



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs H Lee  
**Respondent:** The Chief Constable of Essex Police  
**Heard at:** East London Hearing Centre  
**On:** 8 – 11 September 2020 and (in-chambers) 6 November 2020  
**Before:** Employment Judge B Elgot  
**Members:** Mr T Burrows  
Mr S Woodhouse

## Representation

**Claimant:** Ms T O'Halloran (Counsel)  
**Respondent:** Mr G Thomas (Counsel)

The Tribunal having reserved its decision now gives judgment as follows:-

## RESERVED JUDGMENT

**The claim of disability discrimination does not succeed and is DISMISSED.**

**The claim of sex discrimination does not succeed and is DISMISSED.**

**The complaint of harassment by reference to the protected characteristics of sex and disability does not succeed and is DISMISSED.**

**Written reasons for the Judgment are attached.**

# REASONS

1. The Claimant makes the following claims in a Claim received by the Employment Tribunal on 4 May 2019. First she says that she was discriminated against because of her sex as a woman and treated less favourably than others who are not women by reference to section 13 (direct discrimination) of the Equality Act 2010 ( 'the 2010 Act'). The relevant protected characteristic is sex.

2. Secondly she complains of disability discrimination by reference to s 13 (direct discrimination) which is defined as '*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*'. The relevant protected characteristic is disability. Section 13, as can be seen from the definition, depends on a comparison.

3. She alleges discrimination arising from disability by reference to s 15 of the 2010 Act.

4. The Claimant also pleads that she has been the subject of harassment by reference to s 26 of the 2010 Act and alleges that the Respondent has engaged in unwanted conduct related to both the relevant protected characteristics of sex and disability.

5. It is axiomatic that an employer cannot directly discriminate under section 13 against a disabled person unless the employer knows of the particular disability which the employee has. Section 6 (3) (a) of the 2010 Act confirms the requirement of particularity. It states '*a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability*'.

We have asked ourselves whether the Respondent knew of the Claimant's particular disability or disabilities and also whether the relevant officers knew of the particular effects of those disabilities. This is because some of the effects as described by and argued for by the Claimant are at first sight not characteristic of the disabilities she describes. Our conclusions in this respect are set out below.

6. Section 15 of the 2010 Act states that '*a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability and A cannot show that the treatment is a proportionate means of achieving a legitimate aim*'. This is sometimes called the 'justification' defence.

7. We concur with the detailed legal analysis of the provisions of section 15 which appears at paragraphs 44- 46 of Mr Thomas's submission on behalf of the Respondent and therefore need not repeat it in these Reasons. We adopt that analysis and have taken the approach of asking ourselves first whether there was unfavourable treatment at all and

then asking (see paragraph f (i) of the submission) why the Respondent treated the Claimant in the unfavourable way alleged, in order to answer the question whether it was because of something arising in consequence of her disability.

8. Section 15 also has a requirement of knowledge by the employer. Section 15 (2) states that the prohibited conduct described in section 15 (1) *'does not apply if A shows that A did not know and could not reasonably be expected to know that B had the [particular] disability'*.

9. It must be established that there is a link between any unfavourable treatment of the Claimant and the 'something' arising in consequence of her disability but the Respondent does not need to know that the something which causes or is the reason for the unfavourable treatment is a consequence of the particular disability- see City of York Council v Grosset 2018 EWCA Civ 1105. For example the Claimant argues that her 'emotionality' (see paragraph 49 of Miss O'Halloran's submission) is something arising from her disabilities and that she was unfavourably treated as a result of her demonstrations of emotionality. It is not necessary for her to show that the Respondent appreciated that her 'emotional' behaviour arose in consequence of her disabilities or one of them.

10. The Claimant makes no claim under s 20 of the 2010 Act that the Respondent has failed to comply with any duty to make reasonable adjustments in her case. She makes no allegations of indirect discrimination that any provision, criterion or practice of the Respondent has put her at a particular disadvantage when compared with persons who are not of her sex and/or do not have her disability. She brings no claim of victimisation. She makes no claim that she has suffered a detriment because of any public interest disclosure she has made.

11. The parties agreed a List of Issues which was finalised on the first day of the final Hearing (8<sup>th</sup> September 2019). The Tribunal has therefore treated that List as the parties' definitive list of the factual allegations and the questions which they wish the Tribunal to address and adjudicate upon. Both counsel confirmed that the word 'only' in paragraphs 6 (e) and 12 (j) of the List was intended to remain once amendments had been made. It is therefore clear that the Claimant contends that she was singled out and only she was made subject to *'formal misconduct action ( including a statutory misconduct investigation)in respect of [her]alleged misconduct on 1 Feb 2019'*

12. The agreed List of Issues handed up is very similar to the List of Issues and Factual Allegations in the Preliminary Hearing Summary prepared by Employment Judge Burgher following a preliminary hearing on 12 August 2019 recorded at pages 41 -43 of the bundle but it is not exactly the same. We have worked from the later Agreed List agreed by both representatives but utilised the numbering of the 11 factual allegations set out at pages 41-43 because it is clearer and because it is the numbering used in both sets of submissions.

13. There are a number of other allegations and non-specific complaints raised in the Claimant's lengthy witness statement of 254 paragraphs in relation to which we have

made no findings of fact in this case because they are not pleaded, not included in the agreed List of Issues and were not the subject of cross examination. We are satisfied that they add nothing to the overall context or factual background of this case.

14. The relevant dates, sometimes called the 'material time' during which the discriminatory acts are alleged to have occurred are from May 2017 when DS High became the Claimant's line manager (although the date of the first specific Factual Allegation 1 in the List of Issues is January 2018) until the date of the ET1 on 4 May 2019. The Respondent produced a helpful chronology with which the Claimant took no issue.

15. In accordance with the usual practice of the Tribunal we only read those documents in the agreed bundle to which our attention was specifically directed by the parties, their representatives or the witnesses. We have had the benefit of helpful written submissions from both Mr Thomas and Ms O'Halloran.

16. The Claimant gave evidence on her own behalf, The Claimant's other witness was her colleague Detective Constable (DC) Dawn Shearing. The Respondent's witnesses were Detective Sergeant (DS) Adam High, the Claimant's line manager from May 2017 until July 2019 although he was off sick from March to July 2019 so was not in touch with the Claimant during that period. The Tribunal also heard from Inspector (DI) Robert Brettell who was DS High's line manager and the Claimant's senior manager from April 2018 to April 2020 and from Detective Chief Inspector (DCI) Jamie Gingell who in February 2019 and until 3 March 2020 was the Operations Manager for the Professional Standards Department of Essex Police (PSD). PSD is responsible for the investigation of public and internal conduct complaints against police officers in the Essex force. DCI Gingell carried out a severity assessment relating to the conduct of both the Claimant and DS High on 1 February 2019.

17. The remaining witness for the Respondent, Sergeant Kevin May, was too unwell to attend the Hearing and this was confirmed by an Occupational Health report dated 23 July 2020. It was accepted by the Respondent and explained to the Claimant that DS May's written statement would be read by the Tribunal but could not be given the weight which would attach to the evidence given by a witness who attended for cross examination. DS May was part of the Serious Collision Investigation Unit (SCIU) from 2011 and managed the A shift. He therefore worked alongside the Claimant when she joined C shift in SCIU in February 2016 but was not her line manager/direct supervisor. He was also the Garage Sergeant which the Claimant describes as '*undertaking extra reviews on cases and overseeing the property, vehicles, training and equipment the Unit might need*'. As a Family Liaison Co-ordinator he did manage her Family Liaison (FLO) work as described below and had the authority to reduce or withdraw that work as he did with other Family Liaison Officers. DS May's FLO decisions were subject to the supervision of DI Brettell who, for example, endorsed the decision to remove all FLO work from the Claimant in early February 2019.

18. The Claimant transferred in to the Essex Police on 9 April 2001 having been previously employed by the British Transport Police and on 2 February 2016 she joined

the Serious Collision Investigation Unit (SCIU) as an Investigator on C shift. DS High did not become her manager until over one year later in May 2017. She is still a uniformed officer.

19. The SCIU investigates road collisions involving death or serious injury. Officers in the Unit are regularly faced with fatalities, catastrophic injuries and bereavement. They have regular contact with the Crown Prosecution Service, the criminal courts and Coroner's inquests. It is a stressful, emotionally demanding and high pressure role the logistics of which are set out in paragraphs 29-32 of the Claimant's statement. DS High described the necessity for the small team to '*get on well like a family and understand each other*' when dealing almost every day with '*destruction*'.

20. The Claimant also undertook a voluntary role as a Family Liaison Officer (FLO) liaising with family members bereaved by road death. In this important supplementary role she was managed by Inspector Brettell who was the Family Liaison Co-ordinator (FLC). We make further observations about this activity below and note the eloquent description of her commitment to it which is set out at paragraph 4 of the Claimant's witness statement. She has been highly commended for her FLO work and nominated for two national awards. However the FLO work, which is undertaken by a broad range of officers across the force, is an additional voluntary role. We are satisfied that the Claimant knew that discharge of this role was not permitted to adversely impinge upon her primary investigation work. In case of conflict she knew that she had to relinquish some of her FLO cases and do her core work as a priority.

21. We find that the Claimant had adjusted duties within the Unit which were framed as reasonable adjustments for her as a disabled person with a mental health impairment as described below. None of those adjustments related to her physical gynaecological health problems or her experience of menopausal symptoms (described by her as Menopause Challenges) both of which are also said by her to amount to disability.

22. Her adjusted duties included the allocation of what she describes at paragraph 19 of her statement as a '*desk job*' away from roads policing, no public order duties, withdrawal of the requirement to be in constant personal radio contact, relieved from rapid response (blue light) driving (later reinstated in February 2018, page 355), and not required to regularly work nights after 2 am. There is however the possibility that she will be called out to road traffic collision scenes. Pages 255 -266 is the documentation relating to the Claimant's Limited Duties Review dated 9 May 2016 which refers to '*psychological vulnerability to stressful situations*' as the reason for limited duties.

### 23. Disability

23.1 The Respondent concedes that the Claimant is a disabled person within the meaning of section 6 of the 2010 Act by reason of her longstanding mental health impairment described in her ET1 as '*poor mental health*'.

She has, since 2006, suffered from depression, anxiety and stress related symptoms which are treated by her general practitioner. She describes in a document entitled 'Additional Information about Disability' at pages 35-39 of the bundle how she had a '*full mental breakdown caused by work related stress*' in 2008. She is prescribed 60 mg Fluoxetine (sometimes called by the brand name Prozac), an anti-depressant at the maximum dose without which she says she '*cannot function*'. Mrs Lee does not have specialist consultant psychiatric input nor does she take any anti-psychotic or any other anti-anxiety medicines. She has commendably taken advantage of many counselling and wellbeing opportunities in order to improve her mental health and become well. At the relevant time in this case she was relying on her GP prescribed drug therapy only.

- 23.2 The Claimant told us that she has always been open and honest with her colleagues about her mental health struggles. She says that since her breakdown she is irritable, indecisive, has mood swings, suffers from insomnia, cries frequently and has lost confidence and memory skills. She describes some physical symptoms of an eye twitch, headaches and sweaty palms. We find that the Respondent was aware of these difficulties emanating from the Claimant's depression and anxiety state.
- 23.3 The Claimant has been on long term sickness absence since January 2020 and has not returned to work.
- 23.4 However the Claimant does describe some significant and extreme symptoms and effects at paragraph 9 of her witness statement including '*angry, stressed and incompetent*', '*panic*', '*hypo vigilant (sic) and manic*' (our emphasis) and the '*great*' effect of Fluoxetine on her memory which we find were not reasonably known by the Respondent as the effects and symptoms of her depression and anxiety or of her medication. (We assume that the Claimant means hyper rather than hypo vigilant)
- 23.5 We find that she also exhibited other personality and behavioural traits not objectively and certainly not exclusively attributable to her described and diagnosed mental health impairment. The Respondent did not know and could not be expected to know that these were aspects and/or effects of her mental health disability. Those traits and that behaviour over a number of years since 2002 is vividly described in documents in the bundle and we are satisfied it occurred. Paragraphs 8-13 of the submission on behalf of the Respondent provide a useful summary. D I Brettell gives a succinct summary which we find to be accurate- '*the Claimant did not like to be managed or take instructions. In particular she did not like to being supervised by DS High and felt that he was not right for the role or the right supervisor. She was prone to displaying inappropriate behaviours to her previous line managers when she was given instructions and was very belligerent towards DS High*' ( paragraph 19.2 of his witness statement)

23.6 We are satisfied that the following list, whilst not exhaustive, summarises our finding that these examples of the Claimant's often repeatedly disruptive and angry behaviour are not examples of symptoms of her depression, anxiety and stress related symptoms but in fact go beyond the effects of any underlying mental health difficulties with which she has been diagnosed and treated. They also go beyond any effect of that particular disability which the Respondent knew or ought to have known about:-

- Swearing and use of obscene language together with irrational exhibitions of violent anger, frustration and extreme irritability often resulting in crying and shouting even sitting on the floor and weeping (see pages 192-193 and paragraphs 11 and 13 of DS May's witness statement. He describes '*violent outbursts*' at paragraph 16.14). Page 402 describes a '*heightened emotional state making her unfit to be in the workplace*'.
- Extreme antipathy to authority in certain cases, regularly accusing her superiors of bullying, incompetence, corruption, unfairness, playing political games in which she is a 'pawn', being an 'old boys club' and 'male dominated environment' accusing senior officers of belittling and behaving in a derogatory manner to her.
- Deep antipathy, distrust, negativity and anger towards Essex Police as an organisation, persistently expressing that she hates her job and counting down the years to retirement ( see the appraisal comments on page 410 for example – '*for me it's all about surviving the next six to retirement*'). At page 361, in an Occupational Health referral which the Claimant agreed in her oral evidence was a 'fair summary' there is a detailed account of her '*increasing anti-Essex police mentality*' with persistent use of foul language which she agrees she is prone to use.
- Regular insubordination in a ranked profession.
- Extreme expressions of frustration, for example with the Force's IT systems (Athena) and processes as reported at page 336-7 '*it's a shit system and I'm not using it*'
- Accusations against Essex Police and its officers of endemic corruption and failure. At page 402 the Claimant expresses the view that if Chief Officers can swear and throw things at others she cannot see the justification for challenging her behaviour. Similar loud and persistent criticism of the Crown Prosecution Service.
- Expressing rejection of the idea that any line manager in SCIU who did not come from a road policing background was not qualified to do the job or fit to supervise her (as described in paragraph 12 of DS

May's witness statement). At page 360 is a summary of her views which she agreed in cross examination was accurate.

- A lack of insight in to how her behaviour and the loud and repeated expression of her views and opinions may undermine morale in her team and in the office. She herself says at page 668 that she feels she is a victim of *'her own gob.'* She also agreed in response to cross examination that her expression of frustration and unhappiness may be intimidating to colleagues *'I do erupt sometimes'*. She admits to saying more than once *'I'm not giving this job any more than I have to'*.

- 23.7 Insofar therefore as the Claimant also contends that these are matters arising from her mental health problems by reference to s 15 we find that these behaviours are not a discriminatory cause of any unfavourable treatment she received. In other words they are not 'something' arising from her disability of depression, anxiety and stress. She received public complaints and grievances were expressed by her colleagues about these behavioural manifestations. She as an unenviable disciplinary record which appears at pages 604-608 of the bundle. There is an example of a reported complaint by an exam invigilator at page 388 of the bundle. There is a worrying complaint by DS Swan recorded at pages 705 -6 in which he states that the Claimant has made comments which are not *'morally acceptable'* about wishing others dead. There is a timeline prepared by DS High at page 499 of the bundle which sets out numerous examples of disruptive incidents involving the Claimant creating what he calls a *'toxic working environment'*. The Claimant takes no issue with that document save in respect of two minor matters.
- 23.8 Certainly neither DS High nor DI Brettell knew that this extreme behaviour was a possible symptom of the Claimant's mental health diagnosis. DI Brettell, in response to a question from the Employment Judge, confirmed that he had not had these manifestations described to him as symptoms of the Claimant's depression and anxiety. DS High had ,he said, never discussed such symptoms with the Claimant
- 23.9 DI Brettell did receive a copy of a report dated 10 July 2019 from Dr Elekima, Consultant Occupational Physician in the Respondent's Support Services Directorate, but that document describes a type of symptom *'recently started' 'linked to hormonal changes'* including a tendency to *'high irritability, misuse of words or use of foul language, less inhibition in speech and conduct towards others'*. We have found the Claimant not to be disabled by her gynaecological or menopausal health difficulties. Dr Elekima focusses on these health difficulties as the recent cause (in July 2019) of her inappropriate disinhibitions not on her longstanding depression and anxiety. DI Brettell said he could not remember whether the Claimant had personally described these symptoms of recent hormonal change to him but said that it was likely that he would have



remembered if she had been describing such significantly dramatic changes because it may have cast doubt on her suitability for the SCIU role. Of course, by July 2019 the events described in the factual allegations had already occurred.

- 23.10 On 30 July 2019 at pages 707-708 during the course of a meeting with her second tier line manager DI Brettell the Claimant herself stated that she 'understood and accepted' that *'breaches in codes of ethics or offence taken or aimed at colleagues'* would not be tolerated and that *'possible behaviour issues around her speech'* would still be challenged despite the additional information provided about the whole range of her health issues provided in Dr Elekima's medical report of 10 July 2019.

24. Is the Claimant disabled by reference to her gynaecological conditions of fibroids, polycystic ovary syndrome (PCOS) and the symptoms and effects of the menopause?

- 24.1 The Claimant says in her witness statement that she has been diagnosed with symptomatic fibroids (benign uterine tumours) and polycystic ovaries syndrome (PCOS) and that she is now menopausal. The diagnosis of 'features of polycystic ovaries' in April 2013 is at page 780 of the bundle. Her PCOS is treated intermittently with Metformin to regulate her insulin levels and help to regularise her periods. Metformin is said at page 746 to have been taken for *'last two years without problems'*. In her oral evidence the Claimant confirmed that she did not take Metformin uniformly and occasionally ordered it herself on-line which is inconsistent with the medical prescription of an essential drug. She writes at paragraph 13 *'my diagnosis and the menopause cause me to struggle with everyday life, my hormone levels are continually out of balance and this affects both my physical and mental health greatly'*. The witness statement refers to the Claimant's menopause *'over recent years'* but is no more specific as to the date it began.

- 24.2 The Additional Information about Disability which is at pages 36-39 describes PC Lee's gynaecological symptoms and treatment since 2013 but gives no detail of the impact of the conditions of PCOS and fibroids on her normal day to day activities ( things people do on a regular or daily basis). She has a good attendance record at work. We of course acknowledge that the Claimant has difficult and unpleasant gynaecological symptoms including heavy and painful periods which at times are hard for her to live with. The question is whether they amount to a disability as statutorily defined during the relevant period from 2017 to 2019. To an extent the statutory test is a functional one and the 2011 Statutory Guidance on 'matters to be taken into account in determining questions relating to the definition of disability' makes that clear particularly in the Appendix.

- 24.3 S6 of the Equality Act 2010 sets out the definition of disability, the relevant wording is as follows :-

*A person (P) has a disability if P has a physical or mental impairment, and*

*The impairment has a substantial and long term adverse effect on P's ability to carry out normal day to day activities.*

It is for the Claimant to show that she is a disabled person as defined. The Claimant contends that she is disabled not only by her mental health problems as set out above but also by her long term gynaecological conditions and the menopause and its symptoms.

- 24.4 So far as the menopause is concerned, the Claimant states in the undated Additional Information dated in the bundle index as 7 August 2019 that she *'now don't experience periods at all'*. Her symptoms of heavy and painful menstrual bleeding must therefore have stopped at some point and she agreed that this was the case. She refers to her menopausal state as having occurred since 2017 but this is not supported by medical evidence
- 24.5 We find that the Claimant has not shown that she is a disabled person by reference to her gynaecological health problems. She had minor surgeries in 2014 ( page 796 re-section of fibroid) and 2015( page 828 endometrial ablation) and there is no mention in her GP Notes at pages 808-841 of hospital treatment for her fibroids or PCOS since then. She was discharged to the care of her GP (page 794). Her fibroids therefore appear to have resolved before the start of the relevant time as defined above i.e. before May 2017.
- 24.6 There was an attempt to regulate the Claimant's heavy bleeding by a drug assisted acceleration of her menopause in 2013/4 prior to her first surgery as she states on page 36. This was unsuccessful. This means that she was not naturally hormonally menopausal at that date.
- 24.7 The only doctor's letter in the bundle after 2015 is one dated 13 September 2019 at page 808 written by the Claimant's GP who knows her and her medical history well; it encloses the hospital letters up to 2015. That GP letter in 2019 says *'she is reaching the symptoms of the menopause ...these conditions affect Heidi on a regular basis and are likely to for many years to come'*. There is only one entry in the GP notes on 20 September 2018 referring to *'PCO/menopause and ongoing weight'*. There is no mention in the notes of the menopause having occurred or even begun in 2017.
- 24.8 The Claimant describes a good supportive relationship with the Respondent's Occupational Physician Dr Obadiah Elekima. A letter from him dated 10 July 2019 appears at page 700A of the bundle. It gives a sympathetic account of the Claimant's *'medical history'* which even she described in her oral evidence as being *'a bit one sided'*. Dr Elekima's letter refers to *'recent'* hormonal changes and not to menopausal symptoms going back a number of years.

- 24.9 The Claimant spoke to a colleague in HR, Anita Chandler, on 2 May 2019 as recorded on page 668 and reported that '*she may be undergoing her menopause*' suggesting a fairly recent onset of menopausal symptoms.
- 24.10 The documentary evidence submitted by the Claimant and other documents in the bundle therefore lead us to conclude that the onset of menopause and the menopausal symptoms experienced by the Claimant only began in 2019.
- 24.11 We have seen several Occupational Health reports in the bundle pages 751 -9 covering the period 2015 to 2018 which do not make reference to any gynaecological issues causing any difficulties for the Claimant. For example the OH referral at page 346 refers only to a 'history of mental health issues' and makes no reference to PCSO or the menopause.
- 24.12 There is no medical evidence submitted by the Claimant or evidence given by her about the functional impact of fibroids/PCOS/menopause that shows a substantial adverse impact on her day to day activities at the material time in this case. She was not disabled by the effect of the menopause on her health when menopausal symptoms began in 2019.

25. Time Limits/Jurisdiction-s123 Equality Act 2010

This issue is identified at paragraphs 15-17 of the Agreed List of Issues

- 25.1 The ACAS Early Conciliation certificate shows an early conciliation notification of 24 April 2019 and date of issue of 3 May 2019. Claims to an employment tribunal must be made within three months of the date of the acts of discrimination complained of. This three month time period is of course extended to permit early conciliation so that in the Claimant's case the limitation period extends back to all the acts described in all the factual allegations except for Allegations 1, 2 and 3 which are, on their face, brought out of time
- 25.2 Allegation 1 refers to January 2018 '*and several occasions thereafter*'- DS High was said to be dismissive when the Claimant sought to discuss her health issues with him and put his hand up to stop the conversation saying these were '*lady issues/girlie stuff*'. The Claimant does not give a date for or particularise any such incident apart from the one in January 2018. The dates which are identified in paragraph 42 of Ms O'Halloran's submissions as being examples of previous occasions when the Claimant sought to discuss her PCOS and menopause with the Respondent are in 2013, 2015 and 2019. We have made a finding above that there is no medical evidence of the Claimant's menopause occurring before 2019.
- 25.3 Allegation 2 states that in March 2018 after she had taken her detectives' qualification examination DS High rolled his eyes mockingly at the Claimant and told her, in public, that '*if you ever come off your meds in future give me the heads up so I can prepare*'

- 25.4 Allegation 3 is that on 18 July 2018 (at a meeting in Colchester Costa Coffee) DI Brettell dismissed the Claimant's concerns about how she was feeling and seemed unconcerned about DS High's dismissive attitudes towards her.
- 25.5 S 123 (3) provides that a discriminatory act will remain within time if it is part of a course of conduct extending over a period of time in which case the time limit only begins to run from the end of the period. This is sometimes called a continuing act or an ongoing situation. Mr Thomas, on behalf of the Respondent makes the primary submission that there can be no such ongoing state of affairs because in her witness statement the Claimant does not complain of any allegedly discriminatory incidents or instances of harassment for the period from 18 July 2018 until 1 February 2019 when she is involved in the altercation with DS High. There are complaints about the way in which she was managed and supervised within SCIU over that period but none of them amount to claims of disability or sex discrimination or harassment.
- 25.6 Mr Thomas also makes the pertinent point at paragraph 54 of his submission that the nature of the allegations in the first seven and half months of 2018 is quite different from the complaints made by the Claimant about what occurred on and after 1 February 2019.
- 25.7 In all the circumstances we are satisfied that allegations 1, 2 and 3 are made out of time
- 25.8 It is next incumbent upon us to decide whether the time limit should be extended on the ground that it is just and equitable to do so (s123(1)(b)). There is no evidence from the Claimant why she did not take action to bring her claims within the primary time limit from 18 July 2018 or sometime soon thereafter (before 24 April 2019). In the circumstances we decline to exercise our discretion to extend time. We have no jurisdiction to adjudicate upon allegations 1, 2 and 3.

26. There are however a number of findings of fact and conclusions which it is relevant for us to make about allegations 1-3 and which we can state briefly because they inform this Judgment generally:-

- 26.1 The Claimant is highly critical of the supervision and management she received from DS High whom she describes as incapable and exhibiting weak leadership. For example at paragraphs 72-73 of her witness statement she says '*he was disinterested in our role and only wanted a quiet life...lax style of supervision did not make me feel supported*'. She and DS High did not like each other she says (paragraph 73) and he regarded her as a '*high maintenance (female)*'. She refers to '*anger and hatred*' towards her. Significant sections of the Claimant's witness statement are dedicated to a bitter criticism of her managers to '*provide an environment for me to do my job to my full potential*'. She goes further and alleges that DS May '*wanted me to fail*' '*simply watched and waited for me*

*to suffer* and there is repeated reference to the desire to *'punish'* her. There is however a distinction to be drawn between this type of breakdown of a working relationships and any finding of unlawful sex or disability discrimination. We are not empowered to make findings about the management failures of the Respondent or the lack of cordiality between the Claimant and her managers. The focus of this tribunal hearing is to establish whether she has been subjected to unlawful discrimination.

- 26.2 The Claimant met informally with D I Brettell on 18 July 2018 to have a coffee in Chelmsford Costa. She took with her a list of the issues she wanted to raise ( 32 bullet points in total some of which are objectively minor matters).None of those issues raise concerns about DS High's attitude towards the Claimant's sex, her disability or any matters of women's health. No issues relevant to any allegation of discrimination or harassment appear on that list.
- 26.3 The Claimant reiterates in an unsigned formal statement under caution dated 31 March 2019 which appears at page 613-620 that she had these significant criticisms of DS High's management and 'style of supervision' from the beginning in 2017. She mentions no allegations of discrimination or harassment. She acknowledges that following the meeting with DI Brettell on 18 July 2019 *'I know Insp Brettell took these matters in hand'*. She therefore did not maintain any allegation that DI Brettell had 'dismissed' any of her concerns let alone any matters of suspected discrimination.
- 26.4 The reference on page 614 to DS High's allegedly 'flippant' remark *'do me a favour and tell me next time you are coming off your meds'* again makes no reference to this remark being made publicly with the intention or effect of humiliation, being 'mocking' or having a discriminatory effect. We prefer the evidence of DS High at paragraph 33 of his witness statement which is that he asked her as part of a serious discussion to keep him informed if she stopped taking her anti-depressant medication so that if necessary he could adjust the level of support she needed. The Claimant agreed under cross examination that to ask politely in a private conversation for this information going forward would be reasonable.

27. It may assist the Claimant to understand why she has lost her case if we re-state the legal requirements regarding the burden of proof in discrimination cases. The relevant section of the 2010 Act is section 136 and there has been important case law particularly Igen v Wong in the Court of Appeal 2005 explaining the meaning of section 136. To summarise it is insufficient for the Claimant to point to what she says is unfair, unsupportive or inappropriate treatment of her or treatment which has upset or frustrated her. She must show facts from which a reasonable tribunal could conclude, looking at all the relevant evidence, including the evidence produced by the Respondent, that discrimination including harassment may have occurred. Only if she can show a primary

case of less favourable or unfavourable treatment because of her sex or disability or something arising from it does the burden of proof shift to the Respondent to prove that discrimination has not occurred ( or if it has occurred to justify it in the case of s 15).

28. To give an example, the Claimant put forward the argument (Allegation 9) that the aggressive behaviour of DS High towards her on 1 February 2019 when he admitted he swore at her was direct sex discrimination. He denies this. However, when her evidence was more fully explored in cross examination she conceded that, however objectionable she found this behaviour, she was unable to maintain any argument that DS High, in all the circumstances, would not have behaved in the same way to a male police officer and therefore his conduct did not relate to her sex. It could not be sex discrimination no matter how much the Claimant resented and abhorred this treatment of her. We make further findings of fact about Allegation 9 below.

29. Allegation 4: that in February 2019 Inspector Brettell informed the Claimant that he would not support her for Taser training

The Claimant alleges that this was due to her health issues and being unable to work full nights. This is a complaint of unfavourable treatment by reference to s15 of the 2010 Act and of harassment.

We find this allegation of disability discrimination and harassment to be without merit.

- 29.1 The email sent by the Claimant requesting Taser training is dated 14 February 2019 and is at page 512 in response to DI Brettell sending out the original list of trainees and asking '*if anyone else is interested*'. It is of note that the offer of Taser training to Roads Policing Unit officers sent by Matt Hine on page 513 emphasises '*there will be an expectation that all devices will be deployed daily*'. This means that the Taser device will be in cars and on motorbikes on the road i.e. not left at police stations.
- 29.2 A Taser is an offensive weapon deployed by police officers in dangerous and confrontational front line situations with the public, often when public order has broken down. DI Brettell summarises these as '*violent conflict situations*'.
- 29.3 On 19 February DI Brettell gave a concise and clear reason why he would not support the Claimant's application for training. It is at page 553 '*your current limited duties and restrictions are not compatible with this*'. At page 555 D I Brettell indicates that he has checked the Claimant's HR status in this respect.
- 29.4 The extent of the Claimant's limited duties is set out above and it includes 'no front line duties' and no 'public order' duties. Mr Thomas helpfully sets out at paragraph 95 a-g the multiple recommendations made by Occupational Health that the Claimant was not medically fit for front line duties and he identifies the relevant page numbers in the bundle of documents which we have read. We adopt his summary of the facts and need not repeat them here.
- 29.5 We are satisfied that the reason why the Claimant was not supported for Taser training is that she was placed, with her consent and approval, on

limited duties as an adjustment for her mental health impairment particularly her psychological vulnerabilities in dealing with stressful confrontational situations ( see page 257). She cannot now simultaneously claim that those same vulnerabilities are a discriminatory reason why she was refused permission to train in handling a front line weapon. In addition we note DI Brettell's expert opinion at paragraph 18.4 of his statement '*within her role and limited duties the Claimant would be highly unlikely to require a Taser either for her own protection or to support colleagues*'. He told the Tribunal that SCIU officers are not first responders, not first on the scene at confrontational 999 response situations.

- 29.6 Indeed she replied with her assent on the same day, within three minutes, '*Yes, I understand now, yes that is right. Sorry*' (page 556). She did not correct or query the conclusion reached by Inspector Brettell. This response clearly indicates that she did not consider that she was harassed within the meaning of s 26. D I Brettell's decision was not perceived by her as unwanted conduct and she had no contemporaneous perception that her dignity was being violated or that an intimidating, hostile, degrading, humiliating or offensive environment was being created for her.
- 29.7 There is no claim of s 13 direct disability discrimination. The Claimant's allegation, contrary to her initial reaction at page 556, that DI Brettell's negative/unfavourable decision was made as a result of something arising from her disability ( s 15), in this case her personal characteristics and 'traits' informed by her mental health difficulties, is not upheld by this Tribunal.
- 29.8 If we are wrong about 'the reason why' and if we were to accept the Claimant's argument that the decision to exclude her was because of personal attributes arising from her mental health impairment then we find that the Respondent's actions were justified. The Claimant relies on page 637 of the bundle which are entries in the Day Book (to which the Claimant has ready and regular access). The sixth entry from the top is made by D I Brettell states '*I do not believe she currently holds the right credentials or attributes for this piece of kit. The recent events within the office and current ongoing investigation I believe means Heidi is not ready or currently suitable for this training. Should the situation change I will reassess this and review this decision*'. The decision was not permanent and was subject to review.

The reference to the 'ongoing investigation' is about the fierce altercation between the Claimant and her supervisor D S High on 1 February 2019 which was submitted for a PSD conduct severity assessment by D I Gingell and, in PC Lee's case, later investigated by Inspector Sharn Taylor. Further details are set out below.

- 29.9 Even if we accept the contention that this day book entry shows the 'real reason' for D I Brettell's decision to be factors arising from the Claimant's mental health disability we are certain that the decision was a proportionate means of achieving the legitimate aim of Taser training

which we find was to achieve an efficient use of scarce and specialist resources and equipment.

It was proportionate to select officers for training who were designated fit and who would be part of an operationally effective group who could deploy these devices. The Claimant did not objectively fall within that group in February 2019. In fact eventually none of the SCIU officers were selected for training because their role was deemed not suitable for allocation of Taser devices.

30. Allegation 5. Removal by the Respondent of the Claimant's FLO responsibilities in February 2019.

The Claimant's factual allegation is that this action was taken '*due to her health issues*' and amounted to direct disability discrimination and discrimination arising from her disability. She also contends that it was unwanted conduct amounting to harassment. She makes no allegation of sex discrimination in relation to this factual matrix.

- 30.1 This allegation of discrimination and harassment derives from the Claimant's perception that DS May considered her unsuitable to work in SCIU and 'wanted her out' because of her mental health problems and her alleged 'failure to manage' them. Certainly in March 2018 at pages 386 and 387 DS May expresses strong reservations as to whether, even with adjusted duties, the Claimant is suitable for the SCIU role because of her unacceptable outbursts and '*hates Essex police and is regularly vocal on this point...it is grinding people down*'. He robustly repeats his concerns in emails dated 14 January and 4 February 2019 on page 451.
- 30.2 The Claimant believes that he thus sought to deliberately undermine her FLO work from which she gained considerable self-esteem and pursue his 'hidden agenda' of getting rid of her from SCIU. We do not make this connection; the reason why the Claimant's FLO work was temporarily removed is because she was, on her own admission, struggling with her investigations workload.
- 30.3 First we are satisfied as stated above that many of the behavioural manifestations which DS May describes in his emails '*using language and behaviour you would only find in a violent domestic situation*' are not, as we have stated above, things 'arising from' the Claimant's diagnosed mental health problems. They are not rationally related to the effects of depression, anxiety and stress as diagnosed and treated in the Claimant's case.
- 30.4 Secondly we are not convinced of the nexus between DS May's grave personal reservations about PC Lee's suitability to work in SCIU or even as a police officer at all and the actions which he took to temporarily reduce her FLO workload. We are unconvinced of the hidden agenda.
- 30.5 On page 484 there is a current situation report (CSR) where the entry dated 2 February 2019 is authored by the Claimant as the Officer in Case (OIC). It is clear from that entry that PC Lee's summary '*it is simply not possible to cover everything*' is her assessment of the heavy workload she



has dealing with a total of 7 live investigation cases ( including a fatal collision involving a police vehicle) and 5 FLO jobs. The recommendation/rule of thumb is that an allocation of 3 FLO cases was considered manageable and appropriate for most officers. The Claimant writes that she is FLO for *'two of the biggest jobs that SCIU are dealing with...these two cases are taking up 70% of [my] time'*

The decision was ultimately taken by DS May as he sets out in paragraph 17 of his statement which confirms that he had the formal authority to take this step. He decided on 7 February 2019, as appears from page 485, to temporarily withdraw her from all her FLO jobs as soon as a replacement could be found. He said in his oral evidence that the three smaller FLO jobs were at a stage where they could be efficiently re-allocated. This decision was endorsed by DI Brettell who was sent a copy of the CSR and writes *'clearly unable to manage her workloads effectively and as such investigations are now failing. As such she is not to be deployed on any other FLO deployments. This will be reviewed in six months' time'*

30.6 DS May had knowledge of the Claimant's poor mental health. He credibly states that he had no knowledge of her gynaecological health problems or of symptoms connected to her menopause and, in any event we have found those health problems not to amount to a disability as defined by s 6 of the 2010 Act

30.7 However we find, as stated above, that the Respondent including DS May had no knowledge that the effects of the Claimant's mental health disability extended to the extreme manifestations for which she contends. He states clearly and credibly that *'it is within the remit of my role to remove FLO duties when the work takes over an officer's ability to prioritise their primary role'*. We accept as true and accurate DS May's evidence that the Claimant:-

- Reported and complained that she was unable to manage both her core SCIU investigations work and the five FLO cases ( four of which he describes as 'high profile') and that her welfare was suffering as a result of the stress experienced as a result of her workload.
- Had been told that her SCIU work must be brought up to date before she took absence and went on a detectives' training course. DS May agreed with this decision.
- Was aware that this was a temporary supportive measure and not a 'punishment', *'she would have been able to return to the FLO work once she was up to speed'*
- Was not singled out, *'I would have done the same for any other officer who was in the same circumstances as the Claimant'*

- Was aware that replacements could be found among other trained volunteers within Essex police force who could take over her FLO cases; her family contacts would not be abandoned or neglected.
- Had previously agreed and requested to be removed from FLO duties in 2006,2008 and in 2017 as can be seen on page 332

30.8 In all those circumstances we find no evidence that the Claimant was treated less favourably than a person who did not have her mental health disability was treated or would have been treated in the same circumstances. She has not discharged her burden of proof in this respect. She has shown no prima facie facts from which we can conclude that she was treated less favourably than a person who did not have her particular mental health disability yet was also struggling with a high workload which she expressed as 'unmanageable', and in circumstances where eight weeks' of absence from the office was envisaged. The Claimant was due to attend a driving course, a 4 week detective's course and first aid training after only a further eight shifts on duty.

These comparisons produce no evidence of direct sex or disability discrimination.

30.9 DS May's decision was not unwanted conduct relevant to her sex and/or disability which had the purpose or effect of violating PC Lee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. Indeed the Claimant at the relevant time did not have that perception. She did not object in writing. She says very little about this alleged discrimination in only three short paragraphs of her witness statement (146-148)

The Claimant had herself previously requested and agreed to relinquish her FLO work when she was under pressure to study for her detective's examination and her workload was high ( p 332).

The decision taken to remove her FLO files temporarily was with hindsight (page 627) endorsed by a senior officer Acting Chief Inspector Sharn Taylor, whom the Claimant does not criticise or take issue with in these proceedings.

30.10 We conclude that the Claimant was not subjected to any unfavourable treatment because of something arising from her disability. Her treatment was not detrimental; she was assisted to cope with her core work, in the interests of her wellbeing, by having her voluntary albeit highly valued FLO work temporarily withdrawn and re-allocated to other trained officers so that she could catch up with her outstanding investigations. This was a reasonable management decision and instruction.

30.11 If we are wrong in relation to our conclusion that there was no unfavourable treatment as required by s 15 of the 2010 Act and even if the Claimant was discriminated against in this way we are certain that the removal of her FLO responsibilities in February 2019 was justified. The way in which she was dealt with was a proportionate means of achieving

the legitimate aim of ensuring that the core investigation work of SCIU was promptly done to the highest standard by specialist trained investigative officers and that such officers are not exposed to excessive workloads and/or stressors as a result of too much demand from a combination of their SCIU cases and their voluntary FLO work, however important that FLO work is.

31. Allegation 6: The tone of the OH referral on 5 April 2019 is dismissive and stated that the Claimant's FLO responsibilities were a 'comfort pillow'

- 31.1 This incident is alleged by the Claimant, as recorded in the agreed List of Issues, to amount to direct disability discrimination (s13), unfavourable treatment by reference to something arising from her mental health disability (s15) and harassment. The 'something arising' is said at paragraph 57 of Ms O' Halloran's submissions to be her *'mental health symptoms and what was considered to be the Claimant's inability to manage stress and her workload'*. There is no claim of sex discrimination although the Claimant conceded under cross examination that the 'comfort pillow' phrase may have been used 'if a man'.
- 31.2 The referral actually written by D I Brettell is certainly not objectively 'dismissive' because it expresses concern both for PC Lee (*'I have concerns (which are supported by Heidi's admission) of her mental health and overall general deterioration of her welfare..'*) but also for the team (*'very disruptive in the workplace and this has a negative effect on the rest of the team'*). He then goes on to express what we find to be a conscientious, legitimate and rational opinion which he is entitled to do. He writes that he believes that the Claimant underestimates the stress arising from the nature of the SCIU work itself given that it deals with death, bereavement and *'critically traumatic investigations'*. He somewhat unwisely uses the expression that *'Heidi is not being entirely truthful'* when she says that the SCIU work is not the issue. We do not read that phrase in context as suggesting that in any way Inspector Brettell was accusing the Claimant of falsehood. He meant to convey that everyone in the team found the SCIU work very hard. It simply expresses the view of an experienced senior officer that she may be more affected by the trauma of the SCIU role than she wants to admit even to herself. In response to cross examination DI Brettell confirmed that he did not mean the Claimant was 'lying' only that she may be *'concealing problems'* within herself.
- 31.3 We accept the evidence of D I Brettell at paragraph 21.9 of his witness statement that the OH referral was intended to be a supportive measure. We do not find the phrase 'comfort pillow' to be demeaning or belittling or insulting to the Claimant. In response to cross examination D I Brettell robustly resisted the suggestion that he was being patronising and explained that he meant that the Claimant felt safer and more comfortable doing the FLO work about which she was passionate and where she had acknowledged skills. We find his evidence convincing. A more tactful phrase might have been advisable but on balance and in the context, for example by reference to the comprehensive list of sensible and sensitive

management questions posed by him to OH on page 634, it is not a use of language which amounts to discrimination or harassment of any kind.

- 31.4 We also accept D I Brettells's explanation that he meant to convey the fact that, although the Claimant's FLO work was removed in order to assist her to manage her workload, she still irrationally felt '*punished*' and resented the fact that she was asked to carry out the core investigation work which she liked less and found more challenging than the FLO cases. This is another identifiable source of stress for the Claimant which he was at liberty to candidly point out to OH in order to present the full picture and obtain advice.
- 31.5 We are satisfied that another person not having the Claimant's disability but who was reacting at work in the same way, clearly exhibiting distress, and whose other relevant circumstances and history were the same or very similar to the Claimant's, would not have been referred to OH in significantly different terms. The Claimant was not given less favourable treatment and discriminated against despite the fact that her subjective reaction was once again to perceive that she was being punished and made to suffer.
- 31.6 The threshold for harassment is not reached. It is not reasonable for the Claimant to view this OH referral as conduct violating her dignity or creating any environment as described in section 26.
- 31.7 Finally we have determined unanimously that this allegation does not amount to s 15 disability discrimination. The OH referral of 5 April 2019 was not written in the terms to which the Claimant objects because of any unfavourable treatment of her arising out of her mental health symptoms or an unfavourable perception of her as being unable to manage her own stressors. It was a candid, occasionally clumsily worded, but conscientious attempt to seek support for her ongoing distress and mental health problems by asking for expert advice. It did not dismiss her problems as being somehow down to her own weaknesses or inadequacies. D I Brettell was at liberty to give his own analysis of what some of her underlying problems may stem from.
- 31.8 Finally we state briefly that any s15 disability discrimination we had been able to identify would in any event have been found by us to be justified by reference to the adoption of proportionate means to achieve the legitimate aim which is set out at paragraph 10 (c ) of the List of Issues, namely, '*making sure the OH department were informed of the supervisor's assessment of the sources of, or reasons for, the Claimant's stress in order that she might receive appropriately informed support*'.

32. Allegation 7: That Inspector Brettell and Sergeant May cold shouldered the Claimant after February 2019

- 32.1 This complaint is categorised in the List of issues as direct disability and sex discrimination and harassment. Despite the content of paragraph 77 of Ms O'Halloran's submissions on behalf of the Claimant it is not identified as an incident of unfavourable treatment and s 15 disability discrimination. It was not so identified during the Preliminary Hearing before Employment Judge Burgher (see page 43 of the bundle) and cannot be identified in the original Particulars of Claim (ET1) save that the Claimant pleads generally that she has been 'ignored'.
- 32.2 The relevant paragraph in her witness statement is paragraph 170 and it gives very little detail of this allegation. The Claimant agrees that both officers were prepared to discuss work matters with her and this is consistent with their evidence that they continued to maintain a courteous professional working relationship with her. Her objection to their conduct seems to derive from a failure to maintain a social friendly relationship as work 'mates', go for coffee/breakfast together etc. Of course there is no obligation to be friends with one's colleagues (this is not the same as 'ignoring' co-workers) and it is not discrimination to decline to socialise or make close friendships.
- 32.3 Nonetheless DI Brettell sets out convincingly a number of steps he took to support the Claimant at work after February 2019. For example at page 471 he arranges a welfare officer for her whilst she is temporarily re-located to Stanway police station and finishes his email '*many thanks, if you need a chat I'm here*'. He confirms that he maintained social contact with her on Facebook, still having coffee one to one and says he is '*not really sure what she means*' about him cold shouldering her. At page 667 on 8 April 2019 he authorised her attendance at a Headways mental health training day at HQ.
- 32.4 There is a note of a meeting between the Claimant and DI Brettell on 30 July 2019 on pages 706-708 which refers back to previous allegations of 'bullying' by the Claimant. She states at page 708 that she '*could not evidence any particular comment, action or omission*' by Inspector Brettell amounting to bullying and said she thought it was '*a lack of communication between us*'. We conclude that the Claimant had already de facto abandoned her accusations against DI Brettell more than a year before this Tribunal Hearing.
- 32.5 Under cross examination the Claimant was a little embarrassed and conceded that she may have misinterpreted DI Brettell's behaviour; she acknowledges the pressures upon him supervising a busy unit. She said that she was looking for him to understand, empathise and sympathise with her. This is a natural reaction but it is not discrimination if that level of reciprocal understanding is not reached.
- 32.6 She said that she now has a cordial and supportive relationship with him and agrees that her perception that he was cold shouldering her may have been a mistake. In cross examination she said '*looking back he was*

*having a hard awkward time and could have been misconstrued [by me] and decreasing contact making me feel cold shouldered. I can see now that it was not deliberate'. We treat these unequivocal concessions by the Claimant as a withdrawal of her allegation against DI Brettell.*

- 32.7 So far as DS May is concerned the Claimant simultaneously alleges that he was always 'negative' towards her (although she says she did not appreciate the extent of that negativity), did not understand her and was always 'keeping a tally' on her yet also somehow changed his behaviour and began to cold shoulder her after February 2019 in a way amounting to discrimination/ harassment. We cannot agree that this was the case.
- 32.8 The timing is relevant to this allegation. After 1 February 2019 he Claimant was working at Stanway and then attended several weeks' training returning to Boreham office on 5 April when she immediately asked to meet with DS May, was highly distressed and agitated in the office, very tearful and crying so that she was obliged to leave the site. DS May referred her to OH again. The relevant correspondence authored by DS May is at pages 625 and at 631-635. Thereafter DS May's own depression became worse and his mental health difficulties increased as he describes eloquently in paragraphs 16.19- 16.20 of his witness statement. It is thus hardly surprising that he kept his contact with the Claimant to a professional minimum as he did with other colleagues in order to preserve his own mental health from May onwards. She was not singled out or treated less favourably. By July 2019 DS May began his own sickness absence and never returned to the SCIU. In other words he and the Claimant were back working together for only three months.
- 32.9 The Claimant's other witness DS Dawn Shearing gave surprisingly contradictory evidence; she said that DS May was always approaching the Claimant trying to '*wind her up... in order to get a reaction from her or start a debate*'. This is the opposite of cold shouldering and is not an accusation made personally by PC Lee. It is denied by DS May. DS Shearing confirmed that she had not observed DS May ignoring the Claimant. She also said that she had never experienced DI Brettell behaving towards her or any of her colleagues in a way that suggested he had any discriminatory attitude towards women or those with long term health problems. She said the same of DS High in relation to any open expression of sexist attitudes or remarks; indeed he had tutored her for the detectives' examination, mentored her and encouraged her to apply for the role in SCIU.
- 32.10 In conclusion, there is no cogent or convincing evidence produced by the Claimant that from February 2019 there was a change in DS May's behaviour and he singled her out and 'cold shouldered' her in a way he had not done previously. She has conceded that she was mistaken or misunderstood DI Brettell's behaviour. She has not discharged her burden of proof in showing prima facie facts from which we could conclude that she has been the subject of less favourable treatment from the two named officers of the Respondent than any man or any person not having her particular disability. The Claimant was clear in her evidence that DS May

spoke to other women officers. The factual threshold for proof of harassment is not met.

33. Allegation 8: In February 2019 being subject to disciplinary action (namely referral and investigation) in respect to absenting herself for two hours due to ill health in January 2019.

- 33.1 This allegation is identified in the agreed List of Issues as an instance of discrimination arising from disability (s15) and harassment. There is no allegation of direct sex or disability discrimination. The submission on behalf of the Claimant confirms
- 33.2 The allegation refers to a report and official referral sent by DI Brettell to the Professional Standards Department in relation to a possible breach of the Essex Police Code of Ethics by both PC Lee and DS High in relation to the incident and altercation between them on 1 February 2019. The purpose of that report is to request what is called a 'severity assessment' by PSD. Under the Respondent's disciplinary procedures such an assessment is carried out at an initial stage in order to obtain advice and recommendation as to whether alleged misconduct should go forward for formal investigation- it can only move to the investigation stage if the assessor agrees that, if proven, the conduct would amount to misconduct or gross misconduct. At investigation stage any officer has added protections, rights and support which do not pertain at the assessment stage. The process was helpfully explained to us by DCI Gingell who carried out the severity assessment for both officers. He pointed out that it is more accurately called a conduct assessment for internal matters and a severity assessment for external complaints. There is a further explanation at paragraphs 137 and 138 of Mr Thomas's submission on behalf of the Respondent which we accept as accurate.
- 33.3 In relation to PC Lee alone Inspector Brettell also sent a report of an incident occurring on 14 January 2019 which is related in the middle paragraph of page 458. We are certain that this report does not simply refer to the Claimant 'absenting herself' from the office. It is primarily an account of her behaviour before she 'stormed' out and it is supported by an A 57 report on page 465 by DS May who was present. His detailed account is predominantly about the Claimant's '*loud and irate*' behaviour before she left the office. Similarly his email at page 451 addressed to DI Brettell focusses on the Claimant's '*poor behaviour... which will not change*'.
- 33.4 We are satisfied that the Claimant was subjected to the first early stage of the misconduct procedure because of her behaviour on 14 January 2019 and not because she absented herself for 2-3 hours because of ill health. Her contention that because of something arising from her mental health disability she was subjected to unfavourable treatment cannot be upheld. She contends that the 'something arising' is advice which she was previously given and acted upon on 14 January 2019. The advice is for a coping strategy or suggestion that when she feels overwhelmed she

should remove herself temporarily from the situation. The Respondent took no issue with that suggested coping mechanism- DI Brettell said in evidence *'I was happy if she was overwhelmed for her to go for a coffee or something. I understood that'*.

33.5 In any event when cross-examined the Claimant agreed that the incident on 14 January 2019 was a relevant matter to send for a PSD conduct assessment. It is clear therefore that she has in effect abandoned this allegation of unfavourable treatment about an incident which she said in evidence she *'could not remember too well'*. Her concession makes sense; it is clearly relevant to the conduct assessor to know whether alleged misconduct is a one-off or part of a pattern of such conduct.

33.6 For the sake of completeness we also accept and adopt the arguments made by Mr Thomas at paragraphs 135-138 which it is not necessary for us to repeat here.

34. Allegation 9:Aggressive behaviour towards the Claimant by DS High

34.1 This allegation relates to the events of 1 February 2019 at the Boreham SCIU office. It is identified in the List of Factual Allegations at page 43 only as direct sex discrimination and harassment. However in the List of issues agreed between the parties on the first day of this Hearing allegation 9 appears as an allegation of direct sex and disability discrimination and s 15 unfavourable treatment i.e. discrimination arising from disability albeit that there is a consistent mistake in the List of Issues which refers to 1 January 2019.

34.2 There is a dispute of fact about the detailed chain of events which occurred on 1 February 2019. The areas of dispute are not relevant to the core allegation in these proceedings but are pertinent to other factors which were ultimately resolved (as set out briefly below) by the PSD procedure and outcomes.

34.3 The Claimant's own account is that on the morning of 1 February 2019, approximately two or three hours after her arrival in the office following a period of leave, she was asked by her line manager DS High to conduct a 'tray check' of her investigation cases. This is the equivalent of a file review undertaken by DS High in his supervisory capacity. The Claimant was resistant to doing this tray check there and then since she had a number of emails she wished to read first. However she could not refuse a management request. She is extremely critical of the allegedly perfunctory and inadequate way in which DS High carried out this exercise but those are criticisms of his management style and supervision (pursued by the Claimant throughout this case and in cross examination of the Respondent's witnesses) which are not said to amount to unlawful discrimination.



- 34.4 We find that the Claimant was '*vociferously obstructive*' ( to use DS High's phrase at page 446 of the bundle) during this exercise, critical of Essex Police and the CPS and persistently maintaining that she did not have the time to deal with her investigation workload and '*two FLOs that are sucking the life out of me*' (her words). She refused offers of help and back up; she was resistant to prioritising her workload as DS High was suggesting. She was extremely frustrated and angry and although she denies in cross examination using swear words confrontationally at or about her line manager directly she agrees she may have used expressions like '*it's a fucking mess*'. DS High uncharacteristically (the Claimant described him as 'usually calm and amiable') lost his temper and swore at the Claimant saying words such as '*fuck off Heidi I do not need this, stop moaning and get on with it*'. Under cross- examination DS High testified that his swearing at the Claimant had nothing to do with her mental health issues.
- 34.5 There is consistent evidence that the Claimant erupted loudly, she was described as screaming and 'bellowing'. DS May was in the office and he refers to the Claimant shouting and throwing or deliberately dropping FLO files and investigation books on the floor before storming out. The Claimant does not dispute that she swore at DS High using the words '*who the fuck do you think you are, how dare you, don't fucking walk away from me*' or something very similar. She could be heard in the adjoining office (see page 468). DS May arranged for her to be transferred to the Stanway office to keep her and DS High apart.
- 34.6 DS High self-reported his conduct in an email which is at page 446 and gave an apology to his colleagues and his own line manager DI Brettell. In that email he refers to the A57 report he prepared and submitted in November 2017 setting out previous concerns about PC Lee's outbursts, behaviour and demeanour (pages 334-340).
- 34.7 The Claimant made no notes, wrote no email setting out her account of events and made no apology to anyone. Her account of this incident in paragraphs 123 -137 of her witness statement is characteristically hyperbolic. She refers to her supervisor abusing, bullying, belittling and undervaluing her '*for over a year*' and then exhibiting '*hatred*'. She is '*astounded*' by his assertion that the FLO work is a volunteer role. Her reaction, she says, was to be '*incredibly provoked by his disgraceful behaviour*', to have a panic attack, '*crying hysterically and unable to speak*'. This reaction was not observed by the other witnesses in the room.
- 34.8 First, the Claimant has stated in her responses under cross examination that she does not now maintain the allegation that DS High's behaviour towards her on this day was direct sex discrimination. She said that he may well have told a male officer to 'fuck off' in the same circumstances. She said '*it was because I was a trouble maker predominantly and not because I was a woman necessarily. A man would get the same treatment*'. The reference to 'troublemaker' was identified by the Claimant in her evidence as relating to a successful complaint she brought against Essex Police in 2014 when she received compensation. We therefore do

not uphold any claim of less favourable treatment because of the Claimant's sex. She herself concedes that a man in the same circumstances including provocative, oppositional and rude misbehaviour may well have been at the receiving end of the same loss of self-control by DS High.

- 34.9 The Claimant went on in her oral evidence to assert that the reason for DS High's aggressive treatment of her was that he did not understand her health and *'cannot be doing with me'*. She refers at paragraph 136 of her witness statement to the reason for the treatment as being her menopausal state making her, she says, *'not one of the easy people'* whom she alleges DS High preferred to deal with.
- 34.10 She makes no other specific reference in her witness statement to any other reason for DS High's treatment for her and certainly no reason which relates to her sex or to her mental health disability or fibroids/PCOS. There is a robust reference again to the Claimant's low opinion of DS High's *'lack of leadership skills, knowledge and interest in the role'* and to reasons for his treatment of her which are un-connected to either protected characteristic of sex or disability but which relate to personality *'he found me difficult to manage because he knew I would expect him to make decisions and oversee my cases'*. These reasons have nothing to do with her menopause.
- 34.11 We have found that the Claimant's menopausal symptoms were not at the relevant time a disability as defined by the 2010 Act. It has not been necessary to make findings about the Respondent's knowledge of her menopause and its effects. As a result of this decision we conclude that there was no direct discrimination on this basis or any unfavourable treatment amounting to s 15 discrimination
- 34.12 Ms O' Halloran's submission is that DS High's 'aggressive' conduct, which was clearly unfavourable treatment, was because of something arising out of the Claimant's mental health disability because it is said he treated her aggressively and swore at her as a result of behavioural manifestations by her of her *'mood'*, *'attitude'* and *'mentality'* which, it is argued, derive from her mental health conditions.
- 34.13 First we do not agree, as stated above, that the extreme manifestations of behaviour to which the Claimant was regularly prone and which she exhibited on 1 February 2019 are 'things' which arise from depression, anxiety and stress. We have set out this rationale above. Nor do we find that the Respondent knew or ought to have known that mental health difficulties of the type reported and described by the Claimant over the period 2017 to 2019 would result in the effects or types of effects which we set out above or which were evident on 1 February 2019. On that date we find that the Claimant was, consistently with a long history of such disruptive behaviour, highly irritable, irrationally obstructive, insubordinate and loudly critical ending with a violent outburst when DS High swore out of exasperation. Her behaviours were the 'reason why' she received unfavourable treatment.

- 34.4 The reason why DS High swore at the Claimant and walked away from the tray check with her is because of factors not connected with her sex or her disability but which arose as a result of a poor working relationship exacerbated by the Claimant's extreme behavioural patterns which are not consistent with her diagnosed mental health conditions.
- 34.5 The Claimant has not discharged her burden of proof in relation to Allegation 9 and we find no discrimination or harassment occurred.

35. Allegation 10: Only pursuing formal misconduct action (including a statutory misconduct investigation) in respect of the Claimant's alleged conduct on 1 February 2019

- 35.1 As we have clarified above this is an allegation that the Claimant was singled out for formal misconduct action (investigation stage) when DS High was not. The List of Issues identifies this matter as an alleged act of direct sex discrimination only. It is also identified as harassment and we are satisfied that this alleged harassment can only be related to the protected characteristic of sex. There is no submission to the contrary made on behalf of the Claimant
- 35.2 This wording of the issue is consistent with the List of Factual Allegations at paragraph 14.10 on page 43 which is worded '*The decision not to refer DS High for disciplinary action and only pursuing action in respect of the Claimant's alleged conduct on 1 February 2019-Section 13 Equality Act, sex, Section 26 Equality Act*'.
- 35.3 This treatment is the event which the Claimant described in her evidence as '*destroying*' her. Her hurt and angry emotional reaction to being informed of the decision that DS High had not been '*served Regs*' when her conduct had been sent to Inspector Sharn Taylor for formal investigation is set out in Inspector Taylor's email dated 4 March 2019 on pages 578-9.
- 35.4 We are satisfied that there is no extant allegation of harassment related to the protected characteristic of disability. This is because, in her oral evidence, the Claimant agreed that DCI Gingell, the assessor who made the decision to refer her conduct for a PSD disciplinary investigation, did not know of her health conditions or of any disability. She said '*it should have been brought up but was not discussed*'. In view of this evidence the Claimant's statement at paragraph 165 of her witness statement that the '*decision made by DCI Jamie Gingell of PSD...was due to the bullying nature Essex police members had towards my mental health*' cannot be correct. The only document brought to DCI Gingell's attention as an appendix to DI Brettell's referral which makes any reference to the Claimant's mental health is the A57 report prepared by DS High on 10 November 2017 at pages 334-40.

- 35.5 That is a document whose content was the subject of a detailed cross examination of the Claimant by Mr Thomas. She did not disagree with most of its content in so far as it describes her highly challenging sometimes intimidating behaviour summarised as '*a drain on managers*'. The reasons for her high stress levels (from various sources) and concerns for her mental health are expressed in that report and no doubt DCI Gingell noted that content. (DCI Gingell comments that the 2017 Report was not followed up but the reasons for that omission need not concern this Tribunal)
- 35.6 However we are certain that the predominant content of the formal report is DS High's increasing concern that the Claimant is extremely difficult to supervise and has engaged in several episodes of unacceptable behaviour resulting in complaints and loss of team morale. DS High described the conduct which precipitated his 2017 A57 as '*unique. It stayed with me because I had never had it happen to me before that a junior colleague ranted at me in front of others saying 'you have no idea what we do in here*'. DCI Gingell thus read it as an historical account of the Claimant's behaviour under DS High's supervision and drew the reasonable conclusion that there was an unfortunate previous record of repeated concerns and complaints about PC Lee's conduct. The November A57 did not alert him to the Claimant's mental health disability and its manifestations in relation to her office behaviour and relationships. There is no content in that document which would bring her disability to his attention.
- 35.7 The nature of a severity/conduct assessment into both the Claimant's and DS High's conduct on 1 February 2019 was explained to us. The referral was made by DI Brettell after careful consideration and reflection as to whether there was any other way he could deal with the situation. He spoke to the Claimant on 4 February 2019 as recorded on page 453 and she admitted that '*she did lose her temper and did act inappropriately within the office. However she states that she did this purely because she was sworn at by Adam [High] following an argument over workloads and poor management*'. In her witness statement at paragraph 155 the Claimant agrees that it was appropriate for her behaviour to be referred for assessment and indeed acknowledges that she was '*prepared to deal with whatever action was given to me*' after service of a Regulation 15 Notice by the formal investigator Inspector Taylor on 22 February 2019 (see page 597). She does not take issue with the fact that she was to be investigated for potential breaches of standards of professional behaviour. Her complaint is that DS High was not also dealt with in the same way, as she states in paragraph 161.
- 35.8 DCI Gingell in his role as assessor does not interview or speak to any of the participants in, or witnesses to, the relevant events because he is not

the formal investigator. He conducted his assessment based on DI Brettell's referral and the documents attached which are listed at page 460. His decision is not subject to any right of review or appeal.

- 35.9 His decision to send the Claimant's case for formal investigation but not to refer DS High is set out in a rationale at pages 491-494 headed 'Conduct Matter-Severity Assessment'. The reason why the Claimant received this less favourable treatment than DS High is encapsulated in that rationale. In summary at page 493 he decided not to refer DS High because his swearing at the Claimant was a one off isolated incident for which he immediately expressed contrition and from which it is anticipated he will learn and improve. By contrast DCI Gingell states that there is a '*clear and repeated course of conduct [by the Claimant] in relation to [her] language and behaviour towards others and in general forum*'. He finds there to be a pattern of unacceptable temperament and anger management/control issues which clearly breach the professional behaviour standards. He concludes that the Claimant has failed to learn from earlier incidents and '*unable to address over time*'.
- 35.10 The Claimant was not referred for a misconduct hearing (potentially resulting in dismissal) or in relation to any allegation of gross misconduct. Her job was never at risk.
- 35.11 The less favourable treatment in relation to Allegation 10 was not because the Claimant is a woman and DS High (her comparator) is a man. It was put to DCI Gingell that he regarded a woman swearing to be worse than a man swearing. He categorically said that was incorrect and said he '*took umbrage*' at the suggestion that he differentiated in this way. It is because DCI Gingell assessed her conduct as being more 'severe' than that of DS High for all the reasons he has set out in his rationale. Her complaint of direct sex discrimination does not succeed. She was not subjected to unwanted conduct in relation to the protected characteristic of sex.
- 35.12 Under cross examination PC Lee agreed that it was not sex discrimination when she said that the real reason for the difference in treatment was because she was viewed as a '*troublemaker*' by Essex Police. Again she referred to her previous successful claim against the Force in relation to data breaches. She said '*it was because I was a troublemaker predominantly and not because I was a woman necessarily...a man would get the same treatment*'. This statement negates her allegation of direct sex discrimination.
- 35.13 Ms O' Halloran, on behalf of the Claimant, conducted a cross examination on the basis of the unfairness and bias of the procedure followed by DCI Gingell in terms of the documents he took into account ( supplied by DI Brettell) and the 'failure' to interview or consult the Claimant or ask her for documentary evidence. He refuted all allegations of bias in favour of DS

High. There is no allegation that the reason for this procedure is a discriminatory one. We understand the severity assessment process to be as it was explained to us by DCI Gingell in his evidence and as summarised in paragraph 162 a)-e) of Mr Thomas's submissions. In other words the PSD process means that the assessor initiates no investigation of his own for the reason that police officers receive additional rights and protections only once any complaint against them has gone forward to the investigation stage. It was eventually investigated by Inspector Taylor against whom the Claimant makes no complaint of any kind.

- 35.14 For the sake of completeness we set out the narrative of events which later occurred. Inspector Taylor's investigation report was sent to Detective Superintendent Chapple who was the decision maker. His conclusions are set out at page 696 of the bundle and make no reference to any unlawful acts of discrimination or anything similar. He decides that there is a case to answer only in relation to allegation 2 against PC Lee ('shouting and swearing at DS High in the presence of colleagues') and recommends Management Action as set out on page 697 including a note in PC Lee's PDR Day Book. He does not find that the case supports a referral for misconduct proceedings of any type.
- 35.15 However Superintendent Chapple goes on to say that *'notwithstanding the earlier assessment regarding DS High'* he recommends 'Additional Action' which will be noted in DS High's Personal Development Record (PDR) and Day Book.
- 35.16 In conclusion therefore both the Claimant and DS High eventually received the same outcome following their February 2019 altercation. Both were given management action and neither had any factual finding of misconduct made against them. The only slight difference between the two cases is that the Claimant's computerised disciplinary record will show a record of the management action and DS High's will not (because no computerised investigation 'file' was opened for him).

36. Allegation 11:Inspector Brettell failed to sanction Claimant having a half day off and passed it back to the acting Sergeant to consider

- 36.1 This allegation is identified as direct disability discrimination, discrimination arising from disability and harassment relating to disability. None of those claims succeed.
- 36.2 This matter can be dealt with very briefly. The relevant emails are at pages 666-667. There is no evidence in those documents which supports the Claimant's claims of discrimination. She asked the Inspector if she

might have a half day off to attend a 'Headways' mental health course because it *'might be useful for me'*. Her brief request is not a 'cri de coeur', it does not indicate that her health is deteriorating or at risk. DI Brettell confirms that he will authorise the training i.e. he agrees to the Claimant's request contingent upon there being sufficient resources in the office to cover her duties. This is a normal management prerogative which DI Brettell is entitled to use in relation to all officers. His contingent approval was not less favourable or unfavourable treatment in any way connected to the Claimant's disability and this allegation is without merit.

37. In all the circumstances of this case the claims of sex and disability discrimination and the complaints of harassment related to the protected characteristics of sex and disability do not succeed and are dismissed.

**Employment Judge B Elgot**  
**Date: 23 November 2020**