



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4101287/2020 Hearing by Cloud Video Platform (CVP) on 25, 26, 27
and 28 May 2021

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Employment Judge: M A Macleod
Tribunal Member: S Gray
Tribunal Member: A McFarlane

Steuart Wilson

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Claimant
Represented by
Mr D Hay
Advocate
Instructed by
Mr R Milvenan
Solicitor

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The Chief Constable of the Police Service of Scotland

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Respondent
Represented by
Dr A Gibson
Solicitor

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous Judgment of the Employment Tribunal is that the claimant's claim
of victimisation under section 27 of the Equality Act 2010 fails and is dismissed.

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REASONS

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1. The claimant presented a claim to the Employment Tribunal on 4 March
2020 in which he complained that he was discriminated against on the
grounds of disability, and unlawfully deprived of wages to which he was
contractually entitled.

2. The respondent submitted a response in which they resisted all claims made by the claimant.
3. A hearing on the merits was listed to take place on 25 to 28 May 2021, by CVP in light of the ongoing restrictions in place owing to the coronavirus pandemic.
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4. The claimant appeared and was represented by Mr Hay, Advocate, instructed by Mr Milvenan, Solicitor. The respondent was represented by Dr Gibson, Solicitor.
5. Parties presented a joint bundle of documents to which reference was made in the course of the hearing. There was some confusion at the outset of the hearing as to whether the Tribunal had been provided with the complete, up to date bundle of documents. On investigation it became apparent that a full copy of the bundle had been provided electronically to the Tribunal, but that the hard copies which had been sent and forwarded to the Employment Judge and Members did not comprise the most up to date version. While this was an unsatisfactory state of affairs, the Tribunal was able to manage the bundle, and the electronic version of it, during the course of the hearing so that no adverse consequences arose.
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6. Parties also helpfully provided to the Tribunal an Agreed Statement of Facts.
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7. The claimant gave evidence on his own account, and called as witnesses:
 - Iain William Graham Reid, Police Constable;
 - Gordon Waters, Police Constable; and
 - Andrew Ian Malcolm, Chair of East Area, Scottish Police Federation.
8. The respondent called as witnesses:
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 - Steven Miller, Chief Inspector and Firearms Lead Officer for Scotland;

- Steven Irvine, Superintendent;
- David Hume Pettigrew, Superintendent; and
- Mark Williams, Assistant Chief Constable of Police Scotland.

5 9. It should be noted that the claims presented in the ET1 were refined during the course of the hearing. In his original claim, the claimant complained that he had been discriminated against on the grounds of disability under section 13 (direct discrimination), section 15 (discrimination arising from disability), section 26 (harassment) and section 27 (victimisation) of the Equality Act 2010.

10 10. At 1754 on 27 May 2021, following the conclusion of the evidence in this case, the claimant wrote to the Tribunal to withdraw his claims under sections 13, 15 and 26 of the 2010 Act. He confirmed that the claim of victimisation under section 27 of the 2010 remained.

15 11. Accordingly, although the Tribunal heard considerable evidence ranging across the original claims, the terms of the Judgment which follows are restricted to the outstanding claim under section 27, in order to focus upon that as the only issue remaining between the parties.

20 12. As a result of that withdrawal, the respondent's outstanding application for strike out of those claim was rendered otiose, and did not require to be heard by the Tribunal.

13. Based on the evidence led and the information provided, the Tribunal was able to find the following facts admitted or proved.

Findings in Fact

25 14. The claimant, whose date of birth is 9 January 1985, commenced service with the respondent as a Police Officer on 1 May 2007.

15. The respondent is the Chief Constable of the Police Service of Scotland appointed under and in terms of section 7 of the Police and Fire Reform

(Scotland) Act 2012. The claimant carried out his service under the direction and control of the respondent.

- 5 16. The claimant is qualified as an Authorised Firearms Officer (AFO), and engaged in a specialist role in The National Specialist Firearms Unit. His base was Police Headquarters, Fettes, Edinburgh, as part of the Armed Response Unit. The National Firearms Unit is responsible for the tactical deployment of armed police officers to police incidents across Scotland.
- 10 17. At all material times in relation to this case, the claimant has suffered from Inflammatory Bowel Disease and Ulcerative Colitis, which amounted, and continued to amount, to conditions qualifying the claimant as a disabled person within the meaning of section 6 of the 2010 Act.
- 15 18. At the relevant time, the claimant's first line manager was Sergeant Lee Dickson, and second line manager was Inspector Kerry Stevenson. His third line manager was Chief Inspector Steven Miler. Superintendent Steven Irvine was the Head of the National Firearms Unit.
- 20 19. On 30 January 2019 the claimant did not report for work. Shortly after that date, he declared that the reason for his absence was "work-related stress". In line with the respondent's procedure, a report was submitted by Sergeant Dickson to Chief Inspector Miller, and then by Chief Inspector Miller to Superintendent Irvine dated 19 February 2019 (77ff), headed "Temporary Withdrawal of AFO Authorisation – PC Stuart Wilson FO144 PSI 1481233".
- 25 20. He noted that the claimant had reported absent from work on 30 January 2019 citing vomiting, and thereafter attended his GP, providing a medical certificate of absence which cited work related stress as the reason. Temporary Police Sergeant Craig McDonald met with the claimant to ascertain the reason for this, but the claimant was unwilling to disclose the exact reason, other than stating that it related to discrimination. Sergeant Dickson went on to note that he had an informal meeting with the claimant
- 30 on 15 February 2019, and that *"Due to the circumstances PC Wilson and I mutually agreed that he will be temporarily withdrawn from all operational*

AFO duties until significant improvement has been established in his health, circumstances which he fully accepts and agrees with this decision.”

21. Having received the report and comments from both Sergeant Dickson and Chief Inspector Miller, Superintendent Irvine concluded:

5 *“I have read the report from PS Dickson and the comments from PI Law and
CI Miller. This case is of concern to me in that PC Wilson claims to be
suffering from work related stress but will not disclose the reasons for this
other than some form of discrimination which has not been expanded upon.
This leaves his supervisors and management team unable to resolve or
10 address his issues as the root cause cannot be established. The grievance
process is designed exactly for this type of matter, however he has not used
this process which may have avoided this period of absence. I am also now
aware that PC Wilson has approached ACAS as a means of arbitration over
the alleged discrimination, however the claim is not clear at all and PC
15 Wilson is seeking compensation for hurt feelings over the matter, the
substance of which is completely unknown.*

*In the absence of additional details, PC Wilson will be managed in
accordance with the Police Scotland Attendance Management SOP and will
be encouraged to disclose the underlying reasons for his stress related
20 absence. In the interim period, I fully support this temporary withdrawal and
agree that PC Wilson cannot undertake any form of training. As this case
progresses, his withdrawal status will be reconsidered in light of new or
additional information and a report will be submitted should his status
change in any way.”*

25 22. The report was then forwarded to Superintendent David Pettigrew, People
and Development, who confirmed the temporary withdrawal of the
claimant’s AFO authorisation by memorandum dated 21 February 2019
(93), effective from 15 February 2019. It was noted that the claimant’s
current AFO authorisation, which under normal circumstances requires to
30 be renewed every year, would expire on 9 April 2019.

23. On 27 February 2019, the claimant raised a grievance in relation to a number of matters predating his absence in January 2019 (82ff).

24. On 17 March 2019, the claimant presented a claim to the Employment Tribunal (95ff) under case no: 4102985/19. The claim was one of disability discrimination, and set out the basis of his complaint in a paper apart (107ff) by reference to 9 alleged incidents, commencing in 2014.

25. In his claim, he complained that he had been subject to discrimination on the grounds of disability under sections 15, 20 and 26 of the 2010 Act.

26. On receipt of the ET1, the respondent sought to take steps in order to respond formally thereto. Michaela McLean, of the respondent's Human Resources department, emailed Gordon Brown (the respondent's Director of Human Resources), Helen Carmichael (their solicitor), Chief Inspector Miller and Superintendent Irvine, among others, on 27 March 2019 (120). In that email, she said:

"This is becoming a complicated case, and I feel we would benefit from some further discussion around our next steps. We have ongoing dialogue with Steuart re his absence contact, and his views that his current line manager is not appropriate. He has suggested alternatives, but we feel there is a conflict of interest due to other ongoing ET cases involving this person. Added to this we have now received ET papers from Steuart, which Helen is currently dealing with and looking for any background info in relation to..."

27. Chief Inspector Miller responded to that email, replying to all recipients, (118) suggesting that a face to face discussion would be of assistance, and setting out a number of responses to the points raised. Superintendent Irvine then added his comments by email (118) to all, in which he agreed with CI Miller that he was not aware of the issues in the ET1 being raised as a grievance or complaint before then, though he noted that he had only taken over Armed Policing in September 2017. He stressed that *"The whole reason for our enquiries with PC Wilson was to attempt to understand*

what his issues were with a view to resolving them. We clearly can't do that if he refuses to speak with us or tell us what the issues were/are."

28. Gordon Brown, Director of E & D, wrote to Ms McLean, Ms Carmichael, Cl Miller and Superintendent Irvine on 17 April 2019 (121ff). in that email he set out advice about how to proceed, particularly regarding discussions about whether or not the claimant could be allowed to return to work in a different role on a temporary basis. He stressed that *"the ET is not to be discussed"*. He continued:

"If this is the outcome of the objective decision making process, this may indeed prove challenging in the circumstances depending on whether anyone named in the ET is within his direct line management chain however we must be mindful of not making a decision to remove him from AP [Armed Policing] because of the ET claim as to do so may be viewed as victimisation as a result of whistle blowing and may be in breach of the Equality Act. He cannot suffer a detriment as a result of raising the complaint and he cannot be treated less favourably as a result of disability either – unless we can objectively justify our decision. As challenging as this is, if we were to think beyond the ET outcome the same objective decision making would be required regardless of whether the claim was upheld or rejected."

29. On 6 May 2019, the claimant returned to work. On that date, at 0940 hours, he emailed the Employment Tribunal, with copies to a number of others including Ms McLean and the respondent's agent Dr Gibson (140):

*"I would like to respectfully request a withdrawal of my claim *Wilson V Police Service of Scotland – Case Number 4102985) due to the stress that the process and preparation is having on my family, family life and disability.*

I would like to thank the tribunal service for its support and initial considerations of my claim.

I have included ACAS and the respondent within this email."

30. That claim was then dismissed by Judgment of the Employment Tribunal issued on 9 May 2019 (142).

31. On 27 May 2019, the claimant withdrew his grievance in its entirety (155). In that message he said:

5 *"I respectfully request the withdrawal of my grievance complaint in its entirety.*

10 *The main reason for withdrawing my complaint is that the entire process for returning to operational firearms duties looks to be a long one. This is due to nothing more than the process itself, rather than any particular medical concerns. The longer I am away from firearms refresher training, the more training I will require to catch up on. I do not want to end up in a situation where Optima suggest I am not allowed to return to firearms training whilst there is a grievance ongoing in the background. It is for this reason that my complaints cannot be progressed under a grievance investigation. I have worked hard over a number of years to be employed in my current role and I would like to return to these operational duties as soon as possible."*

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32. When the claimant returned to work, he did so on modified duties, on the basis that his firearms authorisation remained suspended at that time. The respondent operates a process for the reinstatement or variation of AFO Suspended Authorisation. A number of officers require to consider information placed before them in order to determine whether or not they are prepared to agree to the reinstate the claimant's AFO status.

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33. The record of those officers' engagement with the process is set out in a form (064-010) which is completed by them (128ff).

25 34. Sergeant Lee Dickson, the claimant's line manager, completed the first section, headed "Reason for Reinstatement or Variation Request", on 31 July 2019:

30 *"Constable Wilson has been suspended authorisation since his absence from work due to sickness on 30/01/2019. Following a period of absence and with the support of his GP he has since returned to work on modified*

duties from 06/05/2019. He has been assessed by the FMA and Optima who have no concerns for his fitness as a firearms officer and he is ready to return to full operational firearms duties.” (128)

5 35. The claimant was referred to Optima Health, the respondent’s Occupational Health advisers, by referral dated 8 April 2019, and was assessed on 25 June 2019. A report was completed by Dr Kathryn Allan, FMA (Force Medical Adviser) for the respondent, on that date (157). She advised:

10 *“PC Wilson was referred following a period of absence due to work related stress as described above. A GP report has been received and reveals no underlying health condition other than his long-term medical condition. In my opinion it is appropriate for PC Wilson to undertake his AFO medical.”*

36. She also confirmed that the claimant was fit to undertake his full role, with the exception of regular night duties, and pointed out that he was due to have an AFO medical to confirm his fitness to resume AFO duties.

15 37. The claimant’s AFO medical was carried out by Optima Health on 29 July 2019, and a report by Susan Gillies, Occupational Health Adviser, was provided to the respondent dated 31 July 2019 (166ff).

38. The report by Ms Gillies confirmed that the claimant was fit for firearm duties following his medical assessment.

20 39. Sergeant Dickson, in completing his comments on the claimant’s reinstatement form (129) confirmed that he had worked closely with the claimant since his return from absence and had no concerns at that time about his return to full firearms duties.

25 40. The form was then sent to Police Inspector Kenny Stevenson, who met with the claimant on 16 August 2019, and completed the form on 20 August 2019 (129). Inspector Stevenson confirmed on 20 August that he supported the claimant’s reinstatement, having met with him and considered the FMA report. The claimant assured him that the issues which had caused his absence no longer existed.

41. Part 4 of the form then required to be completed by the Armed Policing Chief Inspector, in this case CI Miller. He met with the claimant on 26 August 2019. It is not CI Miller's invariable practice to meet with all staff seeking to return from suspended authorisation, but where a life event has caused the absence or suspension, or where there are a number of factors as in this case, he would do so. He described the process, unapologetically, as an intrusive one, fundamentally because his decision is essentially one which requires him to commit himself to allowing an officer to be authorised to carry a firearm, and, therefore, to use a firearm in certain circumstances.

42. The meeting took place in Stirling as that was more convenient for the claimant. CI Miller wanted to "look him in the eye" and ensure that the claimant was able to resume firearms duties, and also to clarify a particular issue which arose from the terms of his original ET1.

43. That issue focused on what the claimant said in the paper apart to his ET1, in these terms (113):

"On 18th January 2019 I was asked by Richard Creanor if I would be a witness at his Tribunal. I then became aware that there was an unredacted document (which he requested that I speak to the content of at his Tribunal) in the public domain containing my personal details. It directly identifies me and that I have a medical condition require (sic) medical procedures and that I raised a complaint of discrimination. It indirectly reveals my address and to my colleagues, deeply personal symptoms associated with my illness..."

It is clear to me that senior management have engaged in wilful discriminatory acts, the latest incident within my statement (incident 9) involves the composition of a document that contains falsehoods... This unwanted conduct towards me and my medical condition is unacceptable. It is an abuse of power. An abuse of position and privilege. This clandestine abuse of my medical circumstances has had the effect of violating my dignity, made me feel humiliated and has created an

intimidating environment. It has had the effect of lowering my self esteem, made me feel anxious, stressed, hopeless, a feeling of no status within the organisation, not socially equal and has created an atmosphere of organisational exclusion..." (Tribunal's emphasis).

5 44. The claimant remained on duty between 18 and 30 January 2019, when he went off sick due to work-related stress.

45. Each day an AFO attends for duty, they require to make a "Warning and Declaration", in which they commit to declaring that they are fit to carry out AFO duties and that there is nothing preventing them from doing so. This is
10 sometimes carried out in person but often is done over the telephone. As a result, the claimant had made the Warning and Declaration each day he was on AFO duty between 18 and 30 January 2019, and CI Miller was anxious to clarify that he had not done so while in fact unfit.

46. Prior to meeting with the claimant, and indeed at the point when the
15 claimant returned to duty on 6 May 2019, CI Miller asked Superintendent Irvine for some assistance in investigating whether or not the claimant had undertaken the Warning and Declaration between those dates (137), and in particular on 21, 22, 23, 24 and 25 January, and 28 January. Superintendent Irvine sought the assistance of Inspector David Ferguson,
20 who emailed him on 7 May 2019 (139/8) to confirm that there were records of the claimant having done so on 21, 22, 23, 24 and 25 January 2019, but that he could not find the call on 28 January 2019.

47. CI Miller also investigated whether the claimant had been responsible for signing out weaponry on any of these dates, and Sergeant Ryan Brown
25 confirmed to him on 7 May 2019 that the claimant had done so on 21 to 25 January but not on 28 January 2019 (143).

48. Finally, he established that the claimant had engaged in training on 29
30 January 2019 at Jackton, assisting as an instructor for the "teach and safety ratios"; that he had signed a declaration in relation to AFO duties and training, with no issues identified; and that he did not undertake any live fire

on that date as it was a day of MASTS drills with Silent Blank ammunition and drill rounds (151).

49. CI Miller laid out his thinking to the claimant at the meeting of 26 August, and noted (131) the terms of his conversation and conclusions as follows:

5 *"The area of potential public risk was that PC Wilson declared himself fit for AFO duties and indeed firearms training when he was feeling the above described feelings, contrary to his responsibilities and prior to declaring himself absent from work on 30th January 2019. In essence, the officer deployed as an SFO under the existing Police Scotland Standing Authority*
10 *whilst feeling 'anxious, stressed, hopeless' and experiencing 'insomnia, nausea, upper abdominal upset and pins and needles'.*

On 21st August 2019 I received PC Wilson's reinstatement request. As already outlined above, I met with him in person at Stirling Police HQ on 26th August 2019.

15 *With regards the potential for public risk as described above the officer provided the following context –*

1. *He provided he fully understood why I was asking him about this and the perception that there could be a potential for public risk;*
2. *He provided that at no time between 18th January and his declared absence on 30th January 2019 did he undertake either an AFO Warning & Declaration or Firearms Training declaration whilst he was unfit to do so;*
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3. *He provided that he wrote the ET Claim statement during the period of his absence (commencing 30th January 2019) and by his own admission*
25 *he was not in a 'good place' either emotionally or mentally when he wrote same. The officer also states he was suffering from a lack of sleep at the time of articulation and that in 'hindsight', it was not worded as he intended. He further provided that as a consequence he fully understood why the content of the ET Claim could have been interpreted*
30 *in the manner described.*

4. *In the absence of any other evidence based details and context now provided by PC Wilson, there is nothing to substantiate the potential for public risk and as described.”*

50. Having had this conversation, which CI Miller described as amiable, and the claimant recalled as being very uncomfortable, CI Miller concluded that it was appropriate to permit the application to be referred to Superintendent Irvine. He completed and signed his part of the form on 26 August 2019, the day he met the claimant. It was then emailed to Superintendent Irvine, who also completed and signed it on that date (132).

51. During the course of the meeting, according to the claimant, CI Miller asked him if he “still had a problem with management”. CI Miller said he did not recall using such a phrase, thought he would not have done so (he said it sounded “very Hale and Pace”) but acknowledged that he may have asked him about having difficulties with the people he had to work with. CI Miller regarded it as important to address the question of whether or not he had any ongoing grievance with his managers. He was concerned, when the grievance was initially raised, that the claimant was not willing to engage with him about the substance of his concerns, and wanted to ensure that the claimant was now willing to do so.

52. He also felt it was important to ask the claimant for his explanation as to whether or not he had taken the Warning and Declaration on days when he was not in fact fit to attend firearms duty, but he was satisfied with the claimant’s answer, and regarded that matter as resolved as well.

53. Superintendent Irvine confirmed that:

“I have read the comments by Sgt Dickson, Insp Stevenson and CI Miller. The issues surrounding PC Wilson accepting the warning/declaration on the dates in question have been explained to CI Miller. This issue did have the potential to call into question PC Wilson’s judgement and integrity which would have had serious consequences for the safety of himself, his colleagues and the public. Based on the explanation provided to CI Miller, it is reasonable to assume that since PC Wilson was suffering from stress and

anxiety that the words he has articulated in his employment tribunal claim and the inferred timeline could well have been misinterpreted. It is essential though that when considering a reinstatement for firearms duties that all matters are fully explored to ensure that the identified risks are minimised as far as reasonably practicable. I am content and pleased that PC Wilson has recovered from his period of illness and he has been deemed fit for operational firearms duties by the FMA. Based on all information available to me, I am content that there are no contra-indicators which would prevent PC Wilson from being fully reinstated to operational duties when his required training has been completed.”

54. Having completed the form, Superintendent Irvine then sent it to David Pettigrew, Superintendent for People and Development (P&D). He is the Superintendent who has final authority to sign off the claimant's reinstatement to AFO status, being independent of Armed Policing and uninvolved in any management relating to the claimant or the division within which he worked.

55. Prior to his signing off the authorisation, Superintendent Pettigrew required Angie Brand, Firearms Authorisation Review Inspector, to confirm with the Professional Standards Department that there were no outstanding matters which would affect the decision he had to take. Inspector Brand sent the request to Superintendent Pettigrew on 27 August 2019 (167) and said that before he submitted the request, he may wish to read all the information. She also confirmed that she would call him when the PSD checks came back and therefore there was no further barrier to the reinstatement of his AFO status.

56. The claimant emailed the People and Development Firearms Authorisation department on 9 September 2019 (170) to ask for an update on how his reinstatement was progressing. He said he was hoping to get the necessary catch up training arranged that week in order to “get back operational”. Inspector Brand replied the following day to say that the file was with Superintendent Pettigrew for review and decision, and that he would be informed when the process was complete (169). When the

claimant replied saying "Hopefully we get a reply today", she forwarded the exchange to Superintendent Pettigrew with a short note saying "as I said...!" Superintendent Pettigrew took this to mean that this was a reminder that the claimant was looking for an update on the reinstatement request, Inspector Braid having told him previously that the claimant was asking about it.

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57. There was a delay between 27 August and 16 October 2019 in Superintendent Pettigrew's hands in dealing with the request. He said that the reasons for the delay were that from 27 August until 13 September he had a number of operational pressures upon him, namely that he was the designated Commander for the Glasgow Rangers match against Legia Warsaw on 29 August, a very high pressure commitment; and that he had 2 full days of Police interviews; that he was on call for late shift coordination for the week beginning 7 September 2019; and that on 10 September he required to convene a senior officer succession meeting. He said that due to these commitments he was unable to speak to CI Miller, as he wished, before 13 September 2019.

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58. From 13 September until 7 October 2019, Superintendent Pettigrew was on annual leave, celebrating a "special birthday". When he returned from annual leave, he was faced with a significant backlog of work which had built up in his absence, all of which, he said, was time-critical, and that took him a considerable time to work through. He believed that his function was to make the decision and that it would not have been appropriate for him to have delegated the role to any other officer. He accepted that he could have referred the matter up the management line to Assistant Chief Constable Williams, but only in circumstances where there was an urgent operational imperative to have the officer reinstated.

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59. Superintendent Pettigrew then spoke to CI Miler. It is not precisely clear when he spoke to him, though it was in the period after he returned from annual leave. He discussed with CI Miller whether there were any concerns about the claimant having taken the Warning and Declaration while he may have been unfit for work, something he regarded as an issue of integrity.

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He was satisfied, having spoken to CI Miller, that these matters had been dealt with and covered satisfactorily.

5 60. Superintendent Pettigrew completed his section of the form (Part 6)(133) on 16 October 2019, and approved the claimant for AFO deployment “when suitably qualified”. He said:

10 *“I have considered this reinstatement request taking account of the comments from PC Wilson’s Line Managers in particular CI Miller who explored in some detail the issues of concern at the time of the officers absence in January 2019. After some discussion with CI Miller I am content that the issues of concern have been appropriately addressed and I concur that his authorisation should be reinstated.”*

61. He emailed People and Development Firearms Authorisation on 16 October 2019 (173) attaching the reinstatement form duly authorised:

“I have given this some thought and spoken at length to Stevie Miller.

15 *In essence, there is no medical opinion and no line management view that suggest any issue with reinstatement.*

To base any decision to refuse reinstatement on the existence of a grievance or an ET would in my view indicate that there is a punitive consequence of pursuing such a direction.”

20 62. Superintendent Pettigrew was aware that the claimant had lodged a grievance and also an Employment Tribunal claim earlier that year, though he had not been given copies of the documents so was unaware of the precise complaints being made. His concern was that if the grievance remained unresolved that may mean that the relationships between the
25 claimant and his management might not have been repaired or resolved, but in this case he did not regard this or the Tribunal claim as being relevant to the decision on reinstatement. In addition, Angie Braid had made him aware that both had been withdrawn.

63. The claimant was then placed on training for the week beginning Monday 21 October 2019 in order to allow him to be deployed on firearms duties as soon as possible.

64. On 18 November 2019, Inspector Andrew Malcolm, the claimant's Scottish Police Federation representative, wrote to ACC Williams (178). In that letter, Inspector Malcolm raised a number of concerns about the process of suspension and reinstatement:

"I refer to the above subject and recent conversations in relation to the re-authorisation process for Authorised and Specialist Firearms Officers. These processes have recently been subject of review through the Grievance process and referral to external agencies in relation to alleged discrimination towards individuals with protected characteristics.

Elements of the grievances included a desire to review the re-authorisation process, which has been completed in relation to medical opinion around fitness for duty. However, there appears to be a flaw in the process around perception by firearms officers who believe that if they highlight or express any concerns that they will be removed from duty for prolonged periods which drives matter underground and places everyone at risk...

...All firearms officers require to make a fitness declaration at the commencement of each training and duty period to show that there is nothing that would impact on their physical or mental capacity.

In my experience, every officer involved with Firearms takes this declaration extremely seriously and is focussed on their fitness to undertake the duties expected of them, which extends to those commanding deployments...

Constable Wilson had been medically cleared for operational deployment as a Specialist Firearms Officer on 29th July 2019 however he was not allowed to participate in any form of activity connected with firearms until 17th October 2019. During this intervening period, I understand that there were several meetings in connection with a grievance that he had raised in connection with his disability. Constable Wilson was advised that his re-

authorisation required additional scrutiny as a consequence of his grievance.

5 *Constable Wilson is concerned that his re-authorisation was treated differently from others as a consequence of his grievance. He is keen to learn why there were delays in his re-authorisation and why he was not even allowed to participate in tactics or non-firearm related training.”*

65. Inspector Malcolm requested a review of the process relating to his client’s reinstatement to AFO status.

10 66. It is noted that “re-authorisation” is an annual process whereby each AFO requires to satisfy the respondent of their continuing ability to carry out their duties, whereby reinstatement is the process which the claimant was undergoing.

15 67. ACC Williams replied on 17 December 2019 (180). He explained that the process had undergone some changes, and while formerly known as “Temporary Withdrawal” was now referred to as Suspended Authority. He explained the background, and then set out the timeline of the events leading to the reinstatement of the claimant’s authority. He sought to address the claimant’s complaint that a 5 month delay had taken place between his return to duty and his being allowed to undertake any form of training connected with firearms, and set out the different periods involved.

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68. He concluded:

25 *“Having considered this matter including the concerns raised, I am satisfied that the robustness of due process, including the assessment of multiple unique factors which may exist in any given case, is entirely justified when taking the nature of the AFO role into account. In addition, and for the avoidance of doubt, the time taken to reinstate this officer was not, as you suggest, as a result of him raising workplace concerns but as a consequence of all relevant information requiring to be duly gathered, considered and a well-reasoned determination made in this case.*

I do however understand that perception can become reality if officers are not aware of the significance of the decision making process, what it involves and how a decision able to withstand scrutiny is ultimately achieved. The risk of drawing inaccurate conclusions or making assumptions as a result of a lack of awareness and understanding of the process and why it must be so rigorous and intrusive is not lost on me. I have therefore asked Supt Irvine to consider how best to ensure officers expectations are managed from the outset upon their introduction to the role of AFO.”

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69. Inspector Malcolm wrote again to ACC Williams on 23 December 2019 (184) reiterating concerns which were still live for the claimant. ACC Williams did not reply to that letter in terms, though acknowledged receipt much later, in March 2020, by which time these proceedings had been initiated and therefore he did not consider it appropriate to continue those discussions.

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70. At ACC Williams' instruction, Superintendent Irvine met with the claimant and Inspector Malcolm in January 2020 at Stirling Police Office. Chief Inspector Chris Scobie was also present at the meeting. Inspector Malcolm questioned why the process had taken so long. Superintendent Irvine indicated that he was unable to provide an explanation as to why there was a delay between August and October 2019. At that meeting Superintendent Irvine told the claimant and his representative that nobody involved in the process had seen the claimant's claim form, which was incorrect in that the statement of claim attached thereto had been circulated around senior management. He said that that was an error, but that what he had meant was that he had not seen the form itself, just the statement attached to it.

71. The claimant led evidence from two comparators upon whom he sought to rely in this case.

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72. The first comparator was PC Iain Reid, an AFO based at Glenrothes Police Station. His AFO status was temporarily withdrawn on 27 September 2019, due to a recurring eye problem which affected his eyesight and ability to

drive. His AFO status was reinstated following an Optima assessment, on either 21 or 24 October 2019. He only met with one manager, namely Sergeant Dickson, his line manager.

5 73. The second comparator was PC Gordon Waters, a member of the Armed Forces Unit based at Fettes in Edinburgh. His AFO status was suspended in early June 2019 following his declaration that he had separated from his wife. PC Waters was aware that such an event required to be declared owing to the potential emotional impact upon him, and complied with that requirement. He required to meet with Inspector Stevenson in late August 10 2019 in order to discuss with him the state of his relationship. He was able to assure Inspector Stevenson that the separation remained amicable, and that no hostilities had emerged between himself and his former wife, and that they had come to an amicable private arrangement with regard to access to the children of the marriage. After the meeting, PC Waters 15 required to attend further training and once that was completed, he was in a position to return to AFO status. He estimated that he was reinstated as an AFO in early September 2019.

74. Neither comparator suffers, or suffered at the material time, from the disability of depression and anxiety from which the claimant has suffered.

20 75. The claimant complains that as a result of the delay, which he regards as an act of unlawful victimisation on the grounds of disability, he has suffered certain financial losses, and that he has sustained injury to feelings, all as set out in his Schedule of Loss.

Submissions

25 76. For the claimant, Mr Hay presented a written submission to the Tribunal. He invited the Tribunal to hold that the claimant was subjected to unlawful victimisation in contravention of section 27 of the Equality Act 2010, to award the claimant compensation and to make recommendations in terms sought in paragraph 26(c) of the paper apart to the ET1 (19-20).

77. He addressed the first detriment relied upon by the claimant, namely the raising of issues by CI Miller in connection with the period of 18 to 29 January 2019 as sufficient to amount to a detriment. The imputation made by CI Miller was clearly that on occasions in that period the claimant had made declarations that he was fit to undertake firearms duties when he knew, or reasonably ought to have known, that he was not fit to do so. Mr Hay submitted that his clearly amounted to an issue of misconduct, and Superintendent Irvine accepted as much, given the impact on the claimant's integrity. The suggestion was that the claimant had been guilty of a breach of his duties as a police officer by acting dishonestly. He submitted that this would satisfy the test of amounting to a detriment, referring to **Shamoon v CC Royal Ulster Constabulary [2003] ICR 337**.

78. Mr Hay also referred to the Police Conduct Regulations, and the claimant's right to expect that this allegation, if it were to be pursued further, would be pursued under those Regulations. As a result, he had a right to prior notification and representation in any investigative meeting he attended in this connection. That these rights were not extended to him was clearly reasonably a detriment.

79. Mr Hay invited the Tribunal not to accept CI Miller's denial that his motivation in raising this matter was that the claimant had raised an Employment Tribunal claim, for a number of reasons.

80. He listed those reasons in his written submissions, including the lack of clarity as to how the apparent discrepancy came to his attention, the pernicky interrogation of the factual averments in the claim form, the fact that the investigation into these matters began on the day the claimant returned to work, the delay between then and the point when it was actually raised with the claimant, the fact that the claimant was asked by several managers whether he still had a problem with management, the way in which CI Miller's conduct at the meeting caused the claimant to feel dread, and other issues.

81. The second detriment upon which the claimant rests is the delay in allowing the claimant to be reinstated to his AFO status. Firstly, Mr Hay submitted that the behaviour of CI Miller was clearly causally connected to the decision of Superintendent Pettigrew to delay progress in this reinstatement request, which was “potentially otherwise innocent”. The reason why Superintendent Pettigrew took his time with the reinstatement was due to the content of CI Miller’s part of the form, which is sufficiently causally connected with the first detriment to sound in damages.

82. Secondly, he submitted that Inspector Brand appears to have wielded influence over Superintendent Pettigrew’s consideration of this matter. She encouraged him to read all the papers, and then there is the curious email exchange in which she made a less than complimentary reference to the claimant’s reasonably worded emails chasing progress of the matter. Inspector Brand appears to have been aware of the claimant’s Tribunal claim given that she sat in case conference meetings about it, including one where the issue of discrepancy had been discussed.

83. He also referred to the wording of the email to which Superintendent Pettigrew attached the reinstatement decision, in which he made reference to the grievance and Employment Tribunal claim. Mr Hay asked why that was said. This requires careful examination in relation to the burden of proof given the paucity of available evidence in this regard, he said.

84. Mr Hay invited the Tribunal to award the compensation sought in the Schedule of Loss.

85. For the respondent, Dr Gibson immediately sought to address what he submitted was a major issue with the claimant’s submissions.

86. He argued that the 2 claims of victimisation have not been foreshadowed in the claim. He said he took witnesses to paragraph 19 of the paper apart to the ET1 as he had understood that that was where the victimisation claim was found. Paragraphs 13 and 14 of the paper apart are part of the factual narrative of the claim, ending at paragraph 18, and 19 to 26 set out the legal basis for the claim. It is abundantly clear, he maintained, that the only claim

was that of delay in the process, and that was what he had addressed in his written submissions.

87. It is not correct that the meeting of 26 August was pled as a standalone detriment, he submitted. It was said to have been the cause of the delay, not to be treated as a separate detriment.

88. Dr Gibson pointed out that within a short space of time after he received the papers CI Miller convened a meeting, which is not unusual in complex cases.

89. He did not dispute that the grievance and the ET1 were protected acts under section 27 of the 2010 Act, and that CI Miller and Superintendent Irvine were aware of them. This was less so in the case of Superintendent Pettigrew, which, he argued, was why Mr Hay raised the tenuous argument about Inspector Brand.

90. Dr Gibson did not take issue with the principle that a delay could be seen as a detriment but said that the problem for the claimant is that there was nothing to do with his original claim in the delay, and everything to do with the need to have the most thorough, intrusive and unstinting investigation. The respondent makes no apology for having a pernicky inquiry into every aspect of the claimant's life in order to decide whether or not he should have a gun put into his hands with the authority to shoot and, if necessary, kill. Going through the ET1 to make sure that they had no outstanding issues was what happened, and rightly so.

91. The problem for the claimant is that there is no direct relationship between the delay and the content of the grievance or the Tribunal claim. They concern largely historical matters no involving persons in the Firearms Unit process, and unrelated to his illness. The protected acts had been resolved by the time the alleged detriments took place. This calls into question any suggestion as to why CI Miller, Superintendent Irvine or Superintendent Pettigrew would be seeking to victimise the claimant.

92. Dr Gibson insisted that while managers could not discriminate against the claimant, they were entitled to explore whether there were any matters remaining from the grievance or the Tribunal claim which could affect the ongoing relationships within the department. It had also come to CI Miller's attention that the claimant may have made the Warning and Declaration while unfit, based on the terms of the ET1, and wanted to address that. He did so, and accepted the claimant's explanation. While the claimant gives his take on that meeting of 26 August in his evidence, there is a contemporaneous note of it in the form completed by CI Miller, confirming what happened at the meeting. This is credible evidence, he submitted. CI Miller says that the claimant understood why that matter had to be raised, and provided the explanation.

93. The meeting did not cause significant delay, but the Tribunal has Superintendent Pettigrew's evidence about the reasons why he did not deal with the matter until he did. Dr Gibson submitted that he could see some argument for the claimant if the matter had gone to discipline, or reinstatement had been refused, but it did not. It makes no sense, he suggested, to say that his senior managers were motivated to show their disapproval of the claimant, but then sign off his reinstatement.

94. Dr Gibson pointed out that none of the senior officers involved considered or suggested that this was a disciplinary matter, or that it was a police misconduct issue.

95. The evidence is overwhelming that the reasons for the respondent's actions related only to public safety. The grievance and the Tribunal claim were a factor but there was no motivation other than to ensure that the correct decision was reached.

96. The motivation was not to discourage a further claim – “good luck with that”, as Dr Gibson put it – but to be supportive in ensuring that the claimant was feeling all right at that time.

97. The Tribunal has the evidence as to why the decision was made on 16 October, and no adverse inference can be drawn from it.

98. Inspector Malcolm did not raise the conduct of CI Miller in the meeting of 26 August in his letters to ACC Williams, which may have been expected to happen if that were in fact an issue for the claimant.

5 99. Dr Gibson submitted that if the claimant had been asked if he still had a problem with management, it was because it was abundantly clear that he had a problem with management in his ET1 and his grievance. It was natural to ask him about that in a major investigation as to whether or not he should be permitted to carry a firearm.

10 100. Dr Gibson went on to say that the Tribunal does not require to concern itself with a reasonable steps defence.

101. He submitted that the claimant's claim for £9,000 in relation to injury to feelings while still being able to carry a gun is entirely inconsistent.

102. Dr Gibson therefore invited the Tribunal to dismiss the claimant's claim.

15 **The Relevant Law**

103. Section 27 of the 2010 Act provides:

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

(a) B does a protected act, or

20 *(b) A believes that B has done, or may do, a protected act.*

104. The Tribunal also took into consideration the different authorities to which we were directed.

Discussion and Decision

25 105. The Tribunal requires to determine whether or not the claimant in this case has been subjected to a detriment or detriments on the basis that he has done a protected act under section 27.

106. In addressing this overarching issue, the Tribunal must first determine the scope of the claim, since it is clear from the submissions of the parties that there is some dispute about this.

107. Mr Hay sought to rely upon paragraphs 13 and 14 of the Paper Apart to the ET1 as founding a claim of victimisation based on the detriment of the handling of the meeting of 26 August 2019 by CI Miller. Reference was made to CI Miller reading a passage from the ET1 in the original claim and inferring from it that the claimant had declared himself fit for firearms duties when he was not in fact fit. In paragraph 14, the claimant says that he believed he was not treated fairly. He continues:

“He had not been provided with notice that allegations were to be put to him at this meeting which could have led to disciplinary procedures. The claimant believed that he had been treated unfairly as a result of making a genuine disability related complaint. Other AFOs who were returning to firearms duties had not been subject to the same scrutiny.”

108. Paragraph 19 then states:

“The respondent’s failure to allow the claimant to return to firearms duties was an act of unlawful victimisation. This detriment was suffered because he had pursued an Employment Tribunal claim and a grievance that related to disability discrimination. The claimant had been cleared by 3 medical professionals to return to firearms duties but was not permitted to do so. The reason for this was due to the issues that the claimant had raised in his Employment Tribunal claim and grievance. This was reference by Chief Inspector Miller at the meeting of 26 August 2019 and through the claim narrative being annotated to the reinstatement request form. As a result, the claimant suffered a detriment as he missed out on firearms training, an advanced driving course (which is necessary for career progression) and loss of wages.”

109. In a highly technical claim such as victimisation on the grounds of disability, and particularly one where the claimant, as here, has the benefit

of legal advice from the outset of the proceedings, the respondent and the Tribunal are entitled to expect clarity as to the claims being presented.

5 110. Paragraph 19 is the only paragraph in the ET1 which specifically refers to unlawful victimisation. It is stated that the respondent's failure to allow the claimant to return to firearms duties was an act of unlawful victimisation. Leaving aside the slight lack of clarity in that phrase (it is obvious that what is meant is the delay in the claimant's return to firearms duties rather than a failure to allow him to return, since he did return to firearms duties in October 2019), the plain reading of that paragraph is a legal claim being advanced on the basis that the claimant was subjected to the detriment of having his return to firearms duties delayed on the grounds of his having done a protected act, namely raised a grievance and an Employment Tribunal claim. The meeting of 26 August 2019 is called upon by the claimant in support of the assertion of victimisation, when it is said
10 that CI Miller referenced the grievance and the claim.
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111. Paragraph 14 is said by Dr Gibson to form part only of the background narrative, and not to give notice of a separate claim of detrimental treatment. He maintained that he had not understood the conduct of CI Miller at that meeting to be criticised as detrimental treatment until it was raised in the submissions of Mr Hay on the claimant's behalf.
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112. We regarded this as a finely balanced argument. It is plain that Dr Gibson's expression of surprise (and indeed outrage) that this matter had been raised expressly only at the latest possible stage in the proceedings was entirely genuine. Mr Hay did not touch on this at all in his submissions,
25 but simply proceeded on the basis that there were two separate detriment claims before the Tribunal. There is no doubt that the claim does set out a claim of unlawful victimisation in paragraph 19, complaining about the delay in the claimant's reinstatement to AFO status. Dr Gibson acknowledges this.

30 113. However, Dr Gibson sought to draw a very clear distinction between the legal claim set out in the pleadings at paragraph 19, and what came

before in the paragraphs encompassing 13 and 14, suggesting that the latter were merely background information.

114. We were ultimately persuaded that the pleadings can legitimately be read as founding a claim for victimisation in paragraph 14, when it is said that the claimant was not treated fairly, in the failure to provide him with notice that allegations were to be put to him at the meeting which could have led to disciplinary procedures, and that this treatment was as a result of making a genuine disability related complaint. While not expressly using the word “victimisation”, it seemed to us clear that this was not merely factual narrative, but an attempt to set forth a claim of victimisation. It is a complaint of unfair treatment on the grounds that he had previously made a disability related complaint. While the pleadings could have been much clearer – and we do sympathise with the respondent’s position on this – it is our judgment that the allegation of detriment relating to the meeting of 26 August 2019 does form part of the claim and therefore must be considered by the Tribunal.

115. Accordingly, we turn to that allegation, which states that the raising of issues in the original claim form by CI Miller is capable of amounting to a detriment.

116. The claimant’s complaint is a little unclear, but it seems to relate to his unhappiness – what he described as “dread” – while in the meeting with CI Miller when it became clear to him that the earlier proceedings were in front of his senior officer and were to be the subject of discussion.

117. We should say that we considered that each of the witnesses in this case gave their evidence in a truthful and helpful manner. We do not believe that there was any attempt by any witness, and in particular by the claimant or CI Miller, to mislead or deliberately manipulate the events as they happened in order to gain an advantage or place their opponent at a disadvantage.

118. The claimant and CI Miller plainly had quite different perspectives on how that meeting went. CI Miller expressed surprise and disappointment

that the claimant was now complaining that he had felt intimidated or oppressed by his conduct at the meeting. He said that he saw no signs of stress or dread from the claimant, describing it as an amiable meeting. It was conducted in a good atmosphere. He had agreed to have the meeting in Stirling, so as to be convenient for the claimant. He put the point to the claimant that the original claim form had contained a statement which implied that he may have been taking the Warning and Declaration at a point when he was suffering from a number of symptoms of stress incompatible with doing so, and in his view the claimant answered clearly and straightforwardly, and satisfied him with his answer.

119. There is, as Dr Gibson observed, a contemporaneous record of that meeting in the reinstatement form completed by CI Miller (131), a record which was not challenged by the claimant nor his representative in their correspondence with ACC Williams. In that record, he said that the claimant had said that *“he fully understood why I was asking him about this and the perception that there could be a potential for public risk”* and also noted that *“he fully understood why the content of the ET Claim could have been interpreted in the manner described”*.

120. CI Miller’s note is supported entirely by his own evidence before us, which we found to be clear and reliable. He was not challenged about the terms of these specific statements in cross-examination (though it was put to him that the meeting had a different flavour to the one he proposed), but we considered that where there was a difference between the claimant and CI Miller as to the content and tone of this meeting, we preferred the evidence of CI Miller. We would stress again that we do not consider that the claimant was in any way giving false evidence, but simply evidencing, with the benefit of hindsight, the strong sense of injustice which he has felt about these events..

121. It is also, in our judgment, entirely credible that the claimant would accept that there was an appropriateness in CI Miller raising these questions with him, in order to satisfy himself that the claimant was ready to return to firearms duties and bear the very heavy responsibilities and

scrutiny which come with that role. CI Miller had to ensure that there were no issues of integrity arising from the claimant's conduct prior to his absence on sick leave, and did so, in a straightforward manner, so as to allow the claimant freely to respond, and persuade him that all was well. Very fairly, in our judgment, CI Miller accepted immediately the response of the claimant, and without delay proceeded to move the application to the next level.

122. We have found no basis, therefore, for criticism of CI Miller in the way in which he approached that matter. CI Miller was motivated, in our judgment, by the need to ensure that there were no ongoing difficulties in the claimant's view of his managers which might provide an obstacle to the effective exercise of his critical duties as an AFO. There is simply no foundation to any accusation that CI Miller was somehow activated by irritation about the grievance or the original claim, and we reject it.

123. Accordingly, we are not persuaded that the claimant has proved that the respondent subjected him to a detriment by conducting the meeting in the way he did with the claimant on 26 August 2019. CI Miller emerged in evidence as a mature, professional police officer acting in a responsible way when discharging the heavy duty of considering the reinstatement of a firearms authorisation to an officer whose suspension had been entirely proper in the first place. It is an intrusive process and it is in our view justifiable for the respondent to have uncomfortable conversations with staff in order to ensure that when the authorisation is reinstated the officer concerned is ready and able to face the highly demanding role to which he is returning. That is the reason CI Miller raised these matters with the claimant, and in our view he was eminently entitled to do so.

124. The second detriment relied upon by the claimant was the delay in reinstating the claimant's AFO authorisation.

125. We found it difficult to understand precisely what the delay was said to be, by the claimant. It appears that his particular concern related to the period between 29 July 2019, when Optima had signed him as fit and able

to return to AFO status, and 16 October 2019 when that status was restored to him. On the other hand, it may have been the period between 26 August and 16 October, when the matter was in the hands, largely, of Inspector Pettigrew.

5 126. When assessing this matter, we require to take care to understand what comparison is being made here. There is no set time for the reinstatement process to be completed. Each case, as we heard, is based on different circumstances, and must be considered individually. We heard that the reason for the suspension of AFO status can happen when an
10 officer suffers a physical injury, is absent due to a mental impairment or suffers the breakdown of a marriage or other relationship, but it is clear that there are a large number of potential events in the lives of officers which can bring about the suspension.

127. The claimant does not dispute that the suspension was the correct
15 decision at the time.

128. In submissions, Mr Hay argued that the primary date when suspension should have been brought to an end was “shortly after” 29 July 2019. We took this to mean that he believed that the claimant’s AFO status should have been reinstated on approximately 1 August or even before, but
20 we were a little unsure as to what precisely was meant. That date was significant because it meant that he was signed as being physically and mentally able to return to AFO duties.

129. It is plain, however, that the medical sign-off is only one part of the process. Each of the senior managers, from Sergeant Dickson up to
25 Inspector Pettigrew, must complete and sign their part of the form, and be satisfied that they are in a position to do so.

130. From 29 July, the claimant met with Sergeant Dickson on 31 July, and he signed the claimant’s form on that date; Inspector Stevenson signed off the form on 20 August 2019; CI Miller received it on that date and the
30 following day arranged to meet with the claimant on 26 August 2019; having met with the claimant, he signed the form that day, and passed it to

Superintendent Irvine, who also completed and signed it that day and passed it to Superintendent Pettigrew.

5 131. In our judgment, the significant passage of time in this period is the gap between 26 August and 16 October 2019, when the matter lay with Superintendent Pettigrew. We heard evidence from Superintendent Pettigrew, who explained that there were a number of heavy responsibilities on his shoulders in that period, and that he was absent for three weeks on annual leave in the middle.

10 132. His explanation encompassed (1) his duties as match commander for the football match between Glasgow Rangers and Legia Warsaw at Ibrox on 29 August 2019; (2) 2 full days of police interviews in the period up to 13 September; (3) responsibility for on call late shift coordination in the week beginning 7 September; (4) a senior officer succession meeting on 10 September; (5) annual leave between 13 September and 7 October; (6) on 15 his return, “a pile of work” in which everything was time-critical; and (7) his wish, before completing the form, to speak to CI Miller, which he managed to do shortly before signing it off.

20 133. In our judgment, Superintendent Pettigrew’s explanation was a convincing one. He was the only senior manager who could carry out this task. No other manager is given the responsibility he has for independent scrutiny of each application for reinstatement, and it is obvious that this is a responsibility which he takes very seriously. We believed his evidence and considered him to be an excellent witness, who had no interest in delaying the return of an experienced officer to AFO status.

25 134. There is no foundation whatsoever for suggesting that Superintendent Pettigrew had in mind the claimant’s prior grievance and Employment Tribunal claim, or had any particular view of the claimant other than what he gleaned from the information provided.

30 135. At this point we must address Mr Hay’s attempts to impute fault to Inspector Brand in her actions involving this application, which we regarded as groundless. Inspector Brand was not called as a witness and therefore

was unable to defend herself from these imputations. It was suggested that there was something sinister about her telling Superintendent Pettigrew to read all the papers before making a decision. There are a number of perfectly innocent interpretations which could be placed upon that statement – such as the obvious one, which is that he should not take an important decision without informing himself fully before doing so – but to suggest that that of itself indicated that she was pointing her Superintendent towards the grievance and the Tribunal claim is stretching the evidence, such as it was, beyond breaking point and we could not sustain it.

10 136. Mr Hay also tried to suggest that there was a negative implication behind the email of 10 September 2019 (169) in which Inspector Brand forwarded an email exchange she had had with the claimant when the claimant was chasing progress of the application, by sending a short email saying “as I said.....!”. He put to Superintendent Pettigrew that there was a negative connotation behind those words. We reject that interpretation. It was obvious that Superintendent Pettigrew interpreted it as reinforcing to him that the claimant wanted an answer. We considered that to be a reasonable reading of the email. It may in fact be said to contain more than a hint of criticism of the Superintendent himself.

20 137. Superintendent Pettigrew was aware of the grievance and the Tribunal claim, but not their contents. He gave clear evidence that they had nothing to do with his decision. He repeatedly stressed that while it was unfortunate that the decision was delayed it was purely based on the significant weight of business to which he had to attend at that time.

25 138. We found Superintendent Pettigrew’s explanation an entirely credible and reasonable one. It is understandable that the claimant was frustrated at the timescales, particularly as he was keen to return to his full duties, but it is a critical decision and must be taken by the appropriate officers with full information available to them.

30 139. There is no basis for the suggestion that Superintendent Pettigrew deliberately sought to delay the process at all, nor that he did so as a result

of the claimant having done a protected act. There was a delay in this case in addressing the claimant's application, especially in the hands of Superintendent Pettigrew, but we have concluded that the reason for this was that he was exceptionally hard pressed at the time, and in the middle of the period was away on annual leave for three weeks.

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140. There is therefore an objective reason which accounts for the delay, and we consider that reason to be entirely unrelated to the claimant's disability, and to the protected act which he had done.

141. We should, finally, address the issue of the two comparators who were named and from whom evidence was led.

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142. Firstly, PC Iain Reid. The reason for the suspension of his AFO status was that he suffered a problem with his eyesight, a physical problem, which required to be addressed in order to ensure that he was able to practise safely. Once his eyesight problem had been resolved, he was able to return to duty.

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143. In our judgment, PC Reid was not an appropriate comparator for the claimant. Their circumstances were materially different. Firstly, PC Reid, as has been observed elsewhere, suffered a physical problem, whereas the claimant had a condition affecting his mental capacity, namely work related stress. Secondly, the resolution of PC Reid's suspension was relatively straightforward, in that it simply required the respondent to be satisfied that his physical eye condition had improved so as to enable him to carry out his duties, whereas the claimant's condition was one about which little was known when he went off sick, and was affected by the duties which he was due to be resuming. In our judgment, there was a significant difference between the circumstances of PC Reid and of the claimant simply because there were matters which required to be resolved before he could return to work. In particular, there was no issue which required to be addressed with PC Reid in the way in which the concern over the Warning and Declarations taken by the claimant in January 2019 had arisen. That was a material difference unrelated to the claimant's disability itself, but relating to a

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potential issue of honesty and integrity on which the respondent, reasonably in our view, required to be satisfied.

144. PC Waters was suspended from AFO duties due to the unfortunate breakdown of his marriage. He was interviewed on his return, not unlike the claimant, so that the respondent could be satisfied that there were no ongoing emotional difficulties arising from the circumstances justifying the suspension. We were satisfied that the claimant was not treated less favourably than PC Waters on the grounds of his disability, fundamentally because we were drawn to the conclusion that the reason for the delay in the claimant's case was explained satisfactorily by Superintendent Pettigrew as relating to the particular period during which the application was before him, and unrelated to the claimant's disability.

145. It is our judgment, therefore, that the claimant's claims of unlawful victimisation must fail, and be dismissed.

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Employment Judge: Murdo Macleod
Date of Judgment: 20 July 2021
Entered in register: 22 July 2021
and copied to parties

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