



EMPLOYMENT TRIBUNALS

Claimant

Ms S Vladimirova

v

Respondent

The Commissioner of Police
of the Metropolis

Heard at: Watford

On: 14, 15, 16, 17
and 18 September 2020

Before: Employment Judge Hawksworth
Mr M Bhatti
Mr A Scott

Appearances

For the Claimant: Mr I Komusanac (solicitor)
For the Respondent: Mr R Oulton (counsel)

JUDGMENT

The unanimous judgment of the tribunal is:

1. The claimant resigned and was not constructively dismissed. Her complaint of constructive unfair dismissal therefore fails and is dismissed.
2. The claimant's complaints of direct discrimination because of disability and/or race, indirect disability discrimination, harassment related to disability and/or race, and victimisation fail and are dismissed.
3. The claimant's complaint regarding holiday pay was withdrawn at the hearing and is dismissed.

REASONS

Claim, hearing and evidence

1. The claimant was employed by the respondent from 15 April 2013 to 17 May 2018. She was a public access officer.

2. In a claim form presented on 28 April 2018 after a period of Acas early conciliation from 26 February 2018 to 26 March 2018 the claimant brought complaints of constructive unfair dismissal, direct discrimination, indirect discrimination, harassment and victimisation. The response was presented on 14 June 2018. The respondent defended the claim.
3. There was a preliminary hearing on 7 October 2019 at which the complaints were clarified and case management orders were made.
4. The final hearing took place in person at Watford employment tribunal. Social distancing measures were in place at the tribunal. From the second day of the hearing, arrangements were made for the respondent's case manager and (on days when they were not giving evidence) for witnesses of the respondent to observe the hearing by video conference (CVP). This reduced the need for people to attend in person when observing.
5. On the first day of the hearing the employment judge told the parties that before being appointed as a salaried judge, she was a partner and principal lawyer at Slater and Gordon, a firm of solicitors which acts for the Police Federation of England and Wales and its members. This case does not involve the Police Federation or anyone known to the employment judge but she wanted to make the parties aware and give them the opportunity to ask any questions or raise any objection. Neither party had any questions or any objection to the employment judge continuing to hear the case. The tribunal did not consider there to be any need for recusal.
6. There was an agreed bundle of 677 pages. Page references in this judgment are to the agreed bundle.
7. After preliminary matters had been dealt with, we took some time on the first day for reading. We heard the claimant's evidence on the afternoon of 14 September, on 15 September and the morning of 16 September. We heard evidence from the following witnesses for the respondent:
 - 7.1 Sergeant David Bottomley (on 16 September 2020);
 - 7.2 Chief Inspector Fifi Gulam-Husen (on 16 September 2020);
 - 7.3 Sergeant Caroline Robb (on 17 September 2020);
 - 7.4 Detective Sergeant Helen Purcell (on 17 September 2020);
 - 7.5 Sergeant Ruby Lee (on 17 September 2020).
8. All the witnesses had exchanged witness statements.
9. The parties' representatives made closing submissions on 17 September 2020.
10. We gave judgment with reasons at the hearing on 18 September 2020, explaining our findings of fact and the conclusions we had reached. The parties requested written reasons.

Issues

11. The issues for determination were discussed at the preliminary hearing on 7 October 2018 and were set out in an agreed list of issues which was at pages 70-78 of the bundle. They were:

Jurisdictional issues

- (a) Was the Claimant disabled at the material times within the definition of s6 Equality Act 2010? (At the hearing the respondent accepted that the claimant was disabled at the material times.)
- (i) If so, what are the relevant disabilities?
- (ii) Did the Respondents have actual and/or constructive knowledge of the Claimant's alleged disability / disabilities, and if so, from when?
- (b) Have the claims been brought in time within the definition of s123 (1)(a) Equality Act 2010 and s111 (2)(a) Employment Rights Act 1996?

11.1 Constructive unfair dismissal

- (a) Was the Respondent in repudiatory breach of the implied term of trust and confidence by reason of the following allegations:
- (i) The stress, harassment and bullying the Claimant suffered at work which caused her health problems to deteriorate, as particularised at point 11.5 below (3.5 in the original list);
- (ii) The fact that the Respondent tolerated such bullying through Sergeant Robb;
- (iii) Not addressing the Claimant's grievance and complaints of harassment in a serious and appropriate manner through Sergeant Purcell and through Superintendent Leach, who failed to address the Claimant's concerns in April 2018 when she phoned the help line desk. She was in charge of the grievance procedure when Sergeant Robb failed to deal with it in the first instance;
- (iv) The Claimant was provided with no support and was required to work as a station officer on her own frequently, without the support of another officer;
- (b) Did the Claimant's resignation arise from one breach or a 'last straw' in a series of breaches?
- (c) Did the Claimant resign without delay?
- (d) If the dismissal was unfair:
- (i) Has the Claimant taken reasonable steps to mitigate her loss?

- (ii) Did the Claimant contribute to her dismissal and should any compensation be reduced accordingly?
- (iii) Has there been a breach of the ACAS Code of Practice?
- (iv) If so, should any uplift or deduction be made?

11.2 Direct disability discrimination

- (a) Was the claimant treated less favourably because of her disability/disabilities by the respondent:
 - (i) Imposing restrictions on entering the GPC, CPU, the Sergeant's room and the Writing Room;
 - (ii) Leaving the claimant to work alone on early shifts, whereas other teams often have a PC and station officer;
 - (iii) Not allowing the claimant to take posture breaks;
 - (iv) Not approving the claimant's roster, causing her to miss training;
 - (v) Requiring the claimant to work longer (approximately 1 hour) during shifts than other officers.

11.3 Indirect disability discrimination

- (a) Did the respondent discriminate against the claimant by applying a provision, criterion or practice ("PCP") which is discriminatory in relation to the claimant's disability, namely:
 - (i) Telling the claimant when to take a break (she couldn't decide for herself whereas others could);
 - (ii) A requirement for the claimant to work longer (approximately 1 hour) during shifts than other officers
- (b) Did, or would, the Respondent apply the PCP to other persons with whom the Claimant does not share the characteristic?
- (c) Did, or would, the PCP put persons who share the same protected characteristic as the Claimant at a particular disadvantage when compared with persons with whom the Claimant does not share those characteristics? The comparators the Claimant relies upon are:
 - (i) All the PAOs in the teams who are not disabled
- (d) Can the Respondent show it was a proportionate means of achieving a legitimate aim(s) namely:
 - (i) to ensure the front desk of the Colindale Police Station is always attended in order to provide the required consistent and high standard of service to the public;
 - (ii) ensuring victims of crime / those who report a crime are confident their report will be dealt with thoroughly and efficiently;

- (iii) ensuring reports of crimes are assessed and dealt with promptly;
 - (iv) maintaining public confidence in the police service;
 - (v) ensuring the Respondent is complying with the general duties of employers to their employees under the Health and Safety at Work Act 1974;
 - (vi) ensuring the Respondent is complying with the Working Time Regulations 1998;
 - (vii) ensuring staff are taking adequate rest breaks during the working day;
 - (viii) the proper management of MPS resources.
- (e) Alleged disadvantage suffered:
- (i) The PCPs adversely affected the Claimant's management of her hip and back problems, due to increased pain.

11.4 Direct race discrimination

- (b) Was the claimant treated less favourably because of her Bulgarian nationality by the respondent:
- (i) Imposing restrictions on entering the GPC, CPU, the Sergeant's room and the Writing Room;
 - (ii) Leaving the claimant to work alone on early shifts, whereas other teams often have a PC and station officer;
 - (iii) Not allowing the claimant to take posture breaks;
 - (iv) Not approving the claimant's roster, causing her to miss training;
 - (v) Requiring the claimant to work longer (approximately 1 hour) during shifts than other officers.

11.5 Harassment: disability and/or race (Bulgarian nationality)

- (a) Did the respondent engage in unwanted conduct related to the claimant's disability and/or race by:
- (i) Sergeant Bottomley spreading rumours about the claimant being a problem officer;
 - (ii) Sergeant Bottomley making jokes about the claimant having to stay until the end of the shift;
 - (iii) Sergeant Bottomley spreading rumours about the claimant being put on an action plan;
- (b) Did the conduct have the purpose or the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
- (c) Was it reasonable for the conduct to have the alleged effect on the claimant in the circumstances?

11.6 Victimisation

- (a) Was the grievance raised by the claimant in October 2017 a protected act?
- (b) Was the claimant subjected to a detriment as a result of doing that protected act, namely:
 - (i) Was an old complaint against the claimant re-opened?
 - (ii) Did the bullying and harassment of the claimant escalate?

11.7 Unpaid holiday pay

- (a) This was resolved between the parties and this complaint was withdrawn at the hearing.

Findings of fact

- 12. On 15 April 2013 the claimant began employment as a public access officer or station officer. She had previously been a volunteer station officer for three years. She was an employee of the respondent (not a police officer).

The role and working patterns

- 13. The claimant's role was to deal with enquiries from members of the public at the front counter of Colindale police station. Colindale police station is in the borough of Barnet, and is the only station in the borough with a public counter, so the counter is very busy. The claimant worked alongside and supported a response team of police officers, one of five teams on the borough. Each team had a public access officer who worked with them.
- 14. Under normal circumstances the public counter was staffed by one public access officer and one police officer but this was subject to the requirements of duty. The claimant and other public access officers sometimes worked on the counter on their own. Mr Burman, the grievance advisor, was told this by Mr Njenga, another public access officer, and by PC Mustafa. Like other public access officers, the claimant had to be on the front counter on her own on occasions where there was an emergency, for example we were told about one time when she was on her own because an officer was stuck in traffic. The claimant told us she was on her own for 60% of the time. We do not accept that it was as frequently as that.
- 15. During her working day, the claimant took around 10 cigarette breaks of about five minutes each. She did not leave the counter unstaffed when she did so. As she later told Chief Superintendent Rose, she was able to take cigarette breaks with assistance from the police officers on her team.
- 16. In 2013 the claimant was advised by the respondent's occupational health advisor that to help in managing her health issues she should take posture

breaks away of a few minutes every 20-30 minutes to avoid sitting/undertaking computer based tasks for long periods (page 309).

17. On 29 December 2015 the claimant reduced her hours from full-time (36 hours per week) to an annual flexible working roster which averaged about 29 hours per week. The claimant's working pattern was made up of two early shifts, two late shifts, and no night shifts.
18. On 20 October 2016 the claimant made another flexible working application to work reduced hours with two early shifts and two late shifts per week, and no night shifts. Her annual roster for 2017 averaged around 24 hours per week. It took some time to finalise this. The roster went through various versions whilst it was being agreed, including mandatory training dates for 2017 being added in (page 96). The claimant's request was agreed and the 12 month roster was put in place, to be reviewed again at the end of 2017.
19. The police officers in the response teams, including the team the claimant worked with, finished at 3pm when on an early shift. The response team which took over started at 2pm, allowing a handover between the teams.
20. Generally, the finish time for a public access officer would be the same as the team they were working with, and for an early shift that would normally mean a 3pm finish. At the end of a shift police officers and public access officers had to book off duty on the CARMS duty system (that is, they had to record the time at which they finished work). The sergeant would normally deal with this and would book off the whole team at the same time.
21. The claimant's working hours were different to the police officers on the response team she worked with, because of the flexible working application which had been agreed in her case. The claimant's flexible working pattern provided that on early shifts the claimant's shift would finish at 4pm, ie one hour later than the rest of the response team. The additional hour had been included at the claimant's request, otherwise her shift pattern would have had fewer hours and reduced pay.
22. Some other public access officers on the borough also had flexible working patterns. Mr Pantelides was one. He was on a different team to the claimant and had different supervisors.
23. On 5 March 2017 there were some issues with the claimant leaving before 4pm when she was on an early shift. The claimant's line manager Sergeant Simpson emailed her to remind her that her finish time on early shift was 4pm and that it was up to her to book off at the end of a shift (page 110).

Complaint against the claimant

24. On 13 September 2017 a member of the public made a complaint to the respondent about the claimant and another officer. This was passed to Sergeant David Bottomley, one of the response team sergeants, to investigate.

25. In her evidence, the claimant said that someone told her that whilst dealing with this complaint, Sergeant Bottomley asked the other officer to slightly change his story to make the claimant look fully responsible for the conduct which was the subject of the complaint. This very serious allegation was unsupported by other evidence. We did not see why Sergeant Bottomley would have done this. Such action by him could, if true, have had very serious consequences for him. It is hard to see what benefit there would have been to Sergeant Bottomley which would have justified the risk to him from making this suggestion or request. For this reason we concluded that it is highly unlikely that Sergeant Bottomley would have taken this step. We find that Sergeant Bottomley did not make this request.
26. On 5 October 2017 Sergeant Robb from the borough's professional standards unit requested an update on the complaint. Sergeant Bottomley replied on 5 October 2017 that he was dealing with it (page 119). One of the issues for us to decide was whether the complaint was at any stage closed and then reopened. During the hearing, it was accepted on the claimant's behalf that she was wrong in thinking that the complaint was closed at any stage prior to 20 October 2017 and then re-opened. She accepted that it was being progressed albeit the claimant herself was not kept updated about it.

The incident on 20 October 2017

27. On 20 October 2017 the borough commander Chief Superintendent Rose attended the front office of Colindale police station and found it unstaffed. The claimant had left the front desk unattended. Chief Superintendent Rose spoke to the claimant and told her she should tell him if she was on her own. Later that day, as she was still on her own, the claimant contacted Chief Superintendent Rose to let him know this.
28. At the end of her shift the claimant was asked to a meeting in the inspector's office with Sergeant Bottomley and Inspector Gulam-Husen. At that time Inspector Gulam-Husen was the inspector for the response team which included the claimant. Inspector Gulam-Husen felt professionally embarrassed that the borough commander had found the front desk unstaffed. She was disappointed that her team was not delivering as it should do. During her meeting with the claimant, Inspector Gulam-Husen became frustrated as she felt the discussion was going round in circles. She raised her voice and said to Sergeant Bottomley words to the effect of, "Take her out of the office. You deal with her". Sergeant Bottomley and the claimant left and went to the sergeants' office.

The claimant's complaint about the meeting on 20 October 2017

29. The following day the claimant sent an email to Sergeant Simpson to make a complaint about Inspector Gulam-Husen's conduct at the meeting (page 130). In her email the claimant complained that she had been shouted at and insulted and she felt bullied. The claimant did not make any express allegation of discrimination or mention any protected characteristic.

30. On 21 October 2017, the same day that the claimant sent her email complaint to Sergeant Simpson, Sergeant Bottomley spoke to the claimant to update her about the complaint by the member of the public. In doing so he was not reopening the public complaint. It had remained open and had not been closed down at any stage prior to this.
31. Sergeant Simpson forwarded the claimant's complaint to Sergeant Robb to ask for her advice on how to deal with it. Sergeant Robb's role on the professional standards unit was to deal with complaints by the public and possible misconduct issues. Sergeant Robb replied to Sergeant Simpson on 23 October 2017, giving advice and referencing the grievance procedure (page 134). The respondent's grievance policy provides for a period of informal resolution on the borough before a complaint is dealt with centrally as a formal grievance. Sergeant Robb copied her email to Detective Sergeant Purcell, the 'informal resolution champion' for the borough.

The meeting on 1 November 2017

32. The claimant was unhappy about what had happened and requested a meeting with the borough commander. The meeting took place on 1 November 2017. Chief Superintendent Rose, Sergeant Bottomley and the claimant were at the meeting. The claimant's working hours were discussed. It was clarified that the claimant had a flexible working pattern under which she worked until 4pm on an early shift and that those on a standard working pattern finished at 3pm on an early shift. The claimant did not want to change her shift pattern so that she finished at 3pm on an early shift (as this would mean reducing her hours and pay). She was asked to stay at work until the end of her contracted hours. The earliest the claimant could leave was 15 minutes before the end of her shift.
33. The claimant may have been permitted to leave early on occasion in the past. She said that she took her lunch break at the end of the day to allow her to leave early. Chief Superintendent Rose asked her not to do this because of the need to take a proper break in line with the Working Time Regulations.
34. Another issue which was discussed at this meeting was leaving the front counter unstaffed, as had been seen by Chief Superintendent Rose on 20 October 2017.
35. The claimant said that she had been put under a restriction by a previous manager that she was not allowed to go to certain rooms in the station such as the sergeants' room and the writing room, both of which were upstairs. We find that this was not a restriction placed on the claimant, rather she was told to try and deal with situations without leaving the counter unstaffed, for example by telephoning for advice or assistance rather than going upstairs or, if she had to leave the counter, she should put up a notice.
36. There was no evidence before us that the claimant was treated any differently than other officer or public access officer in relation to this request.

It seems unlikely that other officers or public access officers would have been given any different instruction, other than to stay on the front counter as much as possible to provide a service to members of the public.

37. A note of this meeting was sent by email the same evening by Chief Superintendent Rose (page 143). Chief Superintendent Rose's note records that the claimant's shift pattern on early shifts was the 7am-4pm arrangement. It said that after the meeting Sergeant Bottomley would brief the other sergeants about what had been discussed. Chief Superintendent Rose asked the claimant and Sergeant Bottomley to let him know if he had missed anything from his note, and said that otherwise it would be treated as a fair and accurate record.
38. The claimant replied to the note within thirty minutes, saying to Chief Superintendent Rose: "I'd like to thank you for your quick response and fairness. The record below solves all issues and I am happy with the outcome. Thank you again." (page 150).

After the meeting with Chief Superintendent Rose

39. After the meeting, as discussed and agreed and as recorded in the note, Sergeant Bottomley spoke to the other supervisors on the team about what had been said at the meeting. This was to ensure consistency of approach and understanding about the claimant's working hours and arrangements.
40. The claimant alleged that during the period November 2017 to April 2018 Sergeant Bottomley made jokes about the claimant having to stay until the end of a shift. The claimant did not give any examples of jokes she said were made by Sergeant Bottomley. The allegations were in very general terms and were denied by Sergeant Bottomley. We find that he did not do this.
41. The claimant also alleged that during the period November 2017 to April 2018 Sergeant Bottomley spread rumours that she was a problem officer. The claimant told us the name of one person who had told her about rumours, but they did not provide a statement and were not called to give evidence. She said that she was unable to provide any more detail, as the other people still worked for the respondent. We find that Sergeant Bottomley did not refer to the claimant as a problem officer or spread rumours that she was. He briefed the other sergeants as had been agreed during the meeting with Chief Superintendent Rose and the claimant. He later found out during the formal grievance process that his discussion with the other sergeants had not been kept confidential by them.
42. On 11 November 2017 the claimant left the building early before the end of her shift, and had not booked off on CARMS for three shifts. Acting Sergeant Petrucci raised this with the claimant saying: "...you really MUST comply with these instructions. I don't want you to get yourself in trouble so please please just do as you are asked" (page 200).
43. On 21 November 2017 the claimant contacted Chief Superintendent Rose by email to complain about how Inspector Gulam-Husen was interpreting his

note (page 173). The claimant complained that on 9 November 2017 when she left the front desk to check something, she was told she should use the phone if she needed advice. On the same day she was told she could not leave until her shift finished at 4 o'clock. She also complained that on 12 November 2017 she had been told she had to stay until the end of the shift and book off on the CARMs system. In his reply on 28 November 2017 Chief Superintendent Rose said he understood that the claimant's flexi-pattern finished at 4pm. He said if she didn't want this pattern it could be changed, but 'what isn't going to be OK is to have a different pattern to others ... and then not do those hours'.

44. Inspector Gulam-Husen said in her evidence to us, and we entirely accept, that in requiring the claimant to work her contracted hours the respondent was concerned with the public purse and the service being provided to the community. Those are obviously genuine and very reasonable concerns for the respondent to have.
45. The claimant also alleged that during the period November 2017 to April 2018 Sergeant Bottomley spread rumours that she had been put on an action plan. On 22 November 2017 Sergeant Bottomley drafted an action plan for the claimant, based on the minutes of the meeting with Chief Superintendent Rose. Although steps for the claimant to take had been identified and agreed at the meeting and were recorded in Chief Superintendent Rose's note, it was not made clear to the claimant following the meeting that they would be put in the form of an action plan for her. Sergeant Bottomley sent the draft to Sergeant Mower, the claimant's new line manager. It was never finalised or sent to the claimant.
46. On 29 November 2017 the claimant was informed by Sergeant Bottomley that the complaint against her by a member of the public had been resolved. In the letter to the member of the public confirming the outcome of the complaint, Sergeant Bottomley said that a formal action plan had been set for the claimant (page 171).
47. We find that Sergeant Bottomley did prepare a draft action plan and he sent it to the claimant's line manager and referred to it when dealing with the complaint by the member of the public about the claimant. The claimant was not aware that steps were being taken to put her on an action plan. However, we did not have any evidence that Sergeant Bottomley spread rumours about the claimant being on an action plan.

The informal resolution process

48. Meanwhile, steps were being taken to start the informal resolution process for the complaint made by the claimant on 21 October 2017.
49. On 1 November 2017 the informal resolution champion for the borough, Detective Sergeant Purcell, emailed Sergeants Robb and Simpson to say that to progress her complaint, the claimant would need to get in touch with the single point of contact (SPOC) to ask for an informal resolution champion

to be appointed (page 160). This information was passed to the claimant and she called the respondent's grievance helpline to find out who the single point of contact was. She was told that the single point of contact was Superintendent Leach. The claimant sent an email to Superintendent Leach on 7 November 2017 enclosing a separate document called "Sad Story" (page 155). The email and the document made allegations of bullying and harassment but did not refer to any protected characteristic.

50. On 20 November 2017 the claimant sent another email to Superintendent Leach as she had not heard back from her (page 157). She said she was experiencing continued bullying, and made the same complaints about being required to stay to the end of her shift on 9 and 12 November 2017 that she referred to in her email to Chief Superintendent Rose. In this email the claimant said she did not accept being discriminated and insulted and that she was subject to ongoing harassment. She said she was the only officer who was required to book off on CARMS herself, to stay to the end of the shift and not to go upstairs. In the email, she did not make an allegation of disability or race discrimination or any other contravention of the Equality Act.
51. On 23 November 2017 Superintendent Leach replied to the claimant's emails of 7 and 20 November 2017 (page 165). She was catching up following her return to work from a period of annual leave. Superintendent Leach gave told the claimant that Sergeant Purcell was the borough's informal resolution champion. On 24 November 2017 Sergeant Purcell was formally tasked to start informal resolution for the claimant's grievance, and she was contacted by the claimant.
52. On 30 November 2017 Sergeant Purcell emailed the claimant with a suggested date for a meeting and took some other steps to start the informal resolution process. The meeting was arranged for 13 December 2017 because the claimant was on annual leave until 9 December, having medical treatment in Bulgaria. The claimant had given Sergeant Purcell her mobile number and said she could be contacted 'if you need'. She asked for the grievance to be progressed ASAP. She did not specifically ask to be contacted while she was on leave (page 636).
53. The claimant's meeting with Sergeant Purcell took place on 13 December 2017. Sergeant Purcell identified six complaints that the claimant was making (page 190). She told the claimant that some of her complaints would need to be passed to the respondent's central grievance team to be dealt with formally, but that she could take steps to try and reach informal resolutions of the others. In the light of the advice from Sergeant Purcell that some aspects could not be resolved informally, the claimant submitted a formal grievance on 20 December 2017 (page 207).
54. On 4 January 2018 Sergeant Purcell sent her draft informal resolution summary report to the claimant (page 237b). The report addressed the claimant's complaint of rumours about an action plan. Sergeant Purcell recorded that an action plan had been prepared for the claimant, although it had not been taken through the full formal process. She enclosed a copy of the draft action plan.

55. The claimant replied to Sergeant Purcell. She was upset to see the draft action plan. She was not happy with the content of the report although she felt Sergeant Purcell was “doing [her] job precisely and fair” (page 244). Sergeant Purcell made some amendments to the report following discussions with the claimant. The claimant agreed with what Sergeant Purcell had written in the final report subject to a few small points, and she thanked Sergeant Purcell for her time and support (page 261). She said that she had been very distressed since receiving the action plan and was going to see her GP.

The claimant’s sick leave and resignation

56. The claimant started a period of sick leave on 4 January 2018 and she did not return to work before her employment ended in May 2018. In February 2018 the claimant had a new line manager, Sergeant Lee. The claimant was visited or called during her sick leave approximately every 2-3 weeks by Sergeant Lee.
57. On 28 March 2018 Sergeant Lee called the claimant to discuss a number of matters including her roster for 2018. Sergeant Lee offered to have a meeting with the claimant to discuss the roster but because the claimant was off sick, the roster never came into effect. The claimant did not miss any training days as a result of her 2018 roster not being finalised. She was on sick leave from 4 January until her employment ended on 17 May 2018 and so would not have been able to attend any training during that time.
58. In the same telephone conversation on 28 March 2018 the claimant told Sergeant Lee that she wanted to come back to work, and she did not want to move teams. The claimant’s account of this conversation was different but we accept Sergeant Lee’s evidence on this point because she kept a log of her interactions with the claimant and this included a contemporaneous note of the discussion on 28 March 2018 (page 436A).
59. On 19 April 2018 the claimant resigned, giving one month’s notice (page 428). Her email notice of resignation said:

“...I was bullied and harassed at work for a long period of time and this caused issues with my health...”

“...I am a dedicated officer and an active person and staying home, taking pills and not being able to work caused my health issues to worsen. In order to get my health better I will remove the only reason for it – my job.”

The claimant’s formal grievance

60. While she was on sick leave and after she left her employment with the respondent, the claimant’s formal grievance was investigated by a grievance advisor Mr Burman.

61. During the grievance investigation the claimant suggested that Inspector Gulam-Husen's treatment of her may have been because of historic connections between Bulgaria and Turkey, and the period when Bulgaria was under Turkish occupation. It appeared that the claimant thought that Inspector Gulam-Husen was Turkish. However, in her evidence before us the claimant accepted that Inspector Gulam-Husen was not Turkish.
62. Mr Burman prepared a detailed 58 page grievance report dated 21 June 2018. He accepted that there had been a breakdown in the working relationships between the claimant and Inspector Gulam-Husen and between the claimant and her sergeants which dated back to 20 October 2017. The grievance report made recommendations and identified multiple local learning points for the respondent.

The law

Constructive unfair dismissal

63. The definition of dismissal in section 95(1)(c) of the Employment Rights Act includes constructive dismissal which is a dismissal where the employee terminates the contract of employment in circumstances where they are entitled to terminate it without notice by reason of the employer's conduct.
64. Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27 sets out the elements which must be established by the employee in constructive dismissal cases. The employee must show:
 - 64.1 that there was a fundamental breach of contract on the part of the employer;
 - 64.2 that the employer's breach caused the employee to resign; and
 - 64.3 that the employee did not delay too long before resigning and thereby affirm the contract.
65. The Claimant relies on breaches of the implied term of trust and confidence. This is a term implied into all contracts of employment that employers (and employees) will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties.
66. In cases where a breach of the implied term is alleged, 'the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it' - Woods v WM Car Services (Peterborough) Limited [1981] IRLR 347.
67. In Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978 Underhill LJ set out a series of questions to be considered where an employee claims to have been constructively dismissed and where there are said to be a number of repudiatory breaches. Those questions are:

- 67.1 What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, her resignation?
- 67.2 Has she affirmed the contract since that act?
- 67.3 If not, was that act (or omission) by itself a repudiatory breach of contract?
- 67.4 If not, was it nevertheless a part of a course of conduct comprising several acts and/or omissions which, viewed cumulatively, amounted to a breach of the implied term of trust and confidence?
- 67.5 Did the employee resign in response (or partly in response) to that breach?

68. If a constructive dismissal is established, the tribunal must also consider whether the reason for the dismissal is a potentially fair reason, and whether the dismissal is fair in all the circumstances, pursuant to section 98(4) of the Employment Rights Act 1996.

Disability and race

69. Disability and race are protected characteristic under sections 4, 6 and 9 of the Equality Act 2010.

Direct discrimination

70. Section 13 of the Equality Act provides:

“(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

71. Section 23(1) provides that:

“On a comparison of cases for the purposes of section 13 [direct discrimination] ... there must be no material difference between the circumstances relating to each case.”

Indirect discrimination

72. Section 19 of the Equality Act provides:

“(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.”

Harassment

73. Under section 26 of the Equality Act, a person (A) harasses another (B) if

“a) A engages in unwanted conduct related to a relevant protected characteristic, and

b) the conduct has the purpose or effect of –

i) violating B’s dignity, or

ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.”

74. In deciding whether conduct has the relevant effect, the tribunal must take into account:

“a) the perception of B;

b) the other circumstances of the case;

c) whether it is reasonable for the conduct to have that effect.”

Victimisation

75. Victimisation is prohibited by section 27 of the Equality Act:

“(1) A person (A) victimises another person (B) if A subjects B to a detriment because

(a) B does a protected act...”

76. A protected act is defined in section 27(2) and includes:

“a) bringing proceedings under this Act;

b) giving evidence or information in connection with proceedings under this Act;

c) doing any other thing for the purposes of or in connection with this Act;

d) making an allegation (whether or not express) that A or another person has contravened this Act."

Burden of proof in complaints under the Equality Act 2010

77. Sections 136(2) and (3) provide for a shifting burden of proof:

"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) This does not apply if A shows that A did not contravene the provision."

78. This means that if there are facts from which the tribunal could properly and fairly decide that the difference in treatment was because of the protected characteristic, the burden of proof shifts to the respondent. The respondent must then prove that the treatment was in no sense whatsoever on the grounds of disability or race. If there is a prima facie case and the explanation for that treatment is unsatisfactory or inadequate, then it is mandatory for the tribunal to make a finding of discrimination.

79. In Igen v Wong [2005] ICR 931 the court set out 'revised Barton guidance' on the shifting burden of proof. The court's guidance is not a substitute for the statutory language and the statute must be the starting point.

80. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal could decide that, on the balance of probabilities, the respondent has committed an unlawful act of discrimination. "Something more" is needed for the burden to shift to the respondent.

81. If the burden shifts to the respondent, the respondent must then provide an "adequate" explanation, which proves on the balance of probabilities that the treatment was in no sense whatsoever on the grounds of disability. The respondent would normally be expected to produce "cogent evidence" to discharge the burden of proof.

Conclusions

82. We apply the relevant legal tests to the findings of fact that we have made, to reach our conclusions on the issues for determination. We have set our conclusions in the same order as the list of issues except that we have dealt with the allegations of direct discrimination because of disability and because of race together.

Constructive dismissal

83. The legal test that we have to consider is whether there was a repudiatory breach of the contract of employment by the respondent, in this case whether there was a breach of the implied term of trust and confidence, which is a

fundamental part of the employment relationship. That means we have to consider whether the respondent, without reasonable or proper cause, conducted themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties.

84. The claimant relied on four matters which she said were breaches of the implied term of trust and confidence and which led to her constructive dismissal. We first consider our findings of fact in relation to each of these.
85. The first alleged breach was stress, harassment and bullying suffered at work as set out in paragraph 11.5 above (originally paragraph 3.5 of the list of issues). This included the allegations that Sergeant Bottomley made jokes about the claimant having to stay to the end of her shift and spread rumours that she was a problem officer. We found that this did not take place and that the extent of Sergeant Bottomley's actions in this respect was to brief other sergeants as he was asked to do by the Borough Commander and as the claimant had been told in the note of the meeting that he would do. This took place in November 2017.
86. This alleged breach also included the allegation that Sergeant Bottomley spread rumours about the claimant being on an action plan. We have found that Sergeant Bottomley prepared a draft action plan, that he sent it to the claimant's line manager and that he referred to it when dealing with the complaint by the member of the public about the claimant. These actions took place in November 2017. We have not found that he spread rumours about the claimant being on an action plan.
87. The second breach relied on by the claimant was the respondent tolerating bullying through Sergeant Robb. We have not found that the respondent tolerated bullying, by Sergeant Robb or otherwise. We found that Sergeant Robb as the professional standards sergeant for the Borough advised the claimant and her supervisors as to the appropriate procedure that should be taken to deal with the claimant's grievance complaint of bullying. Sergeant Robb's involvement with the claimant's case was in October/November 2017.
88. The third breach of contract which the claimant alleged was not addressing the claimant's grievance and complaints of harassment in a serious and appropriate manner through Sergeant Purcell and through Superintendent Leach. We have not found that Sergeant Purcell or Superintendent Leach failed to address the claimant's concerns. The grievance was initially raised on 21 October 2017, following which steps were taken to identify what process should be followed and how. There was a delay while Superintendent Leach was on annual leave but she came back to the claimant on 23 November 2017 after her return from leave. Sergeant Purcell was tasked to deal with the informal aspects of the complaint on 24 November 2017 and met with the claimant after the claimant's annual leave on 13 December 2017. The draft report was sent to the claimant on 4 January 2018. That timetable appears to us to be reasonable. The informal resolution process took place from October 2017 to January 2018.

89. Finally, the claimant alleged that the respondent breached the implied term of trust and confidence by providing her with no support and requiring her to work as a station officer on her own frequently. We found that the claimant was required to work on her own on some occasions when there were unforeseen circumstances, and that the same applied to other public access officers. We have not accepted that the requirement to work alone was as frequent as the claimant said or that other public access officers were treated better in this respect. The claimant was not at work after 4 January 2018.
90. Therefore, we have not found that any of the matters relied on by the claimant as repudiatory breaches of contract happened as alleged by her.
91. We have gone on to consider whether any of the matters which we have found to have happened give rise to a finding of constructive dismissal. We have approached this by considering the steps set out in the case of Kaur v Leeds Teaching Hospital.
92. First, we have to identify and consider the most recent act on the part of the respondent which the claimant says caused or triggered her resignation. The last straw was said by the claimant in her further particulars and on her behalf in submissions to be Superintendent Leach's actions around the time the claimant phoned the grievance helpline. The date initially given for that was April 2018 but it was accepted by the claimant during the hearing that this took place much earlier, in November 2017.
93. We therefore need to consider whether the claimant affirmed the contract after that act. We conclude that she did affirm her contract after November 2017. She stayed on at work for some weeks, going off sick in January 2018. She engaged with the informal action and grievance procedures, and on 28 March 2018 she told her line manager, Sergeant Lee, in a telephone call that she wanted to come back to work. These were all affirmations of the claimant's contract of employment.
94. Although the claimant did not say that the breakdown of the working relationship with her managers which the grievance handler, Mr Burnham found had started in October 2017 was a fundamental breach of contract, we record for completeness that if she had done we would have concluded that the claimant had affirmed the contract of employment after these events as well for the same reasons.
95. Further, we would not have found any actions of Superintendent Leach, Sergeant Bottomley, Sergeant Purcell or Sergeant Robb, to have amounted to a repudiatory breach of contract. If we had, we would have concluded that the claimant affirmed the contract after those acts in any event.
96. Our conclusions mean that the claimant was not constructively dismissed and that her employment terminated by resignation. Her complaint of constructive unfair dismissal fails.

Direct discrimination because of disability and/or race

97. Next, we have considered the complaints of direct disability and race discrimination. The claimant relied on the same treatment for both of these complaints.
98. The claimant said that she was subject to less favourable treatment because of her disability and/or her Bulgarian nationality. The respondent accepted that the claimant was disabled at the material times.
99. We set out our conclusions on each of the five matters said to be less favourable treatment.
100. The first was that the respondent imposed restrictions on the claimant entering the GPC, the CPU, the sergeants' room and the writing room. The claimant said meant that she was unable to do the work of a PAO effectively. We have found that there were no restrictions placed on the claimant, rather that she was told to try other means of dealing with situations to avoid having to leave the desk unstaffed. We have found that there was no evidence that the claimant was treated any differently in this regard to others working on the front desk. We found that it was highly unlikely that other officers or public access officers on the front desk would have been given any different instruction other than to keep the desk staffed as much as it could be to provide the service to the public. We have not accepted that the claimant was treated differently to other officers or public access officers in this respect.
101. Secondly, the claimant complains that she was left to work alone on early shifts whereas other teams often had a police officer and a station officer working together. Again, we did not have any evidence that the claimant was treated differently in this respect. There was no evidence that other public access officers more frequently worked with another officer on the front counter. We were given some late disclosure of rosters of other public access officers but we were not taken to them in evidence.
102. Thirdly, the claimant said she was unable to take her posture breaks. The claimant had been told by occupational health that she should take regular posture breaks because of her health condition. She did not ask for any breaks. Her case was that the respondent should have arranged them for her.
103. We have found that the claimant had no difficulty in taking cigarette breaks with assistance from police officers on her team. We conclude that it would have been possible for her to take posture breaks either in the same way or at the same time as her cigarette breaks.
104. This complaint has been put as direct discrimination rather than as a complaint of failure to make reasonable adjustments. In a complaint of direct discrimination the first question for us is whether the claimant was treated less favourably than someone else was or would have been treated in relation to posture breaks. There was no evidence that anybody was or would have been treated any differently.

105. The fourth allegation of less favourable treatment because of disability or race was that the claimant's roster was not approved, causing her to miss training.
106. The claimant said this occurred from June 2016 to April 2018. The roster which was being discussed in the second half of 2016 (ie the roster for the calendar year 2017) had training dates added in during the process of approving the roster. Any delay in approving the roster did not cause any missed training.
107. The roster that was being considered in the latter half of 2017 and the beginning of 2018 (that is the roster for the calendar year 2018) was not finalised. The roster did not come into effect because the claimant was off sick. However, as she was on sick leave, the claimant then did not miss any training dates as a result of any delays or any failure to finalise the roster.
108. The final allegation of less favourable treatment relied on by the claimant is that she was required to work approximately one hour longer than other officers. We have found that the claimant had a flexible working agreement under which she worked until 4pm on early turn shifts. She had requested this pattern and it had been agreed. The respondent asked the claimant to stay at work until the end of her contracted hours. This was an entirely reasonable request. The respondent suggested that the claimant could change her shifts to finish at 3pm if she wanted but she chose not to.
109. When considering whether the claimant was treated less favourably than others, we need to consider those who also had a 4pm finish time, as that is a material part of her circumstances. Police officers and public access officers on standard working patterns finished at 3pm. A comparison between the claimant and someone with a 3pm finish time would not be an appropriate comparison for these purposes. A comparator would also have to be on the same response team as the claimant and have the same line managers making decisions as to finish time as that is also a material circumstance.
110. We have concluded that the claimant has not established that she was treated any less favourably than a comparator was or would have been.
111. If we had found any less favourable treatment, we would have gone on to consider whether the claimant had established any evidence from which we could decide that any less favourable treatment was because of disability or race.
112. There was no suggestion of any basis on which the claimant could have been discriminated against because of her disability or her Bulgarian nationality.

Indirect disability discrimination

113. The claimant also made a complaint of indirect disability discrimination. She relied on two PCPs (provisions, criteria or practices). These were:

- 113.1 Telling the claimant when to take a break (she could not decide for herself whereas others could); and
 - 113.2 requiring the claimant to work longer (approximately 1 hour) during shifts than other officers.
114. These are not PCPs within the meaning of section 19 of the Equality Act. They are individual to the claimant, and expressly describe ways in which the claimant was treated differently to others.
115. Indirect discrimination arises where an apparently neutral policy or practice is applied generally but particularly disadvantages the claimant and others who share her protected characteristic. The PCPs relied on by the claimant expressly say they were not applied to others. They cannot form the basis of a complaint of indirect discrimination.
116. For these reasons, the complaint of indirect discrimination fails.

Harassment related to disability and/or race

117. The claimant alleged that PS Bottomley engaged in unwanted conduct related to disability and race by:
- 117.1 spreading rumours about her being a problem officer;
 - 117.2 by making jokes about her having to stay until the end of her shift; and
 - 117.3 by spreading rumours about the claimant being put on an action plan.
118. We have first reviewed our factual findings on these. If we have found the factual basis for the allegations proven, we go on to consider whether the legal tests are met.
119. We found that Sergeant Bottomley did not made jokes about the claimant having to stay until the end of a shift and that he did not spread rumours that she was a problem officer.
120. We did find that Sergeant Bottomley briefed other sergeants after the meeting on 1 November 2017, as he was asked to do by Chief Superintendent Rose. We conclude that this did not amount to unwanted conduct which had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. If it had any of those effects, it was not reasonable for it to do so. Further, there was no evidence before us from which we could conclude that this conduct was related in any way to disability or nationality.
121. We did not find that Sergeant Bottomley spread rumours about the claimant being put on an action plan. He did prepare a draft action plan and send it to the claimant's line manager, and he referred to an action plan when dealing with the complaint by the member of the public about the claimant. The claimant was unaware that an action plan was being considered; she understood that the meeting on 1 November 2017 was to consider concerns

she had raised, not concerns about her performance. It would have been better if the respondent had been more open with the claimant about this. However, Sergeant Bottomley's conduct in relation to the action plan was not conduct which had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Again, if it had any of those effects it was not reasonable for it to do so. Finally, there was no evidence from which we could conclude that this conduct was related in any way to disability or nationality.

Victimisation

122. Finally, the claimant made complaints of victimisation. We need to consider whether the claimant did one or more protected act and if so whether she was subject to any detrimental treatment as a result of doing protected act(s).
123. We have first considered whether the claimant did a protected act. The list of issues said the claimant's grievance in October 2017 was a protected act. It did not identify the exact communication which was said to be the protected act. We have considered the email sent by the claimant on 21 October 2017 to Sergeant Simpson and the two emails and attachments to Superintendent Leach sent 7 November 2017 and 20 November 2017 as those could be described as the claimant's grievance, albeit that they were made in November, not October.
124. We have found that none of the claimant's grievance documents makes an allegation of a contravention of the Equality Act or does anything else in connection with the Equality Act. There are references to bullying and harassment but no reference to the Equality Act or to protected characteristics in the emails of 21 October and 7 November 2017. There is a reference to discrimination in the email of 20 November 2017 but no reference to a protected characteristic. There is no allegation of disability or race discrimination. We have concluded that none of these emails are protected acts.
125. In case we are wrong about that, we have gone on to consider the second stage of a complaint of victimisation, which is to consider whether the claimant was subjected to a detriment because of sending any of her grievance emails.
126. The first detriment relied on by the claimant was an old complaint being re-opened. The claimant accepted during the hearing that the complaint was never actually closed although the order of events may have led the claimant to believe it was. As the complaint had not been closed, this complaint cannot succeed as it is based on facts which did not happen.
127. Secondly, the claimant complained about bullying and harassment escalating after her grievance emails were sent. This complaint was not particularised in the list of issues and we were not told exactly what treatment the claimant was describing as escalating. We concluded that the claimant was referring to the incidents which took place on 9 and 12 November 2017 and which she complained about in her emails of 20 November 2017 to Superintendent

Leach and 21 November 2017 to Chief Superintendent Rose, as these were referred to in those emails as continued bullying.

128. The claimant said that on 9 and 12 November 2017 she was asked to stay to the end of her shift, to book off at the end of her shift and to use the phone for advice rather than leaving the front desk. This did not amount to detrimental treatment of the claimant. The requests and instructions given to the claimant on 9 and 12 November 2017 were attempts by her managers to implement the arrangements discussed at the meeting with Chief Superintendent Rose on which the team's supervisors had been briefed by Sergeant Bottomley. Further, this treatment was not because of the grievance complaint the claimant had made on 21 October 2017 or her subsequent emails in November 2017. Her complaints did not play any part in this treatment.

129. The claimant's complaint of victimisation fails and is dismissed.

Holiday pay

130. The holiday pay claim was dismissed on withdrawal, the parties having resolved this between themselves.

Employment Judge Hawksworth

Date: 19 October 2020

Sent to the parties on: .16/11/2020

Jon Marlowe
For the Tribunal Office