Case Number: 2300650/2018

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms S Shah	v	The Commissioner of Police of the Metropolis

Heard at: Watford

On: 30 November and 1-3 (and, in private) 4 December 2020

Before: Employment Judge Hyams

Members: Mr I Middleton
Ms K Turquoise

Appearances:

For the claimant: Mr Lee Betchley, of counsel
For the respondent: Ms Suzanne Palmer, of counsel

UNANIMOUS LIABILITY JUDGMENT

1. The claimant's claim to have been subjected to detrimental treatment, within the meaning of section 47B of the Employment Rights Act 1996, for making a protected disclosure within the meaning of section 43A of that Act, does not succeed. The claimant was not subjected by the respondent, or any person acting on behalf of the respondent for whose acts or omissions the respondent is responsible, to any such detrimental treatment.

2. The claimant was not victimised by the respondent, or any person acting on behalf of the respondent for whose acts or omissions the respondent is responsible, within the meaning of section 27 of the Equality Act 2010.

REASONS

The claim and the issues

1 The claimant's claims in these proceedings were originally wide-ranging. However, at a preliminary hearing conducted by Employment Judge R Lewis ("EJ Lewis") on 25-26 August 2020, the claimant withdrew all of her claims except those which were determined by us. The two which remained for

determination were recorded by EJ Lewis in paragraph 5 of the document signed by him on 27 August 2020 but sent to the parties only on 9 October 2020, entitled "Case Management Order" of which there was a copy at pages 1-6, i.e. pages 1-6 of the hearing bundle. (Any reference below to a page is unless otherwise stated to be read as a reference to a page of that bundle.)

2 Paragraphs 5.1-5.5 on pages 1-2 were in these terms:

"5.1 The only remaining questions for the tribunal are:

- What did the claimant say or write on each of the occasions set out at #5.3 below?
- Did the claimant on any of those occasions make a protected disclosure (ERA s 43B) or do a protected act (Eq A s 27(2))?
- What did the respondent do or omit to do in responding to the claimant's 999 call (#5.4 below)?
- Was the action or omission set out at #5.4 below done, or omitted to be done, by the respondent because the claimant had made a protected disclosure or done a protected act?
- If so, to what remedy is the claimant entitled?

5.2 The claim proceeds as two claims arising out of one event. The two claims are (a) detriment on grounds of having made a public interest disclosure or disclosures (ERA 1996 s.47D), and victimisation because of having done a protected act or acts (EqA 2010 s.27).

5.3 The claims are based on any of the following, each of which is said by the claimant to be a protected disclosure and a protected act. The following list of protected disclosures / acts is definitive.

- Complaints about bullying and harassment made orally and in writing to Inspector J Morris on 22 September 2015;
- The claimant's email sent to Mr S Tovee the same day;
- The claimant's email sent to Mr S Moring the same day;
- The claimant's 'Fairness at Work' grievance of November 2015;
- The claimant's complaints made orally to Dr Porritt on 21 December 2015;
- An email sent by the claimant to Dr Porritt in January 2016;

- The claimant's complaint made orally to Sgt Campbell in February 2016.

5.4 The only detriment or act of victimisation relied upon is that in response to the claimant's 999 call on the night of 12/13 February 2018 the claimant was offered no police assistance and her case of a burglary was closed. The claimant has leave to clarify this claim, but not to amend it.

5. In the course of this hearing, the claimant confirmed that the only disability upon which she proceeded was PTSD; and the respondent conceded that in respect of that impairment only, she met the s.6 definition of disability at all material times."

3 As Employment Judge Hyams ("EJ Hyams") discussed with the parties' counsel (to whom we were very grateful indeed for their flexibility, co-operation and other assistance) after we had all read the witness statements and such of the documents as we had time to read before hearing oral evidence, the claim is an unusual one which is necessarily narrow in its scope. That is because the claimant had, by February 2018, been continuously absent from work on account of sickness for approximately a year and a half, and because her claim was made in relation to the response of the respondent, acting as a provider of services to the public, towards a request from the claimant, as a member of the public, for the services of the respondent as a public service provider.

4 In addition, as a result of a very helpful discussion with Mr Betchley, we were able to ascertain that the evidence on which the claimant relied in support of her claim to have made protected disclosures within the meaning of section 43A of the Employment Rights Act 1996 ("ERA 1996") and to have done protected acts within the meaning of section 27 of the Equality Act 2010 ("EqA 2010") was in documentary form only. The disclosures and protected acts were stated on behalf of the claimant in the amended details of the claim at pages 10-11, in paragraphs 6.1-6.7 inclusive. The documents which consisted of, or were the best evidence of, those things referred to in those paragraphs were, respectively, as follows:

4.1 paragraph 6.1: page 59

4.2 paragraph 6.2: page 57

4.3 paragraph 6.3: page 60

4.4 paragraph 6.4: pages 150-152

4.5 paragraph 6.5: pages 66-67

4.6 paragraph 6.6: pages 72-73, and

4.7 paragraph 6.7: pages 74-75.

5 The respondent accepted that those documents were what they purported to be, i.e. documents which were in fact sent to the respondent. Accordingly, there was no need for the documents to be the subject of oral evidence. As a result, the key issue for us was what was the "motivation", using that term in the sense in which it is used by Underhill LJ in *Unite the Union v Nailard* [2019] ICR 28, of the persons who acted, or failed to act, in ways about which the claimant complained in this case. In determining that question, we took into account section 136 of the EqA 2010, which so far as relevant is in these terms:

> "(1) This section applies to any proceedings relating to a contravention of this Act.
>
> (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) But subsection (2) does not apply if A shows that A did not contravene the provision."

6 While that provision does not apply to a claim of detrimental treatment for making a protected disclosure, we regarded its substance as being applicable to a claim of such detrimental treatment, albeit that the words "the court must hold that the contravention occurred" do not apply.

7 Before she gave evidence, Mr Betchley took careful instructions from the claimant, and he told us and the respondent that there were only two parts of the claimant's witness statement (which contained 170 numbered paragraphs, was 23 pages long and was single-line-spaced) other than those which proved the documents referred to by us in paragraph 4 above, on which the claimant relied in seeking to prove her claim, i.e. for liability purposes only. Those two additional parts were paragraphs 33 and 99. They dealt with the involvement of Mr Steve Littell, who is (and had by the time of the hearing before us been for 15 years) employed by the respondent as a Communications Supervisor.

8 Paragraph 33 of the claimant's witness statement was in these terms:

> "On 1.7.16, I was advised that a compliant had been received about me from a member of public regarding a call I took. As the shift finished on 2.7.16 I did not want to feel stress and strain anymore so I asked supervisor Rodney Grant who had dealt with the complaint about the outcome of that complaint. I was advised that duty officer will deal. As I was leaving work, I did ask supervisor Steve Littell that duty officer was of the team or any duty officer of the day. He confirmed that it would be duty

> officer of the team. During that conversation Steve and I also talked about me suffering from anxiety and some difficulties with line management, transfer from Hendon to Lambeth. I must have spoken to him for approx. an hour sometime between 6:00 pm - 8:00 pm."

9 Paragraph 99 was in these terms:

> "I was part of Team 3 at Met CC - Lambeth, and supervisor Steve Littell was part of Team 3 at Met CC Lambeth, with whom I spoke with on the 999 call. He had been aware of the fact I had discussed issues of bullying, harassment and discrimination previously with him on 2.7.16 for an hour after my shift finished that day in the evening approx. between 6:00 - 8:00 pm. As Team 3 supervisor, he would have been aware that I was not part of Team 3 since 1.3.17 following a decision taken by Supt Adelekan in a meeting with him on 1.3.17."

The procedure which we followed

10 In part as a result of the factors to which we refer above, we agreed with the parties that we would determine liability first. We accordingly agreed with the parties that we would hear evidence from the claimant about the impact on her of the events about which she made her claim only if the claim succeeded.

11 In addition, we could see that the burden of proof was imposed on the respondent as far as the "whistleblowing" complaint was concerned, i.e. of detrimental treatment within the meaning of section 47B of the ERA 1996 for the making of a protected disclosure within the meaning of section 43A of that Act, by section 48(2) of that Act. Accordingly, and because it was convenient for us and the parties for us to do so, we heard oral evidence first from the respondent's witnesses, two of whom (Ms Fowler and Mr Littell) gave evidence via CVP, and the other two of whom gave evidence in person.

The evidence which we heard

12 We heard oral evidence from the claimant on her own behalf in the manner indicated above and below (i.e. initially proving only paragraphs 33 and 99 of her witness statement and then being cross-examined and asked questions by us, including about the other parts of her witness statement to which we refer below), and, on behalf of the respondent, from the following witnesses in the following order:

12.1 Police Constable ("PC") Daniel Davison

12.2 Police Sergeant ("PS") Jonathan Bradley

12.3 Detective Constable ("DC") Yvonne Fowler, who in February 2018 was known by her married name and was therefore known as DC McAuley,

and was working in the respondent's TDIU, i.e. its Telephone and Digital Investigation Unit, and

12.4 Mr Steve Littell, Communications Supervisor.

13 We read the documents in the 235-page bundle to which we were referred.

14 In what follows, we first refer to the material evidence. We then discuss several relevant factors, after which we state our conclusions on one determinative issue, namely whether or not any of the acts or omissions about which the claimant complained were tainted by an unlawful discriminatory motivation.

The factual background, including the evidence on the key primary issue of what was in the minds of the relevant persons acting on behalf of the respondent

15 The claimant is employed by the respondent as a Communications Officer, taking 999 and 101 calls on behalf of the respondent. She started to work for the respondent in that role on 2 April 2012. From then onwards until 15 May 2016, she was based at the respondent's Hendon premises. After that, at her own request, she transferred to work at the respondent's premises in Lambeth.

16 The claimant started a period of absence from work on account of ill-health on 24 July 2016. She remains so absent, as we say above.

17 The claimant lives in an apartment which is in the area for whose policing the respondent is responsible. Shortly before 1.00am on 13 February 2018, the claimant called the 999 service for that area. That was because the claimant had returned to her flat at between 22:40 and 22:45 on 12 February 2018 and found that, while there were no signs of forced entry to it, it had been (as she put it in paragraph 91 of her witness statement) "turned upside down".

18 Paragraph 91 of the claimant's witness statement bears repeating in full:

> "On 13.2.18 at 4:20 am I wrote to my welfare officer Julian Morriss that my flat had been broken into. I had been staying out of the home due to strong suicidal ideation where I needed to keep myself safe. I had come home between 22:40 - 22:45 hrs on 12.2.18 and saw that the flat had been turned upside down. There were no signs of 'forced entry'. I was completely shocked. It was approx. between 12:47 - 12:53 am on 13.2.18 when I called up 999. The operator who handled the 999 call was really rude and shouting. I wrote in the email that the call needed to be listened to. Generally, we are expected to complete a 999 call in 3 mins 30 secs. This call lasted for approx. half an hour."

19 We did not have a copy of that email to Mr Morriss in the bundle.

20 It was ascertained by reference to documents disclosed by the respondent in the course of these proceedings that the operator to whom the claimant spoke was PC Davison. It was his firm, clear, and repeated evidence, that he had no recollection of the call. He was told about it for the first time only during November 2020, and only in the days before the hearing before us; he attended the hearing at short notice. He was repeatedly pressed in cross-examination about his knowledge of the claimant and his recollection of the call, and he was adamant that he had never before seen her and that he did not know that one of the callers to whom he spoke in the early hours of 13 February 2018 was the claimant.

21 PC Davison started to be trained to do the job of call handling at about the end of July 2016. He was trained at Lambeth, so he might have overlapped with the claimant there for a short period of time. He said (and we accepted) that he (using his words) "went live", i.e. started his job of being a call handler, in September 2016. He said that he received training for two to three weeks before doing so. If, therefore, PC Davison was working at Lambeth at the same time as the claimant, then it was for only a very short period of time. Certainly, there was nothing in the claimant's witness statement to the effect that she recognised the receiver of her 999 call on 13 February 2018, or that the person to whom she initially spoke recognised her; the parts where she referred specifically to the immediate recipient of the call (paragraphs 93 and 95) referred only to "[t]he operator". The whole of the passage from paragraph 93-95 bears repeating here:

> "93. I had dialled 101 initially and after being on the phone for 8 mins, I decided that I needed to call 999 at approx. 12:53 am on 13.2.18. The operator on the phone said - 'Police Emergency, what is your emergency?' That is the standard salutation. I said the first thing that came to my mind - I said, 'Suspicious circumstances'. He started shouting saying that I should not be calling 999 for something like this. I should call up 101. I said, I had called 101, I had been on the phone for 8 mins, it was only thereafter I called up 999. He started shouting even more, I then told him that I do the same job that you do. When he heard that, he was even more rude and said, 'you should know better then'…shouting from the operator continued. I told him that I had come home and my home was burgled - whereupon he said, 'why did you not say that at the start'. I was upset, stressed, tearful to come home to an aggravated burglary. I was shouted at, spoken to rudely by the operator taking 999 call. I was quite upset and terminated the call. I knew from working as a Comms Officer, the way in which my 999 call was being handled was not the norm.
>
> 94. I have worked night shifts as a part of my job taking 999 calls. I know that calls which come past 11:00 pm are generally very serious. As an operator one needs to [be] highly alert on those calls. Members of

public generally report suspicious circumstances - e.g. - suspect is looking into people's car which is often very serious and are graded accordingly. Suspicious circumstances can also include weapon, knife of some kind on some of those calls. I have never seen an operator shouting at a victim of crime for saying the first thing that came to their mind - i.e. 'suspicious circumstances'. It is a serious type code amongst the police just like burglary.

95. The operator then called me again on 999 call, as is the procedure. While he apologised, he was remotely not serious in how he was doing his job. This is evident that while the call lasted half an hour, he had failed to identify that I was a vulnerable victim due to PTSD. I asked him that while I had called as a victim of crime in a state of distress was I expected to answer in the police type code saying it is burglary which would then be classified as 003. No victim of crime would have that level of equilibrium. I had shown far greater equilibrium than most people would have been able to do so, under circumstances like that."

22 The parties agreed that when a 999 caller terminates a call prematurely, the operator is required to call the caller back.

23 Mr Littell had no recollection whatsoever of any telephone conversation with the claimant on 13 February 2018. He said that if he had been involved in the response to the claimant's 999 call then it would have been to respond to a query raised by the operator, or if the caller had complained about the advice given by the operator. We accepted that evidence of Mr Littell. Mr Littell was in fact somewhat offended by the proposition that he might have treated the claimant to any extent detrimentally because the claimant had made complaints of discrimination and/or that there might have been breaches of any legal obligation or endangering of health and safety, i.e. to any extent differently from the way in which he would have treated any other member of the public. He was so offended because he said that it suggested that he might act otherwise than with integrity. We accepted that evidence of Mr Littell: we found that he was an honest witness, doing his best to tell the truth, and that if he was at all negatively influenced by any knowledge that he might have had of the claimant, then it was not conscious as far as he was concerned.

24 Ms Fowler was adamant that she did not know the claimant in February 2018, she had no idea that the claimant was employed by the respondent, and she knew nothing of the claimant's past complaints. We found Ms Fowler to be an honest witness doing her best to tell us the truth, and accepted that evidence, not least because there was nothing whatsoever in the evidence before us from which we could draw the inference that Ms Fowler had that knowledge, or any part of it.

25 Ms Fowler did not speak to the claimant at all: she left her a telephone message only, since when she called the claimant the claimant did not answer the call. Ms Fowler's investigation was recorded on page 25 of what the respondent called its CRIS report. The report was at pages 89-127. Page 25 of the report was page 113 of the bundle. On that page, there was this record of Ms Fowler's analysis of the matter and the visit of a Scenes of Crime Officer ("SOCO").

> "14/02/2018 08:13
>
> DC 217790 YM MCAULEY
>
> factors
>
> Vulnerability
> . There are no vulnerability factors
>
> Escalation
> . There are no escalation factors
>
> Steps Taken
> .There is no tactical intervention required.
>
> SOLVABILITY ASSESSMENT
> Based on my assessment of material available, no further investigation is required. The reasons behind this are:-
>
> . There is no named or identifiable SUSP
> . There is no known CCTV coverage
> . The time frame is unreasonable for CCTV trawling
> . There are no witnesses
>
> I have informed the victim about this decision.
> Home Office Outcome Code 18
> Investigation complete.
>
> 14/02/2018 08:27
>
> SCENE EX 100221 N BARGIELA
>
> From SOCO: Scene examined with a negative result"

26 The next pages showed that a police community support officer ("PCSO") had attended the premises at 14:00 on 13 February 2018. On page 114 there was this record:

> "18/02/2018 12:00

> PCSO 101650 7263SX AD CARVALHO
>
> Burglary: Flat 56, SCOTTWELL DRIVE, NW9
>
> CRIS number: 2403780/17 dated: 12/02/2018
> Officer attending (Inc Warrant No) PCSO 7263 SX Pedro CARVALHO
> Victim's name: Shefali DESAI.
> Time and date of visit: 1400 hours on 13/08/2018
> Did victim receive Victim Care Card: Yes
> Are they a repeat victim? No
> Have SOCO attended? Yes
> MG11 taken by reporting officer: No. This burglary investigation has been tibbed.
> Mobile phone stolen: No.
>
> Cocooning visits: SCOTTWELL DRIVE, NW9
>
> 1) Flat no. 56
> Spoken to: Shefali DESAI
> Time visited: 1400 hours
> Is there CCTV: No
> Comments: Victim has been advised to lock her doors and windows with keys. She has been advised to install an alarm and CCTV. She has been advised to switch lights on timer, during the hours of darkness."

27 The word "tibbed" in that extract was, the parties agreed, shorthand for, or an alternative to, saying that the matter had been sent to the TDIU for investigation.

28 The respondent had a standard operating procedure ("SOP") concerning how burglaries of domestic premises should be handled. There was a copy at pages 44-55. That was stated on page 44 to be a "policy". There was a further single-Page document at page 56, stated also to be a policy. It had in it this line:

> "MPS Policy - Residential Burglaries will be graded on caller's circumstances unless the caller specifically requests deployment, this will then be suitable for TDIU process."

29 Mr Littell's oral evidence was that despite that written policy, there was in February 2018 in place a directive from above not to send a police officer to attend domestic premises at which a burglary had been reported, because of resourcing issues. However, he had himself said to the claimant, as she had said in paragraph 98 of her witness statement (which we have set out in paragraph 51 below), that nothing was likely to be gained by a police officer attending the claimant's flat during the night of 13 February 2018 because she had called 999 approximately two hours after the burglary. We understood that

to have been said on the basis that no forensic benefit was likely to be gained by a police officer attending at that time. However, there was in the SOP at pages 44-55 an indication of what benefit there might have been from a visit where a 999 call had been made about two hours after the burglary. There was also a statement of what should be done if a police officer attended as soon as possible after a 999 call. On pages 45-47 there was a "Primary investigation frontline - checklist", on the second page of which under the heading "Victims/witnesses" there were these bullet points:

> "• Provide victim care card and explain what will happen next. Ascertain preferred contact method. Offer victim support service and refer where appropriate.
>
> • Give crime prevention advice to victim and refer to appropriate partner agencies. Give advice re door/window locks, improved lighting, alley gates and Watch Schemes and how they can prevent burglaries.
>
> • Obtain an MG11 Burglary proforma from the victim.
>
> • If available, obtain images from victim of items stolen, i.e. jewellery, unique items, etc - this will help identify items quickly especially if sold on locally into second hand outlets. BIU can assist with attaching these images to a CRIMINT. (Discretionary)
>
> • Conduct appropriate local enquiries to trace further witnesses - record your actions and enquiries.
> • Flag the CRIS to SNT for a reassurance visit to victim."

30 It was not in dispute, i.e. the respondent accepted, that no MG11 proforma had been obtained from the claimant and that the fact that the requirement in the policy concerning the obtaining of that proforma did not have after it "(Discretionary)" meant that it was a mandatory part of the policy to obtain such a proforma. We were, however, not shown a copy of an MG11 proforma and what might have been expected to be gained by completing one, although the passage which we set out in paragraph 32 below suggests that it is simply a place where a victim's initial recollection is expected to be recorded.

31 There was on pages 48-50 a "Secondary investigation frontline - checklist", and under the heading "Victims/witnesses" on page 48, there were the following bullet points:

> "• Make further contact with victims and witnesses to ascertain if they have remembered any further information.

- Identify vulnerable/intimidated victims/witnesses. Obtain evidence in line with Investigative Interviewing policy. Consider referral to victim support.

...

- Obtain images of stolen items. BIU can assist with attaching these images to a CRIMINT."

32 At page 51, there was this passage:

> "**More information**
>
> **Take a statement immediately**
>
> Research has shown that the best time to capture evidence from many vulnerable people including the elderly is within a short time of the incident occurring. Unless a victim is very distressed, a written statement must, therefore, be taken from an elderly victim or witness at the time of the primary investigation into the offence. Failure to do this may lead to important evidence being lost and reasons for not taking the statement must be noted on the CRIS report. The statement should be recorded on the Burglary MG11 template (see One Stop Shop) or a fuller statement can be recorded in an EAB or on Form MG11."

33 There was in the bundle at pages 25-29 a document described by the respondent as "Linked Incident Print/CHS", and it was stated by the respondent and accepted by PC Davison to have been completed by him. On page 25, the caller was described as a "W(Witness)", and by the word "Urgency" there was this: "R(Referred)". On page 27, it was specifically recorded by PC Davison that the caller was a witness, although the victim's address was the claimant's. The parties agreed that the entry "R(Referred)" meant that the incident was treated as one which did not require an immediate police presence at the scene of the crime. Mr Littell said in oral evidence that he would not have been able to require such a presence, and that the question whether or not a police officer would need to be despatched urgently to the claimant's flat would be taken by the despatch team supervisor. However, it was recognised by the respondent that the classification of the claimant as a witness by PC Davison was an error, and that she should have been classified as a victim. Mr Littell said, however, that it would not have made any difference to the question whether or not a police officer would have been despatched at the time to the claimant's flat if the claimant had been classified as a victim.

34 The claimant's oral evidence to us was that she had sought to gain entry to her flat when she had returned to it at between 22:40 and 22:45 on 12 February 2018 and that it was difficult to get into. That was, she said, because there were things behind the door. She also said that she could not see who was in the

flat, i.e. whether or not there was someone there at the time, for the reasons given by her in paragraph 92 of her witness statement, which was in these terms:

> "Suspects had removed things from drawers, bags, cupboards thrown it everywhere, the lights had been tampered with, so no lights were working. The home was completely dark. I could only use the light on my phone. The suspects had even thrown clothes in the toilet, making it impossible to use the toilet. The chaos that was created was unbelievable. The home was not habitable."

35 Thus, said the claimant, during the early hours of 13 February 2018 she was vulnerable as she was a woman alone at night and unable to go back to her home as she was not sure whether or not anyone was still in it. When it was put to her by EJ Hyams that she must have been able to see whether or not anyone was in the flat at the time, even if only by the light of her mobile telephone torch function, since they are usually quite bright, she said that the battery on the telephone was down to 2% and that she had quickly left the flat when she had been unable to see whether or not anyone else was there.

36 At first sight, it was a matter of some concern that the respondent had deleted the recording of the claimant's 999 call, despite

36.1 (according to the evidence of the claimant set out in paragraph 18 above, albeit that it was not supported by a copy of the email in which she said there she had asked Mr Morriss to listen to the recording) having been put on notice that the manner in which the claimant was spoken to during the call by the operator was in issue only very shortly after the call had been made, and

36.2 the fact that the claimant had made her claim to this tribunal only days after the call and in the claim had made complaints about what had happened during the call.

37 We therefore considered carefully the precise sequence of the relevant events in the course of the making and pressing of this claim. The claimant first referred to what had happened on 13 February 2018 at the end of the details of the claim that she made to this tribunal which was eventually determined by us. There were two places in which she referred to what had happened on that day and shortly afterwards. The first was on page 12 (i.e. of the claim form, of which there was no copy in the hearing bundle), in box 15, with the heading "Additional information", in these (and only these) words:

> "Recently, between 11/12/18 - 12/2/18 there was burglary in my flat. I reported the burglary at approximately 12:47am on 13/2/18 and without taking any statement from me over the phone or in person my case was closed on the 14/2/18 in keeping with ongoing discrimination. I received a

> voice mail on 14/2/18 at 8:07am asking me to email police about items stolen."

38 On an additional page, attached to the ET1 claim form as "other claim details", there was a passage which contained towards its end these words:

> "Recently, on 11/2/18 - 12/2/18 when my home was burgled and I reported the matter to the police at 12:47am approximately on the 13/2/18 no police officer took my statement over the phone or in person. The only person who came was forensics team and a community support officer. My case was closed on 14/2/18 and all I received was a voice mail that I should inform the police about the items lost through an email."

39 A preliminary hearing was listed to take place originally on 21 May 2018 at London South Employment Tribunal, but it was postponed and relisted. No preliminary hearing had taken place by the time that the case was, at the request of the claimant, transferred from London South to the region in which the claimant's home is situated, the South East Region, to be heard at Watford. The preliminary hearing was then listed to take place on 16 December 2019 at Watford. While the claimant applied for that hearing to be postponed and relisted, that application was refused and the hearing took place on that date. The claimant was represented at it by counsel, Mr A Ohringer. The hearing was conducted by EJ Lewis. The case management summary and orders which resulted from that hearing were sent to the parties on 4 January 2020. The orders included one for a further preliminary hearing to take place on 17 and 18 June 2020.

40 On 21 February 2020, the claimant's then solicitors, Irwin Mitchell, sent an email to the tribunal, enclosing "the Claimant's amended particulars of claim as required by the Employment Tribunal". That email and those particulars were not included in the hearing bundle but Ms Palmer referred to the particulars in her closing submissions and having found them in the file and confirmed with the parties that we had the right document we saw that they included this paragraph (numbered 37):

> "On 13th February 2018 the Claimant suffered a home burglary which naturally caused her an overwhelming amount of stress and anxiety. The Claimant called 999, she said she was suicidal but instead of the police officer listening, he shouted at her. So the Claimant called out of hours counselling and the call went to Lambeth, her work place. The Claimant informed the line manager Sian Sweting [sic; it should have been a reference to Sian Sweeting] that she was extremely suicidal."

41 The respondent's response to that document was sent to the tribunal on 28 February 2020 and was to the effect that the claimant had failed to comply properly with the case management orders made by EJ Lewis in the document sent to the parties on 4 January 2020, and that the claim should accordingly be

struck out, but if it were not struck out then an "unless order" should be made under rule 38 of the Employment Tribunals Rules of Procedure 2013, ordering the claimant to comply properly with those orders. On 9 March 2020 the respondent, via Ms Harding, a solicitor employed by the respondent, wrote that the respondent was unable to draft amended grounds of resistance. EJ Lewis decided that the claimant should be treated as having applied to amend her claim, and that the application to do so and the respondent's application to strike out the claim should be determined at the hearing of 17 and 18 June 2020 if it went ahead. That decision was communicated to the parties on 12 April 2020.

42 The claimant ceased during the first part of 2020 to be represented by Irwin Mitchell. On 16 June 2020, the claimant wrote to the tribunal saying, among other things, that she had "read the amended particulars submitted on 21.2.2020 for the first time over the weekend" and that:

> "It was upsetting to note that facts of the case have been inaccurately presented."

43 Because of the national response to the Covid-19 pandemic, the hearing of 17 and 18 June 2020 was converted to a 2-hour hearing by telephone. It was conducted by EJ Lewis. Among other things, he adjourned the hearing to continue in person on 24-26 August 2020 at Watford. That hearing occurred, but on 25 and 26 August rather than on all three days. EJ Lewis again conducted it. He made the orders set out in the case management record at pages 1-6 to which we refer in paragraphs 1 and 2 above.

44 The claimant had by then instructed new counsel, Mr Betchley, who as stated above appeared before us. His assistance was invaluable to us, as it evidently was to EJ Lewis. We record our equal gratitude to Ms Palmer for her assistance. Mr Betchley, now instructed on a direct/public access basis, i.e. without a solicitor instructed by the claimant, drafted what he described as the "Claimant's repleading following a preliminary hearing in the Employment Tribunal at Watford held on 25 and 26 August 2020". It was at pages 10-12. It was admirably concise, and pleaded the claimant's claim in regard to what happened on and after 13 February 2018 as follows:

> "11. Regrettably, in February 2018, the Claimant's home was burgled. The burglars ransacked her home, causing criminal damage, and, amongst other things, stole cash and precious jewellery.
>
> 12. The Claimant reported the crime and asserts that the manner in which her case was handled from beginning to end, as set out below in sub-paragraphs 12.1 to 12.5, amounts to detriment. The matters relied upon are:

12.1. On discovery of the burglary, at approximately 12.47am on 13 February 2018, the Claimant dialled 999 and her call was directed to her place of work at Met CC Lambeth. The Claimant asserts that the operator who received her call was rude, shouted at her and told her not to call 999. The call was terminated by the Claimant as a result. The operator called her back and took her report. During this second call, the Claimant also spoke with a supervisor with whom she had, in 2016, discussed the Respondent's treatment of her;

12.2. The Claimant requested police attendance at her home and believes that police attendance at a residential burglary is part of normal standard operating procedures when requested by the victim. The police did not attend despite the Claimant's request;

12.3. At approximately 08.00am on 13 February 2018, a forensics officer visited the crime scene and a small number of photographs were taken but nothing more was done. The forensics officer advised the Claimant that the case was to be closed. It is not clear to the Claimant on what basis, and on whose authority/orders, the decision to close her case was taken so quickly, or why this information would be communicated to her by a forensics officer;

12.4. On 14 February 2018, the Claimant received a voicemail from the Telephone Investigation Bureau offering to take a victim statement from the Claimant but also stating in the message that her case was to be closed. Again, it is not clear to the Claimant on what basis, and on whose authority/orders, the decision to close her case was taken. The Claimant believes that the Telephone Investigation Bureau normally attempt to make contact with a victim of crime on at least two separate occasions. This did not happen in the Claimant's case, and a victim statement was never taken from the Claimant;

12.5. For the above reasons, the Claimant asserts that the burglary at her home in February 2018 was either not meaningfully investigated at all by her employer, or, alternatively, inadequately investigated by her employer. The Claimant further asserts that the defects in the police investigation caused her insurer to reject her claim to cover her financial losses under her home insurance policy.

13. The Claimant asserts that the detriment she was subjected to in relation to the burglary was in whole, or in part, because those employees involved in its handling, whether directly or indirectly,

believed that the Claimant had made the protected disclosures and/or had done the protected acts as set out above, or alternatively that she may do protected acts in future. Approximately one week after the burglary had occurred, the Claimant brought proceedings against the Respondent and others under the Equality Act 2010."

45 It was PS Bradley's evidence that in February 2018 the respondent had in place a policy, which was implemented in the software via means of which the recordings were kept, of deleting recordings of 999 calls after 731 days (i.e. two years, allowing for the possibility that one of them was a leap year). His evidence on this aspect of the matter was in paragraphs 2-7 of his witness statement, which were as follows:

"2. On 9th September 2020 at 10:11 hours I received an email from Chief Inspector Graham Winch, asking me to find a recording on the NICE system for an employment tribunal. The recording he requested was for CAD 277/13Feb18.

3. The NICE system is used at MetCC to record calls from members of the public, transmissions at the ICCS terminals (used to control radio channels used by the MPS) and some internal telephony.

4. As of 13th February 2018, NICE 4.1 was in use at MetCC. This system had a policy setting whereby audio recordings were automatically deleted after two years (or 732 days). Whilst the audio recording is deleted, the system does retain a database entry detailing the call (which operator dealt, the date and start time of the call, the duration etc.).

5. I believe the requirement to automatically delete these recordings stems from a previous version of NICE (3.2) where a statement of requirement for 3.2 had said "The retention period should be set at two years (i.e. 365 + 366 = 731 days) and recordings that age past this point (i.e. on day 732) must be automatically deleted from the archive and the database. This process should be applicable to new recordings and any recordings held in the archive prior to the upgrade." [page 137 of the bundle].

6. The NICE system was upgraded on around the 25th of February 2020 to NICE 7.2, which has a longer retention period (six years and a day). At the time of the upgrade, two years-worth of previous audio recordings (plus those recordings where retention was requested – relating to ongoing major incident investigations) were uploaded to NICE 7.2, however everything before that would have been automatically deleted (unless specifically retained).

> 7. Accordingly, when I checked the NICE 7.2 system for the recording requested by Chief Inspector Winch, I was able to see that the operator recorded as having dealt with CAD 277/13Feb18 (Pc Dan Davison p230264) had dealt with a call that began at 00:57:50 and which lasted thirty minutes and seven seconds. However I was unable to obtain the recordings when requested for the reasons identified above."

46 We accepted that evidence of PS Bradley, whom we found (like all of the other witnesses, in fact) to be an honest witness, doing his best to tell us the truth. There was a copy of the NICE report to which Mr Bradley referred in paragraph 7 of his witness statement at page 128 of the hearing bundle. That was a scanned copy and it was a little fuzzy. We accordingly asked for, and were sent, a copy of the document in its original digital form, so that we were able to see it clearly. It showed that PC Davison had spoken to the claimant for 1 minute and 49 seconds starting at 00:55:43 on 13 February 2018, and that he had then spoken with her for 30 minutes and 7 seconds starting at 00:57:50.

47 Therefore, the first time that the claimant or any representative of hers communicated to the respondent (i.e. as the respondent to this claim) in any way that the claimant was complaining about the manner in which the person or persons to whom the claimant spoke during her 999 calls on 13 February 2018 spoke to her, was 21 February 2020. That was more (albeit only 8 days more) than two years after the calls were made. However, by then, the recordings of the calls had been deleted.

48 Certainly, there was no evidence before us that anyone on behalf of the respondent had accessed and listened to the recordings of the two 999 calls that the claimant had made on 13 February 2018. It was put to PS Bradley that he could have approached the provider of the recording software to find out whether or not the recordings could have been retrieved, and he accepted that he had not done so. However, he said that when the Metropolitan Police Force changed the version of the software, staff including him were told to keep particular recordings, such as those relating to the Grenfell Tower fire and terrorist attacks in 2017, so he believed that other records were no longer available.

49 PS Bradley did not say anything in his witness statement about whether or not he knew the claimant or that she had made complaints about the manner in which she had been treated by staff for whose acts the respondent is responsible, and it was not put to him that he had such knowledge.

50 It was the respondent's case, put to the claimant in cross-examination, that the respondent's 101 number was used for routine calls and not emergency calls. The claimant at first insisted that there was no distinction between 101 and 999 calls but then accepted that as far as the police are concerned, there is a distinction between them and that the 101 number is as far as the police are

concerned to be used for routine calls such as if the caller wants a CRIS report. The claimant, however, denied that the fact that she called 101 initially on 13 February 2018 meant that she herself recognised at the time that calling 999 was not appropriate because she could not reasonably request the presence of a police officer at her flat at that time.

Things said for the first time during the hearing before us

51 For the first time, in oral evidence, the claimant said that when she spoke to Mr Littell on 13 February 2018, she said that she was (or at least had been) in team 3 (of which he was the supervisor) and that she had depression and anxiety. However, she did not assert during her oral evidence that she had told him or that she had said to PC Davison that she suffered from PTSD. The latter was consistent with what she had said in the final sentence of paragraph 98 of her witness statement. The whole of the paragraph bears repetition. It was in these terms:

> "I wrote in the email to Julian Morriss, that operator who dealt with the 999 call, had handled the call very badly. I had requested to speak to a supervisor on 999 call asking for police assistance, it was denied. I was told by supervisor Steve Littell, whom I spoke with on the 999 call, that if I had called between 22:40 - 22:45 hrs when I came home the police would have attended. This was not in keeping with the Standard Operating Procedure (SOP) on Burglary. SOP clearly states that if the victim requests police assistance it should be provided. Neither the operator nor the supervisor chose to identify that I was a vulnerable victim due to PTSD."

52 There was in the bundle a copy of what the respondent called a Single Incident Print, concerning what had happened during the early hours of 13 February 2018. It was at pages 30-32. It included on page 31 this text (the original is in capitals, so we have put it into ordinary text), recording what had been said by one of the respondent's in-house occupational health counsellors whom the claimant had spoken to that morning after the claimant had called the respondent's out-of-hours counselling service:

> "I have been contacted by a police officer Shefali Desai who is long term sick. She has been the victim of a burglary tonight. She suffers from PTSD and has sucicial [sic] thoughts. I have put her in touch with the crisis team and she has spoken to them, she has been given advice on how to manage the situation until the morning when she can she [sic] her GP. She is used to managing the situation and I don't believe attendence [sic] would serve a purpose but I just wanted to let you know to cover myself."

53 Those words were a record of what had been said by the counsellor to operator 097290, who was based at Lambeth, on the telephone shortly before 3.40am on 13 February 2018.

54 Another thing that the claimant said for the first time during the hearing, i.e. it was not foreshadowed in the extensive prior pleadings or her witness statement, was that she had said to PC Davison during her conversation with him on 13 February 2018 during her 999 call that she had a lot of gold and jewellery and that it might have been stolen. That was said during supplemental oral evidence, i.e. before being cross-examined. EJ Hyams' note of what the claimant said in this regard was as follows:

> "The first thing I said was that I had a lot of gold and jewellery; operator did ask if I had anything that might be stolen; and I said I had a lot of gold and jewellery that might be stolen."

55 However, at page 86, there was a copy of an email sent at 20:04 on 14 February 2018 by the claimant's husband to three recipients who appear to be concerned with the management of the block of flats in which the claimant lives, in which the claimant's husband wrote this:

> "Dear All,
>
> Hope you are well.
> Me and my wife's flat was broken into on Sunday AND Monday the weekend just gone by.
>
> On the Sunday apparently they came in through the front door using some sort of wire contraption (as explained by a locksmith) looked around and left with minimal disruption and little signs of entering the property.
>
> Next day on Monday they came back and flung a lot of our belongings around and made off with a significant amount of money and a laptop.
>
> My wife has filed a report with the police and had the front door locks and the living room bay window locks changed. The other locks were examined and said to be in good working order."

56 There was no mention there of jewellery having been stolen, which one would have expected if it had been in the mind of the claimant at the time that jewellery had been stolen, especially given the importance to the claimant of that jewellery (to which she referred in several places in her witness statement, most notably paragraph 168). The claimant's response to that proposition (which was communicated to us by Mr Betchley, on instructions) was that she and her husband were not on good terms.

57 The claimant's explanation for this new evidence that the first thing she had said to PC Davison was that she had a lot of gold and jewellery that might be stolen, was that as she spoke to us, she was reliving the events of 13 February 2018, i.e. experiencing them as a PTSD flashback, and that what she was saying was therefore accurate. However, this part of her evidence was not put to PC Davison, although it has to be said that if it had been then he would in all probability have said in response that he had no recollection of the call.

A discussion

58 All of the persons to whom the claimant spoke or who were alleged by the claimant to have acted to any extent because of the complaints of the claimant made in 2016 (i.e. those which were claimed by the claimant to have been protected disclosures within the meaning of section 43A of the ERA 1996 and/or protected acts within the meaning of section 27 of the EqA 2010) gave evidence. PC Davison was the first person to whom the claimant spoke in the early hours of the morning of 13 February 2018. He might have met the claimant in July 2016 when he was being trained at Lambeth, where she was working until 24 July 2016, but there was a real possibility that she had started her period of sickness absence before he started his training there.

59 Mr Littell did not say that he did not remember the claimant, but he was adamant that he was not aware that she had made any complaints about the manner in which she had been treated at Hendon. However, the claimant had transferred to Lambeth because of her perception about the manner in which she was treated at Hendon, and if she and Mr Littell had had a conversation in 2016 after she transferred to Lambeth, then it was highly likely that he asked her why she had transferred to Lambeth given that Hendon was much closer to her home and much easier to get to from her home.

60 Nevertheless, 13 February 2018 was over 18 months after the conversation that the claimant said she had had with Mr Littell (which she said in paragraph 33 of her witness statement, set out in paragraph 8 above, had occurred on 2 July 2016). He had no recollection at all of such a conversation when he gave evidence to us, and he was first asked to recall the events of the early hours of 13 February 2028 only during November 2020.

61 As for the question whether it might be helpful to send an officer to the scene of a domestic burglary, the question was what purpose would served by doing so. The primary purpose of a police force is to investigate crimes and gather evidence to be used in prosecutions of those crimes. The claimant complained that the respondent had not investigated her burglary in accordance with the Metropolitan Police Force's standard operating procedures, but the issue for us was (and was only) whether or not the relevant persons had acted or failed to act with a tainted motivation.

62 The fact that the respondent has two numbers for members of the public to call, namely 101 and 999, can mean only that the purposes served by those two numbers are different. The latter number is evidently for emergency calls and the former is, as the claimant herself accepted as we record in paragraph 50 above, regarded by police forces as being the number to call for routine, i.e. non-urgent, or non-emergency, matters.

Our conclusions on the primary factual issues here

63 At the end of the hearing, the parties were in agreement about the conversations that the claimant had on the telephone with relevant persons or organisations during the early hours of 13 February 2018. The first call that the claimant made was to the respondent's 101 number, as she said in paragraph 93 of her witness statement, which we have set out in paragraph 21 above.

64 That call was not answered. The claimant then called 999 and spoke to PC Davison twice, as we record in paragraph 46 above. We accepted the claimant's evidence that she spoke to Mr Littell, as he was on duty as the supervisor of the team of which PC Davison was a part at the time and the length of the second call was consistent with there having been a complaint made by the claimant about the manner in which PC Davison had dealt with her call.

65 We concluded, not least because the claimant herself did not contend otherwise, that the claimant did not refer to her PTSD when speaking with either PC Davison or Mr Littell. We accepted Ms Palmer's submission that the claimant had conflated in her mind the content of her conversation with the occupational health counsellor to which we refer in paragraph 52 above and what the claimant had said to PC Davison and Mr Littell, and that the claimant may not in terms have referred to her anxiety and depression when speaking with PC Davison and Mr Littell. We then stood back and asked ourselves whether the claimant had in fact referred to her anxiety and depression when speaking to PC Davison and Mr Littell on 23 February 2018. In doing so, we took into account the fact that the claimant had not herself at first, in her long and detailed witness statement, said that she had referred to her mental health when speaking to PC Davison and Mr Littell, and had simply complained (in paragraphs 95 and 98, which we have set out in paragraphs 21 and 51 respectively above) that they had not identified her as being vulnerable because of her PTSD. That suggested strongly that what was in her mind at the time, both on 13 February 2018 and when writing her witness statement, as the cause of her potential vulnerability was her PTSD, and not her anxiety and depression.

66 In addition, we concluded that if the claimant had in fact referred to the possible or actual loss of her highly-valued jewellery when speaking to PC Davison, as she asserted for the first time when giving oral evidence in the manner which we record in paragraph 54 above, then it was at the very least surprising that

her husband did not refer to the loss of that jewellery in the email sent over a day and a half later as we record in paragraph 55 above: if he was in contact with her at that time, as he evidently was, then there was nothing to stop the claimant from referring to the jewellery as being missing and no discernible reason why he would not have referred to that jewellery in the email at page 86. In addition, the fact that no request for a picture of jewellery (as was provided for in the SOP from which we have set out the relevant extract in paragraph 29 above) was made by the SOCO or PC Davison, showed either that they failed to do something which clearly should have been done (there being objectively very good reason to obtain a photograph of stolen jewellery), or that the claimant did not refer in her conversations with them to missing jewellery. In addition, as the claimant herself had recorded in the ET1 claim form, as we record in paragraph 37 above, she had been invited by PC Fowler in the latter's single telephone message left at 8:07am on 13 February 2018 to send an email stating what property had been stolen, but the claimant did not send any such email.

67 Furthermore, as we record in paragraphs 34 and 35 above, the clamant's evidence given orally to us was that she had had difficulty getting into her flat, and then when she was there was unable to see what had happened in detail, because the lights were broken and she could use only her mobile telephone's torch function by which to see. Even if the claimant there overstated her inability to see what might have been taken (and we say that because she said in paragraph 92 of her witness statement, which we have set out in paragraph 34 above, that it was impossible to use the toilet since clothes had been thrown in it, suggesting that she had been able to go rather further than just inside the flat), she would at the very least during the next day and the day afterwards (14 February 2018, in the evening of which the email from her husband at page 86 from which we have set out the material part in paragraph 55 above was sent) have been able to see what had been taken. Paragraphs 105-112 of the claimant's witness statement showed that she had indeed been at the flat during the day at least on 13 February 2018.

68 In those circumstances, we concluded on the balance of probabilities that the claimant did not refer, when speaking to PC Davison on 13 July 2018, to the possibility that her jewellery had been stolen. Arriving at that conclusion led us to the conclusion that the claimant was capable of creating a memory, and that her recollection of what had occurred on 13 February 2018 was not wholly reliable, although we also concluded that the claimant had not, in creating the memory of referring straightaway when speaking to PC Davison to her jewellery, acted dishonestly to any extent. Rather, we concluded that the claimant was simply mistaken in that regard. Nevertheless, we concluded on the balance of probabilities in all of the circumstances to which we refer above that the claimant had not, when speaking to either PC Davison or Mr Littell, referred to the fact that she suffered from anxiety and depression.

69 However, even if the claimant did say something about her anxiety and depression to PC Davison and/or Mr Littell, we were satisfied on the balance of probabilities and having heard and seen him give evidence that Mr Davison did not know who the claimant was at the time of receiving her calls and speaking to her on 13 February 2018, and that he did not know that she had made complaints about the manner in which she had been treated before she started her period of sickness on 24 July 2016 which has still not ended.

70 Similarly, we were completely satisfied on the balance of probabilities that Mr Littell's actions and decisions on 13 February 2018 in relation to the claimant, including his support of the decision of PC Davison not to send a police officer to the claimant's flat as a matter of urgency, were in no way affected by the fact that the claimant had made complaints about the manner in which she had been treated by the respondent at any time before that day. We came to that conclusion having heard and seen Mr Littell give evidence and concluded (as we record in paragraph 23 above) that he was not consciously influenced by the fact that the claimant had made complaints about the manner in which she had been treated at Hendon, and having concluded for the following reasons on the balance of probabilities that he was not subconsciously or unconsciously so influenced.

70.1 The claimant first called 101. We concluded that that was because she herself did not regard the situation as requiring the presence of a police officer, as she could see that no forensic purpose would be served by doing so.

70.2 And that was in truth the case: the call was made at least two hours after the claimant had found that her flat had been burgled, and an immediate search of the area could not reasonably have been thought to be likely to lead to the apprehension of anyone to whom the burglary could be tied, i.e. a suspect.

70.3 Even the policy document at page 56 the relevant part of which we have set out in paragraph 28 above did not mean (i.e. its words did not mean only) that a police officer would automatically be despatched to attend premises which had been burgled if the occupier asked for that to happen: rather, it merely meant (i.e. it could reasonably be read only as meaning) that the case would not automatically be sent to the TDIU for investigation.

70.4 The claimant had not identified herself as being so vulnerable that there was a risk of a loss of evidence by not going to see her immediately: her own evidence, at the end of paragraph 95 of her witness statement, which we have set out in paragraph 21 above, was this:

> "I had shown far greater equilibrium than most people would have been able to do so, under circumstances like that."

70.5 While (as we record in paragraph 30 above) we were not told what an MG11 is, the requirement to complete one was (see paragraphs 29 and 32 above) part of the respondent's primary investigation protocol, which was applicable only if a police officer attended the burgled premises in response to an emergency call, and no such officer was despatched to do so here.

70.6 The purpose of reassuring a victim was catered for in that protocol by the final entry in the passage that we have set out in paragraph 29 above, which is this:

> "Flag the CRIS to SNT for a reassurance visit to victim".

70.7 Even if the claimant had identified herself, or been identified, as being vulnerable, that would (we concluded on the balance of probabilities) not have resulted in a police officer being sent immediately. That was because (1) the claimant was not elderly, (2) the age of a vulnerable witness is the focus of the passage from page 51 set out in paragraph 32 above, (3) the claimant herself said in her witness statement, as we repeated in paragraph 70.4 above, that she showed "far greater equilibrium than most people would have been able to do so, under circumstances like that", (4) a SOCO was plainly going to attend first thing that day (as was confirmed by the fact that one did so: see the end of the extract set out in paragraph 25 above), and (5) we could see nothing in the evidence before us which suggested that even if the claimant had been regarded by either PC Davison or Mr Littell as being vulnerable, she would have been thought by them to be likely to be able to say any more to assist the forensic investigation than she had already said to them.

71 Although it was not strictly necessary to do so (since we concluded that PC Davison neither knew the claimant nor that she had made complaints which, as we say in paragraph 75 below, we might, have we needed to do so, have concluded were protected disclosures, and would have concluded were protected acts within the meaning of section 27 of the EqA 2010), we concluded on the balance of probabilities that PC Davison's response to the claimant's 999 call was initially terse, but that that was because (1) the claimant herself said (see paragraph 93 of her witness statement, set out in paragraph 21 above) that the reason for the call was "suspicious circumstances", which is not an obvious reason for calling 999, (2) there was a two-hour delay in the claimant calling 999 after finding that her flat had been burgled, (3) the claimant had herself said that she did the same job as PC Davison, so his immediate reaction was to the effect that she should have known better than to call 999, and (4) she had herself, when he put it to her that she should have called 101, told him that she had at first called 101 (see paragraph 93 of her witness statement, set out in paragraph 21 above). The claimant having ended the call, PC Davison was obliged to call her back. We concluded, having heard and

seen him give evidence, that it was likely that, as it was the claimant's evidence, he apologised when he did so. However, apologising to the claimant in the circumstances was as consistent with PC Davison being sorry that she was upset as with him being sorry for what he had said in the first call. As a result, we drew no adverse inference from the fact that (as we found) he apologised to the claimant. In fact, his apology was an indication of him seeking to mollify the claimant and seeking to draw out from her whatever might need to be ascertained by him for the purpose of fulfilling his function. It was also an indication that if he had been rude initially, for the first one and a half minutes of the conversation, after which the claimant ended the call, then he was not rude during the second (long) part of the conversation.

72 As for Ms Fowler, as we say in paragraph 24 above, we found that she had no knowledge at all of the claimant or her circumstances when she made her (Ms Fowler's) decisions about the progression of the case. Ms Fowler therefore could not have had either of the claimed prohibited motivations (the fact that the claimant had made a disclosure, assuming that it was one which fell within section 43A of the ERA 1996, or done a protected act within the meaning of section 27 of the EqA 2010) in making those decisions.

73 Finally here, we record that we were unable to see anything from which we could draw the inference that the failure to retain a copy of the recording of the calls of 13 February 2018 was to any extent a result of the fact that the claimant had made complaints about the manner in which she had been treated by the respondent. That was because, as we found,

73.1 the respondent had (see paragraphs 45 and 46 above) before 25 February 2020, when the relevant new software was introduced and a new policy of keeping recordings for six rather than two years started to be applied, a practice of automatically deleting recordings that were 671 days old,

73.2 by 15 February 2020, the claimant had not stated as part of her claim to this tribunal that PC Davison had acted rudely towards her during her conversations with him of 13 February 2018, so there was no reason as far as this case was concerned to retrieve that recording, and

73.3 there was no evidence that anyone on behalf of the respondent had retrieved that recording and listened to it, so that it could not be said that there might have been a recognition by anyone for whose actions the respondent was responsible that something untoward had occurred during the telephone conversations between the claimant and (1) PC Davison and (2) Mr Littell on 13 February 2018, and that deleting the recording of those conversations might therefore assist the respondent.

74 Mr Betchley pointed out that PS Bradley might have made further inquiries of the provider of the recording software and hardware to see if it was possible to

retrieve the now-deleted recording, but there was nothing in the evidence before us to show that PS Bradley either knew the claimant, or knew that she had made complaints about the manner in which she had been treated by persons for whose acts and omissions the respondent was responsible. Thus, there was nothing in the circumstances from which we could conclude that his failure to seek a copy of the now-deleted recordings was to any extent the result of any prohibited motivation.

75 As a result of our above conclusions on the facts, we found that none of the persons who were responsible for doing the things about which the claimant complained in the claims that we determined were motivated at all by the fact that the claimant had made complaints which amounted, or might have amounted, to protected disclosures or protected acts. We therefore did not need to consider whether or not what the claimant had said in the communications to which we refer in paragraph 4 above amounted to either a protected disclosure within the meaning of section 43A of the ERA 1996 or a protected act within the meaning of section 27 of the EqA 2010. However, for the avoidance of doubt we record here that

75.1 while it was vigorously argued by Ms Palmer on behalf of the respondent that the claimant's claimed protected disclosures were not such for a number of reasons, we came to no conclusions in that regard, but

75.2 it was not seriously contended by Ms Palmer that the claimant had not done one or more such protected acts, and we were of the initial view that it might well be difficult to avoid the conclusion that the claimant had done one or more such acts.

76 We record here too that given our conclusions on the primary factual issues stated above, we did not need to decide precisely what, of the claimant's repleaded case, required determination and in what way it exceeded the boundary of the claim as it stood at the start of the hearing (and therefore could not be pressed unless we permitted the claim to be amended).

In conclusion

77 For all of the above reasons, the claimant's claims as they stood at the start of the hearing on 30 November 2020 fail and are dismissed.

_____

Employment Judge Hyams

Date: 8 December 2020

Case Number: 2300650/2018

JUDGMENT SENT TO THE PARTIES ON

10/12/2020

Jon Marlowe

FOR THE TRIBUNAL OFFICE