on 19 March 2015. In handing the report(s) to Supt Mallen, (who had been present at the earlier Gold meeting) DI Aston was essentially repeating earlier disclosures of a criminal nature relating to Insp Donaldson and PS Pendlebury and therefore made a further protected disclosure.

91. The Claimant did not initially recall if he emailed the document to CS Sykes or spoke to him. He then accepted he did not verbally update CS Sykes as he was off work. There was therefore no verbal disclosure. There is no objective evidence that the documents were emailed to CS Sykes. However, during cross-examination, CS Sykes accepted that the report of 19 March 2015 was sent to him. To that extent a further disclosure to CS Sykes was established.

92. On 31 March 2015, ACC Shewan emailed CS Sykes and CS Hull of PSB to enquire whether DS Pete Jackson's review would look at issues surrounding Insp Donaldson as well as PS Pendlebury and Zoe Wilkinson. CS Hull replied that it would and that it was appropriate to pause before making Insp Donaldson a 'suspect' for a criminal offence.

93. On 31 March 2015, PS Schofield & PC Byrne were seconded full time to the criminal investigation.

94. There was a presentation by DI Aston and PS Schofield to DS Jackson and others on 7 April 2015. In particular, it was argued that Insp Donaldson was to be treated as a suspect and should be interviewed under caution. Consequently, she was to be served with 'misconduct' papers.

95. On 7 April 2015, PS Schofield sent a slide show of the evidence to DS Pete Jackson.

PD 6 *"[By giving] notification (as documented in the decision logs to Supt Jackson) of Pendlebury's links to local drug dealers [causing] (i) the witness Leicester to fear for her safety; (ii) threats [to be] made for her safety; (iii) threats [to be] made to her by PS Pendlebury and Wilkinson."*

96. DI Aston's case was that he disclosed that information verbally to Supt Jackson on 8 April 2015.

97. One of the action points of the Gold meeting was for Supt Jackson to review the investigation. He was given an initial briefing by DI Aston on 7 April 2015.

98. On 8 April 2015, Natalie Leicester presented at Rochdale Police Station and freely admitted attempting to pervert the course of justice by writing a false statement about the arrest of PS Pendlebury at Asda.

99. In the interview, Natalie Leicester discussed PS Pendlebury's possible links to unsavoury characters and displayed apparent fear for her own safety but did not identify any actual threats being made by him. The taped interview record shows that the essence of Ms Leicester's concern was that if PS Pendlebury could persuade her to make a false witness statement, then she was afraid that he could arrange for her to be subjected to criminal violence, now that she had become a "grass" at the hands of known criminals with whom she believed he had some connection. That does not amount to information tending to show that a criminal offence might be committed. If she had stated that PS Pendlebury had said that to her it would support the "threat".

100. DI Aston spoke to Supt Jackson on 8 April 2015 to update him on developments. Supt Jackson produced a summary of what he knew on the same date. The information he recorded included: that Ms Leicester had alleged threats had been made against since she had been pressured into giving a false statement, and that he had agreed that DI Aston needed "to act tomorrow to arrest Pendlebury and Wilkinson" both to secure further evidence and to mitigate any risks against Natalie Leicester.

101. DI Aston confirmed that he had given this information to Supt Jackson. It appears that the information concerning a link to a drug dealer amounted to the

fact that Pendlebury's next door neighbour was the girlfriend of a known drug dealer. It is not an offence to live near someone who dates a drug dealer. That point appears to be a background piece of information.

102. The respondent's case was that the claimant's case on this disclosure taken at its highest, did not amount to DI Aston providing information to Supt Jackson that he could reasonably have believed tended to show that a criminal offence was likely to occur. In this instance we consider that on the facts the information falls short of tending to show commission of a crime.

103. On 8 April 2015, DS Jackson provided his investigation review to ACC Copley, CS Hull & CS Sykes. There was clear evidence of PS Pendlebury, Zoe Wilkinson and Natalie Leicester providing false evidence in relation to the arrest and the actions of the Asda security guard. There was therefore evidence that they had conspired to pervert the course of justice. DS Jackson decided that Insp Donaldson's phone records should be examined and she should be interviewed under caution. He felt she should therefore be served with criminal and misconduct notices to fully safeguard her rights. DS Jackson's report was sent to DI Aston on 9 April 2015.

104. On 8 April 2015, ACC Copley agreed that the criminal investigation should remain in Rochdale Division (i.e. with the claimants).

105. On 9 April 2015, misconduct notices were approved for Insp Donaldson and prepared. Insp Donaldson was to be restricted in her duties at work.

106. On the same day, DI Aston, together with Supt Alan Robertson, met DS Simon Retford the head of the respondent's CCU (Counter Corruption Unit) which is a component part of the PSB to discuss his intelligence on PS Pendlebury's alleged criminal associates.

107. On 9 April 2015, PS Pendlebury and Zoe Wilkinson were arrested and interviewed for perverting the course of justice in relation to the false statement provided by Natalie Leicester.

108. On 10 April 2015, PS Pendlebury and Zoe Wilkinson were charged with conspiracy to pervert the course of justice. DCI Hussey reviewed the position and determined that the matter now met the criteria for a mandatory referral to the IPCC in that PS Pendlebury's alleged attempt to pervert the course of justice as a serving police officer amounted to serious corruption. Such a referral was required in accordance with the Police (Complaints and Misconduct) Regulations 2012 (ss.4&7).

109. On 13 April 2015, misconduct papers were served on Insp Donaldson [1300] with restrictions.

DET 2 *Failure to refer the investigation to the IPCC from March-April 2015.*

110. Mr Liston (a team leader at the IPCC) accepted that only 'serious corruption' triggers a mandatory referral to the IPCC. PS Pendlebury's alleged shoplifting and his arrest on 19 September 2014 did not amount to serious corruption. His further arrest for perverting the course of justice on 5 March 2015 triggered consideration of the allegation as serious corruption.

111. Mr Liston agreed that 5 March 2015 was the earliest possible referral date on that basis. DI Aston accepted it was reasonable for PSB (who make the referral) to seek further information before doing so. That is why there was a Gold Meeting on 18 March 2015, although we noted that neither in that meeting, nor in the email correspondence between ACC Copley and ACC Shewan at around that time was there specific mention of a referral to the IPCC.

112. The actual referral to the IPCC was on 10 April 2015 when PS Pendlebury was charged with perverting the course of justice.

113. It was accepted by the claimants that realistically; 18 March 2015 was the earliest date a referral to the IPCC ought to have been made.

114. DI Aston was on annual leave between 18 March 2015 and 30 March 2015.

115. At most, the Tribunal was therefore examining a delay of less than 1 month.

116. The IPCC Commissioner did initially question the delay in referral (on 13 May 2015. In answer to the IPCC commissioner's queries, Mr Noonan wrote to Mr Liston saying that the IPCC would commence a "targeted independent [investigation] dealing with these issues but not until GMP have taken their investigation to the point of charge [or not]". This suggests that it is unlikely that the IPCC would have accepted the referral even if it had been made prior to 10 April 2015, the date upon which PC Pendlebury was charged with an offence comprising serious corruption.

117. Mr Liston accepted that the delay did not make any difference to the way the investigation was conducted and continued. He accepted that in practice 'delay' of this nature is not unusual. That is consistent with Mr Noonan's position as set out in his email of 13 May 2015.

118. In any event, whether the IPCC would have elected for an independent investigation if it had been referred to them on 18 March 2015 rather than 10 April 2015 is suggested by the respondent to be highly unlikely.

119. Furthermore, it is likely that the team did very little in the 1 month period under consideration bearing in mind that during 2 weeks of that month DI Aston was on annual leave.

120. Between 5 March and 10 April 2015, the investigation into PS Pendlebury had continued; he had been interviewed and his telephones had been examined. It was examination of PS Pendlebury's phones that further increased the degree of suspicion about Insp Donaldson (although she had been already declared a suspect). Insp Donaldson was served a Regulation 15 Notice of investigation on 13 April 2015.

121. Mr Liston was allocated the case on 13 April 2015.

122. DI Aston had a meeting with CI Williams and asked her to make a witness statement. Initially she said she would not do so. After a further discussion about the original arrest and the incident on 28 December 2015, of which she said she had been informed by Insp Donaldson, she agreed to prepare a statement. She did so shortly afterwards.

123. On 14 April 2015, DI Aston attended a second Gold meeting chaired by CS Sykes. Supt Hankinson, DCI Hussey & DI Robertson were present. DI Aston noted in his casebook concerns about the involvement of CI Williams and CS Bruckshaw in the investigation.

124. Mr Liston had a meeting on 15 April 2015 with DCI Hussey and other PSB officers, Mr Noonan and DI Aston. DI Aston provided a briefing package and updated the meeting on the criminal investigation into PS Pendlebury and Insp Donaldson.

125. The following day, 16 April 2015, the IPCC had an internal meeting and, as Mr Liston told the tribunal, the Commissioner decided the matter should proceed as a managed investigation, i.e. one that is carried out by officers from the referring force but is subject to the oversight and management of the IPCC through one of its own officers.

126. On 21 April 2015 the IPCC confirmed that DI Aston should be the Senior Investigating Officer.

127. DI Aston did not identify a particular individual who had caused detriment by deliberately creating the delay in referral. The duty to refer sat with PSB. Supt Spragg's evidence was that earlier opportunities for referral were simply missed by PSB.

128. In his witness statement, Mr Liston explained the rationale for the IPCC deciding upon a managed investigation instead of an independent one. The IPCC felt that DI Aston (and by implication his team) had already carried out so much work on the matter e.g. the review of the phone logs and compiling evidence which questioned PS Pendlebury's credibility, that it was sensible for him to continue to investigate. If the IPCC had taken the matter on as an independent investigation it was thought it would have set the matter back several months to allow another investigating officer to get up to speed.

PD 7 *"[DI Aston] met with PSB and IPCC to discuss [the] investigation, briefing them on the wrongdoings of Pendlebury, Donaldson, Williams, Bruckshaw, Wilkinson and Leicester"*

129. DI Aston's case is that he disclosed that information verbally to DCI Hussey, and DI Robertson on 15 April 2015.

130. DI Aston's briefing comprised prima facie information tending to show that PS Pendlebury, Zoe Wilkinson, Natalie Leicester and Insp Donaldson had committed criminal offences. It was common ground that information about CS Bruckshaw and CI Williams, who were not then yet suspects in the investigation, was not given in that briefing.

131. It was also common ground that this disclosure would be protected if made in the public interest as having been made to DCI Hussey and DI Robertson who were present at the meeting albeit they were already aware of the information.

132. On 17 April 2015 DI Aston examined Insp Donaldson's computer and found various emails including the email from CS Bruckshaw to the CPS.

PD 8 "*DI Aston verbally to CS Sykes on 17 April 2015 "Raising [his] concerns over emails between CS Bruckshaw and ACCs Shewan & Copley and Ian Rushton (CPS)"*

133. The background to this we have set out above.

134. On 17 April 2015, DI Aston obtained CS Bruckshaw's email to the CPS from examining Insp Donaldson's computer. DI Aston immediately telephoned CS Sykes who asked him to bring the emails to him at once. DI Aston then explained his concerns about CS Bruckshaw's contact with the CPS to CS Sykes. His oral evidence was that he expressed the view to CS Sykes that CS Bruckshaw was attempting to influence the decision to prosecute and that this could be misconduct in a public office or an act tending to prevent course of justice. The tribunal accepts that he raised those concerns and gave information tending to show those matters even though he may not have done so using such precise language at the time.

135. DI Aston then gave the IPCC copies of CS Bruckshaw's emails and told them that CS Bruckshaw may become a 'suspect'.

136. On 17 April 2015, CI Williams provided the witness statement requested by DI Aston concerning the circumstances of the de-arrest of PS Pendlebury.

137. On 22 April 2015, DI Aston & PS Schofield met the CPS who indicated that they intended to charge Natalie Leicester.

138. On 23 April 2015, DI Aston had a meeting with the IPCC. Insp Donaldson was to be interviewed as was CS Bruckshaw once misconduct papers had been served on him.

139. On 24 April 2015 DI Aston met with Supt Spragg (PSB). DI Aston described Supt Spragg as being very supportive of the criminal investigation. Supt Spragg authorised an evidence capture in relation to CS Bruckshaw's computer. CS Bruckshaw was declared a 'suspect' for the offence of perverting the course justice.

PD 9 *"Advising ACC Copley that she may be a witness in the investigation and that this conflicted with her existing role as the Appropriate Authority."*

140. The claimants' case was that they disclosed information (about Pendlebury and Bruckshaw) verbally and in written briefing documents to ACC Copley and Supt Spragg on 1 May 2015. During the hearing it was confirmed that it was only DI Aston who is alleged to have made this disclosure.

141. On 1 May 2015, there was a meeting between DI Aston, ACC Copley, Supt Spragg and Steve Noonan (IPCC).

142. DI Aston's evidence was that he prepared a briefing document which he took to the meeting. PS Schofield accepted he did not have input to the briefing document used by DI Aston at this meeting.

143. DI Aston said the purpose of the meeting was to set out the suspicions relating to CS Bruckshaw. He accepted that at the meeting ACC Copley recognised that, as she had been copied into the Bruckshaw email, she was a potential witness in

the case. She agreed without challenge or discontent to hand the Appropriate Authority role over to DCC Hopkins.

144. Following the meeting, a Regulation 15 Notice of investigation was prepared in relation to CS Bruckshaw.

145. The disclosure relied upon was as set out above. The respondent's case was that such a disclosure would not qualify for protection. However, Mr Hobbs accepted DI Aston made a verbal disclosure of information in the meeting that tended to show that CS Bruckshaw had perverted the course of justice by sending an email to the CPS.

146. We consider that there would be no injustice to either party if we were to consider the disclosure in that way. It is one of several disclosures made by DI Aston that qualify for protection. Considered in that way it reflects more accurately the thrust of the claimant's case. There is no prejudice to the respondent by the tribunal considering it in that way and it was not suggested that the claimant needed formal leave to amend if the tribunal were minded to consider it on that basis.

147. On 5 May 2015, a misconduct notice was served on CS Bruckshaw. CS Bruckshaw immediately made representations about not wanting to be investigated by DI Aston due to previous 'bad blood' between the two. Supt Spragg raised this issue with DCC Hopkins.

148. In summary, this related to an issue in 2003/04 when DI Aston was a source handler in Bolton and CS Bruckshaw was then a Superintendent in that division. It appears there was a disagreement about the handling of a particular case. According to Supt Spragg's memo there was "badmouthing" by DI Aston, CS Bruckshaw instigated with his Chief Superintendent a response which resulted in DI Aston being moved to a different division. The suggestion by CS Bruckshaw was that DI Aston would still hold a grudge against him.

149. DI Aston accepted that there was a historical dispute between himself and Mr Bruckshaw going back over 10 years but that it was he who had instigated the move away from Bolton rather than Mr Bruckshaw or his senior officer.

150. We do not consider it necessary to resolve that dispute. We have not heard from CS Bruckshaw. On either version CS Bruckshaw might have raised the issue of the appropriateness of appointing DI Aston to this investigation of him.

151. On 11 May 2015, DCC Hopkins, together with DS Retford, Supt Spragg and DCI Mark Hussey of PSB had a meeting with Mr Noonan and Mr Liston of the IPCC. This appears to have been prompted by CS Bruckshaw's representations. In his casebook [1559] DS Retford set out the position:

> "DECISION
>
> DI Aston will fulfil the role of SIO will be line managed/overseen by D/Supt Retford.
>
> REASON
>
> This case will be managed by the IPCC. The investigation has already been ongoing for 6 months. A great deal of work is being carried out and for reasons of continuity, it is in the interests of justice and those involved that the case team is maintained. It is

simply too difficult to hand over a complex case at this late stage. The case against Pendlebury & Wilkinson is closely linked to the alleged actions of CS Bruckshaw & Insp Donaldson to split. Furthermore, such a complex case would, if handed to the CCU, tie up many resources & impact on ongoing CCU cases.

To split the cases is also both impracticable and likely to further complicate matters & adversely impact on the ongoing investigation. The case will be IPCC managed, and this will therefore bring in independent scrutiny & control to mitigate the concerns around D I Aston's involvement. Furthermore, all enquiries will be documented and the evidence gathered will likely rely on the accounts of others. Ultimately, any specific decision-making will be ratified by the IPCC. In effect, DI Aston will be working to/for the IPCC investigator, Mr Liston."

152. On 13 May 2015, a Local Business Monitoring (LBM) application was made by DI Aston to access CS Bruckshaw's computer and phone records. It was sent to Supt Spragg. It was authorised on 21 May 2015.

153. On 14 May 2015, DI Aston & PS Schofield met DS Retford to outline the case. Interview dates were set for CS Bruckshaw & Insp Donaldson.

154. On 20 May 2015, PS Schofield prepared an investigation summary which commenced, "This simple investigation spiralled rapidly as friends and work colleagues have deliberately interfered with the investigation in a desperate attempt to undermine and terminate the initial investigation without any charges being brought; a clear course of action intended to pervert the course of justice." [1663].

155. On 21 May 2015, PS Schofield met the IPCC to discuss interview plans concerning Insp Donaldson and CS Bruckshaw.

156. On 26 May 2015, a witness statement was received from Ian Rushton of the CPS.

157. On 26 May 2015, DI Aston met the IPCC to update them. DC Russell Clarke was to be brought in as a specialist Tier 5 interviewer in respect of the interviews with Insp Donaldson and CS Bruckshaw. The appellation "Tier 5" connotes an officer who has received the highest level of training in interviewing techniques and practices. Witness interview strategies and prior disclosures were to be drawn up. The interviews were not only to be recorded on tape but on video and there was to be downstream monitoring both by a member of the team and a member of the IPCC. That entailed contemporaneous viewing as the video was being recorded.

158. Insp Donaldson was interviewed by DC Clarke and PS Schofield on 27 May 2015 for 8.5 hours. The interview was not concluded. When it resumed on 1 June 2015 Insp Donaldson's solicitor stated that there were concerns about DC Clarke's interview technique and so on the second day of the interview Insp Donaldson gave a "no comment" interview but provided a prepared statement that complained of non-disclosure by the interviewer and bias.

159. CS Bruckshaw was interviewed on 28 May 2015. Following a similar process of preparation. It lasted about 6.5 hours.

160. DI Aston reviewed the interview and concluded that CS Bruckshaw had 'clearly committed offences and appeared a broken man'.

161. CS Bruckshaw also raised concerns over the manner of his interview.

162. On 3 June 2015, DI Aston recorded that CI Williams was close to being a 'suspect'.

163. On 4 June 2015, DI Aston briefed DS Retford and updated the IPCC that CI Williams was to be interviewed as a witness rather than a suspect. Authority for Local Business Monitoring (LBM) was sought in relation to CI Williams' email and phone records.

164. On 8 June 2015 DS Retford raised concerns about the tone of language used in DI Aston's LBM application. DI Aston accepted the advice and toned down the language used in the application.

165. On 10 June 2015, DI Aston noted that he felt there was a clear case to go to the CPS for a charging decision on both Insp Donaldson and CS Bruckshaw

166. On 11 June 2015, the IPCC sent DS Retford Terms of Reference regarding the investigation into the actions of Insp Donaldson and CS Bruckshaw in respect of the incident concerning PS Pendlebury 19 September 2014. They were forwarded to DI Aston. These made it clear that the investigation was into whether either officer might have committed a criminal offence and, if so, to make contact with the CPS and also to identify whether either of them had a case to answer for misconduct or gross misconduct or there was no case to answer.

PD 10 *"Reporting allegations of sexual harassment made by KB against CS Bruckshaw."*

167. The claimants' case is that DI Aston and PC Byrne disclosed that information verbally and in written documents to Supt Spragg on 18 June 2015.

168. On 18 June 2015, DI Aston & PC Byrne attended the summons office to investigate the contact it was alleged Insp Donaldson had made. Whilst there they had a conversation with an employee referred to as KB concerning CS Bruckshaw [1431]. During that conversation, KB raised the gist of a sexual harassment allegation against CS Bruckshaw.

169. DI Aston confirmed that after visiting the summons office, he and PC Byrne went to see Supt Spragg in her office. DI Aston did the talking. PC Byrne had noted the victim's account in his policy book. He photocopied it and gave it to Supt Spragg. It was produced in evidence during the hearing.

170. The respondent's case was that there was nothing in that note that tended to show a possible criminal offence on the part of CS Bruckshaw. PC Byrne said he thought it was criminal conduct (harassment) but he accepted he had never seen the texts exchanged between KB and CS Bruckshaw or knew their content.

171. DI Aston also said in evidence that KB's statement indicated the criminal offence of harassment. Harassment requires there to be a course of conduct. DI Aston's alternative position was that it showed a breach of the Professional Standards of behaviour. Supt Spragg did not accept in evidence that the

information suggested a criminal offence. Her view was it might amount to misconduct.

172. After the alleged disclosure on 18 June 2015, the claimants developed their investigation. DC Tracy Bon interviewed KB on 19 June 2015 and took a statement from her. The complaint amounted to unwanted attention from CS Bruckshaw in the form of texts and calls. KB was reluctant to support any action but conceded she would consider it if voice calls were recovered and someone else came forward to support her.

173. On 22 June 2015, DI Aston recorded in his casebook that he had sent an email to Supt Spragg to which he attached KB'S statement. The email itself was not identified or produced. We accept that DI Aston did this. In her witness statement Supt Spragg referred to an email from DI Aston of 8 October 2015 to which the statement was attached. In that email DI Aston said: "you were going to review the statement…" The obvious inference is that he had already sent it to her but that she had not reviewed it by then.

174. The statement of KB [2340] described CS Bruckshaw having a friendly relationship with KB including late-night texting and asking to meet up with KB and her friend for a drink and then to come to her house. She said that she had no intention of doing this but she did not wish to antagonise him because she was in a position of temporary promotion and he was her boss. She said that he made inappropriate comments but that she did not want to go into detail about them but she said she was under no illusion that he was pursuing her sexually. She used to laugh off inappropriate comments until "they became so bad I told him in no uncertain terms to stop contacting me." After she did that there was no further contact. She accepted the texts between her and CS Bruckshaw were "a little flirty" but the inappropriate comments were made during voice calls.

175. The original verbal briefing of Supt Spragg combined with PC Byrne providing a note of the initial interview with KB are disclosures of information by both of them at that time. The subsequent email attaching the statement was a disclosure of information by DI Aston. Whilst the statement may have provided additional detail, we infer that the information disclosed on the earlier occasion was substantially the same.

DET 4 *Failure to act on and investigate the allegations of sexual harassment (made by KB against CS Bruckshaw) from June 2015 to May 2016*

176. The detriment complained of was a delay in investigating a sexual harassment allegation that the victim herself did not wish to pursue.

177. On 24 June 2015, DI Aston reported the matter to the IPCC who thought the harassment case was separate to the criminal investigation and that the complaint should remain with PSB.

178. On 1 July 2015, IPCC internal documents record that the harassment allegations were then with the respondent.

179. On 29 July 2015 DI Aston updated DS Retford. The harassment claim was to be forwarded to Supt Spragg for her to conduct a severity assessment of conduct.

180. On 8 October 2015 DI Aston sought an update from Supt Spragg regarding the same allegation (as referred to above). Her response was that PSB had discussed the matter as potential misconduct but had not formally documented a severity assessment and would look at it again after conclusion of the criminal investigation. DI Aston replied, 'just tidying up' and Supt Spragg replied 'no problem'.

181. On 25 April 2016, DI asked CS Anderson, who had then become Branch Commander of PSB, to look into the harassment allegation. She replied, 'speak on Wednesday'.

182. On 3 May 2016, DI Aston noted in his casebook the harassment complaint had not been moved on for 12 months. On 5 May 2016 he raised concerns with CS Anderson about a number of matters, one of which was the sexual harassment allegation not being investigated. She replied that it was being dealt with. On 8 May 2016 DI Aston recorded the lack of progress by Supt Spragg in his casebook, and on 10 May 2016 Supt Spragg told CS Anderson that she had not formally recorded a severity assessment for the sexual harassment case. She had in fact been off since early February 2016 and had just returned. She explained that she had not had a chance to get to it and apologised. At that point the documents were then forwarded to DCI Flindle to conduct a severity assessment.

183. In evidence Supt Spragg confirmed that the delay was due to her 'own life, capacity and priorities'.

184. In the event, the respondent eventually took no further action as KB refused to have any further involvement in progressing the allegation and refused to be interviewed again.

185. Returning to the primary chronology on 26 June 2015, DI Aston attended a meeting with the CPS. He felt that they had no will to prosecute PS Pendlebury.

186. On 29 June 2015, DI Aston recorded that he found the CPS obstructive, and on 2 July 2015 that the CPS were not interested in the case.

187. On 1 July 2015, ACC Copley met with DI Aston and PS Schofield to prepare her witness statement. She created a draft on 2 July 2015 and finalised it on 17 August 2015 [2427].

188. On the same day, CI Williams was declared a suspect by DI Aston and the intention was that she should be interviewed on 5 August 2015.

189. On 21 July 2015, DI Aston updated DS Retford and a statement was to be requested from ACC Shewan. ACC Shewan sent his draft statement to DI Aston on 18 August 2015. DI Aston formatted it and ACC Shewan signed and returned it [2874].

PD 11 (i)*[Showing] evidence had been withheld by ACC Copley & ACC Shewan;*

(ii) identifying that the statement made by CI Williams was in conflict to the notes of her witness interview and other evidence; and

(iii) setting out the nature of her findings and allegations against the officers under investigation."

190. DI Aston and PS Schofield went to ACC Shewan's office on 27 July 2015 to brief him on the case. DI Aston said the purpose was to get a statement from ACC Shewan regarding the Bruckshaw email to the CPS and to progress the service of misconduct papers on CI Williams. DI Aston's evidence was that he was asked to brief ACC Shewan verbally. PS Schofield was not involved in providing the verbal briefing. He could not recall what he may have added to the conversation. PS Schofield did not therefore make a verbal disclosure at that meeting.

191. DI Aston said he provided a written briefing document relating to CI Williams but could not in the first instance recall which document specifically he was referring to. An email of 27 July 2015 [2471] shows that DI Aston sent a briefing document to ACC Shewan after the meeting. DI Aston was not sure whether he had taken the briefing note to the meeting as well, but he thought he had prepared it in advance and taken it with him.

192. The briefing paper sent to ACC Shewan was a disclosure of information by DI Aston. The respondent's case is that it was not a disclosure by PS Schofield even if, as DI Aston and PS Schofield said, he had been involved in creating one of the documents sent. PS Schofield said that he had created an unsigned PowerPoint on CI Williams detailing errors in her witness statement.

193. The essence of the briefing paper was an allegation that various matters in CI Williams' witness statement were at odds with other evidence in the case and thus was information tending to show an attempt to pervert the course of justice. It also included a summary of the involvement of PS Pendlebury, CS Bruckshaw and Insp Donaldson contained within a draft regulation 15 notice of restriction.

194. The respondent accepted that DI Aston, both verbally and in the email/briefing paper, made a disclosure to ACC Shewan in respect of (ii) above which could indicate the criminal offence of perverting the course of justice by CI Williams. The respondent also accepted that the draft regulation 15 notice, a document prepared by DI Aston, indicated potential criminal offences by the other officers named in the notice. The first part of the pleaded disclosure, that is "evidence had been withheld by ACC Copley and ACC Shewan", was not made out as a matter of fact on the evidence. DI Aston accepted in evidence that he did not say to ACC Shewan that he or ACC Copley had withheld or concealed evidence, and accepted that merely asking for a statement of the circumstances surrounding the Bruckshaw email could not support a qualifying disclosure on that basis.

195. On 29 July 2015 DI Aston sent a report to PC Byrne about wishing to charge Insp Donaldson, CS Bruckshaw and CI Williams. It was noted that ACC Copley and ACC Shewan authorised and supported that criminal investigation.

196. On 30 July 2015 DI Aston updated the IPCC saying that CI Williams was now a suspect, and he also emailed the IPCC to inform them that the CPS did not appear keen to prosecute PS Pendlebury.

197. On 30 July 2015, DS Retford apparently updated DI Aston to say that ACC Shewan was not happy to serve papers on CI Williams. He therefore decided to go to DCC Hopkins for authorisation.

PD 12 *"Identifying that the statement made by CI Williams was in conflict to the notes of her witness interview and other evidence."*

198. DI Aston's case is that he made the following individual or cumulative disclosures of information: verbally and in written documents to DCC Hopkins on 5 August 2015; and verbally in a telephone call to Supt Retford on 5 August 2015.

199. This disclosure is essentially a repetition of element (ii) of PD 11.

200. The disclosure of that information regarding CI Williams' statement as we have just recited could potentially amount to an allegation of perverting the course of justice and therefore was information tending to show the commission of a criminal offence.

201. On 3 August 2015, the IPCC informed DI Aston they needed to review the case against Insp Donaldson, CS Bruckshaw and CI Williams and then, if appropriate, the matter could be referred to the CPS.

202. On 4 August 2015, DS Retford sent a briefing note to DCC Hopkins to consider. He referred in terms to the application by DI Aston to serve papers on CI Williams and for restrictions. The respondent argued it was not clear what if anything DI Aston sent or said to either DS Retford or DCC Hopkins on 5 August 2015. DI Aston's evidence was that he did meet DCC Hopkins who signed the necessary papers. It is extremely unlikely that a DCC would do so without having read the contents the fact that DCC Hopkins agreed to treat CI Williams as a suspect and signed the misconduct papers for CI Williams of itself supports any necessary inference that DI Aston made that disclosure to him on that day. The misconduct papers were served on CI Williams on the same day.

DET 6 *"Seizing computers and exhibits on 5 August 2015."*

203. In answer to the tribunal DI Aston said that the incident that we are about to describe prompted him to think for the first time that the respondent was "out to get him".

204. On 4 August 2015, Zoe Wilkinson made a complaint that her email account had been hacked utilising the tablets that had been seized on her arrest and held by the respondent. It was a serious allegation aimed at DI Aston and his team of improper use of property seized by them. Having lodged the complaint she immediately sent a chasing email to Chris Haskins (PSB) for a reference number but was told that it would not be allocated a number until the following morning.

205. On 4 August 2015 DI Radford sent an email to PSB Duty Cover asking for someone to pick up the complaint and to seize the tablets. He then sent a longer email explaining his rationale for seizing the tablets that is the need to take swift action in order to protect the investigation team.

206. In evidence DI Aston accepted that was PSB's genuine motive for seizing the tablets, but he said that it could have been done in a different way. DI Aston said that PSB had also seized a computer belonging to CS Bruckshaw which they had no need to take. On the day that CS Bruckshaw was served with disciplinary papers, his tablet, mobile phone and office laptop were seized by the team. Hence, they were in the same property store as the tablets belonging to Zoe Wilkinson.

207. DCI Hussey in PSB called DI Aston on 5 August 2015 and informed him of the complaint made by Zoe Wilkinson and said that in consequence PSB had seized what they thought were the relevant computers/tablets from the GMP property store. DCI Hussey also informed the IPCC.

208. DS Retford, when he learnt of this, approached PSB about the matter saying he thought that Zoe Wilkinson was making vexatious claims.

209. DI Aston's concern at the time was that PSB were actually investigating his team. However, in his oral evidence he accepted that he had a "degree of paranoia" at the time.

210. On 6 August 2015, DI Aston emailed PSB to find out what was going on. He also informed the IPCC. DCI Hussey responded that the raid was to protect officers in the investigation and to find out the facts regarding Zoe Wilkinson's complaint. He said that CS Bruckshaw's computer had also been seized from the store as it had been unclear to whom it belonged. In evidence it was argued on behalf of the claimant's that it should have been clear if it had been properly labelled as DI Aston maintained that it was. Be that as it may, DI Aston responded to DCI Hussey's email at the time saying that his email had not been meant as a personal attack on him.

211. On 6 August 2015 Zoe Wilkinson sent a further chasing email to PSB asking for her complaint reference number.

212. On 7 August 2015 Chris Haskins sent the complaint reference to Zoe Wilkinson, who then demanded to know what was being done about the "hack" by Mark Radford. Mr Radford emailed Zoe Wilkinson to explain that the tablets had been seized for examination.

213. On the same day Simon Retford again questioned the seizure of CS Bruckshaw's laptop by PSB in an email to DCI Hussey and Supt Spragg. DCI Hussey replied explaining why the laptop had been seized (saying it was wrongly believed to have belonged to PS Pendlebury). DS Retford replied expressing dissatisfaction with PSB regarding a separate misconduct case which he was himself involved in.

214. In the circumstances the tablets/laptop, the respondent submits, were not seized by PSB as part of a covert surveillance operation on the claimants. Their case is that the seizure was due to the complaint by Mrs Wilkinson, the need to act on it to protect the investigation team, and that the laptop belonging to CS Bruckshaw was taken from the store by accident. Mr Radford said that he thought Mr Haskins "went in and thought 'is it something I want or not?' More than likely he didn't know so he thought he would take it". Wearing all this information on balance the tribunal finds this is the likely explanation.

215. An allegation was put to Mark Radford that PSB had used the Wilkinson complaint as a smokescreen to go and seize CS Bruckshaw's laptop. This was flatly denied. There was no other evidence from which the Tribunal could draw that inference.

216. A further suggestion not expressly put to any respondent witness was that PSB had wiped the laptop as it was found to have no relevant evidence on it. The

information appears to show that prior to seizure by PSB, CS Bruckshaw's desktop computer had been examined remotely and found to have been wiped clean. If that is correct it is clearly a strange event. Nevertheless, an initial assessment of his laptop by CCU found that that too had been wiped clean.

217. Both DI Aston and DS Schofield said that there might have been more work that could have been done to examine the laptop forensically by external experts. Whether that is correct or not, on balance it is likely that the laptop was wiped before being seized by PSB. PS Schofield accepted in evidence that it was unlikely that PSB had wiped it themselves.

218. On 6 August 2015 CI Williams was interviewed under caution by PS Schofield and DC Russell Clarke. In terms of preparation and practice it followed the pattern of the earlier interviews. It was observed by the IPCC and lasted about 7.5 hours.

219. The following day CI Williams informed ACC Shewan that she was sick and criticised both the interviewing officers and the length of the interview. ACC Shewan forwarded her email to DCC Hopkins and described the interview as an "ordeal". ACC Shewan emailed the Custody Department informing them of CI Williams' absence from work.

220. On the same day DI Aston updated DCC Hopkins and asked for CI Williams to be removed from her role in Custody. DCC Hopkins expressed concern at the length of the interview, to which DI Aston responded and forwarded his response to DS Retford.

221. On 2 September 2015 the case against Insp Donaldson, CS Bruckshaw and CI Williams was ready to go before the IPCC or CPS. On 3 September 2015 DI Aston updated DS Retford and DCC Hopkins to this effect.

222. DS Simon Retford met the claimants on 15 September 2015 for a pre-meeting before they went to present their findings to the IPCC. DS Retford changed the wording of the presentation in several instances to make it appear more balanced.

223. On 18 September 2015 DI Aston sent DS Retford an overview of the presentation.

1. On 21 September 2015 DI Aston sent the IPCC presentation pack to PS Schofield and PC Byrne. The pack contained first, a document entitled "Operation Ratio" which was a condensed evidence file and said to be written by DI Aston and PS Schofield; and second an "Operation Ratio" case presentation identifying the same authors [2920, 2921, 3003].

224. On 22 September 2015 summons were issued against PS Pendlebury and Zoe Wilkinson for further charges of attempting to pervert the course of justice in relation to allegedly making false allegations of road rage against the Asda security guard.

225. On the same day, DI Aston together with PS Schofield and PC Byrne went to the IPCC and presented the case against Insp Donaldson, CS Bruckshaw and CI Williams. DS Retford was also present. The IPCC were to decide whether to refer the case to the CPS. After the meeting an electronic version of the presentation was sent which contained an investigation summary dated 20 May 2015 and a

condensed evidence bundle, both of which were said to be written by DI Aston and PS Schofield, a spreadsheet showing timelines and a copy of the IPCC case presentation referred to above.

226. On 24 September 2015 the IPCC decided to refer the case against those three officers to the CPS.

227. On 2 October 2015 DI Aston and PS Schofield met the CPS to hand over case papers.

228. On the same day the IPCC asked DI Aston to send a list of other officers who he considered may be subject to internal misconduct proceedings as a result of his investigation. As we continue, to avoid repetition, when we refer to Insp Donaldson, CS Bruckshaw and CI Williams as a group we described them as the "Senior Officers". We refer to the other officers whose conduct was also considered as the "Other Officers".

PD 13 *"Report on other officers and possible disciplinary cases to answer."*

229. The question for the Tribunal is whether DI Aston verbally, and all the claimants in written documents, disclosed information to Supt Retford on 6 October 2015?

230. The report for which the IPCC had asked DI Aston to prepare was typed and signed by him and sent to DS Retford on 6 October 2015. He wanted DS Retford to review it prior to sending it to the IPCC.

231. In evidence DI Aston said that the other two claimants helped him with it although he could not identify a particular team meeting to discuss the report. The evidence of PS Schofield and PC Byrne was that they did not there were any formal meetings but just informal chats. DI Aston accepted that he typed it and he it was who made the final decisions which officers to include in his report to be considered for misconduct proceedings. DI Aston was concerned about repercussions for himself in making the report. DS Retford commended him on the report, although he made some changes to it, and said that he would give support to DI Aston in respect of any repercussions [3432].

232. DI Aston checked with the IPCC what they wanted from him and the IPCC said that they needed misconduct indications so that they could complete severity assessments. The final version of the report was sent by DI Aston to DS Retford on 7 October 2015 [3481].

233. The report started by identifying possible misconduct on the part of ACCs Shewan and Copley. It went on to outline possible failings by the "Other Officers" to meet professional standards.

234. Although the report did not recommend consideration of criminal offences for any of the "Other Officers" there are passages which suggest that Insp Craig and Sgt Greene could have committed the offence of misconduct in a public office. In the case of Insp Craig, the information suggested that it was she who prevented the arresting officer from entering Ashton under Lyne police station with PS Pendlebury after his arrest on initial allegation of shoplifting. In the case of Sgt Green, she was the custody resource management unit Sgt for the custody branch on that day. The report describes a number of actions including an examination of

the force intelligence record, FWIN. That appeared to show that she had accessed it whilst also speaking to CS Bruckshaw at the time on the telephone. She was on the phone to Insp Craig 10 minutes later when Insp Craig was accessing the same resource. She did not mention this when she was interviewed or in the 2 written statement she made to the investigation team. The report includes "It may be possible she felt a mention this access as she realises she has committed possible criminal or disciplinary offences."

235. Whilst it did not identify any specific criminal offences and referred only to the standards of behaviour we infer that those contributing to the report at least disclosed information which they believed tended to show the commission of the offence of misconduct in a public office in respect of those two officers.

236. That report was sent to the IPCC by DI Aston on 15 October 2015.

237. The respondent's case it that by making a report on breaches of professional standards identified under the headings "Authority, Respect" and Courtesy" and "Duties and Responsibilities" did not amount to information tending to show a breach of a legal obligation, and thus the respondent's case was no qualifying disclosure was made by DI Aston.

238. The respondent's further case was even if it was a disclosure which tended to show a breach of a legal obligation, it was not made in the public interest.

239. On 6 October 2015 the IPCC wrote to the then Chief Constable, Sir Peter Fahy, enclosing its final report, that is to say the investigation report of the claimants into the criminal offences of the "Senior Officers". The IPCC advised that the matter be sent to the CPS for consideration of prosecution. The covering letter with the IPCC's final report stated that it was for the appropriate authority (in this case DCC Hopkins) to determine whether any misconduct matters arose and if so to report back to the IPCC.

240. We infer that it is likely that the information disclosed by DI Aston and his team would have been shared at chief officer level prior to this point. We have recorded instances of actual communication. The letter of 6 October 2015 shows that DI Aston's final report (which was adopted as that of the IPCC) came into the possession of the then Chief Constable at that stage.

241. On 29 October 2015, DI Aston told Supt Spragg that PS Pendlebury had lied about his address to enable a benefit claim falsely to be made by Zoe Wilkinson. He also alleged that PS Pendlebury had also lied about never being bankrupt in order to obtain insurance.

242. On 12 November 2015 the CPS indicated an initial view on the case against the "Senior Officers" as not being made out [3529].

243. On 19 November 2015 PS Pendlebury pleaded not guilty to all counts alleged against him in the criminal proceedings. Prior to or at the commencement of his trial, Zoe Wilkinson and Natalie Leicester pleaded guilty to allegations of perverting the course of justice.

244. On 26 November 2015 CI Williams approached ACAS with a view to commencing early conciliation in respect of a prospective claim against the respondent.

245. On 27 November 2015 the CPS determined that no criminal action should be commenced against Insp Donaldson, CS Bruckshaw or CI Williams.

246. On the same day DS Retford updated DCC Hopkins who thanked DS Retford and DI Aston for their work.

247. On 30 November 2015 DS Retford updated the PSB and sought a discussion on the misconduct phase. On the same day he also updated the IPCC and asked if they wanted to have a meeting about the misconduct phase. The IPCC's response was that they were happy for the respondent to deal with the misconduct of the "Other Officers" identified by DI Aston.

DET 7 *"Failure of CC Hopkins to properly progress disciplinary charges against Inspector Donaldson, CI Williams and CS Bruckshaw in December 2015."*

248. In further and better particulars, the claimants identified under this heading: "Failures include not appointing a suitable qualified and experienced investigating officer for discipline matters and appointing a discipline investigator who was not an interested party. He should have ensured a discipline investigation was carried out and ensured discipline interviews were completed". [125/126]

249. The IPCC, as found above, had accepted DI Aston's final report on the "Senior Officers" as fulfilling their terms of reference for a criminal misconduct investigation. They had adopted DI Aston's final report as their own. They sent it to the respondent recommending gross misconduct allegations be put to those three officers. They required CC Hopkins to complete a memorandum stating whether he agreed or disagreed with that recommendation.

250. The evidence of DI Flindle was that within the scope of the procedure there was no room for the appointment of a new investigating officer or pursuance of further misconduct investigations or misconduct interviews at that point. He reviewed the IPCC criminal investigation and undertook the task of completing the memorandum for CC Hopkins.

DET 17 *"Not offered an exit strategy despite Supt Retford's promises."*

251. This allegation is said to have occurred in January 2016, the point at which DI Aston returned to normal duties. DI Aston retired from the respondent on 30 September 2016.

252. Steve Liston (IPCC) said he raised the need to consider an 'exit strategy' in a meeting chaired by DCC Hopkins on 11 May 2015. That was the meeting that was convened after CS Bruckshaw objected to DI Aston investigating him on the basis of previous "bad blood". DCC Hopkins favoured moving to a full independent investigation by the IPCC at that stage but the IPCC refused. DI Aston's evidence was that he thought that DS Retford had raised an 'exit strategy' at this meeting also.

253. There is no mention in the meeting notes of Mr Liston [1349] or DS Retford [1557/1597] of the need for an exit strategy.

254. The further and better particulars also contain the following:

> "DS Retford told all three claimants that GMP should consider an exit strategy…and that they should be protected as they were investigating a number of officers and some were of senior rank…" [128]

255. At the point of the hearing the claimants identified that the exit strategy to which they refer ought to have been put in place at the point they returned to normal duties.

256. DI Aston's case was that after the CPS decision not to discharge the senior officers there was pressure upon him to return to his divisional role. He said that there should have been a de-brief on the investigation but at that point DS Retford was off sick and CS Sykes cancelled the meeting. He accepted that events then overtook that. He returned to normal duties in Rochdale. He further accepted that he applied for and was offered a move to the Serious Crime Division but he turned it down as he wanted to remain in his Division to work in Rochdale.

257. PS Schofield's evidence was that he had not been blocked from seeking career development and he had subsequently done his Inspector's exam entitling him to seek permanent promotion to a higher rank although he had not at the time of our hearing achieved that promotion.

258. PC Byrne's role had disappeared in a subsequent reorganisation. He returned to a uniform role, which he did not like. After a period of sickness leave commencing in August 2016 he returned to work in February 2017. In September 2017 he applied for a new role in what is known as iOPs, which is a system for managing files, and was successful in obtaining that post.

259. We understand that DCC Hopkins became Chief Constable in about November/December 2015 upon the retirement of Sir Peter Fahy. DCC Pilling came to the respondent from Merseyside Police shortly thereafter. We refer to Mr Hopkins as the Chief Constable as from December 2015. We do not have a precise date. If we are mistaken as to the date we do not consider it is material. Mr Hopkins was clearly involved with a number of aspects of the investigation both as DCC and later as Chief Constable.

DET 8 *"CC Hopkins commissioning [3] reviews of the claimants' investigation as follows:*

By DCI Hussey in December 2015

By DCI Flindle - February 2016

By the Major Crime Review Team ("MCRU") in March-May 2016"

260. Steve Liston recounted in evidence the acceptance by the IPCC of DI Aston's report, the commissioning of the further report covering the "Other Officers", the IPCC adopting the claimant's final report into the senior officers and the CPS

decision not to charge those senior officers as a result of which the processes start to focus on the 'misconduct phase'.

261. The assessment which was necessary at that stage of potential misconduct on the part of an officer was to be in two parts. First, there was to be an assessment of the conduct of the "Senior Officers", and it was this which led to the commissioning of the so-called 'Flindle review'. Second, there was to be an assessment of conduct of the "Other Officers" identified by DI Aston in his subsequent report to the IPCC and it was that which led to the commissioning of the 'Hussey review'.

262. On 14 December 2015 DS Retford and Supt Spragg met the IPCC who indicated that they envisaged gross misconduct cases being suitable in the case of Insp Donaldson, CS Bruckshaw and CI Williams. This was in accordance with DI Aston's final report. They also identified amongst the "Other Officers" Insp Craig as being susceptible to a gross misconduct charge. Those recommendations needed to be considered by CC Hopkins as appropriate authority who was required under the regulations to produce a memorandum setting out his agreement/disagreement. That process was to be initially overseen by Supt Spragg but was ultimately undertaken by DCI Flindle.

263. At the same meeting the IPCC also told the respondent that PSB should determine whether misconduct charges were appropriate for the "Other Officers" identified by DI Aston in his supplemental report [3592]. That was the process which has been described as the 'Hussey review'.

264. On 15 December 2015 Supt Spragg asked the IPCC for an extension to 8 January 2016 to complete the memorandum on the "Senior Officers" which the IPCC agreed. On 15 December 2015 Supt Spragg emailed CC Hopkins and members of PSB to state that a decision was required on the "Senior Officers" misconduct charges by 8 January 2016.

265. On 20 December 2015, DCI Hussey (PSB) asked DI Aston for further documents (mainly statements) to enable him to review the conduct of the "Other Officers" he had identified. The documents were provided to him on 21 December 2015. On 31 December 2015 DCI Hussey prepared a report assessing the conduct of the "Other Officers" involved in Operation Ratio. That report was forwarded to Supt Spragg who was to act as appropriate authority i.e. to ratify the misconduct decisions. Supt Spragg ultimately supported DCI Hussey's recommendations and they were supported as well by CC Hopkins. It was forwarded to the IPCC Commissioner who also approved the misconduct decisions.

266. In his evidence before the tribunal DI Aston accepted the reasons why DCI Hussey undertook the review and said that he no longer criticised the commissioning of that report.

267. However, DI Aston sought also to recast that allegation concerning the Hussey review in the course of his oral evidence. He said at this disagreed with the content of the report and that the content was detrimental to him. That was not the pleaded case which the Tribunal had initially been asked to consider.

268. DI Aston went on to say that DCI Hussey's comments in the report led subsequently to Supt Egerton of PSB conducting a severity assessment on him.

The respondent disputes that. The errors that DI Aston identified in the Hussey review was first that what DCI Hussey reported he said in the paragraphs dealing with Andrew Greenhalgh showed that he had been misquoted. The respondent accepted DI Aston was right in that respect and that DCI Hussey got the wrong end of the stick. When eventually the MCRU ultimately looked at this they completely agreed with DI Aston on that point.

269. In the second place, DI Aston said that the Hussey review was unfair in saying that his interview of Jacqueline Green was confrontational. DI Aston accepted that DCI Hussey's opinion that the interview was confrontational was fair, but he did not agree that the interview was inappropriate. The respondent's case, whilst accepting the position in relation to Mr Greenhalgh, is that it denied that DCI Hussey had done anything wrong in his conclusion about the Jacqueline Green interview. As the facts show, the MCRU review was highly complimentary of DI Aston and the criminal investigation, save for criticisms made and learning opportunities identified in respect of the interview process.

270. The MCRU review was requested by DCI Flindle due to concerns that he had (mainly, but not exclusively, over the criminal interviews). CC Hopkins approved the request for that review. It was only after the MCRU report was prepared that initial severity assessments were conducted on the claimants by Supt Egerton. However, in carrying out those assessments he found no indication of misconduct in respect of any claimant.

271. Returning to the Flindle review, the facts are these. On 22 December 2015 DS Retford and Supt Spragg decided they had insufficient information to conduct a severity assessment of the conduct relating to the "Senior Officers". Under the oversight of Supt Spragg, a DCI was to be appointed to review the evidence, and DI Aston was asked to send all relevant materials to PSB.

272. On 24 December 2015 DCS Hull emailed DCI Flindle and Supt Spragg. It was anticipated that the severity assessment would be handed over to DCI Flindle to complete on 5 January 2016. Supt Spragg sent the materials to DCI Flindle on that date. She also sent him the CPS report and DCI Hussey's report on the "Other Officers" identified by DI Aston.

273. Steve Liston of IPCC accepted that it was appropriate for CC Hopkins to delegate the drafting of the memorandum concerning the "Senior Officers" to DCI Flindle.

274. On 8 January 2016 DCI Flindle prepared terms of reference for a severity assessment. He was to determine whether there was a misconduct case to answer for the "Senior Officers" and Insp Craig. He sent the terms of reference to Supt Spragg.

275. Supt Spragg updated the IPCC, having drafted a letter for CC Hopkins which he approved on 11 January 2016. In that letter CC Hopkins expressed agreement to the determinations on the "Other Officers" made by DCI Hussey and sought further time to review the evidence in relation to the three "Senior Officers".

276. On 14 January 2016 the IPCC approved the proposed course of action by CC Hopkins (in relation to determinations made on the "Other Officers") and granted

the extension to 22 January 2016 that had been sought to determine the action in relation to the "Senior Officers".

277. On 18 January 2016 DCI Flindle updated Supt Spragg saying that the review was going to take another four weeks due to the volume of documents. He felt that clarity was required as to whether charges of gross misconduct were adequately supported by the facts. Supt Spragg asked the IPCC for the further 15 days to submit the memorandum.

278. On 19 January 2016 DCI Flindle sent CC Hopkins his report. He recommended there was a case to answer of gross misconduct for CS Bruckshaw and Insp Donaldson. That allegation would require a misconduct hearing. He found a case to answer of misconduct in respect of CI Williams and Insp Craig. He also identified, first, the potential for Insp Craig raising abuse of process arguments as she had never been served with misconduct papers during the criminal investigation and, second, potential difficulties with the admissibility of the criminal interviews conducted during the misconduct process.

279. CC Hopkins approved the recommendations of DCI Flindle and submitted them to the IPCC on 23 February 2016. The IPCC approved the recommendations and subsequently CS Bruckshaw and Insp Donaldson were served with regulation 21 notices requiring their attendance at a gross misconduct hearing.

280. In cross examination DI Aston accepted the reason for and the commissioning of the Flindle review. That concession terminated that matter so far as the pleaded case was to go. However again in live evidence, DI Aston sought to re-cast the ambit of the detriment he complained of. He said it was the fact that the Flindle report led to the MCRU review being commissioned that he felt was detrimental.

281. DCI Flindle, in his assessment of the conduct of the "Senior Officers", had questioned whether there had been a robust analysis of the evidence in the context of the Police Reform Act 2002, although he made no criticism of DI Aston as a criminal investigator. As DCI Flindle had raised concerns about the admissibility of evidence gathered in the criminal investigation (particularly the interviews), and potential arguments for abuse of process or bias, he recommended a review of the criminal investigation by the MCRU, and it was that recommendation which CC Hopkins approved.

282. The respondent submitted that it was reasonable for DCI Flindle to question the content of the interviews. They were excessively long. The first interview of Insp Donaldson was 8½ hours, and that of CS Bruckshaw 6½ hours. It was suggested there was a failure to give full documentary disclosure before the interviews. The interview questions were peppered with phrases such as "jailbreak", "scheming", "whipped away", "attack on security guard", "Team Rick" (a reference to PS Pendlebury), "a politician sound to your answers", "interfering blindly", "intense loyalty", "bold statement", "habitual thieves", "fleeing the scene like something from a Benny Hill scene", "penny needs to start dropping", and "trying to get the case kicked in the bin".

283. DI Aston accepted that others would be entitled to form their own opinion on the interviews and that he would be happy to take any learning from them. He agreed that there may have "been some learning about getting too involved". He repeated that he thought going in to the interviews that Insp Donaldson was "bang

to rights" and that coming out of the interviews CS Bruckshaw had "clearly committed offences and appeared a broken man".

284. CC Hopkins agreed to the MCRU review and asked CS Hull to get the Major Crime Review Unit (a section within the Serious Crime Division of the respondent) to conduct a review of the criminal investigation and to make a report in report of DCI Flindle's concerns. He wanted to assess whether the IPCC criminal investigation led by DI Aston had been managed effectively with an eye to seeing whether there was any individual or organisational learning arising out of that.

285. DCI Flindle briefed the MCRU on 10 March 2016. That review was conducted by Martin Bottomley and Mark Crowley. On the same day Martin Bottomley provided terms of reference to the review, identifying that the purpose of the review was to assess whether the criminal investigation was managed effectively and to identify individual and organisational learning.

286. In his oral evidence DI Aston said that he felt the commissioning of the MCRU report was "suitable but perhaps not at this time".

287. Mr Bottomley was keen to flag up his early concern that his report would be likely to fall to be disclosed in any criminal or misconduct proceedings. DCI Flindle responded with CC Hopkins' considered view that it would be wrong and lack integrity and might affect public confidence to pause or delay the carrying out of the review.

288. On 18 April 2016 Mr Bottomley informed various people of the review and arranged to DI Aston and DS Retford. He telephoned DI Aston and confirmed the Chief Constable had commissioned the review and that there was to be a meeting with the investigation team on 19 April 2016. DI Aston obtained a copy of the terms of reference for the review and met Mr Bottomley on the following day.

289. On that day, having seen extracts from DCI Hussey's report, DI Aston sent an email to Mr Bottomley defending himself against the allegation of bias raised in DCI Hussey's report of 31 December 2015. He copied that to DS Retford and the IPCC and also told PS Scofield, PC Byrne and DC Russell Clarke of the fact of the MCRU review.

290. On 20 April 2016 Mark Crowley, who was Mr Bottomley's assistant, emailed DI Aston to tell him that he had started reviewing his policy books.

291. On 29 April 2016 DI Aston was interviewed by Mark Crowley and answered all the questions that were put to him. Shortly thereafter, on 3 May 2016, he noted in his policy book that his objectivity and investigative bias had been called into question by the review, he noted in his policy book that he had uncovered poor practice by senior officers and there was no appetite for the truth [3381].

292. As part of the MCRU review Martin Bottomley sought input from the National Investigative Interview Adviser at the NCA concerning the interviews conducted by the team, principally by DC Russell Clarke. The NCA report dated 16 May 2016 [4346] indicated that the adviser considered the interviews demonstrated a strong degree of bias and a lack of objectivity. That report was incorporated into the MCRU report [4201].

293. The MCRU report contained: the terms of reference; the fact that PSB had flagged, via DCI Flindle various matters, including the interviews of the three "Senior Officers"; and recommendations, which included:

293.1. Carefully considering the appointment of SIOs;

293.2. Guidance and training to be considered for those conducting interviews;

293.3. Consideration of whether the MCRU report was a document to be disclosed in the misconduct process; and

293.4. Consideration be given to defining the role of "welfare officer" (a reference to Insp Donaldson having acted as PS Pendlebury's welfare officer).

294. Mr Bottomley suggested that circulation of his report should be carefully managed.

295. DI Aston said in evidence that he agreed with the content of the report save for the criticism of the criminal interviews. It was a feature of that criticism that neither the National Adviser nor Mr Bottomley had viewed or listened to the recording of the interviews of the three "Senior Officers". In general, it was the claimants' case that nobody could get a proper appreciation of whether the interviews were flawed without having listened to the recording, at least in part.

296. Following the MCRU review, as he was bound to do, Supt Egerton completed a regulation 12 initial assessment of conduct for DI Aston and PS Schofield. He found no misconduct on the part of either officer.

DET 12 *"DCI Flindle briefing MCRU to focus on the partiality of the interviews in March 2016."*

297. The briefing from DCI Flindle to MCRU on 10 March 2016 did include DCI Flindle signposting his concerns about the criminal interviews. DCI Flindle's evidence was that he was not telling the MCRU to focus solely on the interviews. He accepted he pointed out his concerns. He pointed out that he had asked for a review for organisational and individual learning. Mr Bottomley gave evidence to a similar effect about the briefing he received.

298. DI Aston's evidence was that there should not have been any signposting to the interviews. It is correct that he did not conduct the interviews that were considered in the review, albeit he was the overall leader of the team which included, temporarily, DS Russell Clarke and PS Schofield who conducted the interviews.

299. The question for the Tribunal to decide is the reason why DCI Flindle signposted the interviews and to consider whether, if the claimants were subjected to detriments, there was any evidence to suggest that DCI Flindle raised his concerns about the interviews because of any protected disclosure.

300. DCI Flindle's evidence was a denial that he had tried to undermine the misconduct process against the three "Senior Officers" (the claimants combined and explicitly stated case). He affirmed that he had genuine concerns about the interviews. He denied that he sought the review on the basis that the claimants had exposed any wrongdoing by the "Senior Officers". DCI Flindle said his own job in

PSB was to examine any alleged wrongdoing by other officers within the respondent, and that he had investigated officers of all ranks. He said that he had never been put under pressure by any member of the respondent's senior leadership team to not investigate "Senior Officers".

301. It is clear from the outcome report of the MCRU review that both Mr Bottomley and the NCA expert adviser agreed that there were learning issues arising out of the conduct of the criminal interviews.

302. DI Aston introduced into his evidence at this point a concern about the regulation 12 initial assessment of conduct carried out by Supt Egerton following the publication of the MCRU report. That was not one of the claimants' pleaded detriments, but we make these findings in respect of that. Initial assessments of conduct are commonplace within a Police Force. Supt Egerton's review of the MCRU report was to see whether that threw up any indications of misconduct, and he found, clearly, that there was no misconduct that could be alleged on the part of DI Aston or PS Schofield within the MCRU report. Indeed, it is right to say clearly that at no stage has the respondent ever suggested that there was misconduct on the part of any of the claimants.

DET 13 *"DCI Flindle visited DI Aston on 13 April 2016 on false pretences."*

303. The case as set out in the claimants' further and better particulars is that on 13 April 2016 DCI Flindle asked to meet DI Aston in response to his reports of possible fraud committed by PS Pendlebury. The claimants' case is that DCI Flindle was provided with evidence to that effect but never investigated it. When DI Aston discovered that DCI Flindle had conducted a review of the investigation, DI Aston challenged him and, according to DI Aston, DCI Flindle became embarrassed and said, "sorry about that".

304. The documentary evidence shows that on 5 April 2016 DCI Flindle and his assistant, Gary Cropper, met DI Aston. DI Aston in his evidence accepted that that was the relevant meeting rather than one on 13 April. He also accepted that the purpose of the meeting (at least ostensibly) was to explore ongoing investigations into PS Pendlebury and Zoe Wilkinson concerning allegations of benefit fraud, child safeguarding and obtaining charitable payments by deception.

305. DI Aston said he was not suspicious of the purpose behind the meeting at the time, however when he was subsequently interviewed by MCRU on 17 April 2016 he thought it was clear that from at least that point in time he felt "under the spotlight". He however accepted when questioned in the tribunal that he no longer felt that either the expression, "false pretences" or "deceit" properly described the visit by DCI Flindle. DCI Flindle produced reports into the relevant matters regarding those allegations on 6 May 2016, and denied that he had conducted a covert disciplinary interview and said he did not know what a covert disciplinary interview was. He maintained that the claimants were never under investigation for misconduct.

306. As to the subsequent meeting where it was alleged that DI Aston challenged DCI Flindle, who became embarrassed and apologised, DI Aston conceded in evidence that it may actually have just been DCI Flindle apologising for not being able to tell him of the MCRU review any earlier than that.

DET 22 *"Refusing to provide a copy of DCI Hussey's report on 21 April 2016."*

307. On 21 April 2016 DI Aston requested a copy of the report prepared by DCI Hussey from Mr Crowley. That was the misconduct assessment relating to the "Other Officers".

308. Although DI Aston had identified to the IPCC those officers being potentially susceptible to misconduct charges, he had never seen the misconduct charging decisions, which is what DCI Hussey produced. Supt Egerton said he agreed that it would not have been appropriate to disclose that report to DI Aston. However, on 21 April 2016 Martin Crowley sent DI Aston excerpts of the DCI Hussey report that were relevant to DI Aston personally. On the same day DI Aston sought directly from DCI Hussey a full report and copied the excerpts he had been provided with to CS Sykes, stating, "Sounds more like a disciplinary investigation every day". CS Sykes sought to reassure DI Aston that it was not such an investigation. CS Sykes was unshaken in his evidence when he maintained there was never a misconduct investigation into the claimants. Before declining to provide the full copy of the report that DI Aston was seeking he forwarded the request to Mr Bottomley, seeking his guidance and saying that he was not inclined to provide it.

309. On 8 May 2015 DI Aston recorded in his casebook that DCI Hussey had critiqued his own report of October 2015 i.e. DI Aston's report to the IPCC about the "Other Officers", but that DCI Hussey would not share his report with him, DI Aston. The respondent disputes there was any detriment to DI Aston in not providing that report. The evidence shows it was not sent to DI Aston because firstly it was prepared for DCC Hopkins as appropriate authority to consider misconduct action against the "Other Officers", and according to the respondent, that also shows it was not withheld because of any protected disclosure.

PD 14 *"Reporting the allegations of sexual harassment made by KB against CS Bruckshaw."*

310. The claimants' case is that DI Aston and PS Schofield made (individually or cumulatively) the following disclosures of information:

310.1. DI Aston in an email to CS Anderson on 25 April 2016;

310.2. DI Aston and PS Schofield verbally in a meeting with CS Anderson, Supt Egerton, DS Tuer, DCI Flindle and two PSB Officers called "John" on 27 April 2016.

311. By the time that the hearing concluded this was said only to be a disclosure by DI Aston as PS Schofield accepted he was not in the meeting relied upon.

312. The allegation of sexual harassment against CS Bruckshaw is dealt with in findings of fact above and was discovered by DI Aston and PS Byrne when they visited and spoke to KB and then informed Supt Spragg subsequently.

313. We have mentioned already the interview of KB by DC Tracy Bon and the subsequent preparation of a signed statement which we have summarised. We have also recorded that Supt Spragg placed the harassment allegation on hold pending the outcome of the criminal investigation, and said that she had "not got

round to doing a severity assessment for misconduct", which she reported to CS Anderson.

314. In her evidence CS Annette Anderson accepted there probably was a meeting on 27 April 2016 with DI Aston in which he likely raised the harassment allegation again. PS Schofield was not at the meeting. The respondent does not accept that the verbal disclosure tended to show the criminal offence of harassment, but did tend to show a breach of the standards of professional behaviour, although the respondent did not accept that that amounted to a breach of a legal obligation or that it was in DI Aston's reasonable belief that such a disclosure was in the public interest.

315. On 3 May 2016 DI Aston noted in his casebook that the harassment complaint had not been moved on, and on 5 May 2016 he raised his concerns with CS Anderson by email about the various matters, one of which was the sexual harassment claim not being investigated, and it was to that that CS Anderson replied that the sexual harassment issue was being dealt with.

316. On 10 May 2016 after Supt Spragg had told CS Anderson that she had not formally recorded the severity assessment for the sexual harassment allegation, documents were then forwarded to DCI Flindle to conduct an assessment, as a result of which it was decided that no further action should occur.

317. Re-tracking to 5 May 2016, DI Aston raised other concerns with CS Anderson, in particular his criminal investigation report to the IPCC/CPS was being used as the investigating officers ("IO") in the misconduct matters for CS Bruckshaw and Insp Donaldson.

318. In response CS Anderson said she would review the IO position. Having regard to the fact that the IPCC had already adopted DI Aston's report as their own, both for the criminal and the misconduct investigation, and the Chief Constable had accepted the recommendations with regard to the misconduct charges against the three senior officers by issuing his memorandum prepared by DCI Flindle, the view was in PSB that they were stuck with the report in terms of misconduct process, and that like it or not DI Aston had to be considered the IO for the misconduct process (as he was the person who had conducted the investigation and was the author of the final report).

319. On 10 May 2016 the criminal investigation team was re-assembled in order to prepare the criminal case against PS Pendlebury for trial.

DET 9 *"Chief Constable Hopkins and MCRU commissioning a report from the NCA dated 16 May 2016."*

320. As recorded above, the MCRU enlisted the help of an interview specialist from the NCA to complete one aspect of its report, namely the appropriateness of the criminal interviews undertaken with the three "Senior Officers". The specialist within the NCA was a national lead on interviewing. The decision to go to the NCA was that of Mr Bottomley. It was not a decision of CC Hopkins. For the reasons set out in the facts above, the respondent argued there was no detriment to the claimants in that regard. The NCA expert found the interviews to be biased and recommended consideration of learning for the interviewers, principally DC Clarke but also for PS Schofield. The respondent's case is that the NCA interview adviser

had reviewed the interviews based on the information provided by Mr Bottomley, he considered they demonstrated a strong degree of bias throughout and lack of objectivity and that he was entitled to come to the professional opinion he did and as set out in his report of 16 May 2016 [434].

321. On that basis the respondent had interviews conducted by the team which were not perfect and arising from which there were potential lessons to be learned, both organisationally and individually in terms of training for the future.

322. In his oral evidence DI Aston accepted that the NCA adviser was an expert in his field but felt that it was "excessive" for the MCRU to request that view. Mr Bottomley in his evidence confirmed that he had concerns about the interviews but was not himself an expert so sought the assistance of the NCA. It is to be remembered that DC Clarke was a Tier 5 interviewer and that was the highest level of training available to police officers.

323. The respondent continued to maintain there was no detriment to any claimant in Martin Bottomley seeking expert input in relation to the interviews. Neither was there any evidence to suggest that Mr Bottomley was aware of any protected disclosures having been made by any claimant.

324. In June 2016 the trial of PS Pendlebury in the Crown Court resulted in him being acquitted on all charges.

DET 10 *"MCRU refusing to review the interviews correctly."*

325. In further and better particulars, the claimant's case was put as "the MCRU failed to carry out the lines of enquiry as request by DI Aston. The MCRU had only read the records of video interviews. The claimant requested they watch the video interviews…The MCRU should have spoken with the interviewer…". The part of the MCRU report dealing with the interviews was the work primarily of the National Interview Adviser, thus the claimants' complaint is to the effect that Mr Bottomley failed to go back to the adviser to ask him to watch the video interviews as opposed to reaching a conclusion on transcripts.

326. Mr Bottomley's evidence was that he was content with the advice of the NCA based upon their having read the interviews. He also described the expert as having been under time pressure due to personal issues. The Tribunal was not informed what they were. We have already recorded that the interviews in total of the three "Senior Officers" were around 24 hours.

DET 11 *"Breach of NCA handling conditions to criticise the claimants."*

327. Other than disclosure to the Chief Constable, the onwards disclosure of the report of the NCA was as a matter of fact restricted. The claimants' complaint as set out in the further and better particulars stated there was a breach of the handling conditions by photocopying the report, using it in the Employment Tribunal proceedings initiated by CI Williams and in the disciplinary cases of CS Bruckshaw and Insp Donaldson. On that basis it was alleged that the material was not supplied to the respondent to use for those purposes, and therefore there was a breach of Schedule 7 and Part 3 of the Crime and Courts Act 2013. The MCRU report, of which the NCA report was part and parcel, was required to be disclosed in those

proceedings by the three "Senior Officers". The report itself identified the likelihood of the need for that disclosure.

328. Mr Bottomley's evidence was that he sought and obtained express authorisation from the author of the NCA part of the report to use it and disclose it in other legal proceedings. As a matter of fact, the Tribunal had no reason to doubt Mr Bottomley's evidence on that point.

329. With regard to the Employment Tribunal proceedings initiated by CI Williams, the evidence was that the respondent's legal team asked for express permission. Originally on 13 October 2016 the NCA administrator said that no consent had been given and asked further questions of the respondent [4580]. The respondent provided that information shortly afterwards, and subsequently on 4 November 2016 the NCA administrator gave written consent for the use of that report in the Tribunal proceedings.

PD 15 *"That PS Pendlebury had perjured himself."*

330. DI Aston maintained that he made the following (individual or cumulative) disclosures of information:

330.1. DI Aston in an email to CS Anderson on 8 June 2016;

330.2. DI Aston verbally to CS Anderson following the email of 8 June 2016;

330.3. DI Aston in emails to CS Anderson, Supt Egerton, DCI Flindle, DCI Packer on 13 June 2016;

330.4. DI Aston in a meeting with DCI Packer on 23 June 2016; and

330.5. DI Aston in a meeting with Supt Spragg and Supt Egerton in July 2016.

331. In respect of the alleged disclosure in an email to CS Anderson on 8 June 2016, on 7 June 2016 (the revision of date is immaterial) DI Aston did in fact email CS Anderson, Supt Egerton and DCI Flindle saying that PS Pendlebury's case was with the jury. He stated in that email that PS Pendlebury had perjured himself by stating that his daughter had a terminal illness (rather than a serious medical condition). The respondent accepted that that amounted to a disclosure of information tending to show that a criminal offence had been committed.

332. As to the disclosure to CS Anderson after that email, CS Anderson accepted in evidence that she probably had a conversation with the claimant along the same lines. The respondent again accepted that that amounted to a disclosure of information tending to show a criminal offence had been committed.

333. As to the disclosure at subparagraph (c) above, DI Aston emailed CS Anderson, DCI Flindle and DCI Packer on 8 June 2016 (again the change of date is immaterial) regarding outstanding issues relating to PS Pendlebury, including perjury. Again, the respondent accepted that that would amount to a disclosure of information to the same effect.

334. In relation to the fourth and fifth disclosures, the meetings with DCI Packer and subsequently Supt Spragg and Supt Egerton, the respondent accepted that the claimant probably discussed the perjury allegation with DCI Packer on 23 June

2016 and with CS Anderson, Supt Spragg and Supt Egerton in July 2016. The respondent accepted that this amounted to information which tended to show the commission of a criminal offence.

335. On 8 June 2016 the trial of PS Pendlebury resulted in an acquittal in the Crown Court of the allegation of shoplifting, conspiracy to pervert the course of justice and two counts of perverting the course of justice. The following day that was reported in the Greater Manchester News [4364-] and included mention of his criticism of the brief investigation under the heading of "Operation Ratio", describing a team of four detectives set up to investigate him in an investigation which so far had cost up to £500,000 and noting that Mr Pendlebury and Ms Wilkinson would now accuse the respondent of corruption. In some less sensational parts of the report mention was made of the fact that Zoe Wilkinson and Natalie Leicester had pleaded guilty to the charge of conspiracy to pervert the course of justice before the trial started and remained to be sentenced.

DET 15 *"Removing the interviews of CS Bruckshaw, Inspector Donaldson and CI Williams from the disciplinary pack on 31 July 2016."*

336. On 23 June 2016 John McNulty (PSB) updated the contents of the draft bundle index for the approaching misconduct hearings into CS Bruckshaw and Insp Donaldson. At that time the index included the record of taped interviews of those officers and CI Williams referred to above.

337. On 4 July 2016 Insp Donaldson and CS Bruckshaw were served with regulation 21 notices. The effect of such a notice is the setting out of the allegations in the misconduct proceedings. The requirement under the relevant regulations is that those notices must be served together with the relevant documents uncovered in the misconduct process by the investigating officer. There is also a requirement that after that notice is served the misconduct hearing must take place within a very short timescale. On 5 July 2016 the final hearing date was set for 15-24 August 2016 for those hearings for Insp Donaldson and CS Bruckshaw.

338. On 6 July 2016 DI Aston wrote an email to DCI Flindle maintaining that his report was not an IO report but a report for the IPCC and he then described how it was passed to the Commissioner as part of the process that we have described above.

339. Insp Donaldson served her regulation 22 response (i.e. her defence to the misconduct allegations) on 22 July 2016. As part of that defence she raised issues with the IO's report and the apparent hostility of the interviewing officers. Her counsel sought redactions to the misconduct bundle, including the removal of DI Aston's investigation report as it contained opinion and bias which is contrary to Home Office guidance. It also sought the removal of the criminal interviews of the three "Senior Officers" as they were not "misconduct" interviews and were unprofessional.

340. Where police officers are being interviewed in respect of matters which may be subsequently referred to the CPS for prosecution as criminal offences, or alternatively, for internal consideration under the Police Disciplinary Procedure, there is a requirement that, not only must the normal caution given to any suspect

in respect of a criminal investigation be given but also a caution to the effect that what is said in the interview may be used in the course of misconduct proceedings. It is common ground that that second caution was not given by DC Russell Clarke or PS Schofield in the interviews of the "Senior Officers".

341. It was explained in the course of evidence that it was common practice within PSB to give the criminal caution, conduct the interview and then at the end of the interview to move to treat it as a misconduct interview by giving the second caution and asking the overarching question, "If I were now to ask you the same questions in relation to potential misconduct proceedings as I have just done in relation to potential criminal proceedings, would you give me the same answers?". Experience suggests that the officer being interviewed will normally assent to that proposition. At that point it is suggested the interview can be used in the context of misconduct proceedings. That process is not invariable but what is necessary is that in whatever form questions are then asked they must be preceded by a caution given under the misconduct regulations procedure.

342. The respondent's position was that it would not have been expected of DI Aston or his team, in particular PS Schofield, to know of that practice because they were not PSB officers (and neither was DC Clarke). Those with responsibility for managing the investigation, that is to say Mr Liston and DS Retford would have known or ought to have known that the second caution needed to be given. The evidence suggests that this was simply not considered as part of the preparatory process for the interviews. Whatever the merits of the claimants' concern at being required to carry out this investigation by reason of the decision of the IPCC and their senior officers there is no doubt from the terms of reference to which we have referred that that included the contemplation of misconduct allegations against the "Senior Officers". Having been placed in that position there remains an unanswered question as to why that was not done. DS Retford might have been able to explain it but he was not called to give evidence.

343. On the same day, 22 July 2016, CS Bruckshaw served his regulation 22 response. In that he asserted that his interviews were biased, relying upon the MCRU report. He also raised the question as to whether DI Aston could properly hold the IO role in the misconduct process.

344. On 25 July 2016 a pre-hearing review was conducted in respect of the misconduct proceedings by Paul Burns, counsel sitting as the Legally Qualified Chair ("LQC"). He gave directions for redactions to the bundle to be completed; in consequence both CS Bruckshaw and Insp Donaldson did request redactions. The LQC directed that further disclosures be provided by the respondent and that the parties were to agree a final bundle for the misconduct hearing by 10 August 2016, and skeleton arguments on points of law by 12 August 2016.

345. In order to progress those directions DCI Flindle on 26 July 2016 sought assistance from PC Byrne in the further disclosure process. Both DI Aston and PC Byrne gave up their weekend to assist in the process. DI Aston's role was defined as "to locate the documents" and the IPCC were also asked to do that.

346. The following day DCI Flindle intimated that a decision was being made by the appropriate authority about whether to proceed with the gross misconduct proceedings. CS Anderson in her evidence confirmed this was being considered.

The regulation 22 responses of the then, two, "Senior Officers", were prepared by experienced counsel who had taken all the points that were available to them. As a result it was thought that the appropriate authority was on the back foot, and the respondent was then seeking permission from the IPCC to downgrade the allegations from "gross" to simple misconduct.

347. Because the IPCC had not at that stage approved the downgrading of the allegations and the deadline set by the LQC for disclosure was 1 August 2016, the disclosure process had to continue, and it was in that weekend of activity that DI Aston and PC Byrne assisted with the disclosure exercise.

348. The claimants' case is that CS Anderson told DI Aston she was ruling out the interviews on 31 July 2016 saying, to the effect, that they should not have been there in the first place as they were for the purpose of a criminal investigation.

349. By this stage DI Aston was clearly disappointed. He wrote an email on 3 August 2016 saying he was "done with it all". In oral evidence whilst he said he feared he might be blamed for the criminal interviews not being usable in the misconduct process, he also said that he then and still trusted CS Anderson. He did not intimate that he thought CS Anderson was victimising him for any protected disclosures he made.

350. In summary, the respondent's case was that CS Anderson as appropriate authority had little option but to remove the criminal interviews of Insp Donaldson and CS Bruckshaw from the misconduct hearing bundle for the reasons that we have attempted to describe before.

351. On 2 August 2016 the respondent communicated with the representatives of Insp Donaldson and CS Bruckshaw to the effect that there should be a request to the LQC to adjourn the misconduct hearing whilst the appropriate authority considered its position. She then wrote to the IPCC seeking their agreement to reassess the conduct of CS Bruckshaw and Insp Donaldson to one of misconduct.

352. The IPCC agreed to that proposal on 9 August 2016 and to the sanctions of management action for CS Bruckshaw and a management meeting for Insp Donaldson. Those were the forms of procedure that the respondent could follow short of a misconduct hearing.

353. We record here the eventual outcomes for both CS Bruckshaw and Insp Donaldson.

354. CS Bruckshaw retired. He had not been able to do so before because of the outstanding allegation of gross misconduct.

355. On 25 November 2016 Insp Donaldson went absent from work with stress. Her misconduct meeting went ahead on 26 June 2017 but at that stage the LQC permanently stayed the proceedings as he felt it was unfair that they should be continued. Part of the reason included the fact that Insp Donaldson had been subjected to a criminal rather than a misconduct interview, and the delay in the process.

DET 16 *"Telling …. that their interviews were biased and lacked objectivity on 31 July 2016."*

356. This allegation refers to the conversation that CS Anderson had with DI Aston on 31 July 2016 to explain why the criminal interviews had to be removed from the hearing bundles for the misconduct hearings. We have already recorded what was contained in the further and better particulars. In oral evidence DI Aston said he overheard a conversation between CS Anderson and Supt Egerton to the effect that the criminal interviews had to come out of the bundle. It is likely that there was probably more than one conversation between DI Aston and CS Anderson on that date. They were on close speaking terms. The substance of DI Aston's oral evidence was similar to the allegation as set out in the further and better particulars. It is also reflective of the reason why the interviews were eventually ruled out of the misconduct hearings. It was the fact that they had not been conducted as misconduct interviews i.e. interviews under the misconduct caution rather than simply the criminal caution, as we have described above, that was the effective cause of the objection by the representatives of the officers charged with gross misconduct.

357. Although the respondent submitted that whatever version of CS Anderson's conversation the Tribunal accepted it probably made no difference, the Tribunal does not agree. The claimants in this case have made a number of specific allegations. The respondent is entitled to have the case determined on the basis of what was actually alleged against CS Anderson. Although the complaint to be included in the interviews in the bundle included an allegation that the interviews were biased and lacked objectivity based upon the MCRU/NCA report, the admissibility of the interviews turned, we think it more likely, on the lack of the caution.

358. It is unlikely that DI Aston was told that the interviews were coming out by CS Anderson in order to make him feel bad or to put him down. CS Anderson, whom DI Aston said he trusts, said in evidence that he deserved to know why the interviews had to be removed from the misconduct bundles. She said, and we accept, that she felt obliged to tell him the truth.

359. The fact of the matter was that by this point and by reason of the whole process DI Aston was clearly disappointed. To the extent that the account was that the interviews were removed because they were criminal interviews or they were removed because it was said that they lacked objectivity, both those statements were true.

360. In his email of 3 August 2016 [4532] in which DI Aston said that he was "done with it all now", he complained also of a number of other matters referred to in this claim as detriments in respect of whistleblowing. He included:

- the views of the investigation, including that by MCRU;
- the interviews being used as a reason to downgrade gross misconduct to misconduct;
- the failure to share the MCRU report with him;
- the assessment of conduct done by Supt Egerton; and

- the failure to execute the "exit plan", to support his officers.

361. In that email he said also that it had taken a toll on his health. The Tribunal has no difficulty in accepting that proposition. The sheer volume of documentation even in this hearing speaks of the magnitude of the task that DI Aston and his team were undertaking as does an understanding that he was investigating the conduct of fellow officers within the same force of whom 2 of the principal officers were more senior to him.

DET 18 *"CS Bruckshaw's statement to the media on 15 August 2016."*

362. After the gross misconduct charges against him were dropped and with, as we understand it, his retirement imminent, CS Bruckshaw went to the press. CS Sykes was asked to inform DI Aston that CS Bruckshaw was going to make a statement to the media. The interview that CS Bruckshaw gave appeared in the Manchester Evening News on 15 August 2016 [4537]. CS Bruckshaw raised the question of whether it was appropriate for an officer to have been involved in the investigation and mentioned the previous "bad blood". DI Aston was not mentioned by name in the interview but this is clearly a reference to him.

363. PS Schofield's evidence was that the article did not allude to him but complained that in a separate BBC interview CS Bruckshaw had called him "a junior detective".

364. PC Byrne accepted that the media article was essentially an attack on DI Aston and there was no direct criticism of him.

365. More particularly, the article criticised the investigation into CS Bruckshaw and said that the officer who led it had been removed from CID by CS Bruckshaw in 2004 and returned to uniform following his involvement in an investigation into the well-known figure, Johnny Adair.

366. It was not in dispute that the article was a detriment to DI Aston although the respondent maintained that was not the case for the other claimants.

367. DI Aston's stated reason for Mr Bruckshaw saying what he did was "because I was investigating him for wrongdoing". In the hearing there was an expansion of this point in the evidence of the allegation contained in this detriment. DI Aston went on to criticise the comments made by the respondent to the press and a fuller version of the article in the Manchester Evening News was produced [4547(1)-(9)].

368. Whilst it is alleged to be outside the terms of the pleaded case of the claimants, the comment attributed to the respondent reads as follows:

> "A GMP spokesman said we can confirm the Head of Professional Standards wrote to the IPCC and the affected parties and explained that based on additional information received recently the case should not have been assessed as gross misconduct but as misconduct and alternative action should be taken. This has now been agreed by the IPCC and the discipline hearing will not take place."

369. Mr Feeny produced a further report. This was a BBC report dated 19 August 2016 [4551(i)-(xii)]. That report had not been produced in the proceedings until part way through the evidence before us.

370. That report contained the following statements: that the respondent said its enquiry took too long and that the respondent accepted the investigation was not carried out in the effective manner that "we always aspire to" and that it took too long to reach the eventual conclusion, and "we are always working to ensure we can take learning from situations when things do not go as we would want and as such a full review will take place".

DET 25 *"Failing to protect DI Aston and his wife following accusations made against him on social media in August 2016 and January 2017."*

371. The thrust of this allegation was the fact that by the publication of the Manchester Evening News article in August 2016 referred to above it revealed that DI Aston, although not named, had been removed with regard to his involvement into the investigation into the son of the well-known figure, Johnny Adair.

372. In further and better particulars the claimants said:

> "Allegations were disclosed on Twitter that DI Aston compromised a covert operation into the UDA and was therefore removed by Bruckshaw…DI Aston complained in August 2016…to CS Sykes about the social media disclosures…which linked him to the UDA operation…DI Aston knew in the past covert operatives had been subject to attacks…CS Bruckshaw created the false story and provided it to a social media website to hide behind anonymity."

373. In those circumstances this was an allegation that social media comments linking DI Aston to a UDA operation placed him at risk.

374. Because there was mention of Johnny Adair, DI Aston sought a risk assessment in relation to his safety from CS Sykes and CS Anderson. She requested a risk assessment from DS Mark Smith of the Force Intelligence Branch who included that there was effectively no threat. He graded the risk as "low risk". It was common ground that that terminology was the lowest category of risk. Clearly a Police Force cannot ever say that there is no risk at all. That was communicated back to DI Aston on 16 August 2016.

375. The social media posts referred to, namely the Twitter feed, is a feed entitled "Cabal of Corruption". It is an anonymous Twitter feed which the respondent has sought to address in the past because it is not specific simply to this case. By virtue of its anonymity it is not possible to conclude on the balance of probabilities that those who publish the posts on that Twitter feed are officers within Greater Manchester Police. On that basis the respondent submits it cannot be vicariously liable for the acts of persons unknown in that regard.

376. On 30 January 2017 the "Cabal of Corruption" Twitter feed mentioned the UDA. On 5 February 2017 DI Aston complained about being at risk due to those social media blogs. Further, on 12 May 2017 the "Cabal of Corruption" suggested that DI Aston had compromised a covert operation into loyalist terrorists, and DI Aston sought a further review of the risk assessment.

377. In further and better particulars the claimants plead that on 23 June 2017 DI Aston was told there was no discernible risk. The respondent submits that was a correct identification. DI Aston accepted in evidence that he "did not expect Johnny

Adair to knock on his door". The Tribunal did not take that expression literally but as meaning that DI Aston accepted that he was not likely to be subject to the adverse personal attention of that person or someone acting on his behalf.

378. Beyond that, the Tribunal is bound to record that there was no evidence upon which are finding could be made that CS Bruckshaw had provided the information to the author of the "Cabal of Corruption" Twitter feed or that he was himself the author of it.

DET 3 *"The allegations made by PS Pendlebury against the claimants after 27 February 2015."*

379. The date that was given for this was 15 February 2016.

380. As is apparent during the criminal investigation into her husband and herself and Ms Leicester, Zoe Wilkinson made a plethora of complaints against a number of officers at the respondent which included DI Aston and PS Schofield. PS Pendlebury's mother made complaints also. On 4 August 2015 DS Retford informed DI Aston that Ms Wilkinson was making numerous complaints to PSB. PS Pendlebury's father made a complaint to the respondent (CC Hopkins/DCC Pilling) on 27 August 2016 stating the investigation had been a "witch-hunt". It was common ground the respondent could not be vicariously liable for the acts of PS Pendlebury's family members.

381. However, on 4 October 2016 PS Pendlebury himself made a complaint to the IPCC about various serving officers. He complained about Simon Retford, Mark Radford and Chris Haskins for attending his child's school to interview his daughter without permission. He complained about PS Schofield for an alleged cell door interview of Zoe Wilkinson. He made complaints against the Asda security guard, Sergeant Canavan for hiding the fact that the Asda security guard had a mobile phone, against PS Schofield again for not seizing all the available CCTV evidence at Asda, and against DI Aston for having a vendetta against him and providing a false statement during his trial and for obtaining family medical records by deceiving his GP.

382. This was PS Pendlebury repeating earlier complaints by his family mebers. They were labelled RP1-11.

383. The IPCC responded to all this that they needed PS Pendlebury's consent to forward the complaints to the respondent. They chased for his consent on 14 November 2016 and PS Pendlebury then gave his consent. The complaint was received by the respondent on 15 November 2016. It was reviewed and upon review it was noted that it duplicated the earlier complaints raised by PS Pendlebury's family members. For that reason, the complaint was archived.

384. As to the earlier complaints from PS Pendlebury's father, those were dismissed by DI Melanie Hall on 30 March 2017 [5146] and it is the complaints of PS Pendlebury's father as duplicated by PS Pendlebury himself about which the claimants complain. Of the 11 complaints identified as RP1-RP11, it was common ground that some of them were not about any of the claimants.

385. Those complaints which were made against the claimants were:

RP4 – complaint against PS Schofield (cell door interview);

RP8 – failure of PS Schofield to gather all CCTV evidence;

RP9 – complaint that DI Aston had a personal vendetta against POS Pendlebury;

RP10 – a complaint about DI Aston providing a false statement about the illness of PS Pendlebury's child; and

RP11 – complaint about DI Aston obtaining medical records without consent.

386. DI Melanie Hall did not uphold any of those complaints irrespective of the person who raised them.

387. In evidence DI Aston accepted that PS Pendlebury would not have been aware of any protected disclosures that he might have made. Moreover, he accepted that the likely motivation of the complaints was to put the investigation under pressure and to side-track them i.e. to distract them from the proper course of the investigation.

DET 21 *"Refusing to provide unredacted copies of the MCRU report to DI Aston from June – August 2016 and to PS Schofield on 9 January 2017."*

388. In the MCRU report published on 1 June 2016 the conclusion was that it was for the respondent to decide who should have access to the report. That was communicated to DI Aston by Martin Crowley of MCRU on 6 June 2016. He did, however, give DI Aston brief details of the report. DI Aston accepted that both DS Retford and Martin Crowley had told him the outcomes of the report and that he was not criticised in it. On 23 June 2016 in an email to DI Aston Mr Crowley stated that he was aware that DI Aston had still not received the full report.

389. The detriment alleged here was that on 1 August 2016 after disclosure of the report in the Bruckshaw/Donaldson misconduct process DI Aston asked again for a copy. At that stage Mr Crowley emailed Mr Aston to say that he was surprised he had not received a copy but it was still for the Chief Constable to decide who had sight of the report. On this point the evidence of CS Sykes and ACC Shewan was that they had not seen the full report.

390. On 30 August 2016 DCC Pilling, who was responsible for controlling the circulation of the report, agreed that DI Aston could read the MCRU report. DI Aston read the full report at the MCRU office on 15 September 2016. Although he did not agree with the comments made in the report about the interviews, he declared that the report was fair and balanced.

391. In evidence DCC Pilling conceded that with hindsight DI Aston ought to have been allowed to read the MCRU report sooner. However, he denied that he had withheld it because of disclosures made by DI Aston about "Senior Officers". He explained that the circulation of the report was tightly controlled and that he then had ultimate control over its disclosure. He explained that part of the reason for the tight control of circulation was to prevent further leaks appearing on the "Cabal of Corruption" site.

392. DI Aston knew the report outcome since the month it was published and had read a full copy of the report on 15 September 2016. The report contained sensitive material.

393. In respect of PS Schofield, he attended a case conference organised to discuss CI Williams' claim to the Employment Tribunal on 9 January 2017. Of the claimants, only PS Schofield attended that conference and so did ACC Shewan. Their attendance was to discuss the evidence for the Tribunal claim with the legal advisers. PS Schofield's evidence was that counsel discussed the relevant parts of the MCRU report with him. He said he asked counsel for a full copy of the report but it was refused, and he also said ACC Shewan told him "the DCC is very clear about who can see it and who can't".

394. ACC Shewan's evidence was that the request was made in effect to the respondent's Legal Services, and that he as a Chief Officer might have taken some responsibility by saying that the report was in the control of Mr Pilling, the DCC. He reiterated that he had never read the report himself and had never seen it. That evidence confirms that the circulation of the report continued to be tightly controlled by DCC Pilling in January 2017. The respondent's case in respect of DI Aston's complaint as to motivation was here applied also as regards PS Schofield.

395. On 16 September 2016 DCI Flindle emailed DCC Pilling to say that he was closing down parts of Operation Ratio and required him to sign off on the decision to give management action to ACC Shewan for not disciplining CS Bruckshaw over the email to the CPS. DCC Pilling replied, "no problem".

DET 19 *"Accused of malpractice by CI Williams on 25 November 2016, the date of CI Williams' witness statement in her Tribunal proceedings."*

396. CI Williams obtained an ACAS certificate on 17 December 2015 and lodged proceedings in the Employment Tribunal ("ET") on 12 January 2016, the grounds of complaint being whistleblowing detriment after making protected disclosures about her line manager, Supt Chris Hankinson. In the claim form she made comments that were critical of DI Aston, suggesting that she was only investigated and interviewed by him because he was friends with her line manager.

397. The respondent's ET3 in respect of that claim dated 19 February 2016 denied CI Williams' claims.

398. On 10 March 2016 DI Aston told PS Schofield and DS Russell Clarke that their names had been requested as witnesses in relation to CI Williams' tribunal claim. On 3 May 2016 DI Aston noted a concern that CI Williams' ET claim alleged she only became a suspect in the criminal investigation because of his alleged friendship with her line manager. DI Aston emailed those concerns to CS Anderson.

399. Preparing to defend the claim by CI Williams. The respondent took witness statements from a number of witnesses: they included DCI Hussey, Martin Bottomley, DCI Flindle, DS Schofield, DC Russell Clarke, CS Bruckshaw, DI Aston, DS Retford, Supt Hankinson and ACC Shewan. Other witness statements were taken in respect of witnesses who have not been previously mentioned in this judgment.

400. In her own witness statement for those proceedings dated 25 November 2016 CI Williams alleged that DI Aston had been unprofessional when asking her questions to compile her statement, and she had subsequently been interviewed in an unprofessional manner.

401. The respondent's case was that this was not clearly not because of any alleged protected disclosures made by the claimants. DI Aston's own words for her motivation was "to get back at me for making her suspect in the criminal investigation".

402. PS Schofield said that the witness statement of CI Williams criticised the criminal interviews and therefore was critical of him, and when asked why he thought that he responded, "it's how she felt about me. I don't think she liked me".

403. PS Byrne accepted that since he had nothing to do with the criminal interviews there were no criticisms aimed at him by her witness statement.

404. CI Williams' claim proceeded to a hearing in the ET but was withdrawn by her after she had given evidence. It was settled without a payment on 13 January 2017. After the conclusion of that claim DI Aston was upset about a further media report in the Manchester Evening News. He contacted CS Anderson on 16 January 2017 who said she had very little knowledge of the ET proceedings. She was concerned about his welfare as she said in evidence, and in fact had a meeting with DCC Pilling and CS Sykes to ensure that DI Aston's welfare needs were addressed on Division.

DET 20 *"DCC Pilling's statement to the media on 15 January 2017."*

405. On 15 January 2017 after her claim was settled CI Williams went to the press. DCC Pilling drafted a press statement in response to an article that had appeared in the Manchester Evening News. He accepted that:

> "…Some elements of the IPCC managed investigation were not carried out in the effective manner that we always aspire to and it took too long to reach the final conclusion. However, we maintain that the investigation was one which needed to be carried out." [4821]

406. The claim as set out in the further and better particulars by the claimants is that press releases by the respondent were used to point blame towards them.

407. The expressions used by DCC Pilling are similar to those attributed to CC Hopkins (as he had by then become) in relation the BBC article about CS Bruckshaw in August 2016, especially insofar as it related to "some elements not being conducted in the effective manner GMP aspires to" and the comment to the effect that the IPCC managed investigation took too long.

408. None of the claimants were named in the original article. They maintain that they felt the criticism was directed at them as the "criminal investigation team". PS Schofield said he did not accept that the comments could apply equally to the IPCC or to PSB involvement. He maintained that DCC Pilling made the statement to put down the claimants because they had made protected disclosures. DCC Pilling denied deliberately targeting the criminal investigation team for criticism on the basis of their having protected disclosures

409. DCC Pilling was of course the second most senior officer to the Chief Constable. He had oversight of a huge number of matters. He could not be expected to have in depth knowledge of every matter and there is no doubt that this investigation entirely predated his joining Greater Manchester Police in early 2016.

410. DCC Pilling was conciliatory in his evidence. He accepted that his comment about the enquiry taking too long could not fairly be applied to the criminal investigation conducted by the claimants. He accepted that he had not been at GMP at the time of the criminal investigation, and timing was not a criticism raised by the MCRU report. However, he said that it was his belief from his oversight of the matter that the investigation did take too long to get to a conclusion. It was supported by the fact that DCC Pilling subsequently asked John Armstrong to look at the PSB management of the investigation and to consider, for example, "as to why the hearing for Bruckshaw/Donaldson was downgraded at such a late stage from PSB side of things … mainly for me to understand the delay".

411. In evidence DCC Pilling stood by the second part of the press release, namely that some elements were not conducted in the manner to which the GMP aspired, by reference to the MCRU report and the criticisms raised in that report over the conduct of the criminal interviews.

412. DCC Pilling said in evidence he was "trying to be balanced to everybody", and that would include the claimants, CI Williams and others at GMP who were involved.

413. Whilst the perspective of CI Williams was not aired in the hearing before us, there can be no doubt that she asserted that she felt sufficient aggrieved that she had faced the prospect of potential criminal charges and disciplinary action. Whatever the merits of that grievance it is correct to say that it was not she who went to Ashton-under-Lyne Police Station to stop PS Pendlebury being taken into custody, for that was Insp Donaldson, neither did she write to the CPS, that was CS Bruckshaw. The main complaint about CI Williams was that she provided a statement that could be challenged based upon other evidence gathered in the criminal proceedings.

DET 26 *"DI Aston not being given his personal file following his request to DCI Harris in January 2017."*

414. DI Aston retired on 15 January 2017. The following day he requested his personal file. He said that he had made the request as he was seeking a document relating to his transfer from Bolton, that is to say a document that might refute CS Bruckshaw's allegation that he had been removed from CID in 2004. The request was sent to Janette Scott, the secretary to the Superintendent on Division. The file was not found in Rochdale, Ashton-under-Lyne or Bolton Divisions, nor was it found at City of Manchester or in Tameside. A number of emails supported that it could not be found there. DI Aston's evidence was that he felt it was either with the Senior Leadership Team or PSB. That suspicion appears to have come from a so-called "joke" comment made by his line manager on Division. It appears that DI Aston took the joke seriously.

415. Following the evidence of DCI Harris, who was DI Aston's last line manager, further enquiries were made of Erika Filipek of Human Resources. That revealed that whilst the paper file had been apparently lost and has never been located, the electronic file has been still retained and does contain some recent Human Resources documents, but nothing to do with the transfer of DI Aston from Bolton in 2004.

Submissions

416. Both parties made substantial written submissions. They were amplified in oral argument. In order to explain our findings of fact we have had to refer to many of them already. Rather than set them out here again separately, in what is already a lengthy judgment, we refer to those that we took into account in reaching our conclusions as we set them out below.

417. There was no substantive dispute between counsel as to the applicable law. Those matters that require the tribunal to make determinations on its approach to the relevant test we have already described in part.

Relevant law (protected disclosures)

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

418.1. Section 43B defines a qualifying disclosure;

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

418.3. 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;

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

418.5. Section 48 (2) which 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.";

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

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

419. As we have noted above two of the issues of principle were: by whom the disclosure was made and whether the disclosures as were made in this case were made in the public interest. A further issue of principle was whether an allegation of breach of professional standards could amount to a breach of legal obligation.

420. We consider each of these issues again in turn.

By whom disclosures are made

421. Mr Feeny accepted as a matter of principle that PS Schofield and PC Byrne could not assert that they been subjected to a detriment because of DI Aston's protected disclosures.

422. The claimants relied on 3 specific documents as disclosures made by all 3 of them. These were the briefing document created on about 2 March 2015 [879], the briefing document for the Gold meeting [981] and the draft report on ""Other Officers"" [3417].

423. In addition, we have identified facts from which we can draw the conclusion that, in addition to DI Aston, the other claimants can also be said to have made disclosures. These are set out in paragraphs…

424. Mr Feeny's argument for the claimants on this issue appears in paragraph 11 to 16 of his written closings submissions.

425. He submits that there is no authority on what constitutes "worker making the disclosure". He intimated that he relies upon section 43C(2) in respect of the briefing documents.

426. As to subsection 43C(2) the provision is,

> "A worker who, in accordance with the procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer."

427. We can state our conclusion on that potential argument immediately. Given their ordinary meaning the words of this subsection "in accordance with the procedure… authorised by his employer, makes a qualifying disclosure" we think must mean that the procedure has been authorised <u>for the purposes</u> of enabling the employee to make a disclosure. The evidence does not support any finding that the creation of briefing documents in the course of a criminal investigation was a procedure authorised for the purpose of making a disclosure. Whilst we have accepted that in several instances in this case disclosures were in fact made in briefing documents that does not of itself advance the claimants' argument on the such a document being authorised for that purpose.

428. In summary, the claimants' argument is that the focus of the statutory language is on the mind of the person making the disclosure not on the knowledge of the recipient, workers can make protected disclosures anonymously or even in the name of somebody else, both PS Schofield and PC Byrne were known to be part of the investigation team and multiple disclosures of information can be considered together to constitute a protected disclosure (**Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540, EAT)**. Thus, Mr Feeny argued that DI Aston was communicating information which included, but was not limited to, the contents of briefing documents that should bring in the other claimants as workers making a disclosure.

429. Mr Feeny submitted that all the claimants confirmed in evidence that the relevant documents were a joint effort, typed by DI Aston but with input from PS Schofield and PC Byrne setting out information that they had gleaned such as phone record information.

430. Mr Hobbs submitted that it is only the person who makes the protected disclosure who is protected by this legislation. That person has to make the disclosure either orally or in writing. He submits that the claimants' case is that if officers sit around, chatting about an investigation over a cup of tea and ultimately the officer in charge draws up a briefing note then somehow the whole team collectively make a disclosure of information. He accepts that if all 3 signed the briefing document then they could be said to be making the disclosure.

431. He makes the further submission that in this case if PS Schofield and PC Byrne made qualifying disclosures of information in their discussions with DI Aston then that they were making disclosures to him on which they could have, but in this case have not, relied.

432. Therefore, Mr Hobbs maintained that save in the instances the respondent had identified PS Schofield and PC Byrne did not make disclosures of information.

433. We are not sure that the position is as simple as Mr Hobbs contends. In one of the cases we have considered, although not signed, documents were identified as having been written by more than one claimant. We see no reason in principle why in that circumstance, if the document contains information which amounts to a protected disclosure, it is not to be considered as a disclosure by both the authors. However, we do not believe that the mere fact that the employer might expect that information about telephone records and cell site evidence had probably been compiled and contributed by one of the other officers is of itself sufficient to make it a joint disclosure.

434. If, however, in the context of an investigation by a small team and the person to whom the disclosures are made is aware that it is an investigation of that sort and one or more members of the team attend a meeting at which information is communicated then, in our judgment, it may be that on such facts those attending may be held to be the joint disclosers of information whoever is in fact speaking. So, it will be a fact sensitive decision in each case bearing in mind the information that is being disclosed, who contributes to the meeting and the extent of any contribution. Another relevant factor may be the existing knowledge of the person to whom the communication is made.

435. The issue was focused on the composition of the briefing documents which DI Aston used or presented to more senior officers as the enquiry progressed.

436. As to the first of those documents, relevant to PD 1, the briefing created on about 2 March 2015 [879], Mr Feeny accepted in final submissions that PC Byrne had not contributed to this document as we have recorded above.

437. As to PS Schofield he is not mentioned by name in the briefing document. Although it contains a comprehensive description of the early part of the investigation into PS Pendlebury and Zoe Wilkinson which any superior officer would likely to realise was the work of more than just DI Aston alone, it would not be possible, we believe, to infer what information was being provided by anybody other than DI Aston. PS Schofield had not been at the meeting with Supt Mallen a few days earlier. Neither was he present when DI Aston saw Supt Mallen and CS Sykes again on 2 March 2015. On those facts we do not think we can properly hold that a disclosure was made by PS Schofield at that time.

438. The second document on which Mr Feeny relies is the briefing document referred to in PD 4 and 5 and prepared for the Gold meeting on 18 March 2015 [981]. That meeting was minuted [993-995]. Neither PS Schofield nor PC Byrne attended or are mentioned in those minutes. The observations in relation to the briefing document that we have made in respect of the briefing document prepared properly 2 weeks earlier apply with equal force. In those circumstances we reach the same conclusion that this was a disclosure of information by DI Aston alone.

439. Mr Feeny next relies upon the draft report on "Other Officers" [3417]. This is relevant to PD 13. It is dated 5 October 2015 and bears DI Aston's name alone. In this case there was clear evidence from all 3 claimants that they had contributed to it, DI Aston at paragraph 275, PS Schofield paragraph 155 and PC Byrne at paragraph 54. What is significant, in our judgment about this document is that it was disclosed in the first instance to DS Retford. He was the PSB officer who, together with Mr Liston of the IPCC, was charged with the management of the investigation. Even if in the case of other officers to whom disclosures were made it could be said that they might not have been aware of the involvement of PS Schofield and PC Byrne, no such conclusion could properly be drawn in respect of DS Retford. Overall the facts show that he was, at least functionally, line managing DI Aston during the investigation. We infer, acknowledging that we have not heard evidence from him, that he would have considered this report as one being made by all 3 officers although bearing only DI Aston's name. We conclude that the disclosure to him was, on those facts, made by all 3 claimants.

Whether the disclosures were made in the public interest

440. Although that expression was used throughout the case as a form of shorthand, the tribunal and counsel clearly had in mind the test, namely, whether the person disclosing the information had a reasonable belief that the disclosure was made in the public interest. We have already summarised our conclusion that where we have found or the respondent accepted that the information disclosed tended to show the commission of a criminal offence then we accept that an officer making that disclosure in the context of an investigation into criminal activity or misconduct on the part of a fellow officer would reasonably hold the belief that it was a disclosure in the public interest. We acknowledge that it would be otherwise if for example there was evidence to show that the disclosure was made for some ulterior personal motive but no such argument was made that effect.

441. Mr Hobbs submission to the contrary was made in paragraphs 12 to 18 of his written final submissions.

442. He identified only one instance in which the Court of Appeal considered the expression: see **Chesterton Global Ltd v Nurmohamed [2017] EWCA Civ 979**. Having earlier recited (paragraph 12) a passage from the speech of the responsible minister at the committee stage in which Parliament was debating this change to the legislation at paragraph 36 Underhill LJ continued:

> "The statutory criterion of what is "in the public interest" does not lend itself to absolute rules, still less when the decisive question is not what is in fact in the public interest but what could reasonably believed to be… The question is one to be answered by the Tribunal on a consideration of all the circumstances of the particular case."

443. And Mr Hobbs then asked the rhetorical question whether everyday disclosures by police officers that someone may have committed a criminal offence to be described as disclosures in the public interest. He submitted that it was "far too simplistic an approach to conclude that disclosures about the alleged criminality of police officers will always have a public interest element to them…"

444. Mr Feeny submits that to hold in that way would defeat the purpose of whistleblowing legislation if police officers were not covered for just doing their job. He referred us to section 37 of the Police Reform Act 2002 and the Explanatory Notes to that section. It was by this section that 43KA was introduced into the Employment Rights Act 1996 in order specifically to extend the protection from detriment by reason of whistleblowing to police officers.

445. In our judgment this is a powerful argument and taken with the other matters we referred to in paragraph 50 above overcomes Mr Hobbs' submission to the effect that this interpretation was not what Parliament intended.

Whether disclosures of breach of professional standards could amount to a breach of a legal obligation

446. Again, we recognise that this is a shorthand expression. We remind ourselves that what we are required to find is whether a person disclosing information reasonably believed that the information tended to show a breach of such an obligation.

447. This issue arises in respect of PD 10 and PD 13.

448. PD 10 is the disclosure of the complaint of KB concerning the behaviour of CS Bruckshaw. In our judgment the evidence that either DI Aston or PC Byrne considered that the information they obtained caused them reasonably to believe that it tended to show the commission of a criminal comprise schedule to offence is weak. Unless the interview with KB went significantly further than her written witness statement but that had not been recorded either at interview or in the statement taken later by DC Tracy Bon, there was no information that would cause an officer to think that CS Bruckshaw had committed a sexual offence. Whilst we would more readily be persuaded that in the alternative they had believed the conduct alleged amounted to harassment, the information does not really seem to suggest a course of conduct on the part of CS Bruckshaw after the point at which KB ceased communicating with him.

449. However, we are satisfied that the conduct alleged could amount, if proved, to sexual harassment under the Equality Act 2010. The definition of harassment in section 39 is arguably broader than that in the Protection from Harassment Act 1997. The standards of professional behaviour comprise Schedule 2 to the Police (Conduct) Regulations 2012. In our judgment the relevant passage is:

> "**Equality and Diversity**
>
> Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly."

450. Sexual harassment is a form of discrimination. The regulations, albeit expressing non-discrimination as a standard of behaviour, are the means by which

unlawful acts of that nature can be addressed by a Chief Constable and decisions made upon them including removing constables from their office. The framework within which this occurs is a legal one and constables have access to legal representation and to have their rights determined by a panel comprising a legally qualified chairman in judicial proceedings. By implication the standards of behaviour require a constable not to behave in that particular way

451. In our judgment the means of addressing a form of conduct which, whilst not criminal, is made unlawful by primary legislation and sets in place a legal process and legal protections for officers accused of that misconduct shows that, at least in this respect, an investigating officer could reasonably believe that the information tends to show a breach of legal obligation.

452. PD 13 is the report on "Other Officers". The respondent's case was that the report did not outline any criminal offences. Mr Hobbs' general submission was to the effect that a breach of a professional standard does not amount to reach a legal obligation. In support of the proposition he relied upon a decision of Peter Gibson LJ in which he refused permission to appeal against a decision in the Employment Appeal Tribunal of Mr Recorder Langstaff QC (as he then was). We have been provided only with that determination, (**Mr JVC Butcher v The Salvage Association** [2002] EWCA Civ 867.)

453. Mr Butcher was the chief financial officer of the respondent. He had a difference of opinion with the chief executive Mr Padgett who he believed to be requiring him to provide information that he knew to be materially misleading. The employment tribunal at first instance appears to have received and expert evidence on the part of both parties and even the claimant's expert "confirmed that the professional obligation to which he referred in his report was not the same as a legal obligation." The tribunal went on to find that Mr Butcher had sought to imply the incorporation of professional ethics into his employment contract so as to give rise to the legal obligation for which he contended. Although the claimant succeeded in his complaint of unfair dismissal because the tribunal rejected the reason advanced by the respondent, he failed in establishing a protected disclosure.

454. In reaching our conclusion, we remind ourselves that the statutory test for protected disclosure was different at the time of this case albeit the element of the test of "information which in the reasonable belief of the worker tended to show…" was the same. The case is clearly distinguishable upon its facts and does not bind the tribunal to hold that no breach of a professional standard could ever amount to a breach of legal obligation.

455. Attractive as the simplicity of Mr Hobbs' argument may be, we are not persuaded that he is correct. In our judgment the decision in each case will be fact specific. We suggest that our conclusion in respect of PD 10 above demonstrates one instance in which that might be the case.

456. But even if we are wrong in that respect, we reject Mr Hobbs' argument that the report on "Other Officers" did not disclose information which tended to show the commission of criminal offence for the reasons that we have set out in our findings of fact.

457. Beyond that, we recall that the standards of professional behaviour also contain the following:

"**Honesty and Integrity**

Police officers are honest, act with integrity and do not compromise or *abuse their position*.

Authority, Respect and Courtesy

… Police officers do not *abuse their powers or authority* and respect the rights of all individuals.

Orders and Instructions

Police officers only *give and carry out lawful orders and instructions*." [Emphasis added]

458. It was at least arguable that the information given about the conduct of Insp Craig tended to show a breach of those standards we have emphasised and *might* amount to the offence of misconduct in public office. This provides another example that shows Mr Hobbs' simple submission about breach of the standards of behaviour cannot apply universally nor simply because something is described as a "professional standard".

459. For those reasons we are satisfied, subject to the other requirements of the test, that in these 2 instances disclosures were made which can qualify for protection under section 43A (1)(a) & (b).

460. We need to go on to determine if those who disclosed information in PD 10 (DI Aston & PC Byrne) and PD 13 (all 3 claimants) reasonably believed that they were doing so in the public interest?

461. In respect of PD 10, the disclosure of the facts which might amount to sexual harassment or discrimination' both officers gave evidence that they thought that the conduct reported demonstrated the commission of a criminal offence. If they genuinely believed that, even if they were mistaken, then allied with their mistaken reasonable belief as to a criminal offence would be the reasonable belief that reporting the information was in the public interest. It is not suggested that they were other than honest witnesses nor that when they stated that they believed it was in the public interest to provide this information to their employer that they did not hold that belief.

462. If an employee who discloses information believes that it tends to show, for example, a criminal offence, but is mistaken in that belief the belief may nonetheless be reasonable. It might be unreasonable if, by virtue of their occupation, a moment's reflection would show that it could not have been a criminal offence. They might also hold the reasonable belief that the disclosure was in the public interest despite not having paused for that reflection. If the information also caused the employee to reasonably believe that it tended to show a breach of a legal obligation it might be the case, on a particular set of facts, that in those circumstances they could not have reasonably believed that the disclosure was in the public interest. It seems to us that absent some fact pointing in the opposite direction this would be highly unlikely. Absent that, if there was reasonable belief in the public interest in the first instance there will also be the same reasonable belief in the second.

463. However, in respect of PD 13 if they reasonably believed that in any respect of one of the officers about whom the report was compiled might be guilty of some form of criminal conduct then, by equivalent reasoning, reasonable belief that such a disclosure was in the public interest is made out.

464. It may be convenient next to identify in summary the disclosures that we have found to have been established, the date of disclosure, by whom it was made and to whom it was made. We do so in the table which follows.

PD 1	2 & 3 March 2015	DI Aston	Supt Mallen, CS Sykes, DI Robertson, Supt Hankinson
PD 2	5 March 2015	DI Aston	DI Robertson
PD 4	13 & 18 March 2015	DI Aston	CS Sykes
PD 5	19 March 2015	DI Aston	DCI Hussey, Supt Mallen, CS Sykes
PD 7	15 April 2015	DI Aston	DCI Hussey, DI Robertson
PD 8	17 April 2015	DI Aston	CS Sykes
PD 9	1 May 2015	DI Aston	ACC Copley
PD 10	18 June 2015	DI Aston & PC Byrne	Supt Spragg
PD 11	27 July 2015	DI Aston & PS Schofield	ACC Shewan
PD 12	5 August 2015	DI Aston	DCC Hopkins, DS Retford
PD 13	6 October 2015	DI Aston, PS Schofield & PC Byrne	DS Retford
PD 14	25 & 27 April 2016	DI Aston	CS Anderson, Supt Egerton, DS Dewar, DCI Flindle
PD 15	6 & 7 July 2016	DI Aston	CS Anderson, Supt Egerton, DCI Flindle, DCI Packer, Supt Spragg

465. Before we set out our conclusions in respect of the allegations of detriment and the issue of causation we set out in a table the detriments in respect of which the claimants complained. We have separated out the dates in order clearly to identify any issue of jurisdiction. We have taken these dates either from the original schedule or from Mr Feeny's closing submissions which identify them more correctly. The modification of the dates does not affect our findings, conclusions or any issue of jurisdiction.

DET 2	*Failure to refer the investigation to the IPCC from …*	*March-April 2015*
DET 4	*Failure to act on and investigate the allegations of sexual harassment (made by KB against CS Bruckshaw) from …*	*June 2015 to May 2016*
DET 6	*Seizing computers and exhibits on …*	*5 August 2015*
DET 7	*Failure of CC Hopkins to properly progress disciplinary charges against Inspector Donaldson, CI Williams and CS Bruckshaw in …*	*December 2015*
DET 17	*Not offered an exit strategy despite Supt Retford's promises*	*1 January 2016*
DET 8	*CC Hopkins commissioning [3] reviews of the claimants' investigation*	*Hussey – December 2015* *Flindle – February 2016* *MCRU – March-May 2016*
DET 12	*DCI Flindle briefing MCRU to focus on the partiality of the interviews*	*March 2016*
DET 22	*Refusing to provide a copy of DCI Hussey's report*	*21 April 2016*
DET 9	*Chief Constable Hopkins and MCRU commissioning a report from the NCA dated …*	*16 May 2016*
DET 10	*MCRU refusing to review the interviews correctly*	*16 May 2016*
DET 11	*Breach of NCA handling conditions to criticise the claimants*	*21 July 2016*
DET 15	*Removing the interviews of CS Bruckshaw, Inspector Donaldson and CI Williams from the disciplinary pack on …*	*31 July 2016*
DET 16	*Telling …. that their interviews were biased and lacked objectivity on …*	*31 July 2016*
DET 18	*CS Bruckshaw's statement to the media on*	*15 August 2016*
DET 3	*The allegations made by PS Pendlebury against the claimants after…*	*27 February 2015.*
DET 21	*Refusing to provide unredacted copies of the MCRU report to…*	*DI Aston - June – August 2016* *PS Schofield - 9 January 2017*

DET 19	*Accused of malpractice by CI Williams [in her] witness statement in her Tribunal proceedings*	*25 November 2016*
DET 20	*DCC Pilling's statement to the media on …*	*15 January 2017*
DET 26	*DI Aston not being given his personal file following his request to DCI Harris in …*	*January 2017*

466. Before we set out our conclusions on the remaining issues of detriment, causation and jurisdiction we first identify the relevant legal principles.

Relevant law (detriment, causation and jurisdiction)

467. 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'".

468. In paragraph 98 of **Blackbay** the guidance for the tribunal is given in 8 paragraphs. At paragraph 7:

> "Where it is alleged that the claimant has suffered a detriment, short of dismissal it is necessary to identify the detriment in question and where relevant to the date of the act or deliberate failure to act relied on by the claimant. This is particularly important in the case of deliberate failures to act because unless the date of a deliberate failure to act can be ascertained by direct evidence the failure of the respondent to act is deemed to take place when the period expired within which he might reasonably have been expected to do the failed act."

469. Mr Feeny submitted that notwithstanding the guidance in **Blackbay** that in a case such as this where a number of disclosures are relied upon, involving substantially the same information being disclosed to different recipients it will be an artificial exercise to cross-reference each individual protected disclosure to each detriment. The guidance he submitted was to avoid a rolled up approach and thus illogical findings of detriments being caused by disclosures which had not yet taken place. Invited the tribunal to group the disclosures by subject matter as follows: Pendlebury (PCJ) – Donaldson – Bruckshaw (PCJ then sexual harassment) – Williams - Pendlebury (perjury).

470. This approach, it was submitted, would avoid the tribunal having to delve into which individual disclosure was in the mind of each individual provided it was satisfied that when the act or failure occurred, on the balance of probabilities, the perpetrator of the detriment was aware that the claimant had made a disclosure and it had more than a trivial influence on their reason for acting or failing to act.

471. On the facts of this case we accept that is an appropriate way to determine these issues.

Causation

472. We were referred to the decision in **International Petroleum Ltd & Ors v Osipov & Ors** UKEAT/0058/17 (unreported) on this issue. In paragraphs 81 to 84 Simler, P concisely summarises the state of the law.

> **"The Causation Issues**
>
> 81. The test of causation in s.47B ERA 1996 is:
>
> **"A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure" (emphasis added).**
>
> 82. It is common ground that "s.47B will be infringed if the protected disclosure materially influenced (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower": see Fecitt v. NHS Manchester [2012] IRLR 64, an approach that mirrors the approach adopted in unlawful discrimination cases and reinforces the public interest in ensuring that unlawful discriminatory considerations are not tolerated and should play no part whatsoever in an employer's treatment of employees and workers.
>
> 83. The words "on the ground that" were expressly equated with the phrase "by reason that" in Nagarajan v. London Regional Transport 1999 ICR 877. So, the question for a tribunal is whether the protected disclosure was consciously or unconsciously a more than trivial reason or ground in the mind of the putative victimiser for the impugned treatment.
>
> 84. Under s.48(2) ERA 1996 where a claim under s.47B is made, "it is for the employer to show the ground on which the act or deliberate failure to act was done". In the absence of a satisfactory explanation from the employer which discharges that burden, tribunals may, but are not required to, draw an adverse inference: see by analogy Kuzel v. Roche Products Ltd [2008] IRLR 530 at paragraph 59 dealing with a claim under s.103A ERA 1996 relating to dismissal for making a protected disclosure.

473. In the more recent case of **Malik v Csenkos** UKEAT/0100/17/RN, which is also unreported as far as we know, Choudhury J noted that, in Osipov, Simler P had referred to the earlier judgment of the EAT in **London Borough of Harrow v Knight** [2003] IRLR 140 in which Underhill J observed that there was no authority then on the effect of subsection 48(2) which provides that "it is for the employer to show the ground on which any act, or deliberate failure to act, was done," and concluded,

> "Prudent tribunal is in dealing with victimisation claims will no doubt prefer, wherever possible, to make positive findings as to the grounds on which the employer acted rather than to rely on s.48(2) until its effect has been authoritatively established."

474. In **Malik** Choudhury J commended that guidance to us as "helpful".

Jurisdiction

475. Section 48(3) provides that the tribunal:

> "…shall not consider a complaint under this section unless it is presented –
>
> (a) before the end of the period 3 months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
>
> (b) within such further period as the tribunal considers reasonable in a case were to satisfy that it was not reasonably practicable for the complaint to be presented before the end of the that period of 3 months."

476. In general terms the provision is familiar from unfair dismissal and numerous other complaints which may be brought under the Employment Rights Act 1996. What was inserted into that Act is the expression "part of a series of similar acts or failures".

477. The provision was considered by the Court of Appeal in the case of **Arthur v London Eastern Railway Ltd** [2007] ICR 193. Mummery LJ, with whom Sedley and Lloyd LJJ agreed, set out a series of considerations in paragraph 29 to 35. We have considered them all. They were considered by the employment appeal Tribunal in the case of **Royal Mail Group Ltd v Jhuti** UKEAT/0020/16/RN and after extensive quotations from those paragraphs Simler P gave the following summary:

> "In other words, a series of disparate acts that are apparently unconnected may be treated as similar and is forming part of a series with the ever since establishes a connection between them. Whether or not there is a relevant connection is a question of fact. All the circumstances surrounding the acts will have to be considered. As Mummery LJ observed (and Sedley LJ agreed at paragraph 41), depending on the facts, that connection may be no more than that they were all done on the ground of a protected disclosure."

478. Mr Feeny also made written submissions (paragraphs 175-180) that the tribunal should draw general adverse influences because of the respondent's failure to call relevant witnesses and what he describes as "incomplete disclosure".

Conclusions on detriments

479. We propose next to set out and address each of the detriments alleged and, having identified the relevant submissions, express our conclusion on whether such the detriment occurred, whether it was an act or deliberate failure to act, by whom it was done (or not done) and when it occurred. It is then necessary to consider in the light of such detriments as are established the position in relation to the series of acts and causation.

DET 2 *Failure to refer the investigation to the IPCC from March-April 2015.*

480. Mr Feeny submits that the criteria for a mandatory referral were met on 5 March 2015 by which time PS Pendlebury had been arrested for perverting the course of justice.

481. Mr Feeney submits that there was a detriment at least by 18 March 2015 when PSB (Supt Spragg, Hussey, Hull) and ACCs Copley and Shewan since by then DI

Aston had identified Insp Donaldson as a suspect also for perverting the course of justice or misconduct in a public office.

482. The detriment is asserted by the claimants to be the delay on the basis that the longer the investigation remained their responsibility the less likely would be that the IPCC would take over the investigation and (in effect, although this was not articulated) appoint other officers to investigate.

483. Although it was DCI Hussey who apparently decided to refer on 10 April 2015 the respondent did not call him to give evidence and the claimant submitted there was no explanation why the referral was not made earlier.

484. The respondent analyses DI Aston's case, for at this stage only he had made, as we find protected disclosures, as that maybe he and his team would not have been stuck with the investigation if it had been sent to the IPCC earlier. This, submits Mr Hobbs, is a flawed analysis – being asked to do your normal day job is not a detriment. DI Aston did not identify in evidence a particular individual who had caused detriment by deliberately creating the delay in referral. The duty to refer sat with PSB. There was no evidence that PSB were seeking to delay the referral so that the IPCC would elect for a managed investigation. There was no direct evidence that any delay was motivated by DI Aston having made protected disclosures. Supt Spragg's evidence was that earlier opportunities for referral were simply missed by PSB.

485. Our conclusion is that the delay was not a detriment. Even by 18 March 2015 the claimants had amassed significant evidence to support the allegations that were referred to the IPCC. We call to mind that CS Sykes gave DI Aston oversight of this investigation on 22 September 2014 and became SIO on 26 February 2015. PS Schofield and PC Byrne were allocated to the case full-time on 31 March 2015. All the claimants had worked on this case in those months.

486. The IPCC felt that DI Aston (and by implication his team) had already carried out so much work that it was sensible for him to continue to investigate. An independent IPCC investigation is likely to have set the matter back several months to allow another investigating officer to get up to speed.

487. Even if the claimants could establish that there was a deliberate decision not to refer earlier, as to which there was no substantive evidence, the IPCC's reasoning would have applied with equal force (or so nearly as much force as to make no difference) if the respondent had referred the matter in mid-March. The effective period of delay is so brief that it cannot properly be considered as a disadvantage or detriment, even to DI Aston.

DET 4 *Failure to act on and investigate the allegations of sexual harassment (made by KB against CS Bruckshaw) from June 2015 to May 2016*

488. This allegation can be relied upon both by DI Aston and by PC Byrne whom we found also made a protected disclosure in respect of this self-same matter.

489. The detriment complained of was a delay in investigating a sexual harassment allegation that the victim herself did not wish to pursue. However, Mr Feeny sets his case high, presumably because of the hurdle of overcoming the suggestion that it cannot be a detriment to an investigator not to require him to investigate a complaint that the complainant does not wish to pursue. Mr Feeney submits a deliberate failure by Supt Spragg with a view to undermining the investigation.

490. In support of that submission he suggests that the allegations might have affected CS Bruckshaw's evidence in the criminal investigation and it might strengthen the overall case against him. He also suggested that KB, an employee of the respondent, "might be led to resent the claimants were not having progress investigation."

491. We record immediately that there is no evidential support for that last point. The suggestion that somehow a criminal case against CS Bruckshaw might be supported by a potential finding that he had committed sexual harassment, or even, if it were the case, some kind of sexual offence is hard to accept. Either in court or before the disciplinary panel we infer that it is highly unlikely that such evidence would be admitted. Its prejudicial effect would appear massively to outweigh any probative value.

492. The respondent submits this was not a detriment to either DI Aston or PC Byrne.

493. Moreover, the respondent submits the delay in investigating the complaint was not because DI Aston or PC Byrne had reported it but because Supt Spragg deemed it suitable to place on ice pending the outcome of the criminal investigation against CS Bruckshaw for perverting the course of justice.

494. We think on the evidence that we have heard and the facts we have found that the delay is more apparent than real. KB had indicated she did not wish the matter to be pursued unless someone came forward to support her allegation. So far as the evidence indicates nobody did. There was no investigation to carry forward or to delay. If there was a detriment, which we do not accept, it was more in the way of Supt Spragg fobbing off DI Aston who wish to pursue the matter. We do not accept that she was deliberately seeking to undermine the investigation.

495. The facts do not establish a detriment to either officer.

DET 6 *"Seizing computers and exhibits on 5 August 2015."*

496. By this point, as we have found, DS Schofield had also made a disclosure, PD 11, on 27 July 2015 to ACC Shewan.

497. The claimant submits that the act underlying the detriment is using the opportunity of seizing Zoe Wilkinson's tablets from the property store in Rochdale also to seize CS Bruckshaw's GMP laptop. Although the claimants accept in evidence it was returned very shortly and that the evidence suggests that it had been wiped even before PSB seized it is submitted to be a detriment because it constitutes interference with the investigation.

498. Both DI Aston and DS Schofield said that there might have been more work that could have been done to examine the laptop forensically by external experts. Whether that is correct or not, on balance it is likely that the laptop was wiped before being seized by PSB. PS Schofield accepted in evidence that it was unlikely that PSB had wiped it themselves.

499. The respondent's case is there was no detriment to any claimant in the action taken by PSB and no evidence of victimisation by PSB of the claimants in any way at this stage.

500. The claimants' submission that the mere seizure of an already wiped the laptop constituted interference with the investigation when they accept that the evidence does not show it was wiped in the one or 2 days during which it was seized is based upon a speculation that further analysis of the laptop might provide evidence relevant to the investigation. In our judgment, at its highest, this amounts to a possibility of detriment. It might become actual detriment if the evidence demonstrated that because of the seizure something had been done to all had happened to the laptop which would compromise any further investigation by an IT expert. The evidence falls short of that by some margin.

501. The implicit argument that it was done deliberately to disrupt the investigation, which we accept would amount to a detriment, also fails. We find that the evidence shows that it was probably seized because the officer taking the tablets did not properly consider what the laptop was. That finding supports a conclusion of a negligent rather than a deliberate decision to seize. Absent a seizure with the necessary intent we cannot find a detriment.

DET 7 *"Failure of CC Hopkins to properly progress disciplinary charges against Inspector Donaldson, CI Williams and CS Bruckshaw in December 2015."*

502. In paragraph 210 of his written submissions Mr Feeny submits that this allegation could be more "fully described as a failure to properly progress disciplinary charges and find fault with the Claimant's criminal investigation instead.

503. He submits that the date of the detriment should be considered to be 4 July 2016 the date when the regulation 21 notices were served on the officers.

504. In paragraphs 211 to 231 Mr Feeny rehearses a number of evidential points in respect of the review by DCI Hussey who was critical of the investigation, the view expressed by Supt Spragg that the report to the CPS was "potentially subjective" and, in summary, that this influenced DCI Flindle who then commissioned the MCRU review which reached the conclusions we have found in respect of the interviews.

505. Mr Feeny submits at paragraph 230 that, whatever the criticisms made of the investigation, PSB had the opportunity to remedy it before serving the disciplinary notices. It was, he said, obviously the disciplinary charges could not be sustained without interviews conducted giving the misconduct caution. Further he submitted that the MCRU review was commissioned in the knowledge that he could potentially prejudice the misconduct proceedings. He therefore invited the tribunal

to reject the respondent's evidence as to why those events took place and find "a deliberate decision to undermine the claimant's investigation; on which the protected disclosures had a material influence."

506. The respondent's case was that there was no failure on the part of CC Hopkins to properly progress disciplinary charges against the "Senior Officers".

507. Mr Hobbs submitted that since the IPCC had accepted the final report both in respect of potential criminal and misconduct proceedings, there was no room for the appointment of a new investigating officer. Such an appointment would have been necessary if further interviews were to be conducted.

508. We did not hear evidence from Supt Retford who was the PSB officer tasked with managing the investigation by the respondent. We did have evidence from Mr Liston who was managing it for the IPCC. Mr Liston did not himself monitor the interviews. He said that 2 other members of his staff did so. It does not appear that any of them either noticed the absence of the misconduct caution or, if they did, attach any significance to it at the time. It was not suggested that any of the claimants would have been aware of that need at the time. The IPCC's view, prior to the investigations commissioned by the respondent, was that the interviews were conducted appropriately. Mr Liston said he had no concerns about them. Although he said he did not understand why DCI Flindle's review (which led to the MCRU review) was undertaken, in cross-examination he accepted the reasoning put to him.

509. In our judgment the difficulty with claimants' case here is that it is put on the basis of a deliberate decision not to progress the disciplinary charges properly and that, in effect, the way in which they were managed in the investigation task was done in order to undermine those charges. Absent such a finding the tribunal could not properly find a detriment in this respect. We are unable to conclude that there was such a deliberate decision. The reasoning urged upon us by Mr Feeny would have to call into question as well the management of the process by Mr Liston on behalf of the IPCC. The claimants rely upon his evidence in support of the fact, with which the respondent, save as to the interviews agrees, that they carried out an efficient, thorough and robust investigation. In those circumstances we cannot conclude that the respondent failed properly to carry out investigation into the Senior Officers misconduct. We cannot safely conclude that the process was managed deliberately to achieve the result contended for by the claimants.

DET 17 *"Not offered an exit strategy despite Supt Retford's promises."*

510. Mr Feeny characterises this as a deliberate failure to act and submits that since the team was split up around Christmas 2015 he advances the date of 1 January 2016 as the date when a reasonable employer would have provided extra strategy that was contemplated.

511. We have found is a fact that the prospect of an exit strategy upon the conclusion of the investigation was raised by Mr Liston in May 2015 and that DS Retford also said that he would ensure that this was done. The claimant explained the rationale which in any event was obvious. These claimants were investigating senior police officers for offences which are tantamount to corruption in the exercise their duties.

Not only was there a potential in any event for some form of reprisal or disadvantage at the conclusion of the investigation but, in addition, the involvement of DI Aston into an investigation of CS Bruckshaw rendered such a reprisal more likely. This was all in the context that 3 criminal investigating officers from a neighbourhood policing team, because of the circumstances we have described, effectively took on a role that PSB officers and/or the IPCC might have undertaken.

512. If as long before as May 2015 the understandable need for an exit strategy upon the conclusion of the investigation was recognised by DS Retford then at the conclusion of the investigation the lack of that strategy being explored amounted to a detriment.

513. We have recorded what happened in the event and, as we set out below, there were additional detriments. Whether, if an exit strategy had been created and implemented, the claimants would have suffered no other detriments is not relevant. The officer who was managing the claimants' investigation on behalf of the respondent promised the strategy and the respondent did not carry it forward, whatever the outcome of the strategy might mean, that failure was a detriment to the claimants.

DET 8 *"CC Hopkins commissioning [3] reviews of the claimants' investigation as follows:*

By DCI Hussey in December 2015

By DCI Flindle - February 2016

By the Major Crime Review Team ("MCRU") in March-May 2016"

514. In his evidence before the tribunal DI Aston accepted the reasons why DCI Hussey undertook the review and said that he no longer criticised the commissioning of that report. In those circumstances the respondent submitted it was not necessary for the tribunal further to consider any aspect of detriment arising out of that report.

515. However, DI Aston sought also to recast that allegation concerning the Hussey review during his oral evidence. He said that he disagreed with the content of the report and that the content was detrimental to him. That was not the pleaded case which the Tribunal had initially been asked to consider.

516. As to that, when we came to consider our conclusions we considered that this was a substantive change in the way that the case was put. Had the case been put in that way we infer that it was at least possible that DCI Hussey might be called to give evidence as he had not been before.

517. We deal with the recast allegation for completeness.

518. DI Aston went on to say that DCI Hussey's comments in the report led subsequently to Supt Egerton of PSB conducting a severity assessment on him. The respondent disputes that. The errors that DI Aston identified in the Hussey review was first that what DCI Hussey reported he said in the paragraphs dealing

with Andrew Greenhalgh showed that he had been misquoted. The respondent accepted DI Aston was right in that respect and that DCI Hussey got the wrong end of the stick. When eventually the MCRU ultimately looked at this they completely agreed with DI Aston on that point.

519. In the second place, DI Aston said that the Hussey review was unfair in saying that his interview of Jacqueline Green was confrontational. DI Aston accepted that DCI Hussey's opinion that the interview was confrontational was fair, but he did not agree that the interview was inappropriate. The respondent's case, whilst accepting the position in relation to Mr Greenhalgh, is that it denied that DCI Hussey had done anything wrong in his conclusion about the Jacqueline Green interview. Moreover, the respondent's case is that neither comment in the Hussey report led to the MCRU review. Moreover, as the facts show, the MCRU review was highly complimentary of DI Aston and the criminal investigation, save for criticisms made and learning opportunities identified in respect of the interview process.

520. In the circumstances, where we have allowed this putative amendment, we would have concluded there was no detriment. DCI Hussey made an error. It was put right shortly afterwards and there were no adverse consequences for DI Aston.

521. As to the Flindle review, in cross examination DI Aston accepted the reason for and the commissioning of the Flindle review. That concession terminated that matter so far as the pleaded case went. However again in live evidence, DI Aston sought to re-cast the ambit of the detriment he complained of. He said it was the fact that the Flindle report led to the MCRU review being commissioned that he felt was detrimental.

522. This could therefore amount to a detriment if we were persuaded that the commissioning of the MCRU review was a detriment.

523. The respondent's case in relation to the MCRU review was that there was no detriment to any claimant in the commissioning of that or any of the reviews relied upon. The respondent's case was that the facts do not demonstrate that the respondent was attempting to undermine the claimants by commissioning the reports/reviews, nor that they demonstrated any evidence of victimisation of the claimants by reason of their having made protected disclosures, insofar as they had.

524. Whilst we recognise that the outcome of the MCRU review, was critical of the carrying out of the interviews. The context was that a Tier 5 interviewer and PS Schofield, and so far as preparation of the process DI Aston were concerned, no criticism was levelled officers accused the misconduct by PSB or the IPCC. However, we consider that DCI Flindle's evidence demonstrated the reason for the commissioning of the MCRU review by the respondent. He had identified matters that he thought were proper issues of concern. His concerns were supported by the review. If the disciplinary process had been undertaken and those concerns had been picked up on and exploited by the officers accused of misconduct the respondent might reasonably considered that it would be more harmful to the force. At the time of the commissioning of the MCRU review the outcome could not have been predicted. For those reasons we consider that it was not a detriment to the

claimants to commission that review at that point. For the reasons set out above we therefore hold that it was not a detriment to ask DCI Flindle to carry out a review in the alternative way argued by the claimants.

DET 12 *"DCI Flindle briefing MCRU to focus on the partiality of the interviews in March 2016."*

525. To make this case Mr Feeney submits that, the fact that DCI Flindle's report mentions concerns about admissibility and that at a meeting on 10 March 16 he referred to "a lack of objectivity and investigative bias on occasions" in the interviews, DCI Flindle briefed the MCRU to ensure that the investigation would be undermined. Were that to be maintained it would clearly amount to a detriment.

526. DCI Flindle was a PSB officer who gave evidence that he had carried out many investigations into senior officers. There was no factual basis in the evidence to suggest why he should have attempted to assist these particular officers to avoid the consequences of any improper practice in the way that is implicit in the claimant's case. We therefore conclude that briefing the MCRU did not amount to a detriment in the circumstances.

DET 13 *"DCI Flindle visited DI Aston on 13 April 2016 on false pretences."*

527. As to the subsequent meeting where it was alleged that DI Aston challenged DCI Flindle, who became embarrassed and apologised, DI Aston conceded in evidence that it may actually have just been DCI Flindle apologising for not being able to tell him of the MCRU review any earlier than that. For that reason, the respondent submits that there was no detriment.

528. Mr Feeny submits that despite DCI Flindle denying that he was gathering evidence on DI Aston the tribunal should infer that was the case because of what was said to be unjustified criticisms of DI Aston in order to justify the MCRU review and the fact that the outcome of that review was to lead to a severity assessment on Mr Aston's conduct.

529. For those reasons Mr Feeney submitted "it was not a stretch … to suggest that [DCI Flindle] had taken it upon himself to probe [DI Aston] on matters which could be used in a subsequent severity assessment". We disagree. We consider that it is a stretch beyond the breaking point to draw those inferences having accepted the rationale for DCI Flindle's report which prompted the MCRU review to be commissioned and, as will be seen below, we do not accept it was a detriment to the claimants for Supt Egerton to have carried out the severity assessment.

DET 22 *"Refusing to provide a copy of DCI Hussey's report on 21 April 2016."*

530. On 8 May 2015 DI Aston recorded in his casebook that DCI Hussey had critiqued his own report of October 2015 i.e. DI Aston's report to the IPCC about the "Other Officers", but that DCI Hussey would not share his report with him, DI Aston. The respondent disputes there was any detriment to DI Aston in not providing that report. The evidence shows it was not sent to DI Aston because firstly it was prepared for CC Hopkins as appropriate authority to consider

misconduct action against the "Other Officers", and according to the respondent, that also shows it was not withheld because of any protected disclosure.

531. On 21 April 2016 DI Aston was sent that part of DCI Hussey's report that was critical of him.

532. Although DCI Hussey did not give evidence he explained in an email of the same day that he would not provide a copy of the complete report because it was prepared for the Chief Constable. ACC Sykes was copied into that correspondence. He replied to an email from DI Aston who suspected there was a disciplinary enquiry into him at that point that there was no such thing. He added the comment," Can't believe some of the language used in reports!!!" In that context he was clearly seeking to reassure DI Aston. Whilst DI Aston's concerns are understandable, the failure to provide the remainder of the report was not and would not be a detriment in not disclosing the remainder of the report unless it was the case that there was in fact an investigation into him, which there was not.

DET 9 *"Chief Constable Hopkins and MCRU commissioning a report from the* NCA *dated 16 May 2016."*

533. As recorded above, the MCRU enlisted the help of an interview specialist from the NCA to complete one aspect of its report, namely the appropriateness of the criminal interviews undertaken with the three "Senior Officers". The specialist within the NCA was a national lead on interviewing. The decision to go to the NCA was that of Mr Bottomley autonomously without reference back to the Chief Constable. For the reasons set out in the facts above, the respondent argued there was no detriment to the claimants in that regard.

534. The respondent submitted there was no evidence to suggest that Mr Bottomley was aware of any protected disclosures having been made by any claimant. No submission was made to the contrary by Mr Feeny. In those circumstances we consider that the respondent has established that the reason for the approach to the NCA was not in any sense because of a protected disclosure.

DET 10 *"MCRU refusing to review the interviews correctly."*

535. In further and better particulars, the claimant's case was put as "the MCRU failed to carry out the lines of enquiry as request by DI Aston. The MCRU had only read the records of video interviews. The claimant requested they watch the video interviews…The MCRU should have spoken with the interviewer…". The part of the MCRU report dealing with the interviews was the work primarily of the National Interview Adviser, thus the claimants' complaint is to the effect that Mr Bottomley failed to go back to the adviser to ask him to watch the video interviews as opposed to reaching a conclusion on transcripts. The respondent's case is that the refusal to return to the NCA expert and to ask him to watch the videos or speak to the interviewers was not unreasonable. The respondent therefore argues that a reasonable refusal by Mr Bottomley to do that cannot amount to a detriment.

536. Mr Bottomley's evidence was that he was content with the advice of the NCA based upon their having read the interviews. He also described the expert as having been under time pressure due to personal issues. The Tribunal was not

informed what they were. We have already recorded that the interviews in total of the three "Senior Officers" were around 24 hours. The respondent's case was there was no evidence to suggest that Mr Bottomley refused to ask the NCA to review the videos on the grounds the claimants had made protected disclosures.

537. We do not consider that the reasonableness of the decision not to revert to the NCA expert is determinative, even if it is relevant. Whilst the claimant's request for the videos to be watched was not passed on to the NCA officer, the reason is provided by Mr Bottomley's evidence, which we accepted, namely that Mr Shaw of the NCA was busy and had limited capacity to carry out this work.

538. Therefore, by the same reasoning as in DET 9 we find that the respondent has established that the reason for the treatment was not because of a protected disclosure.

DET 11 *"Breach of NCA handling conditions to criticise the claimants."*

539. Mr Bottomley, we accept, had sought and obtained express authorisation from the author of the NCA part of the report to use it and disclose it in other legal proceedings. The respondent's case is that in those circumstances it could not be a detriment to do so because there was no breach of the restriction on disclosure if permission were granted by the NCA itself. As a matter of fact, the Tribunal had no reason to doubt Mr Bottomley's evidence on that point. For that reason alone we would find that there was no detriment because there was no breach.

540. The respondent's case was that there was no evidence to suggest that the reports, either of the MCRU or the NCA part of it, were disclosed because of any *protected disclosure made by the claimants. Furthermore, the respondent's case* was that in the legal proceedings relating to or brought by any of the three "Senior Officers", which would encompass both the tribunal proceedings and the disciplinary proceedings, the report was a disclosable document and the respondent was under a duty to disclose it. We consider that point is well made. It is sufficient to establish that the reason for the disclosure, even if it were a detriment, was not because of protected disclosure had been made.

DET 15 *"Removing the interviews of CS Bruckshaw, Inspector Donaldson and CI Williams from the disciplinary pack on 31 July 2016."*

DET 16 *"Telling …. that their interviews were biased and lacked objectivity on 31 July 2016."*

541. These were withdrawn by Mr Feeny in closing submissions.

DET 18 *"CS Bruckshaw's statement to the media on 15 August 2016."*

542. It was not in dispute that the article was a detriment to DI Aston although the respondent maintained that was not the case for the other claimants. The respondent's submission was that the motivation of CS Bruckshaw for going to the press was the fact that he had been subjected to a lengthy investigation by DI Aston rather than any protected disclosure. It was submitted that CS Bruckshaw

was not party to any of the alleged disclosures and would not have been aware of them.

543. DI Aston's stated reason for Mr Bruckshaw saying what he did was "because I was investigating him for wrongdoing". The respondent submitted this was not because of protected disclosures. In the hearing there was an expansion of this point in the evidence of the allegation contained in this detriment. DI Aston went on to criticise the comments made by the respondent to the press and a fuller version of the article in the Manchester Evening News was produced [4547(1)-(9)].

544. The respondent submitted there was no detriment in that release.

545. That comments were those of DCC Pilling. It was submitted they were outside the remit of the particular detriment allegation. Nevertheless the respondent pointed out that DI Aston was not named, the article was about CS Bruckshaw, he had been in the frame of the investigation since 17 April 2015 when the CPS email was obtained by DI Aston, the publication of the article was a long time later (over two years), that the criminal interviews were not carried out in the manner that the respondent always aspired to, the comments about not being carried out in an effective manner, submitted the respondent, could as easily have been comments about the IPCC or PSB itself.

546. The respondent also submitted that at the time a full review was to take place in due course under John Armstrong who was looking at the role of the PSB and the misconduct process. DCC Pilling had to try to be fair to both sides and effectively, the respondent submitted, you cannot please everybody all the time. Based upon that analysis the respondent submitted there was nothing unfair or even detrimental about the GMP comments and there was nothing to link the fact that DCC Pilling wrote those comments to any earlier protected disclosure.

547. Mr Feeney's submission was to the effect that the respondent called no evidence as to Mr Bruckshaw's motive for making the comments to the media and that in any event it was at least in part motivated by the protected disclosures.

548. In our judgment it is an all but inescapable inference that CS Bruckshaw would have known of disclosures of information by DI Aston to more senior officers within the respondent's force. He knew that DI Aston was the investigator from the outset. He had objected to his appointment. He knew of the investigation into PS Pendlebury, Zoe Wilkinson and Natalie Leicester because he had made representations to the CPS. He knew at the time of the interviews the scope of the matters about which he was being questioned. He knew the nature of the potential disciplinary charges because of the misconduct papers and evidence having been served upon him. He knew that PSB and officers at chief officer level were responsible for authorising the process that had been undertaken which in itself was founded upon the results of the investigation and the information that had been reported in the disclosures PD 7, PD 8 and PD 9 in April and May 2015.

549. There was no evidence that he was aware of PD 10 and PD 14 which were the disclosures about the alleged sexual harassment.

550. When, on 15 August 2016, CS Bruckshaw gave his interview to the BBC he not only criticised the investigators as a group but also alluded directly to DI Aston. We accept he may been in part motivated by a belief that DI Aston held a grievance against him. It is not likely that was the sole motive for the statement to the BBC. We accept the submission that on the balance of probabilities it was partially motivated at least by the disclosures made by DI Aston. The respondent did not adduce any evidence to rebut that inference.

551. The inferences that we have drawn to not however extend to PS Schofield and PC Byrne. As a matter of fact we have not found that they made protected disclosures specifically about CS Bruckshaw. Moreover, we do not think it is safe to draw the inference that CS Bruckshaw would have believed that they themselves had made protected disclosures.

DET 25 *"Failing to protect DI Aston and his wife following accusations made against him on social media in August 2016 and January 2017."*

552. The respondent submits that to the extent that DI Aston sought to recast his allegation as a failure on the part of the respondent to identify and stop those responsible for the "Cabal of Corruption", DCC Pilling's evidence was clear, that attempts had been made to do so and continued to be made but the respondent was not able to prevent the social media comments of this type appearing.

553. In our judgment the respondent did what it could. It carried out appropriate risk assessments. In effect, DI Aston accepted that the respondent could not do more. He did not expect a UDA terrorist to "knock on his door" i.e. to contact him or his wife or harm them. A police force can never prudently say there is no risk in such circumstances because of the nature of the world in which we live. The respondent is not to be criticised for having assessed the risk is low which in effect means no discernible risk.

554. In those circumstances the tribunal does not believe that DI Aston has established a detriment in this instance.

DET 3 *The allegations made by PS Pendlebury against the claimants after 27 February 2015.*

555. We have noted DI Aston's acceptance that PS Pendlebury would not have been aware of any protected disclosures and that the likely motivation of the complaints was to put the investigation under pressure and to side-track them.

556. Mr Feeney submitted that since there was no evidence about PS Pendlebury's motive the tribunal should find that it was because of the protected disclosures.

557. The allegations themselves were a detriment to DI Aston and PS Schofield. In the light of DI Aston's concession that PS Pendlebury would not have been aware of the disclosures the tribunal cannot accept the submission based on the being evidence about PS Pendlebury's motive. DI Aston's concession was appropriate and logical.

DET 21 *"Refusing to provide unredacted copies of the MCRU report to DI Aston from June – August 2016 and to PS Schofield on 9 January 2017."*

558. The respondent's case is that since DI Aston knew the report outcome since the month it was published and had read a full copy of the report on 15 September 2016, not being given a copy of the report to take away and keep did not amount to a detriment. As a further point, the respondent's case was since the report clearly contained sensitive material the motivation in not giving access to the report save in accordance with the decision to control was in fact to control the circulation of sensitive material.

559. Although the dates of the allegations of detriment vary as between DI Aston and PS Schofield we consider that the difference is not significant in practice. Save for PD 15 which was made on 6 and 7 July 2016 by DI Aston, both detriments occurred after all the other disclosures were made.

560. The MCRU report was the central focus of the criticism of any part of the investigation. It addressed the manner of the interviews with the Senior Officers. Since PS Schofield had, with DC Clarke, conducted the interviews as a serving officer he would naturally be concerned to know the scope of the report and the basis for its conclusions. The interview process was a responsibility of DI Aston albeit under the supervision of the IPCC. To the extent that PS Schofield and DC Clarke were carrying out the interviews in accordance with the agreed procedure and following the interview plan and strategy for which he was responsible he too was concerned to know what the report contained.

561. DI Aston was permitted to read the report but only after repeated requests and a delay. That delay was a detriment to him. PS Schofield was not permitted read the report at all despite a reasonable request and that amounted to a detriment to him.

562. In this case the respondent did provide an explanation for its decision to restrict the circulation of the report. Mr Feeney submits that it was not a cogent explanation for the reasons set out in paragraphs 274 and 275 of his written submissions.

563. In our judgment the explanation does satisfy the test we have to apply. Although it is correct that the claimants would have known what the sensitive material was in the report and that it was then provided to CS Bruckshaw and Insp Donaldson, that does not undermine the explanation itself. The respondent had caused the claimants to carry out a procedure which was flawed (by reason of the failure to give the misconduct caution) that was part of the difficulty with the continuation of the misconduct proceedings. Proceedings against police officers are always regrettable and are not likely to be welcomed by respondents. Provided no interested party's legitimate rights are compromised a restriction of distribution is a reasonable and cogent reason and shows that the restriction in this case was on the balance of probabilities not because of a protected disclosure.

DET 19 *"Accused of malpractice by CI Williams on 25 November 2016, the date of CI Williams' witness statement in her Tribunal proceedings."*

564. The respondent's case was that this was not clearly not because of any alleged protected disclosures made by the claimants. DI Aston's own words for her motivation was "to get back at me for making her suspect in the criminal investigation".

565. The respondent accepted that the comments made by CI Williams may have been a detriment to both DI Aston and PS Schofield but submitted they were not motivated by the making of earlier protected disclosures by either of those claimants.

566. A significant part of CI Williams' criticism of DI Aston and PS Schofield arises out of the interview that was conducted with her as part of the investigation.

567. She knew that DI Aston was investigating the Pendlebury allegations. She, like CS Bruckshaw had received advanced disclosure and knew at the time of the interviews the scope of the matters about which she was being questioned. He knew the nature of the potential case against her. We infer that she also knew that PSB and officers at chief officer level were responsible for authorising the process that had been undertaken which in itself was founded upon the results of the investigation and the information in respect of her that had been reported in the disclosures PD 7, PD 11 and PD 12 in April, July and August 2015.

568. The respondent adduced no evidence as to the motivation of CI Williams.

569. In those circumstances, and by a similar process of reasoning as we have adopted in respect of CS Bruckshaw, we find on the balance of probabilities that we can properly infer that some part of the way in which she drafted her witness statement was on the grounds that protected disclosures had been made by DI Aston to senior officers.

570. However, again by similar reasoning, we cannot find on the balance of properties that CI Williams would have been aware that in respect of PD 11 PS Schofield also made a protected disclosure of information.

DET 20 *"DCC Pilling's statement to the media on 15 January 2017."*

571. None of the claimants were named in the original article. They maintain that they felt the criticism was directed at them as the "criminal investigation team". PS Schofield said he did not accept that the comments could apply equally to the IPCC or to PSB involvement. He maintained that DCC Pilling made the statement to put down the claimants because they had made protected disclosures. DCC Pilling denied deliberately targeting the criminal investigation team for criticism on the basis of their having protected disclosures. The respondent's case was that on the balance of probabilities DCC Pilling's motivation for the press statement comments was not to put down the claimants for having made earlier protected disclosures. The basis for that was:

(1) DCC Pilling had denied that;

(2) It was described as an inherently unlikely explanation;

(3) None of the claimants' disclosures were made to DCC Pilling;

(4) The disclosures pre-dated his joining the respondent Police Service in January 2016; and

(5) His evidence was that he was trying to balance the interests of all parties when he came up with the wording.

572. DCC Pilling was conciliatory in his evidence. He accepted that his comment about the enquiry taking too long could not fairly be applied to the criminal investigation conducted by the claimants. He accepted that he had not been at GMP at the time of the criminal investigation, and timing was not a criticism raised by the MCRU report. However, he said that it was his belief from his oversight of the matter that the investigation did take too long to get to a conclusion. The Tribunal accepts the respondent's submission that he was clearly referring to the entire process i.e. criminal investigation, misconduct process and subsequent events. It was supported by the fact that DCC Pilling subsequently asked John Armstrong to look at the PSB management of the investigation and to consider, for example, "as to why the hearing for Bruckshaw/Donaldson was downgraded at such a late stage from PSB side of things … mainly for me to understand the delay".

573. The respondent's submission was that, as with any press release, it is unlikely to please everybody at all stages. For that reason, it was submitted it could not be relied upon to raise an inference that DCC Pilling's comments were an act of victimisation against the claimants for having raised protected disclosures.

574. Mr Feeney submitted that although the claimants were not identified by name witnesses for the respondent, DS Canavan, and DS Harris agreed it was common knowledge within the claimants' area amongst colleagues that they were responsible for the investigation. The respondent did not argue to the contrary. We have no difficulty in drawing the conclusion that any follower of this story in the press or on social media in addition to officers of the respondent and acquaintances of the claimants would be able to identify them.

575. Mr Feeney submitted that the statement could also be criticised because it referred only to the investigation whereas CI Williams' claim was also about allegations of bullying. Contrary to an earlier draft the statement did not clarify that CI Williams' allegations were withdrawn. We are not persuaded that those criticisms have great significance. Of more significance is the fact that the statement was about the investigation as a whole when only the interviews were identified as deficiencies, and the reference to the investigation taking too long was not one that was justified. Mr Feeny submitted that DCC Pilling's inability to justify the wording other than by reference to balance to CI Williams suggested that the disclosures negatively influence the wording of the statement.

576. It is correct to remember that none of the disclosures were made directly to DCC Pilling. He had succeeded CC Hopkins earlier in the year. It was not suggested that DCC Pilling was not aware of the entire process which included the disclosures that we have found to be protected.

577. It is not necessary for us to find that the disclosures resulted in DCC Pilling, or any officer of the respondent, bore ill will towards the claimants when taking a particular action or making a deliberate omission. If the treatment, consciously or unconsciously is motivated by the disclosure, in a way that is more than trivial that would suffice. Having regard to our earlier findings we are satisfied that the way in which the statement was expressed was so motivated.

578. We then ask whether the allegation can succeed having regard to the explanation of DCC Pilling that he wished to be "balanced". We recognise that this sort of situation is difficult for the respondent. Nevertheless, since in the respects we have identified the press statement was not balanced in the way submitted by Mr Feeney we are not persuaded that on the balance of probabilities the statement was not, at least in part, motivated by the disclosures.

DET 26 *"DI Aston not being given his personal file following his request to DCI Harris in January 2017."*

579. To DI Aston the failure to provide the file was a detriment because he had been unable to obtain evidence to disprove what he believed to be CS Bruckshaw's lie about him in public.

580. The respondent submitted that the loss of the paper file was not a detriment of the respondent's making. The merits of that submission were not immediately apparent. So far as we know, only the respondent had custody of the file.

581. However, unless DI Aston could persuade the Tribunal that it was deliberately kept from him, whilst it might be a detriment in the way we have described it seems unlikely that the mere loss of it could in any respect have been because of earlier protected disclosures.

582. Mr Feeney submitted that such documents as were discovered and disclosed after DCI Harris had given evidence were incomplete and did not predate June 2013. Both DCI Harris and DCC Pilling expressed surprise that it could not be located. We share that surprise.

583. Mr Feeney seeks to advance the case on the basis that since DCI Harris accepted he made a comment that it might be in a safe in the PSB office, although it does not appear that it ever was, there is an implication that because of the investigation someone within the respondent had either lost or concealed the file. Mr Feeney submitted that there was at least an inference that PSB had some involvement and for that reason the allegation should be upheld.

584. We disagree. On the evidence we simply cannot determine whether the file was lost or concealed. Had we been able to conclude that it had been concealed then by inference such a deliberate act would probably be more likely to have been a result of the investigation. In the absence of such a conclusion it is at least equally likely that the file has simply been lost.

585. In those circumstances although the loss of a file amounted to a detriment and the respondents have not provided any better explanation the tribunal cannot draw the necessary inference that this was on the grounds of a protected disclosure.

586. To summarise, we have concluded that the claimants, either as individuals or together, have made out: DET 17 (no extra strategy, all claimants), DET 18 (CS Bruckshaw's media statement, DI Aston only), DET 19 (CI Williams' witness statement, DI Aston alone) and DET 20 (DCC Pilling's statement to the press, all claimants).

587. The dates of the detriments we have upheld are as follows:

DET 17	1 January 2016
DET 18	15 August 2016
DET 19	25 November 2016
DET 20	15 January 2017

588. By 1 January 2016 DI Aston had made 10 protected disclosures between early March and early October 2015. PS Schofield had jointly with him made disclosures (PD 11 & PD 13) in June and October of that year. PC Byrne had made jointly the disclosure at PD 13 in October to DS Retford.

589. By the time PD 13 was made to DS Retford the matters that were being disclosed were, as we have found, being considered the highest level because of their gravity. Although we have not upheld all the allegations of detriment, we are satisfied that the nature of the disclosures, made during the course of the investigation and the detriments which began in the months following its conclusion can, for each claimant, be linked to the disclosures which they made either individually or jointly. From this we except PD10, the joint disclosure in respect of the CS Bruckshaw sexual harassment allegation because we are not satisfied that CS Bruckshaw's detrimental statement to the media (DET 18) can be linked to that particular disclosure.

Conclusions on jurisdiction

590. The claimants approached ACAS for early conciliation on 6 April 2017. The certificate was issued on 6 May 2017. These proceedings were commenced on 31 May 2017.

591. Mr Feeney accepts that the earliest date a detriment could have occurred and been in time was 7 January 2017. This is correct. It follows that only DET 20 is within the tribunal's jurisdiction unless we were to conclude that the earlier three were "part of a series of similar acts or failures".

592. In paragraphs 294 and 295 of his written document Mr Feeny set out the argument concisely. We can do no better than repeat them.

> "294. There is a fundamental coherency to the detriment claims in that they consist of either interference with the claimants' investigation or criticism of it. In particular, a straight line can be drawn from the handing over of the investigation to PSB in December 2015 to the press statement unjustly criticising the claimants in January 2017.

> 295. In this sense, the detriment claims against Pendlebury, Bruckshaw, and Williams are part of the series are similar acts and failings as they are unwarranted and specious criticism of the investigation, akin to the officially sanctioned criticism from PSB."

593. Although we have not upheld the detriment of the Pendlebury allegations nor have we found "officially sanctioned criticism from PSB" we have found a failure within the scope of that straight line described by Mr Feeny a failure to put in place an exit strategy for the claimants, the Bruckshaw and Williams detriments and the detriment of the final press statement. Having upheld the claimants' case of having made protected disclosures and in regard to all the facts which reveal a history of these claimants attempting to carry out a difficult task in demanding circumstances we are satisfied that this is one of those cases, identified by Mummery LJ in **Arthur**, where these are apparently disparate acts, done on different occasions by different officers of the respondent which are similar to one another in a relevant way by reason of the morning on the ground of the relevant protected disclosures.

594. For that reason, we accept we have jurisdiction in relation to these 4 findings of detriment.

Outcome

595. The claimants' claims are well-founded to that extent.

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Employment Judge

Date 31 May 2019

JUDGMENT AND REASONS
SENT TO THE PARTIES ON

31 May 2019

FOR THE TRIBUNAL OFFICE