



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Warburton

v

**Chief Constable of Hertfordshire
Constabulary**

Heard at: Watford
February 2021

On: 1, 2, 3, 4 & 5

Before: Employment Judge Bartlett, Mrs Bhatt and Mrs Brosnan

Appearances

For the Claimant: Mr Flood

For the Respondent: Mr Waite

JUDGMENT

1. The claimant's claims under section 13 of the Equality Act 2010 fail in their entirety.
2. The claimant's claims under section 15 of the Equality Act 2010 fail in their entirety.
3. The claimant's claims under section 26 of the Equality Act 2010 fail in their entirety.

REASONS

The hearing

4. This case was heard entirely via CVP with all parties dialling in from remote locations. During the course of the hearing there were some problems with connection of some participants. In particular when Ms Keir came to give evidence her audio kept cutting out. We tried various ways to resolve the situation without success. It was agreed that we would suspend Ms Keir's evidence so that she could attempt to resolve the issues. Her evidence was heard later the same day after she had changed locations and attended her office. Her evidence then proceeded without issue. There were a number of other issues in particular Mr Flood's audio, on several occasion throughout

the hearing, cut out. Mr Flood was asked to repeat his questioning and on one occasion when the difficulty persisted Mr Flood disconnected and reconnected and the issue was solved. At one point Mrs Bhatt lost connection and reconnected. The hearing was paused and the evidence was recapped and continued.

5. At one point in the hearing the claimant raised a concern that some of the respondent's witnesses (who were not giving evidence at the time) had their camera switched off. He was concerned that the Tribunal would not know who was observing the hearing. I stated that the hearing was an open hearing and that anyone was allowed to join as an observer. Further in these times of lockdown, working from home and home schooling I recognised that there may be other individuals sometimes present and I was comfortable with cameras being turned off at times. Finally turning the camera off can also save bandwidth and help with internet connection. I did not consider any action needed to be taken.
6. The tribunal took the morning of the first day to deal with housekeeping matters and to read into the bundle and witness statements.
7. The claimant's evidence commenced on the afternoon of the first day and continued during the morning of the second day. The respondent's witnesses gave evidence during late morning of the second day until the end of the third day.
8. The tribunal heard submissions during late morning and early afternoon of the fourth day. The tribunal reserved its judgement as it did not consider there was sufficient time to deliberate, make and give judgement in the five day timescale. ½ day was put in the diary for remedy.

Evidence

9. The tribunal heard oral evidence from the claimant (Mr Warburton) and for the respondent Ms Rachel Wilkinson, Ms Sarah Brent-Porter, Ms Kier, Ms Saunders, Ms Angela Bohm, Mr Kevin Sharp, Mr Ian Hunt and Deputy Chief Constable Dunn. The respondent provided a witness statement for Ms Kirstie Graney who did not attend the hearing. Some medical letters were provided which set out that she was suffering from severe pain. As she did not attend the hearing in person we have given her evidence limited weight.

Background

10. The events in this claim arose from the claimant's, ultimately unsuccessful, application on 26 December 2016 to become a police constable in the respondent's force.
11. This case was subject to a number of case management and preliminary hearings:

- 11.1. on 12 September 2018 a preliminary hearing decided that the claimant was a disabled person at all material times within the meaning of the Equality Act 2010. One claim was struck out and a deposit order was made in respect of revocation of the claimant's police vetting clearance;
- 11.2. on 15 January 2020 a preliminary hearing gave judgement that a number of claims were dismissed on withdrawal;
- 11.3. on 19 June 2020 a preliminary hearing decided on matters relating to the joint expert.

The issues

12. On the Friday before this hearing commenced the parties sent to the tribunal an agreed list of issues. It was confirmed with the parties at the start of the hearing that this was a list of issues which would be used in this case and that this meant the tribunal would make a decision on these issues and these issues alone. During submissions it became clear that there was an error in relation to one of the dates relating to the time jurisdiction point but this was amended by agreement.

To what extent (if at all) did the Claimant's disability cause him to be rude and/or confrontational in his communications with the Respondent (whether in writing or in person)?

13. In light of Dr Grewal's report which identifies that the adverse effects on the claimant's day to day activities includes:

- (i) *"Instability associated with depressive disorder impairs his ability to communicate safely and effectively with people around him. Examples include frequent arguments and angry exchanges."*

14. We are prepared to accept that, to the extent that some of his communications with the respondent were remarkable, this was caused or contributed to some extent by his disability.

The respondent's knowledge of the claimant's disability

15. This issue is relevant both to direct discrimination under section 13 of the Equality Act 2010 and discrimination arising from disability under section 15 of the Equality Act 2010. The test is similar for both sections and no distinction was drawn by either counsel. In respect of section 13 **Gallop v Newport City Council [2013] EWCA Civ 1358** provides guidance as to what must be considered:

"Did the respondent, at any material time, have actual or constructive knowledge of the facts that made the claimant a disabled person, namely:-

*a mental impairment;
which had a substantial and long-term adverse effect on;
the claimant's ability to carry out normal day-to-day activities"*

16. In relation to section 13 **A Ltd v Z [2019] IRLR 952, [2020] ICR 199 EAT** sets out the relevant tests as:

"it is, however, for the employer to show that it was unreasonable for it to be expected to know that a person (a) suffered an impairment to his physical or mental health, or (b) that that impairment had a substantial and (c) long-term effect"

17. **A Ltd v Z** goes on to state that *"an employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances."*
18. It was not contended that the respondent had actual knowledge of the claimant's disability. The claimant's evidence was that at the material times the claimant was not aware himself he had a disability. It was only in August 2017 on attending his GP when he was prescribed medication that he came to understand that he had anxiety and depression.
19. The claimant's case was that the respondent had constructive knowledge of the claimant's disability by reason of the following:

19.1. Ms Saunders had set out in a number of internal emails that the claimant's behaviour was challenging, that he behaved this way towards everybody involved in the recruitment process, it was present throughout her communications with him and she queried whether he had a mental health issue. These emails were forwarded to senior individuals at Hertfordshire Constabulary including DCC Dunn. The respondent's witnesses all accepted that Ms Saunders made the comments about the claimant's mental health out of concern rather being derogatory. However no action was taken.

Findings of Fact

20. We make the following findings of fact in relation to this issue:

20.1. the claimant was a job applicant at the respondent but never an employee. He had limited face to face contact with all individuals at the respondent and in particular those who appeared as witnesses and were therefore most relevant to the factual events forming part of this claim. As the events which form part of this claim arose from the claimant's job application it was an inherently limited situation devoid of most of the general elements present in an employee relationship. Of course we recognise that the Equality Act 2010 applies to job applicants but that is a different issue to the fact we are recording here which is that there was an inherent limitation in the respondent's interaction with the claimant. In

addition we recognise that a job application process can be a stressful situation for candidates;

20.2. taking into account the time period involved and the context (the job application process) the claimant sent a significant number of emails to individuals at the respondent. We recognise that in addition to emails there was limited other contact which included a small number of telephone calls, face-to-face contact with OH and in relation to the fitness test;

20.3. the application form which the claimant completed specifically asks whether the claimant suffered from any mental health issues and he stated that he did not;

20.4. On 16 May 2017 the claimant had a comprehensive appointment with Dr Juncker of the respondent's OH and the claimant states in his in his witness statement

17. On 16th May 2017, at my first medical examination with the Respondent's force medical examiner, at which I failed for having a Body Mass Index (BMI) of 31 against a requirement to be under 30, Dr Junker and I had a long conversation in which I candidly disclosed the anxiety and depression that I was enduring as a result of what was by then ten months of unemployment. I explicitly told Dr Junker that I was having sleeplessness, irritability, and feelings that I was reduced to no more than a spare part by having no purpose. I lamented that I felt that I was on the scrap heap at 43. I made clear that there were underlying issues that had caused me to be depressed for most of my adult life, but which I suppressed as best I could and that my mental health was especially delicate when I am unemployed, but, once employed again and with a purpose I hoped to minimise those feelings and focus on being the best I could in my new role, as I had done last time I was a Constable and as I had in my academic career. I had this conversation as part of her enquiries into my mental well-being, and then when she stated that she could not sign me fit for joining until my BMI was under 30 I explained to her the consequences for the delay until a re-weigh would be that I would miss the next intake and that this was causing me feelings of panic. Dr Junker reassured me that because

20.5. The claimant has not pleaded that he told Dr Juncker sufficient information such that the respondent had actual or constructive knowledge of the claimant's disability. Further, the claimant expressly stated in cross-examination that he did not recognise that he suffered from the disability arising from anxiety and depression until August 2017. Therefore the tribunal finds this is a contradiction of paragraph 17 of his witness statement in which he stated that he disclose the anxiety and depression he was then suffering. Given that the claimant refused to give permission for his occupational health (OH) records to be disclosed in these proceedings we find that the claimant cannot establish that he made such disclosures to OH or that OH had constructive notice. Further,

the claimant has pleaded that it was his interactions with HR and other individuals at the respondent are sufficient to give them constructive notice.

20.6. The interactions between the claimant and respondent which form this claim are limited in time:

20.6.1. the claimant submitted his application to the respondent on 26 Dec 2016;

20.6.2. on 5 January 2017 he first contacts the respondent about his application;

20.6.3. 10 January 2017 is the first response from Ms Saunders at the respondent to the claimant;

20.6.4. the last communication from the respondent to the claimant was on 19 July 2017. The last communication from the claimant excluding the FOI/SAR and legal matters was on 15 July 2017. This means that the total period of communication excluding relating to legal matters was less than 8 months.

20.7. in Jan 2017 the claimant emailed the respondent 4 times and the tone and content of these communications was entirely reasonable. The tone or language used by the claimant in communications with individuals at the respondent starts to change on or around 14 March 2017. At this point he starts to become antagonistic until then his communications were unremarkable;

20.8. at the most there is a period of 4 months of communications from the claimant to the respondent which cannot be described as unremarkable;

20.9. on 17 May 2017 the claimant writes the following email which we consider adopts a tone of complaint which is ill advised from a job applicant:

From: Damian Warburton [<mailto:damian.warburton@ymail.com>]
Sent: 17 May 2017 10:49
To: R BCH Careers
Subject: Re: intake push back to 24th July [OFFICIAL]

Dear Karen

I had that discussion with the doctor and the staff of the office that the doctor liaised with, neither of which indicated a return on 15 June would hinder my 3 July start.

The issue is that she says I am 5kg too heavy to make the BMI of 30. Otherwise everything is fine.

First, I find reference to the BMI offensive as it is an extremely crude height/weight measure that makes no allowance for body type. I am not obese, which the score of 31 suggests I am.

Secondly, I can easily lose 5kg by 3 June if that is necessary. I hadn't known that you employ the BMI, and having easily passed the fitness year I didn't know there was anything else of relevance taken into account.

Third, I am unemployed and do not need to give notice to an employer. You and I had this discussion about the 30 days that you say you need to give me when I complained about you not putting me onto the 27 March despite your earlier assurances that you would. I do not need 30 days' notice.

Therefore, I propose that either I be allowed to return for weighing on or shortly before 3 June, or that the 30 days' notice procedure be ignored if I return on 15 June.

I have done everything I have been asked to do when I have been asked to do it. I don't think a little flexibility here from HR would be unreasonable.

- 20.10. from 14 March 2017 there are a significant number of communications from the claimant to individuals at the respondent given the context of a job application process. The volume of emails from the claimant in this context is unusual as compared with other job applicants or a hypothetical comparator;
- 20.11. the claimant's emails (prior to 23 June 2017) are complaining, they are not rude but they are unpleasant in tone. They are ill advised;
- 20.12. there was at least one phone call with Ms Graney (who did not appear as a witness but it was not disputed);
- 20.13. on 23 June 2017 the claimant was informed that he had failed the vetting process. The claimant responded on that date and the communications from the claimant to individuals at the respondent between 23 June 2017 and mid Jul 2017 in relation to vetting are of a different character: they accuse various police officers of dishonesty. They were aggressive and insulting;
- 20.14. the respondent has steps in the recruitment process which apply to all applicants including the claimant to bring any disabilities to light. This included the application form which explicitly asked about mental ill-health and the meeting with occupational health. For the purposes of this judgement we will take the claimant's case at its highest that it was not until August 2017 that he was aware that he had a disability;
21. The tribunal does not accept that the communications from the claimant themselves were of such a nature or so extreme that they either by their

volume or content gave the respondent constructive notice of the claimant's disability. There are many reasons why individuals may send ill-considered emails there is nothing so inherently irrational, illogical, bizarre or extreme that could give the respondent in this context constructive notice of disability. Even the emails from the claimant in the last four weeks of the application process with the respondent were not of such a nature that they could give the respondent constructive notice of disability in all the circumstances.

22. The claimant relies on Ms Saunders explicit references to possible mental ill health as evidence that there was sufficient evidence for the respondent to have constructive knowledge of his disability. We do not accept this for the following reasons:

22.1. Ms Saunders was a junior member of the HR team;

22.2. she had no specialist mental health or medical training;

22.3. the context of Ms Saunders' emails were that she found the claimant very difficult to deal with, she did not want to deal with him and she was generally annoyed and fed up with him;

22.4. her evidence was that one email she sent to OH mentioning mental health issues and the claimant was flagging it to OH;

22.5. the respondent had a reasonable process in place at the material time to identify mental ill health namely the application form and the OH interview and process. This process may not pick up every mental ill health condition but it is reasonable for the respondent to rely on this to inform them of matters which could give them constructive notice of a disability;

22.6. viewed objectively the communications, in their context, are not sufficient to give the respondent constructive notice.

23. We do not accept that because Ms Saunders' emails ended up being reviewed by some senior members of the respondent namely the HR Director and DCC Dunn, that these individuals should have taken further steps to investigate the claimant's mental health or have been on notice of his mental ill health. We consider they were entitled to rely on the OH process and self-declaration in the circumstances (identified above). Further, these individuals were senior but they are not medical professionals and were entitled to rely on the OH and medical process.

24. Further, we recognise the medical evidence sets out effects of the claimant's disability on him and we find that these effects are not obviously the result of a disability there are numerous other explanations for this behaviour which are more commonplace such as poor self control, bad manners or an entitled

attitude. This demonstrates that it was reasonable for the respondent not to be aware that the claimant was disabled. The claimant's behaviour was initially pushy and complaining, in the last three or four weeks it was insulting and rude. Many individuals without the claimant's disability behave in this way in some if not many situations. The regrettable commonplace nature of such behaviour is a further factor which acts against the respondent having constructive knowledge in all the circumstances of this case.

25. Taking the factors we must consider in relation to constructive knowledge in turn we find that:

25.1. the respondent could not reasonably have been aware that the claimant had a mental impairment. The communications from the claimant do not provide minimal evidence that he suffered from a mental impairment;

25.2. the reasonably short duration of the claimant's interactions with the respondent (and in particular that the worst communications sent by the claimant which were rude and insulting only took place during a period of less than four weeks and when the claimant's dreams of joining the police had been dashed) established that the respondent could not be aware of facts that the claimant's disability would have a substantial and long-term adverse effect. To the contrary we find that the stresses and particular nature of application process appeared to the respondent to be a very significant factor in the claimant's behaviour. This process was inherently limited in time. In addition we find that the respondent has established that the facts of which it was aware do not establish that the claimant's disability had a substantial effect because his disability was a contributing factor to his behaviour but we find that his behaviour was also influenced in part by his character;

25.3. we are prepared to accept that a job application process is a normal day-to-day activity. However we do not accept in the circumstances that the claimant's communications could establish to the respondent that his ability to carry out normal day-to-day duties was adversely affected. This is because the claimant's behaviour was reactive. His communications arose in the context of the situation in which he was not getting what he wanted. We are unpersuaded that had he obtained what he wanted his behaviour would have continued. His behaviour deteriorated significantly after the revocation of his vetting clearance which meant that there was no possibility of him joining the respondent as a PC.

26. Our findings on this matter dispose of the claimant's claims under section 13 and section 15 EqA.

Jurisdiction - Time limits

27. The time limit jurisdictional issues relate to the claimant's harassment claims only. Where there is a time issue in relation to any of the harassment claims it

arises because the claimant received the emails as a result of a data subject access request some months after the emails were sent and received i.e. the claimant was not the sender or recipient. Therefore a number of claims are prima facie out of time and this is not disputed. Further, it is undisputed that in all the claims in which the time limit is an issue the claimant submitted his claim form within three months of receiving the emails. In these circumstances the tribunal has little hesitation in finding it is just and equitable to extend time: it was not possible for the claimant to submit a claim within three months of the sending or receiving of those emails because he had no awareness whatsoever of them. However after receiving those emails he submitted a claim within three months.

Harassment

28. S26 of the Equality Act sets out the following:

“26 Harassment

(1) A person (A) harasses another (B) if—

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

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

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

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

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

(5) The relevant protected characteristics are—

age;

disability...

sex...”

29. S108 EqA sets out the following:

“108 Relationships that have ended

(1) A person (A) must not discriminate against another (B) if—

(a) the discrimination arises out of and is closely connected to a relationship which used to exist between them, and

(b) conduct of a description constituting the discrimination would, if it occurred during the relationship, contravene this Act.

(2) A person (A) must not harass another (B) if—

(a) the harassment arises out of and is closely connected to a relationship which used to exist between them, and

(b) conduct of a description constituting the harassment would, if it occurred during the relationship, contravene this Act”

30. S40 EqA makes clear that the harassment provisions apply to job applicants.

General considerations relevant to all the harassment claims:

S26(4) EqA Considerations

31. In relation to the Claimant’s perception the background to all the emails is that the claimant has accepted his communications were argumentative, confrontational, rude and shot himself in the foot (as set out above we do not analyse all of his communications as rude).

32. In relation to the other circumstances these include:

32.1. the claimant’s admitted challenging and difficult behaviour in communications with Ms Saunders and others at the respondent;

32.2. the claimant first became aware of these emails and their content after his relationship with the respondent had ended except in relation to legal matters. As a result of section 108 and section 40 EqA we accept that former job applicants are in principle entitled to protection from harassment. However we consider that the context of the claimant becoming aware of these emails after he was a former job applicant is a relevant circumstance because it places some degrees of separation between the claimant and the alleged harassing conduct.

33. One factor which indicates that it was not reasonable for the conduct to have the harassing effect is that the emails were received by the claimant after the end of his job applicant relationship with the respondent had ended and there was no ongoing relationship. We find that this has an impact on the effect of the conduct because of the degrees of separation between the claimant and

the alleged harassing conduct in terms of both time and the closeness of the relationships between the claimant and Ms Saunders.

The meaning of “violating” and “intimidating etc”

34. We have considered the guidance set out in **Richmond Pharmacology v Dhaliwal [2009] IRLR 336** *“(violating is a strong word which should not be used lightly). The case law emphasises the critical importance of context.”* and **Betsi Cadwaladr University Health Board v Hughes and others UKEAT/0179/13:**

“12. We wholeheartedly agree. The word “violating” is a strong word. Offending against dignity, hurting it, is insufficient. “Violating” may be a word the strength of which is sometimes overlooked. The same might be said of the words “intimidating” etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence.”

Environment

35. We do not accept that there was an environment for the purposes of s26(1)(b)(ii) or (2)(b) EqAct 2010. The Tribunal asked Mr Flood about this issue and he made submissions about employees in different offices of a multinational which we found were not helpful in this case where the claimant was not an employee, worker or a former employee or worker. He also made submissions that the claimant was in a bubble such that he effectively worked with the respondent’s HR team at the material time. We find that the claimant was a job applicant but by the time he received the emails even that relationship with the respondent had ended. He was an individual who received copies of emails sent internally in the respondent and which concerned him. At the time of receipt he was not working, operating or participating in any environment with the respondent except for some correspondence relating to legal issues. We find that there was no environment for the purposes of s 26 of the Equality Act and therefore his claims in this respect must fail. In case we were wrong in this respect and for completeness we have considered all the other parts of the claim and made findings below.

The harassment claims relating to disability as a protected characteristic.

36. The first action complained about is Ms Saunders’ email of 16 May 2017:

From: R BCH Careers
Sent: 16 May 2017 15:32
To: R OHSW Diary
Subject: RE: Damian Warburton - Herts regs [OFFICIAL]

Hi

It seems he is rude to anyone he comes into contact with. He was injured during his time in the Army and the Police force he was with discharged him through this injury.

He had a fitness test recently was extremely rude to the receptionist and did not want to give 'normal' information to the instructor - he displayed undertones of anger and the fitness instructor did not think he would be suitable to progress.

He has been rude to me on several occasions wanting me to break the rules to get him into the force early etc. He's just not a pleasant person. I think he displays some mental health issues but I'm not a doctor so I couldn't comment any further

Thank you

37. We find that the wording in this email cannot reach the threshold of violating the claimant's dignity or amount to creating an intimidating, hostile, degrading, humiliating or offensive environment. It is quite simply not sufficiently strong.
38. The second action complained about is Ms Saunders' 17th May 2017 email:
Just to let you know that he has flipped out and he may/may not contact you for a date sooner than 13th June. Just out of interest, how long would we give someone to lose weight? He's saying he can lose this within a week or two but I'm sure we have to give them time to do this?
39. The comment the claimant takes issue with is "flipped out". We do not accept that this comment has any association with disability instead it is note of the claimant's anger. There is no reference to mental ill health in this email and instead there is a reference to the claimant not making the July intake and in that context he flipped out. We find that this comment was not related to a protected characteristic. Further, we find that this cannot reach the threshold of violating the claimant's dignity or amounting to creating an intimidating, hostile, degrading, humiliating or offensive environment. It is quite simply not sufficiently strong.
40. The third action complained about is Ms Saunders' 22 June 2017 email:
From: "R BCH Careers" <BCHCareers@Herts.pnn.police.uk>
Sent: 22 June 2017 13:51
To: KIER-CREESE, Tara 1312 <tara.kier-creese@herts.pnn.police.uk>
Subject: RE: Re: 24th July intake - Herts regs [OFFICIAL]
Hi Tara
We all have concerns around Damian – he is the most challenging of people I have ever had the misfortune of dealing with – he is so rude – PST were not happy with his attitude when he had a fitness test. I think he has mental health issues, we just need to get rid of him but he sits on some PCC panel
The 12 does not include Damian – he won't be on this intake
Thanks
Karen
41. We find that this wording which sets out mental health issues and "we just need to get rid of him" in the same sentence is stronger wording than set out in the first two actions. However, when the circumstances of the case are

considered we do not find that it is reasonable for the claimant to perceive that this conduct would violate his dignity or create an intimidating et cetera environment. At several points the claimant recognised problems with his behaviour and apologised, such as on 14 June 2017 to Rachel Wilkinson "*it was not my intention to be abrupt with any of your staff and if that is how I appeared then I apologise*". This email of 22 June 2017 itself refers to the difficulties Ms Saunders had encountered with the claimant (and these have not been disputed by the claimant). We consider that this email makes it clear that the difficulties Ms Saunders has with the claimant and her expressed desire to get rid of him arise from his conduct which he was well aware of by the time he first received this email in August 2017 and in all the circumstances it is not reasonable for the claimant to perceive that this conduct would violate his dignity or create an intimidating et cetera environment.

42. Even taking these 3 emails cumulatively we find that they cannot satisfy the requirements of section 26 EqA.

The harassment claims relating to the protected characteristic of sex

43. We are prepared to accept the emails complained about relate to the protected characteristic of sex.

44. The first email states "Have a look at this gorgeous hunk" and attached a copy of his passport photopage and the second states "Look at this hunk" and attached a different photo. Due to the similarity in the emails/actions we have considered them together.

45. The other circumstances of the case are:

45.1. we repeat what we have said above about the claimant receiving the emails after his limited relationship with the respondent ended

45.2. by the time of the second email namely 23 May 2017, the claimant and Ms Saunders had a strained relationship

46. The claimant's evidence is that he was shocked, disgusted and dismayed after he receive these emails. In his evidence the claimant identified particular upset at the use of "Damian 666" because it brought up unhappy childhood memories. This clearly has no relevance to the protected characteristic of sex.

47. We find that it was not reasonable for the emails to have the effect of violating the claimant's dignity or creating an intimidating et cetera environment because:

47.1. the photos themselves are unremarkable in their nature, the claimant is normal looking and formally dressed;

- 47.2. the only conduct of a sexual nature are the words “hunk” and “gorgeous hunk” there is nothing more;
- 47.3. there are only these two communications which make any reference to the claimant’s sex or which could be construed as of a sexual nature;
- 47.4. in evidence the claimant accepted that when he worked in a civilian role at the Avon and Somerset Police force he had a large moustache. He joked with his colleagues that this made him look like a porn star. We do not accept that an individual who made such comments about himself in a work environment would have had the reactions the claimant claims to have had to these emails. We recognise that the events at Avon and Somerset police force happened some years ago however we do not consider that this lapse of time materially changes our conclusions in this regard.
48. Further we find that the comments do not reach the threshold of violating the claimant’s dignity. They may have offended him but not violated his dignity.
49. For all of these reasons the claimant’s claims to have suffered harassment fails.

Employment Judge Bartlett

Date: 10 February 2021

Sent to the parties on: 23 February 2021

For the Tribunal Office