EMPLOYMENT TRIBUNALS

Claimant: **Mr D Quarm**

Respondent: **Metropolitan Police Commissioner**

Heard at: **East London Hearing Centre (by Cloud Video Platform)**

On: **21, 22, 23 and 24 July 2020**
29 July 2020 (in chambers)

Before: **Employment Judge Gardiner**
Members: **Mr P Pendle**
Mr J Webb

Representation
Claimant: In person
Respondent: Mr N de Silva, counsel

JUDGMENT

The judgment of the Tribunal is that:-

The Claimant's complaints of protected disclosure detriment and race victimisation are not well founded and are therefore dismissed.

REASONS

1. The Claimant, Derrick Quarm, is a Detective Constable in the Metropolitan Police, currently based in Newham. He brings an Employment Tribunal claim against the Metropolitan Police Commissioner, complaining about a decision on 27 June 2018. The decision which he challenges was a decision not to make an official record of a complaint he had sent to the Independent Office for Police Conduct (IOPC) on 22 June 2018.

2. The IOPC had referred the complaint to the Metropolitan Police's Directorate for Professional Standards (DPS). It was handled within the Complaints Support Team (CST), where it was referred to Sergeant Ryan Keating. Sergeant Keating issued his decision letter on 27 June 2018 deciding not to make an official record of the complaint.

3. These proceedings were issued on 5 July 2018, following Early Conciliation from 1 to 2 July 2018. In his ET1 Claim Form, the Claimant challenges this decision under two distinction employment tribunal jurisdictions. Firstly, he alleges that this was a detriment for making a protected disclosure contrary to Section 47B Employment Rights Act 1996. The alleged protected disclosure relied upon is his complaint to the IOPC on 22 June 2018.

4. Secondly, he alleges that it was an act of victimisation contrary to Section 27 Equality Act 2010. The protected acts relied upon in relation to the victimisation claim are the twelve previous employment tribunal claims which the Claimant has issued against the Respondent. This is the thirteenth claim. All but the twelfth claim have concluded. The twelfth claim issued in 2017 is scheduled to take place at a 15-day hearing in March and April 2021. For the sake of completeness, two further claims were issued in 2019, after the events with which this claim is concerned. Those claims were due to be determined in the four tribunal days taken by this case. This case was originally scheduled to be heard in April 2020, but was postponed in accordance with a Presidential Direction as a result of the impact of the Covid-19 pandemic.

5. None of the present Tribunal Panel have had any involvement in any of the previous Employment Tribunal cases. We have come to the facts and issues fresh, not influenced by the way that previous cases have been decided. However, we are bound by findings of fact made by previous Tribunals in those earlier claims.

6. With the agreement of the parties, the Tribunal has heard this case over the Cloud Video Platform (CVP). Witness statements were prepared by Mr Quarm, the Claimant, and by the following witnesses on behalf of the Respondent: Chief Inspector Stephen Tate, Acting Inspector Ryan Keating and Mr David Longhurst. All witnesses attended the hearing and were cross examined in relation to their evidence. Witness statements cross referred to documents contained in three lever arch files of double sided pages, running to 2599 numbered pages with further pages inserted. This was an agreed bundle of documents.

7. At the outset, the Tribunal raised with the parties the extent to which it was necessary to read every document to which the witnesses cross referred. For instance, in the Claimant's case, he cross referred to a detailed set of complaints that he had made in 2013, which he had chosen to call "The Ridiculous". He also referred to a further set of complaints made in 2017 he had named "The Complete Ridiculous". The former document spanned 354 pages; the latter 229 pages. Both Mr Quarm and Respondent's counsel, Mr de Silva, agreed that the focus of this case should be on events in 2018. As a result, with one exception, the parties agreed it was not necessary for the Tribunal to read documents in cross references which predated 2018, save to the extent to which they were referred to in cross examination. The one exception related to an earlier complaint handled by Detective Sergeant Sue Murphy in 2017, which was the subject of the alleged protected disclosure on 22 June 2018 and Mr Keating's letter in response on 27 June 2018.

8. In correspondence with the Tribunal made before the start of the Final Hearing, the Claimant had asked for disclosure of documents from an entity not a party to these proceedings. These were documents he believed had been sent to the Equalities

and Human Rights Commission (EHRC) by or on behalf of Inspector O'Connell around May 2015. These documents were apparently no longer retained by the Respondent. On 15 July 2020, Employment Judge Crosfill made an Order for the EHRC to disclose these documents or provide an explanation as to why this could not be done. On 22 July 2020, during the second day of the Final Hearing, the EHRC wrote to the Tribunal in the following terms:

> "We have carried out relevant searches and do not hold any document which refers to DC Derrick Quarm sent to the EHRC by or on behalf of Inspector O'Connell in or around May 2015"

9. As a result, the Claimant accepted that there were no further documents to be included apart from those documents already contained in the three Tribunal bundles.

10. In addition to the witness statements and documents, the parties had prepared an Agreed Chronology of relevant dates, an Agreed List of Abbreviations and a List of Relevant Names. The Respondent's Counsel had prepared an Opening Skeleton that the Tribunal read before the start of oral evidence. Evidence started at 3pm on the first day and concluded at 4.25pm on the third day. After the evidence had concluded, both Mr Quarm and Mr de Silva exchanged written Closing Submissions which they spoke to orally on the morning of the fourth day. The Tribunal deliberated on the afternoon of the fourth day, and reconvened on Wednesday 29 July 2020 to conclude their discussions.

11. At the outset of the hearing, the parties agreed that the issues for determination were those set out in the document headed Agreed List of Issues [67A] – [67D], with one modification. The modification, as recorded in the record of the case management hearing conducted by Employment Judge Crosfill dated 1 November 2019, was that the detriment of which the Claimant complains was not progressing his 'complaint' via the conduct route he claimed was available under Section 29 Police Reform Act 2002.

Findings of fact

12. For serving police officers, there are various routes for reporting wrongdoing, as recorded in Appendix A of the Metropolitan Police document entitled Reporting of Wrongdoing, which was in force from June 2012. These were (1) Through Line Management (2) To the Professional Standards Champion (PSC) or Professional Standards Unit (PSU) (3) Directly to the Department of Professional Standards (4) Calling the Right Line, a confidential internal helpline, or contacting the same service through the intranet (5) Reporting the matter to Staff Associations (6) Contacting a Mentor (7) Contacting the Independent Police Complaints Commission (IPCC), which was subsequently renamed the Independent Office for Police Conduct (IOPC), (8) Contacting the Mayor's Office for Policing and Crime or (9) Ringing Crimestoppers.

13. Under the heading IPCC, it states "The primary role of the IPCC is to ensure that public complaints about police conduct are dealt with thoroughly and fairly. They are an appropriate channel for persons wishing to report wrongdoing within this SOP".

14. In a subsequent document, entitled "Whistleblowing & Reporting Wrongdoing Toolkit – Q&As", there is an analogous list, although it does not include reporting wrongdoing to the IPCC/IOPC. A third document, entitled "Whistleblowing and reporting wrongdoing policy Q&As", apparently dating from 2016, also omits reference to the IOPC. However, the parties in this case agree that in an appropriate case a serving police officer could report wrongdoing to the IOPC.

15. The jurisdiction of the IOPC is circumscribed by legislation and statutory guidance. The main features of this landscape, so far as are relevant to the present case, are as follows:

    a. Under Section 12 of the Police Reform Act 2002 (PRA), a distinction is drawn between a complaint and a conduct matter. As explained by HHJ Auerbach in *Quarm v The Commissioner of the Police of the Metropolis* (EAT 22 May 2019) at para 157:

> "Section 12 defines a "complaint" as a complaint about police conduct originating from a member of the public. It also defines a "conduct matter" as a matter which has not been the subject of a complaint, but in respect of which there is an indication that a police officer may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings. Section 29(3) and (4) define "member of the public" as including a police officer, but excluding a person under the direction or control of the same person as the officer making the allegation. The net effect is that an officer *cannot* bring a "complaint", as defined, against a fellow officer serving on the same force; but *can* raise a conduct matter, as defined, in respect of a fellow officer."

    b. The IOPC, which oversees the system of handling complaints against the police, issues statutory guidance. Of relevance to the present case is paragraph 9.32 which is worded as follows:

> "There is an 'indication' where the investigator, having considered the circumstances and evidence available at that time, is of the view that the officer, or member of staff, may have committed a criminal offence or behaved in a manner justifying the bringing of disciplinary proceedings. A bare assertion of misconduct or criminality, particularly if it is undermined by other material or inherently unlikely, may not be sufficient. For example, a complaint that an officer is "harassing" someone without more is unlikely to be sufficient"

    c. A matter will not be recorded as a complaint where it is "vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints" (Police (Complaints and Misconduct) Regulations 2012, regulation 3(2)(c)).

    d. If the matter is recorded as a complaint, then the complainant has certain rights in relation to the complaint. These include a right to be provided with an update on the progress of the complaint every 28 days, and a right to be

informed of the outcome. If the matter is recorded as a conduct matter there are no equivalent rights to the person who has chosen to raise it.

e. If a decision is made not to record a purported complaint, then the complainant is to be notified of this decision, the grounds on which the decision has been taken, and the right to appeal against the decision. Once an appeal has been determined, there is no further right to challenge the outcome, except by way of judicial review.

16. On 22 June 2018, the Claimant emailed the IOPC attaching a document that his email described as "my protected disclosure about criminal offences committed by police officers within the Metropolitan Police Service and, a supporting chronology" [981].

17. The former interspersed references to legislation with the following headings :

a. Precis of events – Detective Sergeant (Det Sgt) Sue Murphy

b. Precis of events – Detective Sergeant (Det Sgt) Sue Murphy

c. Why did Det Sgt Murphy refuse to record Criminal offences & wrongdoing by Police?

18. Under the first heading, the following allegations were made against Ms Murphy:

- PERVERTING JUSTICE – Common Law
- CORRUPT AND IMPROPER EXERCISE OF POLICE POWERS AND PRIVILEGES – Sect 26 Criminal Justice and Courts Act 2015
- BREACH OF POLICE CODES OF ETHICS – Honesty & Integrity, Orders and Instructions, Reporting Wrong Doing, Equality and Diversity.
- GROSS MISCONDUCT – Police Conduct Regulations 2012

19. The concluding section had the following wording:

> "Det Sgt Murphy was aware of Police Criminal Networks operating within DPS-CST and the wider DPS. She was motivated in her behaviours by unethical allegiances to colleagues within those units. To support those colleagues, she was willing to conceal evidence of criminal offences, hide health and safety breaches and, not record evidence of Police Wrong-doing."

20. It then referred to a different employment tribunal case, brought by Mr A Denby against the Metropolitan Police Service, as a recent example of the practice of DPS officers behaving in unethical ways to support their colleagues. It then concluded with the following sentence in capital letters:

> "PLEASE SEE THE ATTACHED HISTORY TO UNDERSTAND WHOM DET SGT MURPHY WAS ALLIED TO AND WHOM SHE WAS PROTECTING BY HER CRIMINAL ACTIONS."

21. That was a reference to the Chronology, which contained 51 entries of events from 2010 to 2018. A column headed "Person(s) Involved" listed the police officers by name that the Claimant regarded as involved with the events, specifying in places where the matter had been reviewed by the Respondent's Directorate for Professional Standards (DPS). Given the language used, it is often unclear whether the Claimant was listing a factual narrative of events or whether he was making a specific complaint about how those events had been dealt with. For instance, he stated in relation to concerns raised in June 2012 "no action taken by MetPolice DPS". A similar pattern recurs throughout the document.

22. The last entry in the Chronology was to the communication on 22 June 2018 from the Claimant to the IOPC. It expressed that communication as follows:

> "Concerns raised to Independent Office of Police Conduct (IOPC) re criminal offences by Det Sgt Murphy.
> Deliberate mishandling of concerns raised in IPCC ref 2017/089883
> Corrupt and improper exercise of Police powers and privileges/perverting justice/abuse of power
> Breach of Police codes of ethics"

23. The reference within the Chronology to "criminal offences" committed by Det Sgt Murphy is a reference to the Protected Disclosure document, as well as to the preceding entry in the Chronology. This was worded:

> "Det Sgt Murphy chose to use section 29(4) Police Reform Act 2002 to not record and close down DC Quarm concerns raised in 'The Complete Ridiculous'. Det Sgt Murphy ignored legislation of Sect 29D Police and Crime Act 2017 in unethical closure of legitimate whistle blowing disclosures."

24. In cross referring to the Chronology at the end of the protected disclosure document, the Claimant intended to particularise the issues where Ms Murphy had deliberately chosen not to record concerns raised previously by him. This was especially the allegations about others within the DPS who had considered the specific matters raised in the Chronology. In the Claimant's opinion, she had done so because she wanted to protect these colleagues from criticism. The Claimant regarded this alleged behaviour on Ms Murphy's part as "criminal actions".

25. The Claimant's email was acknowledged by Jonathan Manning, Customer Contact Advisor, on the same day, 25 June 2018 [998]. He referred Mr Quarm to the Police Reform Act 2002 (PRA), saying that he did not fall under the category of a complainant as defined in the PRA. This was because he was a serving officer and he was seeking to bring a complaint against a fellow officer who was under the control of the same chief officer. His conclusion was that the Claimant should raise his concerns with the force directly, and "unless any conduct matters that are identified by the Metropolitan Police meet the criteria for mandatory referral to the

IOPC, or are referred to the IOPC under Schedule 3, paragraph 4(3) of the PRA, the IOPC will not have any jurisdiction to take any involvement in this matter".

26. Despite this discouraging response, Mr Quarm replied to say that he "gave my consent for my details to be passed to the Metropolitan Police Service for details of my concerns to be assessed in accordance with the correct legislation and guidelines". The issue raised by the Claimant was then sent to the DPS at the Respondent [1000]. Mr Quarm was told by Wale Majiyagbe of the IOPC in an email at 3:07pm on 25 June 2018 that the matter had been sent to the Respondent's DPS. The email also told him that unless any conduct matters that were identified met the criteria for mandatory referral to the IOPC, or were referred to the IOPC under Schedule 3, Paragraph 4(3) of the PRA, the IOPC would not have any jurisdiction to take any involvement in this matter [1001].

27. The matter was then passed to Mr Keating in the Respondent's DPS. His role was to review the matter raised, in order to assess whether it was appropriate to record it as a public complaint or a conduct matter. It was not to carry out any further significant investigation himself into the substance of the complaint, which was the next stage of the process, and would be conducted by others to whom the matter would be referred if necessary.

28. This was Mr Keating's third week in the CST, having joined on 11 June 2018. For the first two weeks he had been mentored. During this fortnight, he discussed each of the cases with his mentor. In week three, he took on his own caseload.

29. As was required in all cases, Mr Keating needed to get approval for his proposed outcome from the 'Approved Authority'. This was Chief Inspector Stephen Tate, to whom he reported. Mr Tate had to decide whether or not each matter referred to the DPS should be formally recorded. As a result, it is more accurate to say that Mr Keating would make a recommendation, and the decision would be made by Mr Tate.

30. Mr Keating reviewed the Claimant's initial email to the IOPC, the cover letter and the two documents attached – the four-page document headed "DC Derrick Quarm Protected Disclosure to IOPC 22-06-18" and the 12-page long Chronology. He took the view that the Claimant's main concern in the Protected Disclosure document was the actions of Ms Murphy. He was aware that Ms Murphy had retired from the CST. He told the Tribunal, and we accept, that he did not know Ms Murphy and as far as he was aware, he had never met her.

31. He chose to search on the Respondent's document management system, called Tribune, to identify the documents and reports in relation to Ms Murphy's handling of the Claimant's previous correspondence. At paragraph 35 of his witness statement, he records the specific documents that he located. He reviewed each of these documents.

32. In summary, Mr Keating noted that the Claimant had previously made a complaint to the IPCC on 3 July 2017 (wrongly referred to by Mr Keating as the IOPC), including a copy of "The Complete Ridiculous". The IPCC had referred the matter to the Respondent's CST-DPS on 7 September 2017. He noted that this

correspondence was considered by Ms Murphy, and referred to an Employment Tribunal hearing which had taken place on 5 September 2017.

33. Mr Keating noted that on 12 September 2017 Ms Murphy had emailed her boss, Chief Inspector Tracey Stephenson, given her role as the Appropriate Authority in relation to the matter raised by the Claimant with the IPCC. This is what was written in that email:

> "Hi Boss,
>
> Please see attached non-recording for not being under PRA. Over several years DC Quarm has raised issued [sic] regarding his perceived treatment by the MPS, he has taken the Met to several ET's, none have been found in his favour. In 2015/2016, he submitted a reporting of wrongdoing through the IPCC, this report was recorded under QU/45/16 and reviewed by Geri Brownrigg and Insp O'Connell and it was decided that most of the issues highlighted had all been dealt with at the various ET's. The new issues were reviewed by Insp O'Connell, who found no evidence of any misconduct. DC Quarm was sent a 728 report by Insp O'Connell outlining his view and his findings. On 2/8/17, DC Quarm sent in various reports, copies of Act's etc and stating he was unhappy with the decision of the CST. He has also had another ET against the MPS dismissed."

34. That email attached a draft letter notifying the Claimant that the matter would not be recorded. It appears that Chief Inspector Stephenson agreed with Ms Murphy's assessment. As a result, a letter from Ms Murphy was sent to the Claimant on 14 September 2017 explaining that the decision was not to record the matter. The principal reason was that the points raised by the Claimant did not meet the requirements of a complaint under the Police Reform Act 2002. This was because, as a serving officer, the Claimant could not make a complaint against another officer under the direction and control of the same chief officer. In addition, her letter confirmed that the matters raised were either the subject of previous determinations or, if new matters, did not meet the threshold to be investigated as any form of misconduct. The letter ended by confirming that he had a right to appeal to the Independent Police Complaints Commission.

35. Mr Keating noticed that the Claimant had chosen to exercise that right, but that his appeal had been unsuccessful. He reviewed the IPCC's appeal outcome letter dated 4 October 2017 [949]. He also decided to skim read the first few pages of "The Complete Ridiculous", namely those in the Tribunal's bundle at [685] to [693], as he confirmed in his oral evidence. This was the lengthy contents, running to three pages, and the sections entitled "Introduction", "Aims", "Objectives", "Methodology, "Summary of Report" and "Findings". At that point Mr Keating decided that the contents of that document did not appear to be directly relevant to the matters that he had to consider in the Protected Disclosure document and in the Chronology. It had not been attached when those documents had been sent to the IOPC on 22 June 2018.

36. Mr Keating also located further documents on the Tribune system relating to items which were recorded in the Claimant's Chronology, as identified in paragraphs 40 and 41 of his witness statement. He did not have access to the Claimant's previous Employment Tribunal claims and so did not read or review them.

37. Mr Keating emailed a draft decision letter to Mr Tate on 26 June 2018 recording his recommendation that the matter should not be the subject of an official record, together with his reasoning.

38. Mr Tate responded on 27 June 2018 saying that the matter was an abuse of process both because it was a complaint by one officer against another officer under the direction of the same chief officer; and because it was raising again matters that had been raised in a previous complaint which had been dealt with, and also considered again in his subsequent appeal. His conclusion was that he sanctioned the non-recording of this matter, and there was no need for an internal review. He noted that Ms Murphy had since retired.

39. As a result, Mr Keating wrote to Mr Quarm on 27 June 2018. The relevant sections were as follows:

> "Firstly, your complaint is against Sergeant Murphy of the Metropolitan Police Service. You are also an officer serving with the Metropolitan Police Service. Section 29 of the Police Reform Act 2002 states that a person who, at the time of the alleged conduct, was under the direction and control of the same chief officer as the person whose conduct it was cannot make a complaint under the Police Reform Act 2002. There are processes in place to allow Metropolitan Police Officers to report concerns about the behaviours of their colleagues, and these should be used rather than the public complaints procedure.
>
> Secondly, your complaint is an abuse of the complaints process. Sergeant Murphy received your complaint correspondence, reviewed it and identified that much of the information contained within it had been the subject of numerous Employment Tribunals brought by you against the Metropolitan Police Service, all of which had found in favour of the MPS. She further identified that the information which had not been tested by an Employment Tribunal had been reviewed and/or investigated, and the outcome communicated to you. Because of this, and the requirements of Section 29 of the Police Reform Act 2002, she sought authority for a non-recording decision in relation to your complaint. This authority was granted by Chief Inspector Tracey Stephenson. In September 2017, Sergeant Murphy wrote to you, explaining that the MPS would not be recording or investigating your complaint. Included within this letter was an explanation of your right to appeal the decision to the IPCC (now the IOPC). You decided to exercise this right of appeal and, on 4th October 2017, your appeal was not upheld by the IPCC, who found that Sergeant Murphy had been correct in her decision making. There is no right of appeal for the IPCC decision; however it can be challenged by judicial review.
>
> If you remain convinced that Sergeant Murphy's decision was incorrect, improper or illegal, the correct route of redress would be to seek independent legal advice and launch a judicial review of the IPCC's appeal finding. The complaint we received on 25th June 2018 about Sergeant Murphy's decision constitutes an attempt to circumvent that route through an abuse of the complaints process.

….

If you think you have reason to appeal this decision, you can do so through the Independent Office for Police Conduct (IOPC). The IOPC consider all appeals when a complaint is not recorded."

40. In his evidence to the Tribunal, Mr Keating said he ought to have included a further paragraph discussing whether the communication with the IOPC raised a conduct matter which merited further investigation. He put that omission down to inexperience. Both Mr Keating and Mr Tate told the Tribunal that they had this issue in mind when reaching their recommendation and decision. We accept their evidence that they did have this aspect of the overall decision in mind, even though they did not refer to it in the contemporaneous documents.

41. Their view was that there was no 'indication' of a conduct matter – namely that an officer may have behaved in a way that would justify criminal or disciplinary proceedings. As Mr Keating explained in evidence, even if Ms Murphy was wrong in her assessment, an error on her part would not necessarily constitute a criminal offence. The Claimant was making a bare assertion that this was the case, which was unsupported by any evidence. There was no evidence that she herself was part of a police criminal network or was seeking to cover up such a network.

42. At the Preliminary Hearing before Employment Judge Moor on 20 November 2018, the Claimant argued that the Chronology identified three new complaints which Mr Keating should have noted were new complaints:

    a. 7 November 2014: The entry in the Chronology against this date refers to the actions of Det Sgt Nicholas, but it is not clear whether what is recorded is a specific complaint about his conduct on this occasion, or merely part of the narrative of events;

    b. 23 May 2015: This entry criticised the conduct of Inspector O'Connell in DPS in not asking the Claimant for another copy of his witness statement, the conduct of Debbie Ralph, and DPS generally in relation to an apparently missing statement from the Claimant;

    c. 25 January 2016: This recorded that Chief Inspector Karen Finlay was at fault in how she had dealt with the Claimant's concerns about the conduct of Inspector O'Connell and of Ms Brownrigg in DPS.

43. Mr de Silva has argued in his closing submissions that two of these topics were not new, and the only one which was new was factually incorrect. We do not need to decide whether in fact they were new, given we accept the evidence of Mr Keating that he did not read "The Complete Ridiculous" in any detail to check whether these particular points had been raised in that very detailed document. These issues were not flagged as distinctively new issues by the Claimant which required separate consideration. Rather, in the matter Mr Keating was considering, the Claimant was criticising Ms Murphy's decision not to record his 2017 communication as a complaint because she was "motivated in her behaviours by unethical allegiances to colleagues within those units" [997]. These three dated entries purported to evidence the colleagues to whom the Claimant contended Ms Murphy had

unethical allegiances. Mr Keating's focus was on whether the Claimant was entitled to challenge Ms Murphy's non-recording decision by raising a further complaint about her conduct.

44. We accept that David Longhurst was not involved in the decision in the letter dated 27 June 2018 and his first involvement in the matter was after the claim was served on the Respondent on 17 July 2018.

45. The Claimant chose to exercise his right of appeal and lodged his appeal document on 4 July 2018. In an appeal outcome letter sent on 30 August 2018, the IOPC notified him that his appeal had been dismissed, although that letter appears not to have been included in the bundle of documents**.** We deduce the date of the appeal outcome letter from a further IOPC letter on 18 September 2018 [1022-1023].

46. At the time that the Claimant lodged his emailed complaint with the IOPC about Ms Murphy's conduct there was an internal investigation into potential misconduct within the Directorate of Professional Services, referred to as Operation Embley. Mr Tate was one of the officers under investigation. The concern raised about Mr Tate related to a single case. However, he was able to carry out all his duties, whilst the investigation was ongoing. Mr Keating did not know that Mr Tate was under investigation. Subsequently, the criticism of Mr Tate's conduct of that case was rejected and no action was taken against him.

47. The Claimant did not know much about this internal investigation at the time, other than what he had been told informally by someone working within the DPS. As he accepted when questioned on this issue, it was only in the month after he had made his complaint that he appreciated the potential scale of the investigation when an article appeared in the Sunday Times which, for the first time, referred to the investigation as Operation Embley. This prompted a statement from Helen Ball, the Respondent's Assistant Commissioner for Professionalism.

Legal principles

Protected disclosure detriment

48. The three essential features which must be established if a claimant is to succeed in a claim for protected disclosure detriment are:

    a. Establishing that the claimant has made a protected disclosure;

    b. Establishing a subsequent detriment;

    c. Making the necessary causal connection between the protected disclosure and the detriment.

49. In the present case, the Respondent now concedes that Mr Keating's refusal to record the Claimant's communication with the IOPC is capable of amounting to a detriment. The key matters in dispute are whether this communication was a protected disclosure, and if so whether Mr Keating's refusal was done on the ground that the Claimant had made a protected disclosure.

50. Protected disclosures are qualifying disclosures made in circumstances that are deemed to be protected by the Employment Rights Act 1996 ("ERA 1996").

Qualifying disclosures

51. So far as is relevant to the present case, qualifying disclosures are defined as follows, under Section 43B:

> (1) In this part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following:
>
> (a) That a criminal offence has been committed, is being committed or is likely to be committed;
>
> (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
>
> (c) …
>
> (d) That the health or safety of any individual has been, is being, or is likely to be endangered;
>
> (e) …
>
> (f) That information tending to show any matter falling within any one of the proceeding paragraphs has been, or is likely to be deliberately concealed.

52. The starting point is that the disclosure must be a "*disclosure of information*" made by the worker bringing the claim. That disclosure must have two features. Both are based on the belief of the worker, and in both cases that belief must be a reasonable belief. The first is that at the time of making the disclosure the worker reasonably believed the disclosure tended to show wrongdoing in one of five specified respects in Section 43B(1); or deliberate concealment of that wrongdoing. The second is that at the time of making the disclosure, the worker reasonably believed the disclosure was made in the public interest.

53. In *Kilraine v London Borough of Wandsworth* [2018] ICR 1850 Sales LJ noted that allegations could amount to disclosures of information depending on their content and on the surrounding context. He set out the following test for determining whether the information threshold had been met so as to potentially amount to a qualifying disclosure: the disclosure has to have *"sufficient factual content and specificity such as is capable of tending to show"* one of the five wrongdoings or deliberate concealment of the same. It is a matter *"for the evaluative judgment of the tribunal in the light of all the facts of the case"* (paras 35-36).

54. The Tribunal needs to assess whether, given the factual context, it is appropriate to analyse a particular communication in isolation or in connection with others. In *Norbrook Laboratories (GB) Ltd v Shaw* [2014] ICR 540 (EAT), Slade J (at para 22) said that *"an earlier communication can be read together with a later one as*

embedded in it, rendering the later communication a protected disclosure, even if taken on their own they would not fall within Section 43B(1)(d)". Whether or not it is correct to do so is a question of fact.

55. In *Kilraine*, one of the alleged protected disclosures was made using these words: *"There have been numerous incidents of inappropriate behaviour towards me, including repeated sidelining, and all of which I have documented*". In itself, this lacked sufficient factual content and specificity. The oblique reference to other documented instances did not incorporate other documents by reference. In *Simpson v Cantor Fitzgerald Europe* [2020] ICR 236, the EAT upheld the ET's decision not to aggregate 37 communications to different recipients in order to assess whether there was a protected disclosure.

56. So far as the reasonable belief that the disclosure tends to show wrongdoing, there are two separate requirements. Firstly, a genuine belief that the disclosure tends to show wrongdoing in one of the five respects (or deliberate concealment of that wrongdoing). Secondly, that belief must be a reasonable belief. If the disclosure has a sufficient degree of factual content and specificity, then that belief is likely to be regarded as a reasonable belief (*Kilraine* at paragraph 36).

57. The belief has to be that the information in the disclosure tends to show the required wrongdoing, not just a belief that there is wrongdoing (*Soh v Imperial College of Science, Technology and Medicine* EAT 0350/14). What is reasonable within Section 43B involves an objective standard and its application to the personal circumstances of the discloser. A whistleblower must exercise some judgment on his own part consistent with the evidence and the resources available to him (*Darnton v University of Surrey* [2003] IRLR 615, EAT). So a qualified medical professional is expected to look at all the material including the records before stating that the death of a patient during an operation was because something had gone wrong (*Korashi v Abertawe Bro Morgannwg University Health Board* [2012] IRLR 4 at paragraph 62). However, the disclosure may still be a qualifying disclosure even if the information is incorrect, in that a belief may be a reasonable belief even if it is wrong: *Babula v Waltham Forest College* [2007] ICR 1026.

58. In relation to each of the five prescribed types of wrongdoing, there is a potential past, present or future dimension. For instance, in relation to breach of a legal obligation, the reasonable belief must be that the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation. So far as future wrongdoing is concerned the phrase "is likely to" has been interpreted as meaning more than a mere possibility. In *Kraus v Penna* [2004] IRLR 260 the EAT held that to be a qualifying disclosure, the information disclosed should tend to show, in the claimant's reasonable belief, that failure to comply with a legal obligation was "*probable or more probable than not*".

59. So far as criminal offences under Section 43B(1)(a) are concerned, it is not necessary that the criminal offence believed by the worker to have been committed even exists, let alone has been breached. It is sufficient that the worker reasonably believes that a criminal offence has been committed: *Babula*. In that case the Claimant reasonably believed that the subject of the disclosure had committed an offence of incitement to religious hatred, when there was no such offence at the

time. For the same reason, to amount to a qualifying disclosure, it is not necessary that the worker spells out the precise criminal offence that they have in mind.

60. So far as breaches of a legal obligation under Section 43B(1)(b) are concerned, any legal obligation potentially suffices, including breach of an employment contract: *Parkins v Sodexo* [2002] IRLR 109]. Employment Tribunal cases have held that a wide range of legal obligations are potentially applicable. A belief that particular conduct amounts to discrimination is a *"breach of a legal obligation"*.

61. Unless the legal obligation is obvious, Tribunals must specify the particular obligation that the Claimant believes has been breached – the source of the obligation should be identified and capable of verification by reference to statute or regulation: *Blackbay Ventures Ltd (t/a Chemistree) v Gahir* [2014] ICR 747 (EAT) at paragraph 98. In *Eiger Securities LLP v Korshunova* [2017] ICR 561, the Claimant complained to her line manager that it was wrong for him to trade from her computer, without identifying that he was the person trading rather than her, and told him what her clients thought of this behaviour. In the EAT's view, this was not a case where this was obviously a breach of a legal obligation. Therefore, the Tribunal should have identified the source of the legal obligation to which the claimant believed that the employer was subject, and how it had failed to comply with it. Merely believing that conduct 'was wrong' could be a belief that the employer had breached a moral or lesser obligation, which would be insufficient.

62. In *Kilraine v London Borough of Wandsworth* [2018] ICR 1850, the disclosure in issue related to an occasion when the worker had raised a child safeguarding issue and claimed to have received an inadequate response. The tribunal held that this did not tend to show breach of a legal obligation, and this was upheld in the Court of Appeal. As the Court of Appeal noted, nothing in the Particulars of Claim or the witness statement indicated that the claimant had a particular legal obligation in mind. It was only later that her representative suggested a potential breach of the Children Act 2004 and the Education Act 2002.

63. Section 43B(1) also requires a claimant to have a reasonable belief that the disclosure was in the public interest. This requirement has two components – first a subjective belief, at the time, that that the disclosure was in the public interest; and secondly, that the belief was a reasonable one.

64. What amounts to a reasonable belief that disclosure was in the public interest element was considered by the Court of Appeal in *Chesterton Global Limited v Nurmohamed* [2018] ICR 731. The Court of Appeal considered that a disclosure could be in the public interest even if the motivation for the disclosure was to advance the worker's own interests. Motive was irrelevant. What was required was that the worker reasonably believed disclosure was in the public interest in additional to his own personal interest. So long as workers reasonably believed that disclosures were in the public interest when making the disclosure, they could justify the public interest element by reference to factors that they did not have in mind at the time.

65. Underhill LJ, giving the leading judgment, refused to define "public interest" in a mechanistic way, based merely on whether it impacted anyone other than the claimant or whether it impacted those beyond the workforce. Rather a Tribunal

would need to consider all the circumstances, although the following fourfold classification of relevant factors was potentially a "useful tool":

a. The numbers in the group whose interests the disclosure served – although numbers by themselves would often be an insufficient basis for establishing public interest;

b. The nature and the extent of the interests affected – the more important the interest and the more serious the effect, the more likely that public interest is engaged;

c. The nature of the wrongdoing – disclosure about deliberate wrongdoing is more likely to be regarded as in the public interest than inadvertent wrongdoing;

d. The identity of the wrongdoer – the larger or more prominent the wrongdoer, the more likely that disclosure would be in the public interest.

66. Underhill LJ said that Tribunals should be cautious about concluding that the public interest requirement is satisfied in the context of a private workplace dispute merely from the numbers of others who share the same interest. In practice, the larger the number of individuals affected by a breach of the contract of employment, the more likely it is that other features of the situation will engage the public interest.

Protected disclosures

67. In the present case, the Claimant did not send the communication to his employer. Rather, he sent it to the Independent Office for Police Conduct (IOPC). The IOPC is a prescribed person to whom qualifying disclosures can be made. Section 43F ERA 1996 imposes an additional requirement where the disclosure is made to a prescribed person who is not the claimant's employer.

(1) A qualifying disclosure is made in accordance with this section if the worker-

(a) Makes the disclosure … to a person prescribed by an order made by the Secretary of State for the purposes of this section; and

(b) Reasonably believes:

(i) That the relevant failure falls within any description of matters in respect of which that person is so prescribed; and

(ii) That the information disclosed, and any allegation contained within it, are substantially true.

68. Guidance on the application of Section 43F(1)(b)(ii) is found in the IDS Handbook on Whistleblowing at Paragraph 4.32 :

"It should be noted that S.43F requires that the worker reasonably believed that the information disclosed, and any allegation contained in it, was *substantially* true. The word 'substantially' appears to require the worker to believe on a rational basis that the majority of the information and/or allegations contained within the disclosure is true. If he or she reasonably

believes that only elements of the information and/or allegations are accurate, the worker may well find it difficult to convince a tribunal that this condition has been met. The same would be true if the worker's allegation was to the effect that there was habitual malpractice or wrongdoing on a large number of occasions. If the worker's evidence deals only with one or two such occasions, there is a danger that the tribunal will conclude that he or she did not reasonably believe that the allegation was substantially true. This would not matter in the case of an internal disclosure to the employer, since such a belief is not a precondition for making a protected disclosure under S.43C(1)(a). It does matter, however, where the disclosure is made to a prescribed person pursuant to S.43F."

Detriment

69. There is a detriment if a reasonable person would consider the treatment to be a detriment, even if there is no financial loss as a result. An unjustified sense of grievance does not amount to a detriment.

Causation

70. Section 47B ERA 1996 is as follows:

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

71. Section 48 ERA 1996 is as follows:

(1A) An employee may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.

(2) On a complaint under subsection (1A), it is for the employer to show the ground on which any act or deliberate failure to act, was done.

72. The effect of these sections is that it is for the worker to prove, on the balance of probabilities that there was a protected disclosure, that there was a detriment and the employer subjected the claimant to the detriment. If so, then the burden shifts to the employer to show the ground on which the detrimental act was done: Section 48(2) ERA. If a Tribunal rejects the reason advanced by the employer, then it is not bound to accept the reason advanced by the worker, namely that it was on the ground of a protected disclosure: it is open to the Tribunal to find that the real reason for the detriment was a third reason.

73. The Tribunal must consider what, consciously or unconsciously, was the employer's motivation for the detrimental treatment. Causation will be established unless the protected disclosure played no part whatsoever in its acts or omissions: *Fecitt v NHS Manchester* [2012] ICR 372, CA. The result is that there will be a sufficient causal connection if a protected disclosure was one of several reasons for the detriment, even if it was not the predominant reason. It is enough if it was a material influence, in the sense of being more than a trivial influence. There is no need to consider how a hypothetical or real comparator would have been treated.

Race victimisation

74. So far as is relevant, Section 27 Equality Act 2010 provides as follows:

> (1) A person (A) victimises another person (B) if A subjects B to a detriment because
>
> (a) B does a protected act …
>
> (2) Each of the following is a protected act-
>
> (a) Bringing proceedings under this Act

75. If the Claimant proves facts from which the Tribunal could decide, in the absence of any other explanation, that the Respondent victimised him, the Tribunal must hold that the contravention occurred unless the Respondent proves that it did not victimise him (Section 136 Equality Act 2010).

76. It is not necessary in an appropriate case for the Tribunal to go through each stage of the burden of proof in turn. It is permissible for the Tribunal to go straight to the second stage, assuming that the burden of proof has switched to the Respondent and consider whether the Tribunal accepts the explanation provided by the Respondent (see for example paragraph 38 in *Pnaiser v NHS England and another* [2016] IRLR 170).

Conclusions

Protected disclosure detriment

77. It is first necessary to analyse the extent of the disclosure that the Claimant was making in his communication to the IOPC. He was purporting to disclose information about Ms Murphy's handling of his 2017 complaint to the IPCC, which he regarded as showing criminal behaviour or breach of a legal obligation on her part. The primary document in which this disclosure was made was the four-page document at [994] to [997]. At its conclusion, that document referred to the Chronology as an attached history to enable the reader to understand to whom Ms Murphy was allied and whom she was protecting by what was referred to as "criminal actions". Viewed in that light, the focus of the Chronology is the second column, where under the heading Persons Involved, several individuals are named. This also explains why the covering letter speaks of "criminal offences by police officers" ie using the plural, because the allegation is that Ms Murphy was seeking to cover up criminal offences by other police officers and in so doing was committing a criminal offence herself.

78. It is telling that the Claimant does not contend in these proceedings that the Tribunal should read either "The Ridiculous" or "The Complete Ridiculous", despite these documents being cross referred to in the Chronology. The reason is that these references are part of the narrative of events containing previous disclosures, but not new disclosures made at the time of the complaint about Ms Murphy. The fact that Mr Keating chose to read the opening pages of The Complete Ridiculous does not mean that the Claimant was thereby importing the entire document, or such of the document as Mr Keating chose to read, into his disclosure. The extent

of the disclosure is to be determined by analysing the relevant documents in context, not the use to which they were put on receipt.

Disclosure of information

79. The two documents do make disclosures of information in relation to the narrative of events that are described. The issues for the Tribunal to determine are whether the Claimant genuinely believed that the information in these documents tended to show a criminal offence has been committed; or a person has failed to comply with any legal obligation; or that the health and safety of any individual has been endangered. Given that the entire focus of the disclosure is the conduct of Ms Murphy, we need to decide whether the Claimant genuinely believed that this information showed that Ms Murphy by her actions had committed a criminal offence; failed to comply with a legal obligation; or had endangered health or safety.

Genuine belief information tends to show required wrongdoing

80. We find that the Claimant genuinely believed that Ms Murphy had committed a criminal offence, namely perverting the course of justice, by rejecting his complaint, given the information he had provided to her. We also find that the Claimant genuinely believed that Ms Murphy was guilty of the corrupt and improper exercise of police powers and privileges contrary to Section 26 of the Criminal Justice and Courts Act 2015. This Act is referred to in the document headed “Derrick Quarm Protected disclosure to IOPC 22-06-18”.

81. We find that the Claimant genuinely believed that Ms Murphy had failed to comply with a legal obligation, namely the obligations contained in the Police Code of Ethics, and had committed gross misconduct defined in the Police Conduct Regulations 2012 as a breach of the Standards of Professional Behaviour so serious that dismissal would be justified. These obligations were specifically referred to in the Claimant’s document at [994]. His belief had been reinforced by hearing that there had been complaints about corruption amongst officers within DPS, which were the subject of an investigation.

82. We do not find that the Claimant genuinely believed that Ms Murphy had endangered health or safety. There is only one reference to health and safety in the four-page document, namely the suggestion that Ms Murphy “hid health and safety breaches” [997]. Having heard evidence from the Claimant, we do not infer from this comment or from the limited other references to health and safety in the Chronology, that he genuinely believed that Ms Murphy was endangering health and safety at the time he made his disclosure.

83. We do find that the Claimant genuinely believed that Ms Murphy was concealing criminal offences or breaches of legal obligations committed by other officers, in protecting them in relation to their past activities.

Reasonableness of belief that information tends to show required wrongdoing

84. In relation to the reasonableness of the Claimant’s beliefs, we find that they were not reasonable beliefs in relation to any of the specified areas of wrongdoing, for the following reasons:

a. The Claimant's critique of Ms Murphy's decision was limited to an assertion that she had reached the wrong outcome, given the material that the Claimant had previously presented; and an assertion that Ms Murphy had done so deliberately in order to protect others within DPS.

b. He did not lead any evidence that Ms Murphy would have a suitable motive for doing so, apart from the acknowledged fact that Ms Murphy worked in the same team, the Complaints Support Team of the DPS, as those she was being asked to investigate.

c. There could conceivably be reasonable grounds for inferring such a motive if the evidence before Ms Murphy was so stark that there was previous wrongdoing by police officers. However, no such stark evidence has been provided to this Tribunal or referred to in the paperwork in the bundle.

d. The reasons given by Ms Murphy for rejecting the Claimant's complaint were, on their face, satisfactory reasons why she would not record a public complaint or choose to refer the matter for further investigation. The Claimant was not a member of the public; the Claimant was making bare allegations of wrongdoing without any cogent supporting evidence and therefore there appeared to be no indication of a conduct matter; and the Claimant appeared to be repeating previous complaints already raised and investigated or considered by employment tribunal proceedings. It was not obvious that Ms Murphy's reasoning was incorrect.

e. At the time of his communication with the IOPC, the Claimant was aware that three DPS officers, one of inspector rank, had raised concerns about DPS corruption. His source was someone working within DPS. However, the Claimant did not have any specific details, including the identities of those involved or what proportion of the officers it represented.

f. The Claimant, a black officer, was concerned that there had been past instances where black individuals had suffered discriminatory treatment from the Respondent, as he had set out in previous complaints. However this concern, in itself, or when taken together with the other matters the Claimant identified, did not make it reasonable for him to belief that Ms Murphy was guilty of wrongdoing.

g. An article in the Sun newspaper on 23 May 2018 had alerted the Claimant to the Employment Appeal Tribunal decision in the case of *MPC v Denby*. This may have reinforced the Claimant's belief that there was wrongdoing within the Respondent's DPS in a case involving discrimination, but it does not provide any rational basis for believing that Ms Murphy had been guilty of the matters of which he was accusing her.

85. We accept the point made by Mr de Silva at paragraph 17 of his Closing Submissions that there is a higher evidential threshold which applies whether serving Police Officers have a reasonable belief that supposed misconduct amounts to criminal conduct. There was no rational basis on the evidence advanced for the Claimant, as a serving Police Officer, to believe Ms Murphy was guilty of criminal conduct in the respects alleged. Even without such a higher

evidential threshold, there would not have been a sufficient basis for the Claimant to have a reasonable belief that the disclosure tended to show the required wrongdoing.

86. In closing submissions, the Claimant referred to a report in January 2016 from Her Majesty's Inspectorate of Constabulary, entitled Integrity Matters [1086]. However, this report was not referred to in the course of the Claimant's evidence and was put, for the first time to the Respondent's third witness, David Longhurst. We do not consider that this report provides any basis for concluding that the Claimant's beliefs at the time of his disclosure were reasonable beliefs.

87. The disclosure of information did not contain the necessary degree of specificity to make it a reasonable belief that Ms Murphy was guilty of a criminal offence, or had breached a legal obligation, or concealment of the same. For completeness, if we are wrong about the Claimant's belief as to health or safety, we do not consider that it would have been a reasonable belief that health or safety was being endangered based on the information provided in the disclosure.

Genuine belief disclosure in the public interest

88. Next, we need to consider whether the Claimant genuinely believed that it was in the public interest to disclose the alleged wrongdoing of Ms Murphy. We are not here concerned with his motivations for making the disclosure, but rather with his beliefs at the time the disclosure was made. We conclude that the Claimant genuinely believed at the time that it was in the public interest for there to be an investigation into Ms Murphy's conduct. He considered he was providing a public service in raising his personal concerns about her conduct and her attempts (as he saw it) to protect other officers within the DPS.

Reasonableness of Claimant's belief that disclosure in the public interest

89. Based on his state of mind as to Ms Murphy's conduct, it was reasonable for the Claimant to believe that disclosing her conduct was in the public interest, given the gravity of the matters with which he was accusing her. This is particularly the case given he believed Ms Murphy was acting in complete contrast to the role she had been assigned to perform – namely to identify and expose wrongdoing within the Police Force. Instead, his belief was that she was covering this behaviour up. Even if he was acting partly out of self-interest it was still reasonable for him to believe that it was in the public interest for the wrongdoing to be identified and therefore stopped.

Conclusion on whether the Claimant had made a qualifying disclosure

90. The effect of these findings is that the communication made by the Claimant to the IOPC was not a qualifying disclosure under Section 43B.

Protected disclosure

91. In any event, it was not a protected disclosure in that it did not meet the requirements for a disclosure to a prescribed person under Section 43F. Although the Claimant reasonably believed that the matters he was raising fell within the IOPC's prescribed powers, we do not consider he believed that the information

disclosed, and any allegation contained within it, substantially true. Given the lack of supporting evidence provided within the disclosure in relation to the very serious allegations made, we consider that the Claimant did not have a rational basis for believing the majority of the allegations to be true, even if they were in fact false. We repeat the points set out at paragraph 84 above.

Protected disclosure conclusion

92. As a result, the Claimant's case must fail both because he had not made a qualifying disclosure under Section 43B and also because, in any event, it was not a protected disclosure under Section 43F.

Causation

93. As it was argued before us, and we have heard evidence on the points, we go on to consider whether Mr Keating's recommendation and Mr Tate's decision was influenced by any protected disclosure.

94. The Claimant argues that there is a basis for inferring that both Mr Tate and Mr Keating were influenced by his protected disclosures by the following features:

    a. The lack of curiosity shown by both in seeking further information from him as to the specifics of the matters that he was raising;

    b. The omission of any reference in the internal emails or the outcome letter to considering whether there was an indication of a conduct matter in what he raised;

    c. An alleged reluctance to accept that complaining to the IOPC was an appropriate channel for making protected disclosures;

    d. The omission in some of the guidance to the opportunity to raise issues with the IOPC rather than through other channels.

95. We do not consider that these features are a sufficient basis for drawing an inference that either Mr Tate or Mr Keating was influenced by any protected disclosures. We have heard their evidence and accept their reasons for why the Claimant's communication was not recorded and why further investigation was not considered appropriate. It is as set out in the outcome letter sent by Mr Keating, with the addition of the reason that there was no indication that the communication raised a conduct matter. We do not consider that it was the role of either Mr Tate or Mr Keating to revert to the Claimant to seek further information about his complaint before deciding whether or not to record it as a complaint. This was not standard practice nor was it required by the applicable rules and regulations.

96. We do not consider that there has been any reluctance on the part of either Mr Tate or Mr Keating to accept that complaining to the IOPC would be a permissible route to take when raising a complaint of this nature, in an appropriate case, albeit that this would be unusual. The omission in some of the paperwork to refer to the IOPC route merely reflects that it was an unusual path to pursue, and is no basis for

inferring that either Mr Tate or Mr Keating were influenced in their approach by the content of the matters that the Claimant was raising.

Race victimisation

97. The Claimant alleges in paragraph 42 of the Particulars of Claim that the Respondent operated a "No Discrimination Doctrine". He defined such a Doctrine as "a corporate policy/practice, whereby any means necessary were permissible for their staff to deny, defend against, discredit or destroy, parties who had pursued discrimination concerns/complaints against the Respondent. We reject this allegation. The Respondent did not operate any such Doctrine.

98. We do not consider that the decision not to record was influenced to any extent by the fact that the Claimant had previously issued Employment Tribunal claims or that those claims had been determined. Even on the assumption that the burden of proof has transferred to the Respondent to disprove victimisation, we find that the Respondent has discharged the burden of proof. We accept the Respondent's evidence and explanations. The decision not to record was taken for the reasons given in the decision letter – namely that it was not a complaint given that the Claimant was a serving police officer, and that it was an abuse of process in seeking to challenge Ms Murphy's decision other than by way of judicial review.

99. Whilst reference is made in the decision letter to the previous Employment Tribunal claims, this is to support Mr Keating's reference to there being an abuse of process, in that, in his genuine view, many of the matters raised by the Claimant had already been determined in a fact-finding forum. Mr Keating was not influenced by the Claimant's allegations made in those proceedings – which he had not read – nor by the fact of those proceedings, but by the fact that, in his view, those allegations had been conclusively determined in favour of the Respondent.

Other matters

100. For completeness, we make it clear that we do not accept that the Respondent treated the Claimant as an unreasonable complainant. Such a category is restricted to a limited number of members of the public where a decision has been made to restrict their ability to make complaints, because of the persistence with which they had previously brought unmeritorious complaints. No decision had been made in the Claimant's case that he should be included in this category. There were no restrictions on the Claimant's ability to make complaints to the IOPC beyond those that applied to all serving Police Officers making complaints about other Police Officers on the same Police Force.

Employment Judge Gardiner
Date: 19 August 2020