EMPLOYMENT TRIBUNALS

Claimant: Mr Umer Saeed

Respondent: The Chief Constable of West Yorkshire Police

Heard at: Leeds

On: 1, 2, 3 6, 7, 8, 9, 10, 13, 14, 15 and 17 December 2021. 21 December 2021, 5, 7, 13 and 14 January 2022 (in chambers).

Before: Employment Judge D N Jones
Mr D Crowe
Mr K Lannaman

REPRESENTATION:

Claimant: Mr D Basu, Queen's Counsel
Respondent: Mr D Jones, Counsel

JUDGMENT

1. The claims of direct discrimination because of race and/or religion, victimisation and harassment related to race and/or religion are dismissed.

2. The respondent unfavourably treated the claimant by instituting the unsatisfactory performance procedures (UPP) and subjecting him to a written improvement notice (WIN). That treatment was because of something, namely his absences from work through ill health, which arose from his disability. The unfavourable treatment was not a proportionate means of achieving a legitimate aim.

3. The respondent breached the duty to make reasonable adjustments to the claimant as a disabled person.

REASONS

1. The findings of the Tribunal are unanimous.

Introduction

2. The claimant is a serving police officer. He has the rank of sergeant and is qualified to be an inspector for which he awaits a permanent posting.

3. The respondent is the Chief Officer of the Force in which the claimant serves and, by section 42(1) of the Equality Act 2010, is accountable for any contraventions of that legislation as if he were the claimant's employer.

4. The first of these claims concern allegations of direct race or religious discrimination, harassment and victimisation. Race is defined by the claimant's national origin, having been born in Pakistan, and colour. In respect of the protected characteristic of religion, he is of Muslim faith. The complaints span a period of 2 years from 2018 to 2019 and concern a period when the claimant was seeking promotion to the rank of sergeant and then whilst he was serving in that capacity pending confirmation.

5. The second claim is for disability discrimination. The claimant has a condition of partial sight loss in the left eye which is episodic and although the causes are not fully known, it is a condition which is exacerbated by stress. In addition he has had anxiety and depression. These are disabilities. The instigation of formal attendance performance procedures and the imposition of a written improvement notice are said to be unfavourable treatment because of something arising in consequence of those disabilities or a breach of the duty to make adjustments.

6. On the second day of the hearing, but before the tribunal had heard any evidence, Mr Basu made an application to amend the second claim to add complaints of victimisation in respect of the instigation and application of the formal unsatisfactory performance procedures and disability discrimination in respect of a different disability concerning the knee.

7. The tribunal rejected those applications. These were new claims, not mere relabelling exercises, notwithstanding they concerned the same or similar detriments already raised. The respondent had not pleaded to them, nor prepared the witness statements to address them. The claimant has been legally represented from the outset. Mr Basu suggested that the matter could be addressed by the witnesses who were giving evidence, principally Inspector Little. Mr Jones opposed the application and said the late application prejudiced the respondent and to allow it would cause delay.

8. We were satisfied the hardship to the respondent of allowing the amendments was greater than the hardship to the claimant of refusing them. Delay in notification of any claim risks enhancing the difficulties of responding to it, because the quality of evidence reduces with the passage of time. An amendment would generate further delay and cost in the taking of instructions and responding. These amendments would be 18 months outside the primary time limit, as of the date of application. We make no criticism of the claimant's legal advisors who had taken careful instructions

and clearly identified the legal complaints in the claim form for the second case, but had the claimant wished to bring other claims they should have been identified earlier, at the very least by the preliminary hearing for case management of these cases on 24 March 2021. The hardship to the claimant of not being able to pursue those claims was mitigated by the fact he has other claims before the Tribunal for which he could seek relief.

9. At the commencement of the hearing the tribunal asked Mr Basu to clarify the claims because it was not clear from the claim form precisely how many legal complaints had been presented and upon which rulings would need to be made. We asked him to produce a list of allegations for the tribunal and the parties to work to. A list was provided the following morning but the legal claims were not numbered. We have set them out in a schedule at the end of the reasons. One claim was withdrawn at the commencement of the case and another after the claimant had given evidence. We have calculated a total of 33 complaints in the first case and 2 in the second. There was some duplication and overlap in respect of the complaints against Inspector Horn which we drew together from the list which was produced.

10. On the second day of the hearing, after having read the witness statements, the tribunal raised with the parties a matter relating to paragraph 77 of the statement of the claimant. He had referred to a case in 2007 in which the West Yorkshire Police successfully resisted a claim for race discrimination by a white officer in respect of a challenge made to the appointment of an officer from an ethnic minority to a particular district in Bradford. The claimant raised this in support of his claim. The Employment Judge informed the parties he had represented the police in that particular case and so had knowledge of the details of it, a matter of which he thought the parties needed to be aware. He also informed the parties that he had undertaken many cases concerning the police in his former practice at the Bar which included this police authority more than 9 years ago and the parties could raise any matter arising from this information. Neither party did.

The Issues

Direct Discrimination (race and/or religion)

11. Did the respondent, by his officers, treat the claimant (that is, act or fail to act) in the ways complained of in the list of allegations?

12. If so, was that less favourable than the respondent treated, or would have treated, others because of the claimant's race and/or religion?

Harassment

13. Did the respondent, by his officers, subject the claimant to the conduct set out in the list of allegations?

14. If so, was that conduct unwanted?

15. If so, did that relate to race and/or religion?

16. If so, did the purpose of violating the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for him (an adverse working environment)?

17. Alternatively, did it have the effect of creating that adverse working environment?

Victimisation

18. The engagement in the ACAS process being an admitted protected act, was the PEN entry of Inspector Horne of 9 May 2019 a detriment and was it because of the protected act?

19. The support of a complaint of Islamophobia against Emma Walton being an admitted protected act, did Ms Walton misrepresent the position about funding to ACC Williams and were the emails of 22 November 2018 and 14 January 2019 detriments?

20. If so, were they because the claimant did a protected act?

Disability Discrimination

Discrimination arising from disability

21. It being accepted that the claimant was disabled, was the implementation of the UPP and WIN unfavourable treatment?

22. If so was that because of something, namely the claimant's absence from work?

23. If so did that arise from the claimant's disability?

24. If so, was the treatment a proportionate means of achieving a legitimate aim?

Breach of the duty to make adjustments

25. Did the provision, criterion or practice (PCP) of the UPP place the claimant, as a disabled person, at a substantial disadvantage?

26. If so, did the respondent, by his officers, fail to make reasonable adjustments to avoid that disadvantage?

The Evidence

27. The tribunal heard evidence from the claimant. Mr Ray Evans, formerly Detective Constable, Sergeant Tola Munro, President of the National Black Police Association (BPA), and Sergeant Chris Bentley, Deputy General Secretary of the West Yorkshire Police Federation, gave evidence on behalf of the claimant. A witness statement of Junier Browne MBE, Service Review Team Manager was submitted and its contents not disputed by the respondent. Statements were also submitted of Sergeant Anita Patel, formerly chair of the BPA and currently its General Secretary, Mrs Sophia Ghafoor, financial investigator and ambassador for human resources, Mr Alex Gent, digital investigator and chair of the West Yorkshire

Association of Muslim Police (AMP) and PCSO Gareth Park. The statements were not agreed.

28. The respondent called Chief Inspector Mick Preston, Chief Inspector Sarah Towers, Chief Inspector Anwar Mohammed, Inspector Richard Horn, Mrs Sally Fryer (formerly superintendent, but Chief Inspector at the time of these complaints), Sergeant Chantel Patrick, PC Mark Lund, Inspector Cheryl Kirby, Chief Inspector Christopher Matthews, Ms Emma Walton, Strategic Diversity Equality and Inclusion Specialist, Inspector Stephen Little, Inspector Williams and Ms Victoria Rowland, Employee Relations Advisor. He submitted witness statements of Sergeant Mark Rogers and PC Natalie Smith. These statements were not agreed. He had submitted two other statements which were not relied upon.

29. The witness statement evidence which was not agreed had limited weight because it had not been tested in cross-examination.

30. Mr Basu submitted that it was not appropriate to ask the claimant whether he believed an alleged discriminator's explanation for particular matters. The tribunal ruled that this was a permissible line of enquiry. In addition, Mr Basu suggested it was not necessary to put to those who had been alleged to have discriminated against the claimant whether they had done so because of the protected characteristic/protected act because it could have been subconscious. The tribunal considered that was necessary.

31. The claimant's belief about why an alleged discriminator had acted in a particular way was relevant, because he was in an especially important position to express what led to that conclusion. It was a step in the evidential investigation. It was necessary to put to any alleged discriminator the conduct they were accused of. Fairness required them to have the opportunity to defend such an allegation. The fact that discrimination might be subconscious did not mean the question should not be put. Their response to the allegation is one part of a broad evidential assessment upon which we evaluate all issues.

The background

32. The claimant commenced service in the South Yorkshire Police on 14 June 1999. In February 2002 he transferred to the West Yorkshire Force.

33. In 2010 the claimant was elected as a Federation representative.

34. In August 2019 the claimant was elected as Chair of the West Yorkshire Black Police Association (WYBPA).

35. In October 2017 the claimant was appointed as Vice President of the National Black Police Association (BPA).

36. In March 2016 the claimant passed the first part of the National Police Portfolio Framework (NPPF), the requirement for promotion to the next rank. In September 2017 the claimant was posted to the Leeds City Neighbourhood Policing Team (NPT), In November 2017 his supervisor, Sergeant Patrick, discussed with the claimant the next part of the promotion process, but informed him she would not support it at that time because he had not had any opportunities to act up as a

supervisor and there were not sufficient examples she could certify. Inspector Berriman, to whom Sergeant Patrick reported, agreed with her assessment. However, the claimant's application was approved by the Divisional Commander, Superintendent Money.

37. The claimant moved to the NPT at Leeds Inner East on 26 March 2018 and was appointed to the post of Temporary Sergeant. During this period his supervisor was Inspector Preston.

38. In October 2018 the claimant was posted to the NPT in Leeds North East. Chief Inspector Mohammed had formed the opinion that there was a clash of personalities between the claimant and Inspector Preston and, to protect both, it was in their interests for the claimant to move to a new area, a decision with which the claimant agreed.

39. On 5 October 2018 Inspector Horn became the claimant's supervisor in Leeds North East. Relations between the two proved to be less than harmonious. On 14 January 2019 the claimant had an individual appraisal meeting with Inspector Horn which lasted for 2 hours and received a copy of the Performance Development Review (PDR) prepared by Inspector Preston. The following day he became unwell and experienced loss of vision. He was diagnosed with central serous retinopathy.

40. On 14 February 2019 the claimant was signed off sick. He had a welfare meeting with Inspector Horn on 7 March 2019.

41. On 7 May 2019 the claimant had a meeting with Inspector Horn and his Federation representative and requested to be moved to a different area and supervisor. He stated that he had contacted ACAS with a view to bringing employment tribunal proceedings.

42. On 14 May 2019 the claimant was informed that his request for removal had been refused. The claimant wrote to the respondent to challenge the decision and the divisional commander agreed to the request.

43. The first claim was issued on 30 May 2019.

44. The claimant returned to work on 12 June 2019. Inspector Horn completed the claimant's PDR.

45. On 14 August 2019 the claimant was posted to Bradford West. His supervisor was Inspector Little. He returned to duties following his sick leave on 9 September 2019.

46. On 14 September 2019 the claimant was placed on an informal attendance management plan.

47. On 8 October 2019 the claimant completed his NPPF portfolio.

48. On 25 November 2019 the claimant received notification that there would be a formal stage one meeting with respect to attendance, which is prescribed by the Police (Performance) Regulations 2012.

49. On 30 December 2019 the claimant attended the stage one meeting with Inspector Little who was advised by Ms Rowland. The claimant was accompanied by his Federation representative, Sergeant Bentley. On 22 December 2019 Inspector Little issued a Written Improvement Notice under the UPP.

50. On 16 January 2020 the hearing of the first claim commenced at the Leeds Employment Tribunal but was postponed due to the claimant's ill-health.

51. On 3 March 2020 the second claim was issued.

52. On 3 July 2020 the claimant was confirmed in the rank of Sergeant.

The Law

53. By section 39(2) of the Equality Act 2010 (EqA): On
An employer (A) must not discriminate against an employee of A's (B)—
(a) as to B's terms of employment;
(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
(c) by dismissing B;
(d) by subjecting B to any other detriment.

54. In **Ministry of Defence v Jeremiah [1980] QB 87**, the Court of Appeal held that a detriment would exist if a reasonable worker would or might take the view that the treatment was in all the circumstances to his disadvantage. In **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337** the House of Lords held that an unjustified sense of grievance would not amount to a detriment.

55. By section 109(1) of the EqA, anything done in the course of a person's employment must be treated as done by the employer and by section 109(3) it does not matter whether the thing is done with the approval or knowledge of the employer.

56. Direct discrimination is defined in section 13 of the EqA:
A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourable than A treats or would treat others.

57. Section 4 provides that race and religion are protected characteristics. By section 9 of the EqA, race includes colour, nationality or ethnic or national origins.

58. By section 23 of the EqA:
On a comparison of cases for the purpose of section 13, 19 there must be no material difference between the circumstances relating to each case.

59. By section 27(1) of the Equality Act 2010 (EqA), a person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act.

60. By section 27 of the EqA a protected act includes the bringing of proceedings under that Act, doing any other thing for the purposes or in connection with the Act or making any allegation (whether or not express) that A or another person has contravened the Act.

61. In **Nagajaran v London Transport [1999] ICR 877** the House of Lords held that, in a victimisation, or direct discrimination, claim the essential question was why the employer had acted in a particular way and that the reason may be a subconscious one. Lord Nicholls pointed out that most people will not admit to acting in a discriminatory way and are often unaware they are doing so.

62. Section 15 of the Equality Act 2010 (EqA) provides:

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

63. Section 20 of the EqA provides:

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

64. By paragraph 2 of Schedule 8 of the EqA, "*A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know…that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement"*.

65. By Section 15(4) of the Equality Act 2006, a Code of Practice issued by the Commission for Equality and Human Rights (the Commission) is admissible in evidence and shall be taken into account by a tribunal in any case in which it appears to the tribunal to be relevant. The Commission produced a Code of Practice on Employment in 2011. At paragraph 6.28, the Commission listed some factors which might be taken into account in deciding what is a reasonable step for the purpose of the employer's duty under section 20 of the EqA. They are whether taking any particular steps will be effective in preventing substantial disadvantage, the practicability of the step, the financial and other costs of making the adjustment,

the extent of any disruption caused, the extent of the employer's financial or other resources, the availability to the employer of financial or other assistance to help make an adjustment (such as advice to Access to Work) and the type and size of the employer.

66. Section 136(1) of the EqA concerns the burden of proof: *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.* Section 136(2) provides that does not apply if A shows that A did not contravene that provision.

67. In **Madarassy v Nomura International plc**, the Court of Appeal held that a difference in status, namely that of the protected characteristic alone, was not of itself sufficient to discharge the burden of proof. Establishing a detriment and a protected characteristic are not of themselves sufficient to shift the burden, see **Bailey v Greater Manchester Police [2017] EWCA Civ 425.** In **Glasgow City Council v Zafar** the House of Lords held that because an employer acted unreasonably did not mean that it had acted discriminatorily. If the employer treated those with and without the protected characteristic equally unreasonably there would be no discrimination.

68. In **Laing v Manchester City Council and another [2006] ICR 1519**, the President of the Employment Appeal Tribunal said that if a tribunal was satisfied on the evidence that the respondent had provided a reason which, on a balance of probabilities, had eliminated any discriminatory cause, it was not necessary for the tribunal to trouble about whether the burden of proof had shifted in the first instance. In **Hewage v Grampian Health Board [2012] ICR 1054** and **Efobi v Royal Mail Group Limited [2021] UKSC 33** the Supreme Court stated that it was important not to make too much of the role of the burden of proof provisions: "*They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other*", per Lord Hope in **Hewage**.

69. The Court of Appeal has approved and revised guidance to the application of the burden of proof under previous legislation which remain applicable to the EqA[1].

69.1 In deciding whether the claimant has proved such facts [to discharge the burden] it is important to bear in mind that it is unusual to find direct evidence of discrimination. Few employers will be prepared to admit such discrimination even to themselves.

69.2 The outcome at this stage will usually depend on what inferences it is proper to draw from the primary facts found by the tribunal. The tribunal does not have to reach a definitive determination that such facts would lead to it concluding there was discrimination but that it could.

[1] Wong v Igen Ltd [2005] ICR 931, Barton v Investec Henderson [2003] ICR 1205, Ayodele v Citylink Ltd [2019 ICR 458

69.3 In considering what inferences or conclusions can be drawn from the primary facts the tribunal must assume that there is no adequate explanation for those facts.

69.4 When the claimant has proved facts from which the inferences could be drawn, that the respondent has treated the claimant less favourably on a protected ground, the burden of proof moves to the respondent. It is then for the respondent to prove that he did not commit, or as the case may be is not to be treated as having committed that act.

69.5 To discharge that burden it is necessary for the respondent to prove on the balance of probabilities that his treatment was in no sense whatsoever on the protected ground.

69.6 That requires a tribunal to assess not merely whether the employer has proved an explanation for the facts proved by the claimant from which the inferences could be drawn, but that explanation must be adequate to prove on the balance of probabilities that the protected characteristic was no part of the reason for the treatment.

69.7 Since the respondent would generally be in possession of the facts necessary to provide an explanation the tribunal would normally expect cogent evidence to discharge that burden.

70. By section 26 of the EqA,

(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.

(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.

Analysis

71. In respect of each allegation in the schedule, we have considered all relevant evidence and set out our findings below, separately. Whilst we consider the allegations individually, we must emphasise that our findings have taken account of the totality of the evidence. In determining what probably happened, and why, we have had regard to the case holistically.

Complaint 1. *Offering the claimant no support or development opportunity during his time at Leeds District City and thereby actively undermining his position during his time at Inner East and North East.*

72. The claimant was posted to the Leeds District City NPT in September 2017, having previously served in the Operational Support Unit (OSU). He remained there until March 2018.

73. The claimant did not have any opportunities to act up as sergeant and compares himself to a number of others in specialist departments who were able to act up. He has also referred to white male officers who were afforded opportunities to gain experience and achieve promotion, but there is no detail about this. There is no evidence that there were acting up opportunities which were available in Leeds District City NPT during this time.

74. At paragraph 63 of his statement the claimant states that in November 2017 Chief Inspector Matthews and Sergeant Patrick told him in no uncertain terms to withdraw his Board application, that it would not be supported without any specific reasons save that he had not proven his ability and skillset. He said that Chief Inspector Matthews told him that Superintendent Money would not support his application. We accept this was what happened, but for the following reasons.

75. Sergeant Patrick rated the claimant as satisfactory in his PDR, but the claimant felt this was not fair and objected to signing it. Within 4 weeks of his posting the claimant informed Sergeant Patrick that he wished to apply for promotion and she asked him to send her his development plan of the areas in which he needed to gain experience. He never sent it. She did not support his application at that time because of the fact the claimant had been working with her only a matter of weeks, she had never seen him in the role of sergeant and she believed he needed development in that role. She said in evidence that it was a demanding role. He could be placed anywhere in the Force and he needed experience. The examples the claimant had given were from a previous posting, not ones she had supervised and with respect to a PDR the claimant had refused to sign. Sergeant Patrick advised the claimant to ask one of the supervisors from his previous posting to sign the examples, which she said is what she had done, or ask them to email confirmation. The claimant did neither. She said that she had tried to develop the claimant in some areas, but he did not seem interested. She was disinclined to validate examples she was not a party to. Inspector Berriman supported her view. It was at this time that the views, set out at paragraph 74 above, were expressed.

76. Chief Inspector Matthews did not know the claimant at that time. He spoke with Superintendent Money, who said he had favourable experience of the claimant's work with the BPA and was willing to support the application, a view with which Chief Inspector Matthews then agreed. He wrote the comments in support which the Divisional Commander signed off.

77. This complaint would fall within section 39(2)(b) namely that an employer must not discriminate against an employee in the way he affords access to, or by not affording access to opportunities for promotion. Before addressing whether that would be an act of direct discrimination, it is necessary to consider whether there was such treatment. In respect of not providing opportunities to act up as sergeant there was no evidence that any were available during the claimant's time at Leeds District City. Sergeant Patrick said there were no such opportunities and there was no reason to reject her evidence.

78. In respect of the criticism relating to the initial resistance to progressing the claimant's application we were not satisfied the essential features of section 39(2)(b) are made out because the Divisional Commander approved the claimant's application. There was no disadvantage in terms of delay or otherwise in his promotion progressing. But the views expressed by Sergeant Patrick and Inspector Berriman might have amounted to a detriment within section 39(1)(d) of the EqA.

79. We found the explanation for the hesitancy of Sergeant Patrick and Inspector Berriman an entirely convincing one, namely that they felt the claimant needed more experience in the role to which he aspired. Race and religion had nothing to do with it. We found Sergeant Patrick to be an impressive witness. She was consistent and measured. She had recorded positive PEN entries for duties of the claimant and recognised his good work but held appropriate reservations about his lack of experience in moving to the responsibilities of the supervisory rank with the challenges that would present. We do not accept the submission that the opinion held by Sergeant Patrick or Inspector Berriman must have been flawed because it did not accord with that of the Divisional Commander. The opinions each held were based upon their own respective experiences. Chief Superintendent Money had knowledge of the claimant's work with the BPA which he considered relevant and helpful to the claimant. Sergeant Patrick, Inspector Berriman and Chief Inspector Matthews cannot fairly be criticised if that was relevant material to which they were not privy. Mr Basu was critical of the respondent's failure to call Inspector Berriman, but we were satisfied that Sergeant Patrick's evidence about this allegation was of principal significance and adequately addressed this complaint.

80. At paragraph 63 of his statement the claimant stated that Sergeant Patrick had not developed the same community contacts or had the same impact he had but she had not been not given adverse PDR's or PEN's and was signed off to sit her inspector's exams. He relied upon her as a direct comparator. She is black. We had no evidence of her religion or nationality. It was not clear in these circumstances how she advanced the claimant's race or religious discrimination claims, because even if she were treated better, as a comparator she does not establish evidence that it was for reasons related to the protected characteristics. This was a different matter to that raised by Mr Basu, that in respect of the allegation made against her of race and religious discrimination by section 24(1) of the EqA it does not matter whether she has the protected characteristic, a distinction we have recognised.

<u>Subjecting the claimant to overt and detailed scrutiny in his role as Chair of the WYBPA, by</u>:

<u>Complaint 2</u> - *His first Line Manager, Inspector Mick Preston was immediately abrupt and hostile towards the claimant, as compared to the other Sergeants. During an initial meeting, on 20 March 2018 with Inspector Mick Preston, the claimant's role for WYBPA was discussed. Inspector Preston pointed to his forearm and stated to the claimant that he was "more of an ethnic minority" than the claimant. The claimant was concerned by the comment as he had not discussed or raised his race or ethnicity with Inspector Preston at all. He also stated that having two staff network roles was being "greedy". The claimant sought to assure Inspector Preston that these roles brought additional skills which increased the claimant's effectiveness in*

core policing roles (para 20, grounds of complaint).

81. There is a conflict in the evidence about the initial meeting with Inspector Preston on 20 March 2018. Both parties agreed that the claimant's work with the BPA's was discussed. Inspector Preston said it was a cordial meeting. He emphatically denied he had said that he was more of an ethnic minority than the claimant. The claimant said the meeting had been abrupt and hostile.

82. Immediately afterwards the claimant sent an email saying that he was glad they were able to catch up and he was looking forward to working with Inspector Preston. This contemporaneous record provides some support for Inspector Preston's recollection. Having said that, we recognise that the claimant may not have felt comfortable or regarded it as prudent to call out inappropriate behaviour. It was the first meeting in a new posting with his new inspector, with whom doubtless the claimant would wish to foster positive relations. It is even possible the inappropriateness of the remark would not have been appreciated by the claimant at the time. On the other hand, the claimant held senior positions in the local and national BPA and might have been expected to be more alive than others to what was acceptable.

83. Inspector Preston said that on a later occasion he and the claimant were walking and discussing East European migration in Harehills, part of their district, which led to them discussing heritage. The claimant informed him that his wife was from Czechoslovakia. Inspector Preston said that he had grandparents from Austria who were dark skinned. In cross examination he said he had probably referred to his own dark skin, but he denied pointing to it. In the internal grievance interview, he said that he had been to Cyprus and he tanned quite easily.

84. The claimant had spoken to Chief Inspector Mohammed about Inspector Preston's remark about his tan which he regarded as racist. Chief Inspector Mohammed said in evidence that he had spoken to Inspector Preston about this and concluded it had been intended as humorous. He advised Inspector Preston to be careful as it could be taken out of context.

85. There is no contemporaneous record of the meeting of 20 March 2018. The first time these allegations were reduced to writing was in the claim form and internal grievance of the same day, 30 May 2019, over a year later. Evaluating the alternative accounts and which is probably correct is inevitably problematic, based as it is on two memories of the exchange of words many months before. On balance we think it likely the first meeting was congenial and we are not satisfied that Inspector Preston said that he was more of an ethnic minority than the claimant and pointed to his skin. It would be an unusual remark to make on any occasion, let alone a first meeting. We consider the claimant would have more than likely have raised it with somebody, even if only in confidence, if Inspector Preston had spoken in this manner. He had done so with respect to the tanning remark, with Chief Inspector Mohammed.

86. In an email dated 3 July 2018, Inspector Preston expressed his concerns to Chief Inspector Mohammed about the claimant's abstractions. He said that whilst he was supportive of them, an open and honest discussion had taken place in which he had expressed the view that it would seem potentially greedy to have three association roles going forward. In his evidence Inspector Preston denied saying the

claimant was greedy for holding three positions at the initial meeting but he said at a later occasion he had said others might have thought him greedy.

87. We accept that Inspector Preston did make this comment, but not at the initial meeting. It is likely to have been shortly before the email of 3 July 2018, when there had been a frank discussion. This email reflected Inspector Preston's concern that the claimant should dedicate his full energies to his primary NPT role. The reference to being greedy was not a particularly helpful way of expressing that. Nevertheless, we are not satisfied it had anything to do with the claimant's race or religion. In answer to the question posed by Mr Basu, what was it about the claimant that caused his managers to treat them in this way, the answer was that the claimant was the only person in the Force who had taken on so many other roles in associations which diverted his time from his principal duties. That frustrated Inspector Preston, who wanted the claimant's working hours to be invested on his team. This would have been the case whoever the claimant was, of whatever race or religion.

Claim 3 - *On 17 July 2018 Inspector Preston arrived during the Natural Born Leaders' course, without an invite or being a delegate or speaker for the course, nor would he have known about the change of venue or the reasons for it. He proceeded to count the number of BAME staff from the Force who were in attendance, in order to try and demonstrate why the claimant's presence was not necessary. Inspector Preston's actions were humiliating and distressing for the claimant and a number of other colleagues in attendance. This behaviour has never been done before in the history of the programme. The claimant found Inspector Preston's behaviour offensive and degrading (para 38, grounds of complaint).*

88. This course had been prepared and planned by the claimant. It was for a week from 17 July 2019 and was aimed at encouraging and assisting students of the ages 16 to 18 from primarily ethnic minority backgrounds to obtain a leadership qualification which would be certified by the City and Guilds.

89. Inspector Preston had initially authorised the claimant's attendance at the course for the first and last day, but this had been revised by Chief Inspector Mohammed who permitted him to attend for the first three days, but only on the third if he could not arrange alternative cover.

90. The claimant's complaint is that Inspector Preston attended on the first day without forewarning and counted the number of staff present, pointed out people, asked if they were WYP staff and in what capacity they were attending. He felt embarrassed. He believed Inspector Preston was checking up on him. His account is supported by Mr Junier Browne who said Inspector Preston stood at the back without introducing himself and appeared to be counting those present. Mr Browne said he asked who he was and what he was doing there. He said that he was clearly coming to check up on the claimant as he had previously blocked his attendance. He felt he was dismissive, disrespectful and disingenuous.

91. Chief Inspector Towers attended with Inspector Preston. She had been invited. She had spoken to Inspector Preston on the telephone and informed him she was going. She raised the matter. She told him the venue had changed. He said he would also go to show his support. In her evidence she said she did not recall him counting staff and saw nothing of concern, nor receive any complaints.

92. Inspector Preston denied going to check up on the claimant. He denied counting heads and said he spoke to a few people present who he had not seen for some time, including Sergeant Anita Patel. He sat at a desk with the claimant and Chief Inspector Towers.

93. Mr Evans, then a detective, had attended and saw Inspector Preston, but he did not see him counting or interacting with the delegates.

94. We find Inspector Preston attended without an invitation, but we do not draw the negative impression suggested that this was designed to embarrass the claimant. He learned of the new venue from Chief Inspector Towers, who had been invited and he told her he would also attend. She did not consider this was anything other than to be expected, given he was the claimant's supervisor and the event reflected the Force in a positive light. We consider that Inspector Preston may have counted the numbers present, but we cannot attach any significance to that. For him to demonstrate a negative view of this course in front of Chief Inspector Towers would have been rash and highly unlikely.

95. The claimant suggested that the appearance of Inspector Preston at a venue he had been unaware of was suspicious, but this is explained by the discussion that had taken place with Chief Inspector Towers, of which he had been unaware. She was an entirely credible witness.

96. The claimant and Mr Browne have expressed critical views of Inspector Preston, but these are based upon their interpretation of events which is partial; they did not know of the discussion initiated by Chief Inspector Towers which led to Inspector Preston's attendance. The claimant had been distressed and upset by Inspector Preston's reluctance to allow him to attend the course, which he had felt he had to confront by taking it further to Chief Inspector Mohammed. Mr Browne knew of this background. Upon the evidence we heard and findings we have made the facts do not support the inference this was to subject the claimant to overt scrutiny.

Claim 4 - *In or around August 2018, Inspector Preston had some liaison and contact with ACC Angela Williams with regards to the claimant's roles as both BPA Chair and a Federation Representative. Unprecedented, ACC Williams directed a meeting, on or around 24 August 2018, with the claimant as Chair of WYBPA, Inspector Preston, Chief Inspector Mohammed and Senior HR Manager Amanda Booth. No other staff network Chair has had such close scrutiny or management around their roles. It was apparent in the meeting that Inspector Preston had an agenda to limit and control the claimant in his roles. The claimant has always maintained that the roles cannot be serviced effectively without organisational, including first and second line manager, support. When the claimant raised that maybe the role of NPT sergeant was not suited to the additional roles and he would look to identify other roles, Chief Inspector Mohammed intervened and was adamant that the claimant would be supported (para 46, grounds of complaint).*

97. A meeting was requested by Chief Inspector Mohammed. It was held with ACC Williams and Amanda Booth from human resources, the claimant and Inspector Preston. He sought clarification in respect of abstractions and the extent to which the Force could allow the claimant's membership and work for the two BPA's and the Federation to detract from his primary role as NPT Sergeant. This was not directed

by ACC Williams, as alleged, but at the instigation of Chief Inspector Mohammed, an officer for whom the claimant has the greatest respect.

98. There is no documentation of this meeting and what happened. We accept the evidence of the claimant that he said that if he could not be supported at Leeds North East NPT in his three other roles he needed to look for an alternative and that Chief Inspector Mohammed responded by saying he would be supported in all roles. In his evidence Chief Inspector Mohammed could not recall this comment but said he would have supported the claimant and wanted the claimant on his team; he thought it would be a struggle because the claimant was a very junior sergeant. In his opinion the move from constable to sergeant was the biggest step, a huge sea-change. He said he would have instructed Inspector Preston to support the claimant, if appropriate, but his role was to the NPT and the other roles were secondary, an opinion he impressed upon the claimant. We accept this evidence.

99. Matters had come to a head because Inspector Preston considered that the claimant had been seeking too many days out to support the associations and was not prioritising his role as sergeant in the NPT. He had refused some requests for abstractions such as on 27 July 2018, for a four-day course of the Federation which was to fall during the middle of August. This is a peak period for annual leave. It is particularly busy with the lead up to the West Indian carnival at Harehills. There had historically been additional problems between rival crime groups with a series of shootings. Inspector Preston contacted the course organiser and asked him to look for alternative dates for the course or for the claimant to attend. In the end he did attend an alternative course, in December 2018.

100. The claimant cites this as one of a number of examples in which he says Inspector Preston failed to support him and undermined him and his work for the associations. These criticisms are not well founded.

101. Inspector Preston's frustrations arose from the absences of the claimant from his team, but the claimant wrongly viewed that as an attack on him personally or the associations he worked for. The problem was twofold. Firstly, like any manager, Inspector Preston recognised that his team would be at its most effective if it had its maximum resource. There were only three sergeants in his team and the absence of one was keenly felt. Every abstraction required cover, which drew from another part of the team. Secondly the claimant was new to the role of sergeant. He was inexperienced. He had much to learn. He had young children for whom he shared caring arrangements with his wife. The resource and hours required to support three organisations as well, whilst learning to become a good supervisor and provide the service demanded was unrealistic. In her email of 20 August 2018 ACC Williams said she had learned that the claimant was also a Federation representative as well as the Chair of the WYBPA and Vice President of the BPA. She said he should think about not taking too much on as he would be spending more time on other things than his core role. Chief Inspector Mohammed agreed with this.

102. The hope that the claimant might accept this advice and relieve himself of one of the roles, probably that of the Federation, was not realised. This reflected poor judgment on his part. Any new supervisory role, whether in the police or any other public service, will demand significant time and resource. The claimant was not singled out and criticised for his work with the associations because of his race or religion. He was spoken to because he alone had taken on more activities than any

new sergeant. He had taken on too much. The failure of the claimant to recognise this but rather to consider this was personal to him set him on a combative path with his supervisors which ultimately led to his ill health.

103. None of that is to detract from the vital work the BPA, the WYBPA and the Federation contribute to the development of a quality and functioning Force in a pluralistic society; a service which needs to reflect and understand the diverse community for whom it works. This is a point which was well made by the claimant and Sergeant Munro in their evidence. West Yorkshire has not recruited or retained the same proportion of officers from an ethnic minority as in the county, being about 5.6% rather than 18%. In his role as President of the BPA, Sergeant Munro had learned of a number of officers from an ethnic minority who had left the West Yorkshire Force to serve in neighbouring Forces or to take up other careers. They had informed him this was because of attitudes about race within the ranks and at supervisory levels. This is doubtless a matter which requires careful and serious consideration in an ongoing dialogue between the BPA, the West Yorkshire Force and the Home Office.

104. In addition we have had regard to the report of Sir William McPherson and his comments and conclusions about institutional racism in police forces in the UK and more contemporary reports, including criminal prosecutions and convictions against serving police officers whose behaviour reflect attitudes to race which are offensive and reprehensible. We have not lost sight of this wider context in our evaluation of of what happened and the reasons for why it happened.

105. Mr Basu says that the claimant could and did achieve in all roles because his team were one of the best performers in the district with fewer officers, as acknowledged by Inspector Preston. For this 6 month period that is correct, but it was at the expense of Inspector Preston limiting his requests for abstractions, which fed a mutual animosity and other sergeants covering for the claimant when he was absent, drawing them from other duties in the area.

Claim 5 *On 24 January 2019 once again ACC Angela Williams emailed several recipients, including another Chief Officer, copying in the claimant, misrepresenting the amount of the claim [for funding of the NBL Award Ceremony – see §87], suggesting that £650 was being requested, suggesting the claimant's event would wipe out the staff network budget, and stating that she would require the claimant to attend a meeting with her and the Chief Inspector to resolve the matter (para 88, grounds of complaint).*

Treated less favourably by ACC Williams and/or Emma Walton:

Claim 29 *In seeking to shame the claimant in her widely circulated emails dated 27 November 2018, questioning the future support of the NBL - On 27 November 2018 Emma Walton emailed ACC Williams, misrepresenting the claimant's request for a contribution for the Award Ceremony, including the full amount of the event itself. ACC Williams in turn emailed the claimant, copying in six others, accusing him of recklessness, disregard for protocol and belittling the claimant. This response was sent to the other recipients without seeking to ensure the email from Emma Walton was correct. The claimant found the email professionally and personally*

embarrassing and was upset by the inaccuracy of Emma Walton's communication and the tone and content of the email from ACC Williams. He responded respectfully on 4 December 2018 (para's 76 and 77, grounds of complaint).

Claim 30 *Sending a further email circulated widely on 24 January 2019 that was inaccurate and demeaning to the claimant - On 22 January 2019 Emma Walton emailed ACC Angela Williams again in relation to the funding of the NBL Award Ceremony. The event had been paid for by a Colleague on his credit card. The claimant had agreed with the colleague that should sponsorship not come through, they would split the bill amongst themselves. Authorisation from the PCCs office for the community sponsorship had still not come through and the claimant believed it would have been inappropriate to try and claim that now. The Superintendents Association had paid the colleague £100 directly, and there was an amount of £122 to be claimed from the Federation, which would have left an amount of approximately £300 to be claimed from West Yorkshire Police, if they were willing to make the contribution. On 24 January 2019 once again ACC Angela Williams emailed several recipients, including another Chief Officer, copying in the claimant, misrepresenting the amount of the claim, suggesting that £650 was being requested, suggesting the claimant's event had would wipe out the staff network budget, and stating that she would require the claimant to attend a meeting with her and the Chief Inspector to resolve the matter. The claimant was again very distressed by the email and the suggestions contained, which the claimant believed was unnecessary and unfair. Again the ACC's email was inaccurate and did not reflect the true situation. The Natural Born Leaders Course had run successfully for many years and had not received the hostility and scrutiny the claimant was now experiencing. Such has been the hostility and degrading treatment of the claimant and other BAME colleagues that they have now shelved any plans to run the NBL Course again for the time being. The claimant avers that these actions by the Respondent contravene the submission made to the Home Affairs Select Committee about the level of support and encouragement given to the claimant and WYBPA and the NBL programme (para's 87, 88 and 89, grounds of complaint).*

106. Claims 5, 29 and 30 are suitably dealt with together as they concern the same subject matter.

107. An award ceremony to present the certificates to those students who had successfully passed the NBL course was arranged by the claimant for 30 November 2018. It had been approved by ACC Williams and was to be attended by the temporary Chief Constable (TCC) of the Force, the Police and Crime Commissioner (PCC) and two deputy chief constables of neighbouring Forces. The claimant had made arrangements to obtain funding for the event from a number of outside sponsors, but Force policy required those funding arrangements to be approved by the PCC's office to ensure that they were suitable and did not embarrass the police service.

108. Some five days before the event the claimant had not received a reply from the PCC. He sent an email to Emma Walton on 25 November 2018 to request the Force to advance £500-£750 in the event he did not receive clearance from the PCC to use the sponsors he had obtained. Ms Walton forwarded that to ACC Williams on 27 November 2018 and stated, "*I have received a request from Umar Saeed for approximate… £500 – £750 to cover the cost of his NBL 18 award ceremony should*

he not secure funding from his sponsors". She added a concern that this would exhaust the staff network budget, a fund for all of the associations.

109. ACC Williams replied by email of 28 November 2018. She included the claimant as an addressee and Anita Patel, Anna Button, Sally Fryer, Nigel Brooke and Karen Strapps, being others involved in associations, the Finance Director, who was a member of the command team and the claimant's second line manager. She expressed her "*grave disappointment re this – to find out five days before an event that is catering for 80 people, which our T/CC and PCC are attending and also two other DCCs, that funding is not fully in place, is not where I want to be. Be assured, I do accept that offer funding streams are often last-minute and hard to nail down (I fund raise each year for the International Women's Day conference with AWP, that cost a couple of thousand) but this must absolutely not happen again".* She stated that none of the other staff networks operated in that way and this was not fair on the other networks. She said the DCC had agreed to authorise a £500 spending pressure bid if funding did not come through. She asked the claimant to report to her and discuss the benefits and outcomes of the NBL programme should the claimant which to run it again in 2019. She did not require the claimant to attend a meeting with her and the Chief Inspector, as alleged.

110. Ms Walton was criticised by the claimant for having misrepresented that the amount of his request was for the full cost of the event rather than the contribution he sought. That is not true. She quoted the claimant's words "*would I be able to have an amount of £500-£750 to cover the event any I do not get clearance to utilise the sponsors*". His request was made because he awaited approval from the PCC, rather than a request for monies to cover the cost should he not recover it from the sponsors, which is how Ms Walton expressed it. Whilst this criticism may technically be correct, there remained the problem that there would be no funding if the PCC did not approve the sponsors. This misstatement was a slight one and we were not satisfied it was intentional or malicious. Ms Walton presented as an honest witness who did not have any animosity to the claimant but was doing her best to pass on his request whilst drawing attention to issues she felt ACC Williams should be aware of. Ultimately the Force might have had to underwrite the cost. Whether or not the claimant could have chased approval from the PCC more vigorously rather than resort to a request from the Force to underwrite the cost is unclear.

111. ACC Williams' frustration is plainly about the late notice of this request for approval of the monies to underwrite any possible loss. In saying that the funding was not fully in place she was correct because it had not been approved by the PCC. The claimant may consider that this criticism of him to others, including the Financial Director, was harsh but we can find no evidence from which we could conclude this had anything whatsoever to do with the claimant's race or religion. As is more than apparent from the content of the email it was down to ACC Williams' belief that she had been placed in a difficult situation to release funds at very short notice under pressure, because the event was imminent with a number of dignitaries expected to attend. She felt this might be seen as unfair to other interested parties whose associations put bids forward for that limited fund. During the evidence of Ms Walton it emerged that there may have been a misunderstanding that this event was organised by the WYBPA, when in fact it had been arranged on behalf of the Force. In that event it would seem to have nothing to do with the funds shared by the

associations. Nothing seemed to turn upon this and it is not a point the claimant ever sought to make or clarify in his email correspondence with ACC Williams.

112. The email of ACC Williams dated 24 January 2019 was part of an email chain initiated by a request from the claimant, dated 12 January 2019, for reimbursement to DC Evans, who had paid some expenses for the event on the day because the funding from the sponsors had not come through, it not having been authorised by the PCC by that time. In his email of 12 January 2019 the claimant made no reference to any particular sum save that the Superintendents' Association had put £100 towards the event.

113. That request was forwarded to Ms Walton, who duly copied the email chain to ACC Williams and said that she might recall a request for funding for the NBL award ceremony of approximately £500-£750 as the sponsorship had fallen through. She said that the claimant was looking to arrange payment of £650 to Mr Evans who had paid for the event on the credit card. She said the total cost was £750 but the Superintendents' Association had put £100 towards it leaving a balance of £650 to Mr Evans.

114. Upon this information ACC Williams then emailed Ms Walton and the Finance Director Mr Brooke, copying in the claimant, Chief Inspector Fryer and a member of the finance team Ms Carter, to whom the claimant had initiated his request. In that email, dated 24 January 2019, ACC Williams repeated her disappointment about having been backed into a corner at a very late hour and said that it had been agreed the Force would contribute £500 if funding did not materialise and that to find that a colleague of the claimant's had paid £650 for the event on his credit card which was now being requested from the Force was unacceptable. She asked the Finance Director to meet the bill and apologised. She said the matter would be taken up with the claimant by his chief inspector.

115. As is apparent from the emails themselves, this was clearly a case of crossed wires. In his evidence Mr Evans said he had raised £542.25 on his credit card to pay for the event on the day, for which he had then been reimbursed £100 from the Superintendents' Association. That left a sum of £442.25, which he received from the PCC on 30 January 2019. In his request for reimbursement, by email of 12 January 2019 the claimant had included the earlier email chain from late November 2018, but had not expressed what sum he wished to be paid to Mr Evans, saying only that £100 was to be contributed by the Superintendents' Association.

116. In her email, Ms Walton stated that the sponsorship had fallen through and had calculated that payment was being sought for £650 for Mr Evans, an assumption calculated by reference to the maximum of the original amount sought less the £100 contribution from the Superintendents' Association. She also made the point that the Force had agreed to pay £500. It is fair to say that Ms Walton had assumed that the sponsorship had fallen through and had not addressed her mind to the issue of whether that was because the PCC had not approved it or the sponsors had simply not come up with the money. However, the claimant's request for funds six weeks after the event was not accompanied with any explanations as to why he sought an unspecified sum for Mr Evans or that the PCC had still not authorised the sponsorship.

117. The criticisms which ACC Williams made of the claimant in her email were based upon information she had been provided by Ms Walton which, as we have commented, had been made upon a number of assumptions. Whilst incorrect, they were excusable and understandable, given the paucity of information provided by the claimant. Although the claimant was understandably upset by the reaction of ACC Williams, it was a regrettable misunderstanding to which he had, in part, contributed by failing clearly and comprehensively to explain why the money was needed then to reimburse Mr Evans and in what sum.

118. None of this evidence provides any support for the suggestion that these matters were direct discrimination because of race or religion and we find they were not.

Refusing to allow the claimant to be moved from Leeds North East.

Claim 6 *On 5 February 2019 the claimant again met with Chief Inspector Fryer and Sarah Higgins HR. Chief Inspector Fryer opened the meeting stating that she had been informed that the claimant had stated that "she was out to get him". The claimant denies ever having said this nor thinking it, and sought to reassure Chief Inspector Fryer, given he had gone to her for help. It is unclear to the claimant why Chief Inspector Fryer had accepted as fact, something that was wholly untrue and based on rumour, gossip and speculation. The claimant was not informed as to how Chief Inspector Fryer had become aware of this falsehood (para 90, grounds of complaint).*

119. It is agreed that Chief Inspector Fryer had said to the claimant that she had been told he was out to get her. Notes of this meeting were taken by the human resources officer, Sarah Higgins. In the notes this remark appears towards the end of the meeting and not at the beginning and we find that is likely to be correct. It follows a discussion about the claimant having taken issue with a number of his previous line management. The note records Chief Inspector Fryer as saying that she adamantly denied being out to get the claimant and the claimant made no response. In her witness statement she said that it was Inspector Horn who had told her this. We accept her evidence on this.

120. We consider the allegation and whether it was an act of detrimental treatment which was directly discriminatory below.

Claim 7 *The claimant informed Chief Inspector Fryer that he was suffering a serious eye condition and needed to be moved away from Inspector Preston and Inspector Horn, to a safe environment. The claimant was informed that he would not be moving, stating that this was not an option as he was being "performance managed". Chief Inspector Fryer suggested that the claimant had been "disingenuous" about the reason he had been moved previously by Chief Inspector Mohammed and informed the claimant that he was "not achieving" as a Sergeant. The claimant reiterated his representations to Chief Inspector Sally Fryer to be moved to a different team, asking her to facilitate a move to a safe environment (about 91, grounds of complaint).*

121. Save for the reference to the claimant having been disingenuous about the reason he had previously been moved by Chief Inspector Mohammed, these facts are agreed. As to that matter Chief Inspector Fryer said, at paragraph 41 of her

statement, that she made enquiries of Chief Inspector Mohammed on 8 February 2019 because of what the claimant had said about being moved for his protection. At paragraph 17 she explained that she had sought information from Chief Inspector Mohammed about the move and been told it was about a personality clash rather than for protection, although that view does not seem to square with the evidence of Chief Inspector Mohammed to us that it was also for the protection of both. The claimant believed it was for his protection alone. Be that as it may, there is no reference in Sarah Higgins' note to the use of the term disingenuous in the meeting. Moreover, we can find no evidence in the statement of the claimant that Chief Inspector Fryer ever said anything of this nature. We find it was not said at this time.

122. The decision of Chief Inspector Fryer not to move the claimant from the line management of Inspector Horn on 5 February 2019 was at a time when he had become physically and mentally unwell and the breakdown in his relationship with Inspector Horn was a significant contributory factor. The full extent of that was not known to Chief Inspector Fryer on that date because she had received no medical opinion. An outcome of the meeting was to refer the claimant to the occupational health advisors.

123. Chief Inspector Fryer was adamant that the protected characteristics played no part in her decision, but that it was based upon her concerns about the claimant's performance which were being subject to a plan overseen by Inspector Horn and that there had been a number of changes of line management in respect of whom the claimant had been critical. We recognise the point made by Mr Basu that the adamant denials could not be of any weight if the reason was a subconscious one. Taking into account all of the circumstances, we accept that the reasons Chief Inspector Fryer says she acted as she did were the actual reasons for her conduct in respect of claims 6 and 7 and that she was not consciously or subconsciously influenced by race or religion. There were no primary facts in respect of her conduct which would suggest any such motivation (a term we do not confuse with motive).

124. She had clearly formed a negative opinion of the claimant, based in part upon information received from Inspector Horn. We make criticisms of his management of the claimant which we set out below, but there was no reason for Chief Inspector Fryer to reject what was being reported to her. Moreover, her opinion had been based upon other information in her dealings with the claimant. She felt she was walking on eggshells in her discussions with the claimant and that he would challenge anything which was in any way negative rather than recognise the need to accept feedback and develop. She gave an example of the claimant challenging her in his email request for authorisation from Detective Chief Superintendent Khan of the Professional Standards Department (PSD), to attend a meeting he initiated to discuss the issue of a disproportionate number of officers of an ethnic minority having been referred to his department. Detective Chief Superintendent Khan asked Chief Inspector Fryer to consider the claimant's request to release him, which necessitated a reply from Chief Inspector Fryer to explain to him how the problem of abstractions had arisen which had given rise to claimant's request. In short, she felt the claimant should simply have asked her rather than request his release from a very senior officer. This was something she was not used to in her career. The significance of this is that it illustrates why Chief Inspector Fryer was forming an unfavourable view of the clamant. Whether or not the view she formed was fair or

rational, the evidence does not support the inference that it had anything to do with race or religion.

125. Another example of her concerns was information which a PCSO on the claimant's team had passed to her on 14 January 2019. She met this PCSO because Divisional Commander Cotter had recently held a probationary hearing with her to consider whether she had achieved a satisfactory standard. He had asked Chief Inspector Fryer to discuss with this officer her complaint that she had been placed on a team with a very negative culture which she attributed to the claimant. In this discussion the PCSO said that the claimant did not act as a sergeant, tried to be everyone's friend and allow everyone what they wanted. She also said the claimant had said Inspector Preston was rubbish and was out to get the team and probably racist. Mr Basu criticised Chief Inspector Fryer for taking this complaint seriously because it was from an officer who he said had failed, as evidenced by reason of the meeting with the Divisional Commander. Whilst there may have been good reason to be cautious about allegations made by this PCSO because she may have had an ulterior motive, it was important to listen to them. The Divisional Commander clearly felt they required further consideration. Chief Inspector Fryer believed them.

126. Chief Inspector Fryer had to deal with the problem of abstractions which became a thorn in her side. The extent of this is contained in paragraphs 5 to 14 of her witness statement which included consultation and meetings with human resources advisors and ACC Williams. She had a direct report from 5 inspectors and was second line manager to 24 sergeants. She said in cross examination that this matter alone concerning the claimant took an inordinate amount of effort.

127. It was clear from her evidence that Chief Inspector Fryer had concluded the claimant was dishonest and she believed he had sought to mislead the tribunal with respect to the performance of his team whilst he was working with Inspector Preston. We allowed the respondent to produce some further documentation which reflected some inaccuracies in the figures on which the claimant had relied, because they had taken into account the results of more than the claimant's own team. Nonetheless, even with these adjustments the claimant's team had been one of the best performing and we were not satisfied he had intentionally sought to mislead us, but it was more likely that this had been attributed to a misunderstanding and misreading of the statistics.

128. Having said that, we would not criticise Chief Inspector Fryer for reaching the view she did, simply because on the evidence we heard we did not share it. It was a perception drawn from some difficult experiences. The claimant demonstrated as a problem to management, feeling his judgment was better than theirs. He had every right to challenge them at a higher level, but that carried a risk particularly if he was wrong. Without fortitude and detachment those subject to repeated challenge and mistaken criticism may not view the accuser favourably. With respect to his view of his ability to rise to the challenge of developing skills as a newly qualified sergeant, adequately discharging his principal role and managing his time with the three associations we have no doubt he was wrong. Some of his team expressed concerns about his absence and needed oversight, guidance and leadership and that could only fully be provided by his presence at the station or in the neighbourhood. His absences displeased others who had to cover for him. The

reliance on the team metrics did not address and overcome the concerns of his colleagues and the pressure on Inspector Preston who needed to cover many demands in this busy and challenging area of the City. The strong and adverse views which were formed by Chief Inspector Fryer, as well as Inspector Preston and Inspector Horn which we consider below, were nothing to do with the nature of the associations he worked for, his colour, nationality or religion, but a not uncommon reaction to being challenged repeatedly on a point which the claimant would or could not take on board. This led to them expending unprecedented amounts of time in meetings and correspondence which led to an entrenchment of attitudes rather than any resolution. In the case of Chief Inspector Fryer and Inspector Horn this deteriorating situation led them to draw assumptions that the claimant was dishonest and disingenuous with them.

129. Chief Inspector Fryer's negative view of the claimant led to his counsel taking a confrontational approach in challenging her evidence which became, at times, combative, but we found no underlying evidence or facts from which to infer her decision not to move the claimant was attributable to his race or religion.

Claim 8 *The claimant asked to be returned to a different team that would be a safe environment for him to work in and facilitate his recovery. Inspector Horn's attitude towards the claimant was dismissive and indignant, causing the claimant further anxiety (para 101, grounds of complaint).*

130. The meeting was attended by Inspector Horn, Sarah Higgins, human resources adviser, the claimant and his Federation representative Sergeant Bentley. Ms Higgins made a note of the meeting which we regard as accurate. It is contemporaneous and she was detached.

131. The note records a conversation about the claimant's health. The claimant said his fit to work note expired on 8 May 2019 but his return to work would be dependent upon whether he could move to an alternative team. He said that Inspector Horn was the wrong person to line manage him. When asked why, the claimant said it was a hostile and degrading environment and he felt undermined by sniping, criticism, downplaying of work, misuse of the PEN system and mistrust. Inspector Horn said that he did not know what he could have done differently, that the claimant had difficulties with previous managers and that similar issues had arisen with Inspector Berriman and Inspector Preston, He said it was his responsibility to ensure everyone on his team performed and he should provide feedback and guidance if they were not. He said he did not have a problem with the claimant moving teams and asked where he wished to go. Patrol was suggested. The claimant said South or West Leeds or another district. The claimant reiterated that he would then return to work if he was away from Inspector Horn. The meeting concluded by Inspector Horn and Ms Higgins informing the claimant they would go to Chief Inspector Fryer and the senior leadership team whose decision it would be to facilitate a move and inform him of the decision as soon as possible.

132. The request was conveyed because it was considered by Chief Inspector Fryer on 14 May 2019. She rejected it and set out her reasons which were attached to an email of the same date. In her view the claimant's request was made because he was being performance managed and it would therefore be inappropriate for

another line manager to take over responsibility. She rejected his complaint that there had been a misuse of the PEN entries.

133. The claimant took this to the respondent himself who instructed the Divisional Commander to consider the matter. Chief Superintendent Cotter decided that a move was appropriate and the claimant was posted to Bradford. We are satisfied this was clearly the right decision, because of the medical evidence that the claimant's mental health was attributable to his work and the poor relationship with Inspector Horn was irretrievable. Whilst we do not agree with the judgment of Chief Inspector Fryer who failed to have sufficient regard to the issues of the claimant's mental health, we reject the allegation it was a deliberate and intentional attempt to put maximum pressure upon the claimant or anything to do with the protected characteristics. The difficulty she faced was that there was a history of poor working relationships. The claimant had criticised his last three managers and she was not to know a new one would have been the solution. With the benefit of hindsight that was not the case as the claimant is now performing well to the complete satisfaction and admiration of Inspector Williams to whom he reports.

134. This part of the claim, at paragraph 101 of the claim form, relates to the actions of Inspector Horn not the subsequent decision of Chief Inspector Fryer. We have nevertheless addressed the decision of Chief Inspector Fryer in the previous paragraph. As to the criticism of Inspector Horn, it is clear that the request for a move, on 7 May 2019, was passed on by him. He had no authority to move the claimant but did all he could which was to say he did not object to a move and to convey the request to the appropriate quarters.

135. In respect of the complaint that Inspector Horn was dismissive and indignant, an allegation he denies, we are satisfied the note of the meeting favours his recollection and accept it. We note that Sergeant Bentley, the Federation representative who was present, made no criticism of Inspector Horn's conduct of this meeting either at the time or in his evidence.

<u>The claimant was treated less favourably by Inspector Preston, namely:</u>

<u>Claim 9</u> *Preventing the claimant from attending the full TSS seminar on 27 June 2018 - the claimant was due to attend a TSS seminar, which had been arranged by the Force and approved previously. On 26 June 2018 the claimant received an email at 21.45hrs from Inspector Preston informing the claimant that he should not attend and expressing his view that there was no value in the claimant attending the TSS lecture. The claimant felt pressured not to attend, and had been placed in an uncomfortable situation. He therefore only attended half the lecture and then came into his home station in order to comply with Inspector Preston's instructions (para 30, grounds of complaint).*

136. Late on 26 June 2018, at 20.48, Inspector Preston sent the claimant an email to ask him to attend a 'safeguarding tia' which was a multi-agency meeting which would require the attendance of a sergeant. He had hoped the claimant could shadow Sergeant Nicholson who was due to attend, to gain experience. The claimant responded by email, to point out that he had been booked for some months to attend the TSS Keynote seminar about lean systems and process mapping, which

was designed to achieve efficiencies and savings. The claimant posed the question, was his inspector telling him not to attend the seminar.

137. In reply Inspector Preston said that he had only just become aware the claimant was to attend the session and that he would prefer the claimant to attend to his duties and to shadow Sergeant Nicholson at the safeguarding tia, but he would leave it for the claimant to decide.

138. The email exchange demonstrates that Inspector Preston had not checked the CARM, that is the duty diary, which would have notified him that the claimant had been booked on this course for some time. When he learnt of this from the claimant's reply, he did not inform the claimant he should not attend, as expressed in this particular complaint, but made it clear what he would prefer and that the decision was one ultimately for the claimant. We do not regard this as a detriment. There were competing demands which Inspector Preston had to take into account and there was no improper pressure placed upon the claimant as suggested.

Claim 10 *Requiring the claimant to amend his WYBPA corporate signature - Inspector Preston had circulated an email to all staff requiring an elaborate corporate signature. He informed the claimant that he had worked with another Staff Network Chair and used his signature as an example for the claimant. The claimant complied with the instruction and amended his signature. For information, the comparator Chairs' signature was in rainbow colours. In or around late June 2018 Inspector Preston informed the claimant that he should further amend his corporate signature's reference to the role as Chair of the WYBPA, as it was highlighted in black, asking him to remove this (para 32, grounds of complaint).*

139. By email of 6 May 2018 Inspector Preston informed his team that they should identify themselves by a specific format of email which he illustrated. It included particular references to the layout of the signature and the colour was blue. The email expressly addressed staff associations which Inspector Preston said were permissible but should be added after the team identifier.

140. Shortly afterwards, Inspector Preston noticed that the claimant's formatted email was not as he wished and so he contacted him by telephone. It is agreed that Inspector Preston informed the claimant that the secondary role which the claimant had identified as the chair of the WYBPA was in black lettering and should be changed to blue. According to Inspector Preston the claimant informed him that he had used black lettering because he was black. In cross examination the claimant said that he had replied that the lettering was black because it was an association for the representation of black officers. We consider the claimant's recollection is likely to be correct as it squares with his point about the comparator, the chair of the LGBT Association, who used rainbow colours in his email.

141. The claimant does not suggest that he had drawn Inspector Preston's attention to that at the time. It is plain from the email of Inspector Preston of 6 May 2018 and his evidence that he was seeking a uniform and standardised presentation for emails to identify and publicise the East Leeds NPT brand. The chair of the LGBT was not in the same circumstances because he was not subject to this instruction, not being a member of Inspector Preston's team. We are satisfied that in the hypothetical situation that the chair of the LGBT had received Inspector Preston's

email, that he too would have been required to change the colour of the lettering in respect of the association from rainbow colours to blue. This was not because of the protected characteristics.

Claim 11 *Hindering the claimant's attendance at the NBL on 3 July 2018 - On 3 July 2018, Inspector Preston sought to prohibit the claimant's attendance to the Natural Born Leaders, informing him that his shifts had been amended and that his abstraction would not be authorised. At this late stage, this would have severely hampered the claimant from coordinating the event, including him being able to ensure appropriate quality assurance and necessary safeguards that were in place (35, grounds of complaint).*

142. The complaint is expressed in too broad terms, because Inspector Preston did not seek to prohibit the claimant's attendance at the NBL course and refuse to authorise it, but rather attempted to limit the claimant's attendance from 5 days of abstraction to two, being the first and last days. The reason he advanced for that, at paragraph 64 of his witness statement, was to ensure a balance between supporting the course and ensuring supervisory presence and developing of his role given the degree of his other abstractions.

143. The claimant had invested time and effort in arranging this course which had the approval of the Force and was important and significant for the reasons the claimant expressed. He understandably wanted to be in attendance for the duration. His appeal against Inspector Preston's decision was allowed to the extent Chief Inspector Mohammed said he could attend for three days, Monday to Wednesday, if he could not find cover for the third.

144. The reason Inspector Preston sought to limit the claimant's attendance was nothing to do with his race or religion or the fact the claimant's involvement in arranging the course had been in his capacity as Chair of the WYBPA. It was because Inspector Preston wanted the claimant to be available to work on his team as much as possible and gain experience in his newly promoted post. Chief Inspector Mohammed limited the attendance from the requested 5 days to 3, but there was no suggestion he discriminated against the claimant in refusing his wish to attend the 2 further days.

Claim 12 *By attending a the NBL on 17 July 2018, seeking to embarrass the claimant by counting BAME staff in attendance - On 17 July 2018 Inspector Preston arrived during the Natural Born Leaders' course, without an invite or being a delegate or speaker for the course, nor would he have known about the change of venue or the reasons for it. He proceeded to count the number of BAME staff from the Force who were in attendance, in order to try and demonstrate why the claimant's presence was not necessary. Inspector Preston's actions were humiliating and distressing for the claimant and a number of other colleagues in attendance. This behaviour has never been done before in the history of the programme. The claimant found Inspector Preston's behaviour offensive and degrading bracket (para 38, grounds of complaint).*

145. We reject this complaint for the reasons expressed in respect of claim 3 above.

Claim 13 *Reporting the claimant to PSD on or before 1 October 2018 - On 1 October 2018, the claimant was informed that the PCSO's RTC and the claimant's Report following the same had been submitted by Inspector Preston to the Force's Professional Standards Department for assessment. The referral was made without liaising or reference to the claimant. If the Report had been sub-standard or not in-depth enough, constructive or development guidance should have been provided on what further enquiries, if any, were required. The claimant requested the rationale for Inspector Preston doing so, but this has never been provided to the claimant, despite repeated requests. The claimant avers that that this referral to PSD was malicious and unnecessary, causing the claimant anxiety and distress (para 49, grounds of complaint).*

146. On 8 August 2018 a road traffic collision occurred between a police vehicle which was driven by a PCSO, with another PCSO in accompaniment in the front passenger seat and a motorcyclist. The PCSO's gave a verbal account of the collision to the duty sergeant who compiled a document known as POLVEH (an incident involving a police vehicle). That account was that a male on the motorcycle had pushed it into the front of the stationary police vehicle causing damage to the car. It was recorded as a crime of criminal damage.

147. The claimant became involved on a welfare visit to the PCSO's who were part of his team and sent a report to Inspector Preston on 20 August 2018 by email. The content of that became the subject of the referral to the Professional Standards Department (PSD).

148. Inspector Preston was presented with the POLVEH report as part of his duty to review and write it off. He became concerned that the description of the incident by the PCSO's did not match CCTV footage which had been obtained shortly after the collision.

149. In an email dated 20 August 2018 from the claimant to Inspector Preston, the claimant said that he had spoken to both officers on an informal basis. They had been in a marked police vehicle and had said initially that they had seen a male on a red motorcycle with no helmet and they suspected it was stolen. The driver had intended to cut off the escape route and the front seat passenger opened his door to try to prevent any escape. The claimant stated that there was no intention to make contact by the driver and said that both of the PCSO's had individually confirmed they had an honest belief that the rider of the vehicle had hit the police vehicle with his bike in an attempt to escape and ran off. The duty sergeant had recorded criminal damage to the police vehicle. His report had stated that the PCSO's had reported their vehicle as being stationery at the time of the collision. That is not mentioned in the claimant's report. The claimant reported that the officers had attended a shop later where CCTV footage had been collected the following day and that revealed that "*contact was made by the police vehicle as well*". The claimant added "*I support the view that any contact made by the police vehicle was accidental in an attempt to prevent any further crimes occurring and to lawfully detain the rider. It will be covered under S3 CJ 1967 with any person as for the PCSOs*". He recommended no further action.

150. Inspector Preston spoke to a number of other supervisors who were concerned about the discrepancy between the initial account and the CCTV footage

and the supportive email of the claimant which might raise issues of integrity. Inspector Preston discussed the matter with Chief Inspector Mohammed and then liaised with a supervisor at the PSD who advised him to submit a report to them in respect of the incident, both with respect to comments made by the PCSO's, which were inconsistent before and after viewing the CCTV footage and the claimant's report. He duly did so. It is that which is the subject of this complaint.

151. Having explained those details, with respect to his concerns about the claimant Inspector Preston commented, "*[The claimant] has reviewed the footage and provided the email supervisory report as detailed below (to CI Mohammed and myself), supporting the view [of] [the PCSO's] and going quote the extra mile to add defences (relating to justifiable use of force) in support with a view to keeping his staff on side. However, as detailed below there are a number of concerns around judgement, honesty and integrity which I ask are investigated by PSD please. It is unclear on what basis [the claimant] has formulated the opinion that has been recorded. I would have expected at the very least a report to the effect that questions the initial recording of the PCSO's, or having reviewed the CCTV, a report which outlined differences in the initial report to that based on the CCTV footage*".

152. By email of 28 September 2018 the reviewing officer at the PSD explained that he had viewed the CCTV footage which showed that the police vehicle had been moving and made contact with the bike leading him to the view that this was a road traffic collision not criminal damage. He recommended the crime be reclassified. He considered that the PCSO's had misconstrued events and not intended to deceive anyone or intentionally had a crime reported to minimise their involvement. He recommended management intervention in respect of both PCSO's for failings and unacceptable standards of work and behaviour.

153. He advised management action for the claimant for misquoting legislation and not providing a full rationale whether a crime of criminal damage should have been recorded, by way of a full and frank discussion around the CLA powers and whether or not the incident was a road traffic collision or not. It was not felt that the claimant had been dishonest as he had viewed the CCTV to ascertain the facts of the damage caused to the police vehicle. It was his view that there was a lack of experience and understanding of the legislation.

154. The criticism of Inspector Preston that the claimant had conflated an accident with an attempt to effect a citizen's powers of detention or prevent crime (those available to PCSO's) is valid. It could not realistically have been both, and neither would amount to an offence of criminal damage to the police vehicle. There were, apparently, three accounts of the PCSO's for this matter: the bike rider drove into a stationery police car and caused damage to it; or the police vehicle drove into the motor bike by accident having lost some degree of control; or the police vehicle was intentionally manoeuvred or used to make contact with the bike and/or rider to apprehend and detain him to prevent crime. The claimant ought to have reported the facts clearly, frankly and intelligibly. One construction of the actions of the PCSO's was that they had made up an initial account to deflect blame for damage caused to a police vehicle on to a third party. By failing to address the reason for the shift in accounts after the first proved demonstrably not to be the case from the video footage, and then proffering two, mutually inconsistent justifications for the second explanation it appeared the claimant may have been complicit in supporting that

impropriety. That was considered to pose honesty and integrity issues. The proper course was to refer the matter to PSD for them to investigate. There was nothing wrong with Inspector Preston's response. He need not, and probably should not, have discussed this with the claimant first if he was to make that referral.

155. The fact the PSD advisor reached a conclusion that there was no case of honesty and integrity to answer does not mean it was inappropriate to refer it. The PSD report contains an analysis of the circumstances and reaches a reasoned conclusion but makes no suggestion that the issues of probity which had troubled Inspector Preston were baseless.

Claim 14 *Providing the claimant with no support in completing his NPPF - The claimant had completed 98% of his NPPF Sergeants portfolio, having submitted it to his assessor, who assessed and recorded his work as complete. Although initially accepted, the assessor and the claimant were informed that unfortunately the portfolio and evidence had not been assessed correctly resulting in the claimant having to rework the whole portfolio. This is still ongoing and has caused the claimant substantial further work to his detriment. The claimant has sought guidance outside of Force to assist in completing the NPPF portfolio. The claimant avers that he was given inadequate support, to his detriment in comparison to colleagues (para 52, grounds of complaint).*

156. The Tribunal was unable to identify what this claim was and who it was against. During the cross examination of Inspector Cheryl Kirby, the internal quality assessor, the Employment Judge expressed his concern that he did not know who the allegation was against, that he was still not sure what the claim was, who had done or nor done what they should have done. No clarity was provided.

157. There is no doubt that the relatively recent change in the promotion process to the completion of the NPPF could have been handled better. Inspector Kirby, formerly Lee, who had supervised the claimant acknowledged that, but this rather chaotic introduction of a new system was not specific to the claimant. The claimant's 98% completion of the NPPF was rejected. He had to start again. Inspector Kirby was aware of a similar rejection in the case of another officer who was white. The claimant's initial supervisor, acting Inspector Norgate, had misunderstood what was required. Inspector Kirby said he should have picked up problems with the claimant's NPPF months earlier.

158. One problem concerned examples the claimant had used from the College of Police website. This was referred to the PSD because of a concern in respect of plagiarism. Criticism was made of the referral to PSD.

159. The referral to PSD was explained by Inspector Kirby because she and PS Cocliffe were not clear whether material from the College website which had not been attributed in the document might be a form of plagiarism. The advice was that it would have been if another officer's work had been used as examples but not by using the information the claimant had from the website. We found nothing underhand or inappropriate in the referral. In the event of any doubt, it is a sensible precaution to refer matters to those at PSD for their opinion. Not to do so may result in wrongdoing being misunderstood and overlooked, leading to far more serious problems later on. We reject the allegation of Mr Basu that the number of referrals of

the claimant to PSD was a symptom of the prejudice and animosity to him born of his race or religion.

160. Chief Inspector Fryer was criticised for not allowing the claimant days out to recomplete his portfolio, but that was not Force policy at the time, although that has since changed. With respect to the promotion process the claimant agreed in cross examination that the Force had excluded him from the paper sift because of his knee disability, given him ample opportunity to complete his portfolio, offered support from his immediate superiors and from a more experienced sergeant, given feedback on deficiencies in his written portfolio and granted a 12 month extension to completion of his level 4 NPPF. The claimant agreed that Inspector Preston was not responsible for the completion of the NPPF. It is he who this complaint is said to be about in the grounds of complaint.

161. We have provided the above detail about the claimant's concerns about having to recomplete his NPPF portfolio but remain unclear how it is said to be an act of direct discrimination perpetrated by Inspector Preston; or for that matter anyone else.

Claim *15* *Intentionally seeking negative examples of performance - Subsequently, the claimant was informed by other colleagues, and his own team members that Inspector Preston had been approaching them, team members and even members of the public asking them for negative examples about the claimant's performance. Inspector Preston was attempting to create an adverse discipline and performance footprint and caused the claimant stress and anxiety (para 53 grounds of complaint).*

162. The claimant has provided no particulars of which colleagues and team members had been approached by Inspector Preston for negative feedback. He said in cross examination that he could not remember how many or what they had told him.

163. His statement contains no evidence of any such approach, but there is a reference to Inspector Preston approaching a member of the public who worked at an organisation called CATCH, to whom he had said the claimant was incompetent, but that person remonstrated and said the claimant was very effective. The claimant gave no further details of when this occurred and who the person was.

164. This allegation is denied by Inspector Preston and there are insufficient details and particulars in support. It is not established.

Claim 16 *Subjecting the claimant to an entirely negative PDR meeting on 17 December 2018 - With no advanced notice, Inspector Preston scheduled a PDR meeting on 17 December 2018. The claimant reluctantly attended and the meeting took place at Stainbeck Police Station, Leeds. The tone of the meeting was entirely negative and the claimant feared that he would not receive a fair and balanced appraisal (para 79, grounds of complaint).*

Claim 17 *Producing a long PDR Report that was neither fair nor balanced so as to create an adverse performance footprint on the claimant's professional record - With no advanced notice, Inspector Preston scheduled a PDR meeting on 17 December 2018. The claimant reluctantly attended and the meeting took place at Stainbeck*

Police Station, Leeds. The tone of the meeting was entirely negative and the claimant feared that he would not receive a fair and balanced appraisal. The same day [i.e. 14 January 2019 – see §82], the claimant accessed the Force's PDR system and was presented with a 13 page detailed PDR report, prepared by Inspector Preston. The claimant avers that the PDR is inaccurate and is an unfair and unfavourable criticism of his performance. The PDR report also seems to have been done as a response to the document the claimant had provided Chief Inspector Fryer in which he had set out a chronology of events. It does not accurately reflect the work done or the achievements of the claimant and his team. The claimant found reading the report also incredibly stressful, he felt wholly intimidated and frustrated that he was being treated unfavourably by Insp Preston. The claimant avers that this is an attempt to create a substantial adverse performance footprint on his professional record (para's 79 and 84, grounds of complaint).

165. We consider the two complaints together because they both relate to the same PDR and the meeting to discuss it.

166. The PDR was the annual appraisal. It is 13 pages long and detailed, with narrative and examples for the opinions expressed. It concludes by rating the claimant as needing improvement.

167. The report is critical of the claimant's performance in a number of respects, in particular with respect to the claimant's presence and visibility, concerns which it is said were received from the other 2 sergeants and a number of the claimant's team of officers and PCSO's. Inspector Preston commented upon his challenging the claimant for not prioritising his primary role and allowing his work with the associations to draw excessively on his time. In addition he is critical of the degree of criticism and challenge he received from the claimant. He said the claimant had made unprofessional and disparaging remarks about him to peers.

168. The report is not wholly critical but it could not be regarded as favourable and is on the whole negative. Parts of it are unfair and not balanced.

169. With respect to his team's performance, for which one might expect the claimant to receive credit, Inspector Preston recorded that the claimant said his team was the best performing in the district, but in parenthesis qualified that in saying that was based on a very narrow set of measurables and that the team had some good performers. In cross examination Inspector Preston accepted that the claimant's team was the best performing by reference to the metrics and, even having regard to non-recorded metrics, he could not think of any which reflected negatively. At paragraph 53 of his witness statement, Inspector Preston made similar qualifying remarks as to the team performance. Even having regard to the adjustments to the statistics which were drawn to our attention by Chief Inspector Fryer, we agree with the criticism made on behalf the claimant by Mr Basu that Inspector Preston had not given the claimant sufficient credit and acknowledgement for the strong performance of his team but had understated and qualified it.

170. Another rather peculiar criticism concerns terminology the claimant had used which Inspector Preston. Inspector Preston the claimant described an incident as not a terrorist attack. He said that might have had an adverse impact on members of the public who received this message. But the event as described to us could have

given rise to that belief. The claimant's remark was no different to many such public announcements which are made by the police to allay concerns. In respect of another entry he suggested a report in which a PCSO had been assaulted, which the claimant described as one in which officers were attacked, should have been described as one in which an incident occurred and officers were injured. Inspector Preston said the claimant's report was inappropriate given the sensitivities in Harehills. This was meaningless semantics.

171. Inspect Preston was cross-examined about a number of the entries in the PDR. We did not consider they were all unfair and inappropriate. As is apparent from what we have said above, the time the claimant expected to be allowed in the form of those abstractions was unrealistic and he was resistant to his supervisor's advice on this and repeatedly challenged it. We are satisfied it is likely he did make critical comments about Inspector Preston to his team, reflected in the remarks made to Chief Inspector Fryer by one PCSO. That was unprofessional, notwithstanding whatever provocation the claimant felt might have justified such comments. A final review meeting for the PCSO to which we have already referred which was conducted by Chief Superintendent Cotter had not been properly prepared and the human resources adviser had fed back where improvement was needed. Such a matter is an important one to record in a PDR, to mark it as an area for development.

172. We have come to the conclusion that there was justified criticism in part of this report but in other parts unfairness and imbalance and that amounts to a detriment.

173. There is little objective material to support the claimant's account of the difficult and unpleasant meeting on 17 December 2018, at which the PDR was discussed. It is not fair to say that it was without any notice as set out in the grounds of complaint. Nevertheless, given the content of the PDR we are satisfied it was likely to have been a difficult and unpleasant experience for the claimant to have to listen to substantial criticisms of his abilities. That would constitute a detriment, insofar as it was based upon unfairness and lack of balance which we have found.

174. Was that detrimental treatment less favourable because of the claimant's race or his religion or both? There is no evidence at all that Inspector Preston had acted as he did because the claimant was a Muslim. The claimant is not able to point any evidence in which Inspector Preston expressed any comments or acted in any way to him or anyone else because of his or their faith.

175. There is no suitable comparator. As we indicated earlier, the claimant alone had membership of three other associations which drew upon his time and we are satisfied no other officer who had been supervised by Inspector Preston had presented as so challenging and critical of him.

176. There were comments made by Inspector Preston in respect of nationality, of his relatives from Eastern Europe, and colour, his tan and Austrian ancestors, which could constitute facts from which an inference could be drawn that these detrimental matters had occurred because he had been influenced by the claimant's race.

177. The claimant also referred to an occasion when Inspector Preston had spoken to a black woman in Harehills and said, "*Where are you from?*" The claimant reported this to Chief Inspector Mohammed at the time because two PCSO's raised

it with the claimant. He spoke to Inspector Preston who said he had been dealing with an incident with a person on the floor who having a fit when the woman in question was present. His remark was with respect to where she lived. Chief Inspector Mohammed was satisfied the remark had mistakenly been taken out of context and we regard his conclusion as correct.

178. We also share Chief Inspector Mohammed's view that the remarks which Inspector Preston made about his tan and the skin colour of his relatives was a light-hearted remark. They had no relevance to the difficult relationship between the two. His unfavourable assessment, insofar as it was not fair and balanced, and the unpalatable meeting was because of the poor relationship which had developed from the disagreements with Inspector Preston, challenges directly and then at a higher level, taking up significant amounts of Inspector Preston's management time because of these disputes and making adverse comments about Inspector Preston to his subordinates behind his back. In preparing his final managerial assessment of the claimant in the form of the PDR, Inspector Preston did not rise above these experiences and they affected the objectivity of his written assessment; but race or religion was no part of that.

Treated less favourably by Inspector Horn, namely:
Claim 18 *Belittling the claimant's concerns about the OCG member - Prior to transferring, the claimant's father, a prominent member of the Leeds Muslim Community, had contact with a Kurdish Muslim male, who had been a labourer for their house extension in 2006. The male enquired about the claimant and asked if he could contact him as he was in trouble with the Police. Upon contact, the claimant then realised the male may be an Organised Crime Group (OCG) member and that the claimant and his family may be at risk. In order to be entirely transparent, reported this straight away to Inspector Horn and explained the circumstances. It transpired that the male was an OCG member, however Inspector Horn deemed the level of risk to be low (para 56, grounds of complaint).*

179. The evidence in respect of this complaint is dealt with in a short passage, paragraph of 223, of the claimant's witness statement. He regarded Inspector Horn's response to the issue he had raised about having been contacted by an OCG member as dismissive and demeaning and refers to the email chain in which he notified Inspector Horn of this concern on 13 October 2018.

180. The written response from Inspector Horn of the same date, some two hours later, acknowledges the claimant's concern. Inspector Horn stated he understood it could be hard to be objective in such a situation and it was best to use the National Decision Model (NDM). In the following two pages Inspector Horn analysed the threat and policies and concluded there was no threat at that time. He said that this risk assessment would be placed on the OEL, which we assume is some form of database. Inspector Horn then forwarded his risk assessment under the NDM to Chief Inspector Fryer. He informed her he had tried to telephone the claimant and left messages on his telephones and that he had advised him not to meet with the individual but to ring him and tell him to hand himself in. This was because the claimant had queried whether a meeting would be the right course.

181. Although this was explored in cross-examination with Inspector Horn and Chief Inspector Fryer, we can find no evidence of any dismissive or demeaning

response in the email chain the claimant relies upon. The claimant was subsequently criticised by Chief Inspector Fryer for not having conducted the risk assessment under the NDM himself, but this complaint is not against her. We are not satisfied any detriment is established in respect of Inspector Horn.

His general dismissive attitude towards the claimant, seeking to undermine, belittle and intrusively manage him - The claimant avers he was subjected to onerous, constant and unnecessary micromanagement by Inspector Horn.

Claim 19 *He had excessive numbers of PEN entries. These are comments on the Performance Example Notebook system. PEN entries are normally short, factual comment about an individual's performance, good, observational or bad, used by supervisors. It can also be utilised to record Individual Accountability Meetings (IAMs). Normal practice is for Sergeants to conduct an IAM quarterly with their staff and every fourth IAM being the Officer's PDR. Each conversation the claimant had with Inspector Horn was subsequently recorded as a PEN, including personal details that the Clamant avers was inappropriate to be included on the system. On almost every occasion that he would find a PEN entry, this would then require challenge or correction as it had been misrepresented. The constant challenge began to impact on the claimant's health. He started to feel constantly anxious and stressed. The claimant had immediately made Inspector Horn aware, that every PEN he did was automatically copied to both Inspector Preston and Chief Inspector Mohammed, neither having any continued managerial responsibility for the claimant. The claimant informed Inspector Horn that he· found this highly embarrassing as he had ongoing issues with Inspector Preston and had a great deal of respect for Chief Inspector Mohammed. The PEN entries were detailed, often negative and demonstrated hostility towards the claimant. The claimant avers that the majority were not factually correct and when requested to do so, Inspector Horn refused to amend the entry, instead posting a further PEN entry, in CAPITALS (Paras 62, 63, 64, 65 and 66 grounds of complaint).*

182. Evidence from a number of senior officers revealed that there was no consistency between them in the use of PEN entries nor the frequency of IAM's. Inspector Preston rarely used the PEN entry system but Inspector Horn used it as a daily working management tool to record anything he regarded as significant. The entries themselves are about work-related matters as and when they arose. We do not accept the criticism that inappropriate material was recorded.

183. Inspector Horn addressed criticisms and challenges to his own entries by adding the claimant's by way of cut and paste from an email and then added his comments in capital letters. There was no evidence this approach was applied uniquely to the claimant. The difference was that the claimant made frequent challenges to the entries, far more than any other officer Inspector Horn had ever supervised. That had the consequence of making these records longer and more detailed, involving the original entry, the claimant's response, which was included in its entirety and Inspector Horn's further comment in capital letters. This method established that performance issues were being dealt with as and when they arose and the document could be referred to later by either the supervisor or the officer at IAM's or the annual PDR. Inclusion of the claimant's comments as well as his own was a safeguard which provided a degree of balance and might reveal a pattern which could vindicate the observations either had been making.

184. Whether or not the entries were not factually correct, negative, hostile and excessive are matters to which we return after addressing below each raised in the claim form.

Claim 20 *Inspector Horn undermined the claimant's authority as a Sergeant. In January 2019, when a female member of staff, who had recently suffered a miscarriage, called to report that her grandmother had died. She requested compassionate leave to support her mother and make funeral arrangements. In line with Force Policy, the claimant authorised a few days of compassionate leave, making Inspector Horn aware of his decision. Inspector Horn did not support the decision, despite it being within guidelines and the claimant had to recontact the staff member to state only one day had been authorised (para 67, grounds of complaint).*

185. Compassionate leave could be authorised under the policies of the Force by the second line manager and it was for 1 to 5 days. Inspector Horn was the second line manager and the request should have been referred to him initially and not dealt with by the claimant. There was no evidence to gainsay that. The PEN recorded that the claimant was not authorised to grant that leave. In those circumstances the entry was not factually incorrect. It was appropriate to make it so that the claimant was reminded not mistakenly to grant leave outside his authority in the future.

Claim 21 *An experienced PCSO colleague had not been performing well recently. The claimant had frank discussions with the colleague and was able to re- engage him and saw a marked improvement in performance. Inspector Horn suggested an action plan, but as the claimant was seeing substantial improvement he felt it would be detrimental to the progress. Inspector Horn took exception to the claimant's decision and constantly recorded on PEN that the claimant had not addressed the issue, which was untrue. The claimant believed that formal actions plans should only occur when informal management intervention has not resolved the issues (para 68, grounds of complaint).*

186. This concerns a request from Inspector Horn at the claimant's IAM on 5 November 2018 about a PCSO who the claimant supervised. That officer had failed to populate a database (POPI) with information about crimes as requested by a Chief Inspector. At the IAM Inspector Horn had asked the claimant to include this failure as a PEN entry on the officer's record and initiate a formal action plan. The claimant engaged with that officer to improve his performance and did not record the earlier failure to populate the POPI.

187. Inspector Horn checked the POPI on 5 December 2019 and noticed that the officer had not populated any further crime on it. He also checked the officer's PEN to discover that no entry had been made by the claimant about the earlier failures in accordance with Inspector Horn's request.

188. Inspector Horn then spoke to the claimant and instructed him to speak to the officer to discuss the issues and complete a further PEN entry by 14 January 2019. The PEN entry was completed on 17 December 2019 but Inspector Horn was concerned that it still made no reference to earlier failings to populate the POPI for the period between 5 November 2018 and 5 December 2018.

189. On 6 January 2019 the claimant sent an email challenging the PEN entry for the IAM on 5 December 2019. He stated the PCSO had made entries on the POPI on 30 September, 5 December, 17 December and 23 December and that, although not the highest, it was not the lowest number of recordings. The claimant added that he recorded an observational PEN 'to pacify Inspector Horn'.

190. On 16 January 2019 Inspector Horn made a PEN entry about this matter and said, "*I am extremely concerned by your reply. You tell me you have recorded an observational PEN "to pacify" me. This suggests you have a significant lack of understanding of your role within West Yorkshire police. I rely on you as a sergeant to manage performance on your team. On this occasion you have failed to do this.… I asked you to consider a formal action plan. You declined this option. I believe this was a poor decision. This is evidenced by the fact that when I checked the POPI a month later on 5 December, [the officer] had not made a single entry since I raised the issue for you to address. This suggests that either you have not raised the issue at all, ignoring my request, or that [the officer] had ignored you*".

191. In cross-examination the claimant said that he had not made a PEN entry then, in respect of the failure of the officer to populate the POPI, because he had been asked to do so and not instructed.

192. It was open to the claimant as the direct manager of the officer concerned to consider an alternative approach than that recommended by Inspector Horn. The claimant felt that a less formal approach would be the better way of improving the performance of this PCSO and a subsequent email from the PCSO himself which was posted on the PEN records his admiration of the claimant.

193. Nevertheless, the means adopted by the claimant had seen no improvement with respect to populating the POPI for at least 4 weeks, between the beginning of November and the beginning of December. A record on the PCSO's PEN at the beginning of November would have been a marker against which his performance in that respect could have been measured and a reminder to him of where he had fallen short. Instead of acknowledging that in his response to Inspector Horn, the claimant took issue with it. He later stated he made the entry to pacify his supervisor which was glib and suggested he did not understand, or was deliberately avoiding, the point. In referring to the dates when the officer had populated the POPI, before and after the month when it had been overlooked, he implied that the problem was now resolved and so was not a continuing concern. The claimant did not seem able or willing to reflect on the fact it is possible the PCSO's performance could have been better; he might have rectified his oversights a month earlier if the claimant had done what he had been advised to do. Inspector Horn's store of experience as a supervisor might have been one from which the claimant could have drawn in his early days but he seemed to regard it as worthless if it conflicted with his own judgment.

194. This PEN entry illustrates a point made by Inspector Preston, Inspector Horn and Chief Inspector Fryer, that the claimant did not listen and think about the feedback with a view to learning and improving. He regarded any criticism not as constructive but as a personal attack. He sent an ill-thought response in disobliging terms which exasperated and offended his manager.

Claim 22 *A relatively new, female officer had started on the team. With scant detail,*

Inspector Horn told the claimant that the officer had been talking about "who she would like to have sex with". No context or detail or witnesses were provided, so the claimant said he would speak with the officer. The officer denied the comment but advice was provided about being aware of surroundings and that culture within NPT was different to that on Response. Inspector Horn has continuously raised that the matter was not dealt with harshly enough, despite the claimant's concern that there was not enough evidence to proceed as he had suggested an informal ad-hoc management intervention was appropriate. The claimant also avers it is wrong to make judgements about colleagues based on rumour, gossip and speculation (para 69, grounds of complaint).

195. There were two aspects of the complaint about this officer, not only that she had made comments about colleagues she would like to have sex with but also that she was speaking disparagingly about some colleagues behind their backs. The complaint was made to Inspector Horn at the beginning of November 2018 and he asked the claimant to speak to the officer about this then and record any advice on her PEN. He raised the matter again with the claimant on 5 December 2018 at the IAM because no PEN entry had been made. The claimant made a PEN entry on 4 January 2019.

196. The claimant responded to the PEN entry of Inspector Horn about the IAM on 5 December 2018. He stated that he had been advised that Inspector Horn favoured the officer who had raised the concern and he found that challenging. He said he had no recollection of being asked to record it by a PEN entry. He stated that he had informed Inspector Horn at the IAM that he had spoken to some others and by triangulation of the matter concluded the allegation about the disparaging remarks was likely to be untrue. In respect of the allegation about who the officer would like to sleep with, he stated that he would need more information to address it specifically and male officers had had these conversations for decades and got away with it. He recorded that at the IAM he had told Inspector Horn that he had spoken to the officer in question in general about changes in the team leading to people feeling vulnerable and insecure and that she needed to be mindful of conversations and know her audience.

197. Inspector Horn entered his response on 16 January 2019. He stated that the PEN entry the claimant had made on the police officer's records was 2 months after he had first raised it and that it made no mention of what the police officer had said about the allegations, nor did it record the claimant's comment that she should know her audience. He stated that issues of team cohesion had to be addressed quickly and that it was a straightforward supervisory exercise in which he should have explained to the officer what had been alleged and she could have admitted it, denied it or given a different account.

198. The claimant had been tasked with addressing this sensitive issue but did not follow it through as required, namely by making a PEN entry on the officer's record. Although the claimant said he could not recall being instructed to record a PEN, it is likely that was part of the requirement given Inspector Horn's own fastidiousness about them. It took a further month after the claimant was reminded of the oversight, 4 January 2019, for the PEN entry to be added. There is no acknowledgement about this from the claimant. Rather, he explained why he had reservations about what he had been tasked with, suggesting that Inspector Horn had inappropriately

attached weight to the matter because he had favourites, of which the informant was one.

199. In his evidence to the Tribunal, he said that the officer had denied the allegations when he put them to her. There is no reference to that in his response to Inspector Horn nor, apparently, in the PEN entry on the officer's record. In cross examination he said he was hesitant to accuse anyone unless there was irrefutable evidence of it. We consider it unlikely the claimant put the two allegations to the officer as requested. He had already considered there was nothing in the first allegation and that the second was ridden with hypocrisy because of a culture of male officers conducting themselves in this manner for years and not being challenged about it. His written responses and comments at the IAM suggests that the discussion he had with the officer was in general terms as recorded above.

200. The point about a male culture may have been a good one (although the claimant said that had faded to a large degree), but it did not justify allowing conduct which might offend others in the workplace to continue. The sensible course is to confront whoever might have unreasonably caused offence, man or woman, decide what happened and, if appropriate give advice.

201. Inspector Horn wanted this to happen and it to be recorded. Nobody could properly take exception to that. If it was not done, we would expect him to take it up with the claimant. That is what he did. There is nothing in his PEN entry which is incorrect, unfair or unbalanced.

Claim 23 *Recording an inaccurate and negative IAM on the PEN system on 5 December 2018 - On 5 December 2018 the claimant had another IAM with Inspector Horn, who subsequently recorded it on the PEN system, but the claimant sought to challenge this, questioning the accuracy and disputing the negative nature of the entry (para 78, grounds of complaint).*

202. This is not dealt with in detail in the claimant's witness statement. He cross refers to the record of the IAM and his comments upon it in the bundle.

203. Two of the entries which are impugned as inaccurate and negative have been addressed specifically above. We reject that characterisation of them.

204. One subject of discussion concerned what Inspector Horn had understood to have been agreed with respect to a number of abstractions relating to the three associations. Inspector Horn stated that when he met the claimant at the commencement of the posting, at an IAM on 15 October 2018, they had agreed to try to limit BPA activities to 2 days per month. The claimant disputed that by email of 16 October 2018 and stated it was simply Inspector Horn's observation. Inspector Horn subsequently learned that a meeting had taken place with ACC Williams on 16 October 2018 when she had agreed to allocate two days per month for BPA business and a day per month to support another project. Inspector Horn said he needed to know that and asked why he had not been provided with the information, including in the email of 25 October 2018. The claimant's response was the conversation with ACC Williams had not taken place on that date but later, that he had many meetings with her, that she had sent a WhatsApp that morning and that she changed her mind a lot so it might be better to wait for something in writing.

Inspector Horn said he needed to share that kind of information as soon as the claimant received it. In his witness statement to the tribunal and in evidence, Inspector Horn considered this was an example of the claimant's dishonesty.

205. Emma Walton and ACC Williams were responsible for the policy in respect of working time and associations. The policy was that 56 hours per month were allocated to each organisation for use by its members, to be shared out as they saw fit. Chief Inspector Fryer asked for the meeting with ACC Williams, which took place on 16 October 2018, because she wanted a definitive decision in respect of the claimant because of the number of associations he was involved with. She knew this had been a bone of contention with Inspector Preston and was troubling Inspector Horn following the transfer. At the meeting on 16 October 2018 at which the claimant attended, ACC Williams said that he should dedicate 1 shift in every 7 to BPA activity and inclusion strategy work. That would have been 24 of the 56 hours per month of the BPA's allocation. The total allocation amounted to 3 days per month. Quite why Chief Inspector Fryer did not relay this immediately to Inspector Horn, who was not at the meeting and had responsibility for implementing the decision is unclear. It is no understatement to say that was regrettable.

206. The claimant's concern about this entry appears to be in respect of the comments he was said to have made about ACC Williams, specifically that she changed her mind. This is not the type of thing Inspector Horn would have invented. We have inferred the claimant was embarrassed about a critical remark he had made about a member of the command team and wished Inspector Horn to remove it. As we are satisfied the claimant's remark about ACC Williams was said, the PEN entry was neither inaccurate nor disingenuous, as alleged.

207. We consider Inspector Horn was overly critical of the claimant when he said he could not remember the date of the meeting and the suggestion that the claimant was being manipulative in his email of 25 October 2018 because he did not mention the meeting with ACC Williams. The claimant would have expected Inspector Horn already to have known about that meeting and its outcome and, as we comment above, it is extraordinary he was unaware of it. To this extent we do not consider that part of the IAM was a fair criticism of the claimant.

208. There are some further comments the claimant has made about the meeting in this email. We consider them nothing other than a difference of opinion of no particular significance or consequence. That reflects what is typically the outcome of a performance meeting of this type, where details of recollection may lead to different opinions.

Claim 24 *Recording an inaccurate and negative IAM on 14 January 2019 - On 14 January 2019 the claimant attended another IAM meeting with Inspector Horn. The meeting took nearly 2 hours. Inspector Horn was entirely negative and critical of every action and decision the claimant had made. Such was the hostile and degrading atmosphere, that an hour into the meeting the claimant asked Inspector Horn if he actually had any positive comment or observation to make, which he did not. The claimant found the meeting incredibly stressful, he felt wholly intimidated and unfairly singled out for criticism by Inspector Horn. The claimant avers that his working environment was made hostile by the Inspectors, who sought to degrade the claimant (para's 82 and 83, grounds of complaint).*

209. This meeting was not an IAM. It was called because of an earlier meeting on 6 January 2019 in which Inspector Horn had discussed concerns raised with him by 4 PCSO's and one officer about the claimant and a concern which had been raised by an officer to the previous team sergeant. On 13 January 2019 the claimant had a meeting with his team and discussed these matters.

210. The concern Inspector Horn raised on 14 January 2019 was about the fact he had shared the feedback from other officers with the claimant in confidence and the claimant had breached that confidence. The claimant says that Inspector Horn had solicited adverse criticism of him from these officers.

211. We were not satisfied that Inspector Horn had gone out of his way to find people to criticise the claimant. He was a busy inspector whose time was fully occupied. We do not think he would have added to the problems he had with the claimant in this way.

212. On any view, it was not appropriate of the claimant to raise issues with his team which had been disclosed to him in confidence. It was appropriate of Inspector Horn to criticise the claimant for this because it appeared to the team that they were being reproached and would suffer consequences for what they had said.

213. The meeting lasted for two hours and covered other ground which is set out in the statement of Inspector Horn. It covered such matters as the responsibility of the claimant to arrange cover for meetings when he was off and some of the matters covered in the PEN entries, such as the allegation made by the claimant that Inspector Horn had favourites. There is no further detail of what particular issues the claimant believes were improperly raised in his statement but it was clearly a very stressful meeting. We are satisfied that is likely Inspector Horn displayed his displeasure emotively. He is a physically large presence and recognised in his evidence that he has known all his life that this can intimidate people so he takes care to exercise self-control and not raise his voice. It is likely that self-constraint was not reined in given the fact he believed the claimant had breached his confidence and then threatened his team with repercussions, on top of three months of acrimonious disputes between them. It would have been an intimidating experience for the claimant.

214. It would be a detriment for anyone to be subjected to repeated criticism for two hours in a hostile environment. Whatever the provocation, a manager must retain a level of detachment and self-control.

215. In respect of the way this meeting was conducted and the critical conclusion about the claimant's honesty regarding the failure to disclose the outcome of ACC Williams' meeting in claim 23, we must consider whether that was treatment which was less favourable of the claimant because of race or religion.

216. Inspector Horn presented his evidence in a measured way and acknowledged shortcomings in his conduct. We had the impression he was well-intentioned and had spent many additional hours worrying about how to bring out the best in the claimant. But there were aspects to his management style which gave rise to concern.

217. Like Chief Inspector Fryer he regarded the claimant as essentially dishonest. He illustrated this with three points. One we have addressed, and it concerns the claimant's failure to tell him about his entitlement to three days per month for abstractions. We do not agree for the reasons we have set out that the claimant was being dishonest about this matter.

218. We accept that the claimant did lie about whether he had said to a particular PCSO that his boss did not like him, that she thought he was useless and that she could go to her favourite inspector if she did not like it, when this was put to the claimant on 6 January 2019. Inspector Horn said that the claimant sat uncomfortably for a long period and then denied it. The description of what had been said by that officer and Inspector Horn carried the hallmark of truth and contained the sort of detail that was unlikely to have been dreamt up.

219. In spite of this, we did not consider these examples carried the gravity which Inspector Horn ascribed to them, to the effect that they demonstrated incompatibility with service. Whilst we accept his point that the police have come to expect dishonesty from others in the difficult work they undertake but expect trust and honesty between themselves, it is an overstatement to say that any level of dishonesty is fundamentally incompatible with the role. It would be fanciful to believe that police officers do not lie, even amongst themselves. Whilst we do not condone such behaviour, it is the context and gravity which matters. The lies we have referred to involved embarrassment about the claimant's comment about an ACC, which he was horrified to see was reduced to writing and having been put on the spot about an improper observation to a PCSO. The claimant should not have behaved in this way, but the prominence given to them was disproportionate.

220. In his witness statement, Inspector Horn criticised the claimant for not having read the handover note from the previous sergeant with the adverse consequence that a personal matter about an officer was disclosed. He corrected that at the beginning of his evidence. When he saw the note he agreed he had never seen it and his criticism was unwarranted.

221. He was questioned about an email he had sent the claimant whilst he was away from work on 17 May 2019, in which he said he had not been able to maintain contact and keep the claimant updated. He concluded by saying that he saw from the claimant's twitter account that he was able to read books, which sounded like good news in respect of his eye. Inspector Horn said he was not a user of social media but had searched the claimant's twitter account out of curiosity. He denied this was to send a message to the claimant that he was watching him.

222. The claimant believed Inspector Horn was waiting in a car nearby his house, to see what he was doing upon his return from holiday on 5 April 2019. When it was established that Inspector Horn was elsewhere the claimant argued that he had placed PCSO's in a car nearby and suggested that their minute sheet that they were staking out Hanoy burglars was a fabrication. This was a complaint which was only withdrawn after the claimant's evidence. It was far-fetched, but it may be the claimant maintained this view in the light of the email of 17 May 2019 which left him firmly of the impression he was being closely scrutinised while off sick.

223. In his answers to questions in the grievance investigation, Inspector Horn expressed his adverse opinion of the claimant. He said he felt the claimant was a bit fraudulent claiming disability benefits when he had passed the PSU fitness test, but he was not the government. He expressed the opinion that the officer in respect of whom claim 26 relates was vulnerable and used an analogy of teenage girls who had been sexually abused. He described that as the context behind his concern that the claimant made inappropriate remarks on WhatsApp when she had mentioned her counselling, such as was she going to express her undying love for him and later inviting her for coffee and informing her of his domestic sleeping arrangements. Mr Basu's written submission that he had effectively accused the claimant of being a perpetrator of child sexual exploitation was overkill, but Inspector Horn's analogy was of predatory behaviour.

224. Inspector Horn commenced his management of the claimant with a challenging exchange about his start date. There was a misunderstanding. He wanted to stamp his authority at an early stage but it was inadvisable to choose that as his first issue as he was not on safe ground. He then made matters worse by referring to the claimant as a 'sprog' in their first meeting, a matter the claimant drew attention to after the first PEN entry. He might have thought this was a light hearted remark, but it is not an appropriate term for a manager to use and he should have thought more carefully about targeting his audience (a matter he was keen to address in others, such as the officer who made disparaging remarks about others or who were worth sleeping with).

225. The claimant said there was a history of complaints about Inspector Horn from officers of an ethnic minority and he was getting his own back for these. Most of the information about this was second hand and we did not have the benefit of the full details and context. They were denied and we were unable to make findings on most because of an insufficiency of evidence. However, we find two complaints about Inspector Horn to be troubling. They led to his transfer in 2015 when he was a sergeant. His supervisor remarked upon '*PS Horn's inappropriate comments and occasional use of inappropriate humour*'.

226. Inspector Horn had admitted at the time that he had made a coarse remark about an officer ingratiating himself with the Chief Constable. It was a poor attempt at humour. The officer was from an ethnic minority, but we could not draw the inference it was racially motivated.

227. The other matter was a comment Inspector Horn made to an officer in his team of six police constables. They were working on the Prevent project to minimise the risk of radicalisation. There was a discussion about the attack on the Charlie Hebdo office in Paris. The claimant had initiated a discussion about what those officers should say if this was raised in the community. One officer who was a Muslim said that he felt the artist should not have drawn the cartoons because he felt them to be very disrespectful. Inspector Horn replied that there was a long tradition in the West of people having freedom of speech, which included the freedom to criticise or even make fun of religions and he spoke of the importance of tolerating the view of others if they caused offence. The officer was upset by this remark and raised a complaint about it.

228. In cross-examination Inspector Horn said he was concerned about an ideology being used to justify aggression and violence. The officer had not said that the cartoon justified the violence. He had expressed his feelings about the disrespect to his religion because of the cartoon. Inspector Horn referred to views held *in the West* as if the officer who was British was alien to that. The officer's view may well have reflected that of a large part of the community with whom the police worked. It would have been a useful subject for discussion to gain some insight and empathy with the community but Inspector Horn's remark shut it down. It was unwise. Parliament has made religion a protected characteristic and mocking a religion in the workplace could quite easily amount to harassment. At the very least, that distinction needed to be highlighted in this workplace discussion.

229. Inspector Horn has devoted a large part of his career to promoting relations between the police and ethnic minority groups and in neighbourhood policing. We do not think he intended to cause offence but it had that effect.

230. We have set out in some detail the views and comments of Inspector Horn and aspects of his style of management. They are relevant to our analysis of whether his conduct which amounted to detrimental treatment was because of race or religious factors or was attributable to something else. There is no help from any actual comparator. No other sergeant was at a similar stage of development in his career with the same commitments to associations. We must consider what would have happened, hypothetically, if these events had arisen were the subject not of Pakistan nationality, Muslim and black.

231. We conclude that Inspector Horn's conduct to the claimant, where we have criticised it, was driven by his frustration with the repeated disputes and conflicts which arose from the outset between the two. On some occasions the claimant's challenges were correct, such as the use of the term 'sprog', but for the most they were not sound. His disdainful remark about making a PEN entry 'to pacify' Inspector Horn would have been taken as provocative by any manager. This disharmonious situation hobbled Inspector Horn's efforts to advance the claimant's skills and knowledge. His views became increasingly entrenched and polarised, such that he expressed serious adverse opinions in the grievance hearing and in his witness statement. We are satisfied it is this fractured working relationship which led to the treatment which we have found was detrimental. Race and religion were nothing to do with it. A hypothetical comparator who did not share the protected characteristics but who had conducted himself in the same way as the claimant would have found himself being treated in the same way by Inspector Horn.

Claim 25 *Refusing to arrange an alternative point of contact for his welfare - The claimant informed Chief Inspector Fryer that he was suffering a serious eye condition and needed to be moved away from Inspector Preston and Inspector Horn, to a safe environment. The claimant was informed that he would not be moving, stating that this was not an option as he was being "performance managed". Chief Inspector Fryer suggested that the claimant had been "disingenuous" about the reason he had been moved previously by Chief Inspector Mohammed and informed the claimant that he was "not achieving" as a Sergeant. The claimant reiterated his representations to Chief Inspector Sally Fryer to be moved to a different team, asking her to facilitate a move to a safe environment. The claimant informed the Force, providing fit note and reporting the matter to HR, logging the incident as an incident on duty on 22 March 2019. On 7 March 2019 the claimant attended a purported welfare meeting with Inspector Horn. During the*

meeting the claimant explained his medical condition, asking that Inspector Horn contact him in the morning and not in the afternoons or at night, as his contact was causing the claimant increased stress and anxiety, impacting on his ability to sleep. The claimant asked that this would allow him time to process information and not prevent him being able to sleep. Despite this request, Inspector Horn continued to contact the claimant by text and calls in the afternoons and evenings. On 7 May 2019 the claimant attended a Case Conference, at Elland Road Police Station purported to be a supportive meeting to assist the claimant back to work. The meeting was attended by Inspector Horn, Sarah Higgins of HR and the claimant's Federation Representative. Again the claimant asked that his contact could be with someone else, given Inspector Horn had contributed to his current medical impairment (para's 91, 93, 94 and 99, grounds of complaint).

232. This is a very detailed allegation and, insofar as it relates to Chief Inspector Fryer, we have addressed the issues above.

233. Insofar as it is a claim against Inspector Horn, he did not have authority to move the claimant. He escalated the concern to Chief Inspector Fryer, who had authority. She arranged for Sergeant Bentley to act as a welfare contact.

Claim 26 *Recording a detailed PEN entry on 9 May 2019, which was factually inaccurate, defamatory and personal in nature - On 9 May 2019 the claimant received notification of a further detailed PEN entry submitted by Inspector Horn that contained factually inaccurate information of a very personal nature that the claimant considers to be defamatory. The information caused great distress, upset and anxiety to the claimant. Inspector Horn had not mentioned the issues detailed in the PEN entry at the meeting on 7 May 2019, nor at any other time before it was entered on the system, which would have allowed the claimant the opportunity to discuss and respond to the allegations. The claimant avers that the PEN entry was produced to seek to damage the claimant's reputation and discredit him, as a direct reaction to informing Insp Horn of his intention to bring a claim in the Tribunal (para's 103 and 104, grounds of complaint)*.

234. This related to the same officer the claimant had been tasked to speak about in claim 23. She had approached Inspector Horn, in March 2019, and informed him that she was uncomfortable about a WhatsApp message in which the claimant had asked her if she would express her undying love for him when she had contacted him to ask when he was due back from leave. The officer said that the claimant had previously confided in her about personal matters about his marriage. She had wanted to discuss counselling she was to undergo. The PEN entry did not refer to this.

235. It commenced with reference to a meeting the claimant had had with the officer when he had returned from leave and informed him she had started counselling. The claimant had told the officer he was free to chat at any time and asked if the officer wanted coffee outside of work. When the officer queried what the claimant's wife might think, he said they slept in separate beds. The claimant had sent a WhatsApp message when he was off sick to ask the officer if she wished to go out for a brew. The claimant had made a critical entry in this officer's PEN entries earlier in February about sarcastic remarks she had made and the officer had told Inspector Horn she found the behaviour quite creepy in view of the negative PEN entry.

236. Inspector Horn referred this to PSD. They recommended guidance, mentoring and an action plan.

237. Inspector Horn said he had made this entry on 9 May 2019 and not discussed it with the claimant on 7 May 2019 because that was a welfare meeting. We agree that it would have been a difficult matter to raise then, given the claimant's state of health. Inspector Horn said he would have preferred to have a discussion before making the entry, but that given the claimant's continuing absence, he felt he needed to record it before it became too late.

238. The claimant says that he was empathetic and tried to help this officer in sharing information about his experience of family life and that it could be testing with young children and put a strain on marriages. He draws attention to the email from the officer of 9 March 2019 in which she stated that she thought the claimant's offer for coffee was with regards to her welfare.

239. This was a serious issue. The claimant's actions were at best ill-considered. His discussions about his private life and the invitations to meet outside work at a time he had made criticism of this officer could quite reasonably be construed as manipulative and an abuse of position. They warranted consideration of potential misconduct. He should have understood that. If he had been naïve, then he should by now have displayed some recognition of the difficult situation in which he had placed the officer who took it to Inspector Horn and how a responsible manager would have to deal with it.

240. It is essential that managers are alive to any circumstance which might expose an abuse. It would have been preposterous for Inspector Horn to have dismissed what he had been told as of no real consequence. The fact the officer did not want to make an issue of it later for the purpose of pursuing a complaint did not mean Inspector Horn acted inappropriately. It is noteworthy that her email which the claimant relies upon refers to the claimant having made the remark about he and his wife sleeping in separate beds when she asked if his wife would complain about them meeting for coffee. The matter had to be recorded as a PEN entry and had to include details of the claimant's private life. It is not inaccurate and defamatory. We accept it was done at this time because of the fact that time was passing and it had to be noted down sooner rather than later.

241. This complaint is a stark example of an unjustified sense of grievance which does not amount to a detriment.

Claim 19 - Review

242. In his evidence Chief Inspector Mohammed said he had promised a clean slate but recognised that was not likely to be practicable and that there would have had to be some discussion upon the handover. It is clear that is the case because Inspector Horn sent an email to Chief Inspector Fryer describing this issue and asking for her guidance. It was this that led to the meeting with ACC Williams.

243. From a management perspective, we consider it problematic to draw a line in the sand and promise a clean slate when the difficulties extended beyond merely a

personality clash but had a root problem relating to time out from normal duties to attend associations. That difficulty had to be carried forward because it needed to be resolved.

244. However, we were satisfied Inspector Horn made significant efforts to assist the claimant in the early stages and this was not understood. Mr Basu submitted that the PEN entry system reflected excessive oversight and pernickety criticism and scrutiny which Inspector Horn adopted with the intention of breaking the claimant. He used an analogy of Inspector Horn that if a driver is followed for 500 miles he will be caught speeding.

245. We reject that. As can be seen, these records reflect important performance issues which were not trivial and could not responsibly be overlooked. The use of the PEN system was transparent and fair. Inspector Horn not only included the comments of the claimant in their entirety but added the complimentary remarks of the PCSO who was the subject of claim 21. These were hardly the actions of someone who was creating a wholly one-sided historical account to ruin the claimant's career, as alleged. Mr Jones drew our attention to a number of positive observations in the PEN's.

246. We do not accept the complaint that the PEN's were factually incorrect negative, excessive and hostile.

247. The complaint that these PEN entries were seen by Inspector Preston and Chief Inspector Mohammed is not well founded because the claimant had the responsibility to take action to remove them. Access to the record is restricted to the supervised and the supervisor, but the previous supervisors retain access automatically. The procedure was for the claimant to request Inspector Preston and Chief Inspector Mohammed to delete their names from his record.

Harassment

Claim 30 *Inspector Preston's suggestion that he was "more of an ethnic minority" than the claimant.*

248. We have addressed this complaint in our findings in respect of claim 2. The alleged conduct is not proven.

Claim 31 *Inspector Preston's attendance at the NBL and counting the number of BAME staff in attendance on 17 July 2018;*

249. We have addressed this in our findings in respect of claim 3. The conduct which the claimant says was unwanted was not related to race or religion.

Claim 31 *Inspector Horn's use of the PEN entries, including that of 9 May 2019.*

250. The PEN entries were appropriate and necessary. They were not unwanted conduct related to race or religion, for the reasons we have set out above.

Victimisation:

Claim 33 *The claimant informed Inspector Horn that he had engaged in the ACAS process and intended to pursue a claim in the Employment Tribunal, being a protected act. The claimant avers that Inspector Horn's detailed PEN entry made on 9 May 2019, notified to the claimant on 11 May 2019 was a detriment because of this protected act.*

251. It is accepted that there was a protected act.

252. It had nothing to do with the reason for the PEN entry which we have addressed above. Nor was the PEN entry a detriment.

Claim 34 *The claimant has supported an official complaint of Islamophobia against Emma Walton to PSD, being a protected act. The claimant avers that the misrepresentation made to ACC Williams around funding of the Award's event and the resulting widely circulated email communication on 27 November 2018 and 14 January 2019 was a detriment because of this protected act.*

253. The respondent has accepted that the claimant's support of the complaint of islamophobia against Ms Walton would have been a protected act within section 27(2)(c) of the EqA.

254. We have addressed the reason Ms Walton expressed herself in the way she did in her emails to ACC Williams in our findings in respect of claims 5, 29 and 30. They had nothing to do with the protected act.

255. At paragraph 17 of her witness statement Ms Walton stated that she was unaware that Mr Gent had submitted a complaint to PSD against her and that the claimant had supported it until she was informed of that in the course of these proceedings. That was after the alleged detriments and could not possibly be the cause of them if we accepted that evidence. We did. Ms Walton was an entirely convincing witness.

256. Mr Gent initially raised the matter with ACC Williams who informed him there had been a misunderstanding. Mr Gent's complaint concerned Ms Walton's suggestions about a request for signs to be placed in faith rooms. Her email was clear that she considered that if the matter was confined to the faith rooms no difficulty arose, but that it was the extension of the proposal to public areas which required more thought and discussion about the wider ramifications. According to the statement of Mr Gent, who was not ultimately called, PSD to whom he then referred the matter advised that it would be better dealt with by staff resolution. He provided no further information about what happened, if anything, with the suggested staff resolution. There was no evidence to undermine what Ms Walton said of her lack of knowledge of the complaint.

Conclusions on the first case

257. Taking an overview of the case, Mr Basu drew attention to favourable views within the Force of the Chief Constable, Chief Superintendent Money, Chief Inspector Mohammed and Inspector Williams and contrasted them with the views of Chief Inspector Fryer, Inspectors Horn, Preston, Berriman and Sergeant Patrick. He

said the views of the former were so incompatible with the latter that they threw into doubt the credibility of those accused of discrimination.

258. The respondent, the Chief Constable, wrote to the claimant on 22 November 2021 and said he was pleased for the organisation and for the public of West Yorkshire to have him as an inspector and that they needed good people like him to take the Force forward. We have commented above on the observations of Chief Superintendent Money, Chief Inspector Mohammed and the claimant's current supervisor, Inspector Williams. We have no doubt those views were sincerely expressed and based upon the knowledge those witnesses have of the claimant.

259. We reject the suggestion that the very different comments are irreconcilable. A binary choice of those who approved of the claimant and those who disapproved did not assist us because people were dealing with the claimant at different times and different points of his career, some on a day to basis and others less frequently.

260. For the reasons we have set out the complaints in the first case do not succeed. With respect to direct discrimination that is because the allegation was not established on our findings of fact, or there was no detriment because the complaint was an unjustified sense of grievance having regard to the definitions in **Jeremiah** and **Shamoon** (see paragraph 54 above), or the reason for the treatment was not because of either protected characteristic.

Case 2

1. Reasonable Adjustments

The application of the Police (Performance) Regulations 2012 to the claimant, consideration of the same at the Meeting, and imposition of the AP and WIN was a provision, criterion or practice ("the PCP"). The PCP puts a disabled person at a substantial disadvantage in relation to the application of the Police (Performance) Regulations 2012 because they are more likely to take absences from work than a person without a disability. The Respondent should have taken reasonable steps to avoid the disadvantage, but it did not. The claimant suggests the Respondent could have disregarded periods of the claimant's absence which were caused by his disabilities or could have imposed absence targets without the imposition of the WIN which ultimately moves the claimant one step closer to dismissal.

261. The claimant has been diagnosed with central serous retinopathy to his left eye. There was no history of eye problems prior to January 2019. The condition typically develops spontaneously in men between the ages of 30 and 50, causing a painless blurring of vision causing distortion of objects or difficulties reading small print. Although the cause is unknown, a particular risk factor is stress.

262. The claimant was off work with this condition and stress and anxiety from 15 February 2019 to 12 June 2019, from 25 August 2019 to 8 September 2019 and from 24 October 2019 to 15 November 2019.

263. The claimant had been moved to Trafalgar House police station in Bradford in the summer of 2019 and had a phased return to work from 25 August 2019,

commencing with 50% hours. Inspector Little removed the requirement to work night shifts and confrontational duties. He allowed the claimant to work solely on the completion of his NPPF during his first week. This was completed on 8 October 2019.

264. On 14 September 2019 Inspector Little met the claimant. He placed him on an informal action plan, further to the Forces' Attendance Management Policy. It required the claimant to have no more than one instance of sickness of 2 to 3 days within a period of three months, with the review to take place at the end of that time.

265. On 25 November 2019 the claimant was served with a notice under the Unsatisfactory Performance Process (UPP), which is a procedure prescribed by statutory instrument under the Police (Performance) Regulations 2012. Inspector Little progressed to the formal UPP because the claimant had breached the informal plan because of his absence from 24 October 2019 to 15 November 2019.

266. The claimant attended a stage one meeting under the UPP, accompanied by his Federation representative Sgt Bentley, on 13 December 2019. Ms Rowland attended to advise Inspector Little. Inspector Little came to the conclusion he would issue the claimant with a Written Improvement Notice (WIN) but would await paperwork from the occupational health advisors and consider their recommendations before drawing up the formal document.

267. Previous occupational health reports had been obtained dated the 27 February 2019, 30 May 2019 and 24 September 2019. They had reported the diagnosis of central serous retinopathy to the left eye and work-related stress. Dr Mellors made a number of recommendations for return to work in the report of 30 May 2019, some of which were implemented by Inspector Little.

268. Dr Dixon, Force medical adviser, prepared a report on 10 December 2019 following a consultation which had taken place on 4 December 2019, but it was not submitted until 22 December 2019. He recorded that the claimant had suffered acute headache and visual deficit in the left eye in January 2019 which was urgently investigated, followed by the above diagnosis. The claimant had been distressed that he may suffer a permanent loss of vision. He had been advised the condition was likely to be stress induced. The condition had improved over time such that by May 2019 his vision was a lot better and he was discharged from the care of the ophthalmology department in July 2019. The claimant describes himself as feeling "mentally broken"; he had had some psychological therapy but continued to experience symptoms and of anxiety and depression, struggling with motivation and having left eye pain and headaches. Sleep was poor. The forthcoming hearing at the tribunal was weighing on his mind and he continued to worry about permanent blindness. Dr Dixon advised that the claimant did not meet the core capabilities of a police officer because of the eye condition and associated effect on his mental well-being. He advised a role which was not public facing due to the claimant not being able effectively to see from the left eye and, if operationally feasible, a role which was not computer-based as the claimant had headaches after 20 minutes of working at a computer. If he had to work at computers he recommended maximal natural daylight. These recommendations were short-term and the claimant had been re-referred to ophthalmology because of recurrence of the eye condition.

269. Inspector Little did not change his opinion as to the suitability of a WIN, which he issued on 22 December 2019, the same day he received the occupational health report. In his evidence he explained the reason for this. He considered that the primary cause of the claimant's stress was concerned with the successful completion of the NPPF process and his confirmation in the rank of sergeant. Because he had failed to meet the requirements in the informal improvement plan, the next step was to move to the formal plan. To fail to do so would undermine the purpose and use of the informal one. The WIN required the claimant to have no more than one instance of sickness of three days within the three month period from 13 December 2019 to 12 February 2020. If the claimant failed to meet this standard, he may then be required to attend a formal stage II meeting. Under the UPP if the claimant failed to comply with the requirements set out the stage II meeting he would be at jeopardy of having a service terminated at a stage III meeting.

270. Inspector Little considered that this measure would incentivise the claimant to attend work which he considered essential for the claimant to satisfy him that he had discharged sufficient number of tasks which he could certify for the purpose of the NPPF. Unless that were done within two years, which was to be by 26 March 2020, the claimant would not be confirmed in the role of sergeant. Inspector Little thought the consequence of that would be devastating to the claimant's mental health. He would revert to the post of police constable.

271. In **Griffiths v Secretary of State for Work and Pensions [2017] ICR 160**, the Court of Appeal held that a disabled person could be put at a substantial disadvantage in circumstances in which an attendance policy of his employers required him to achieve certain level of attendance at work in order not to be subject to the risk of sanctions which might ultimately lead to the loss of work.

272. The respondent does not dispute that the claimant had a disability and that this was known to his supervisors. Nor does it dispute that the UPP, which was a PCP it applied, would place him, as a disabled person, at a substantial disadvantage because he was at risk of being absent from work because of his disability to a greater extent than a person who was not disabled. The respondent therefore accepts that the duty arose but denies there was any breach of it; that is that there were any steps which were reasonable which he should have taken to avoid the substantial disadvantage.

273. The substantial disadvantage, the risk of being subject to sanctions had the consequence of enhancing the stress the claimant suffered. We accept the evidence of the claimant that this process caused additional stress and anxiety. This substantial disadvantage was one Inspector Little knew, or ought reasonably to have known about, having read the report of the occupational health advisor and speaking to the claimant. Although the claimant attended work and did not breach the terms of the WIN, he says that was by taking a period of annual leave to cover a time when he was otherwise ill to avoid the risk of further sanctions.

274. Mr Jones submits that the respondent had taken many measures to assist the claimant in his return to work, which reflected suitable adjustments for his disabilities of central serus retinopathy and depression and anxiety: changing duties to nonconfrontational, support and preparation to complete level IV of the NPPF, changing line management, phasing a return to work, allocating work space with natural light, offering a buddy and remove the requirement to drive.

275. The claimant was critical of the measures taken upon his return to work, but that is not part of this particular complaint. Rather we must focus upon the substantial disadvantage, what steps could have been taken to avoid it and whether they were reasonable.

276. The jeopardy that the claimant would be subject to further sanctions and dismissal never came to be because he achieved the required level of attendance and, in any event, the appeal against the WIN was allowed by Chief Inspector Adams on 5 March 2020. That does not have the effect of negating the substantial disadvantage, but it does mean it was short lived. The period of time the claimant was subject to the stress and worry that he might fail to meet the targets and be subject to further sanctions was limited.

277. Mr Jones submits also that the WIN had achieved its effect, because it provided with the claimant with the incentive to attend at work and thereby enable certification of the duties, which could only be done by attendance at work for the NPPF. This had the effect of removing the principal cause of the claimant stress as Inspector Little had anticipated.

278. Whilst that might be correct, it does not address the substantial disadvantage created by the PCP, but another problem, namely the claimant's confirmation in the rank of sergeant. It might have been reasonable for Inspector Little to expose the claimant to the additional stress which arises from being subject to the UPP if it were to allow him to achieve confirmation in his promotion and thereby improve his mental well-being.

279. Mr Basu submits that there was no need to implement the UPP and this simply worsened the fragile state of mental health which was reported by Dr Dixon. A decision not to progress to the formal stage of the UPP would have removed the substantial disadvantage. About that there can be no doubt. The critical issue is would it have been reasonable?

280. Inspector Little was an impressive witness, whose motivations were well-intentioned. His evidence was clear. He answered questions directly and in a straightforward manner. This was to be contrasted with some other witnesses, such as the claimant and Inspector Preston who frequently gave discursive and lengthy responses to straightforward questions which had the effect of creating confusion.

281. Although we were impressed with Inspector Little and his good intentions, we were not satisfied he had fully comprehended the duties of an employer to a disabled person specifically with regard to the consequences of this type of formal attendance procedure. It was unwise to proceed with the meeting without the benefit of Dr Dixon's report and a simple enquiry would have revealed that a meeting had already taken place earlier that month with the Force medical officer so that the report was imminent. Inspector Little did wait for the report, but by not having it available at the meeting placed himself in a position of not being able to discuss it and his concerns with the claimant.

282. Critical to his considerations would be the impact of the formal procedure upon the claimant's mental health. The formal process could have proven counter-productive. His thought processes, that the cause of the claimant's stress was the ongoing difficulties with the NPPF and that it would be devastating for him not to be

confirmed in the rank of sergeant, should have been discussed with the claimant. Although Inspector Little adopted an approach which Mr Jones described as tough love, we are not satisfied that was necessary, nor that the respondent can simply claim the end justified the means. A very clear explanation to the claimant that if he did not attend work, Inspector Little could and would not certify him as having undertaken the requisite duties for the purpose of the NPPF, would have been the most powerful of incentives to ensure his attendance. It ran the risk of the claimant criticising Inspector Little, as he had with other supervisors, but we are satisfied it would have been likely to have achieved the required attendance.

283. We have considered the guidance in the Code of the Commission. The practicality of the step suggested, the effect on the respondent and any consequential cost would not militate against the adjustment. Inspector Little was anxious about failing to follow through from the informal plan, because it might indicate that it was an entirely hollow and meaningless process. We do not consider that sufficient to have avoided taking the step of not implementing the UPP at that time. Specific duties arise with respect to disabled people which will involve departing from precedents. They are regarded as a necessary safeguard to retain and support those with disabilities in work. That is not to say the UPP would not have become necessary at some stage. To maintain the integrity of the process the claimant could have been told its implementation would be deferred and then reviewed.

284. For those reasons we find there was a breach of the duty.

2. Disability arising from discrimination

285. Nothing significant is added by the claim under section 15 of the EQA which is based upon the same facts. We find that there was unfavourable treatment in subjecting the claimant to the UPP and that was because of something, the claimant's failure to attend at work due to ill health and that this arose because of his disability.

286. The issue is whether the unfavourable treatment was a proportionate means of achieving a legitimate aim. It is a legitimate aim to ensure that the respondent's officers and the claimant attend work to serve the public and assist their colleagues in doing so. The use of the UPP was relevant and appropriate to the aim, not least because it contributed to the claimant's attendance. In determining whether it was proportionate we must consider and balance the interests of the respondent in meeting the aim with that of the claimant and the disadvantage to which he was put. We have concluded that the incentive for attendance to ensure certification of duties would have been so powerful that the claimant would have attended even had the WIN not been imposed, and furthermore, had Inspector Little had a discussion with the claimant and his Federation representative about those concerns after receipt of the occupational health report, he would have come to that conclusion. He held the meeting prematurely and it did not run smoothly, with Sergeant Bentley criticising the procedure adopted. That criticism may have been valid as an appeal was allowed, but without reasons from Chief Inspector Adams. It is possible that the confrontational nature of the criticism deflected from the need to focus upon the duty to the claimant as a disabled person. Ms Rowland conceded she might have been more forceful in providing advice to await the occupational health report before proceeding with the meeting, a step she regarded as the better one in her evidence.

In a situation involving decisions of this type about the duty to make adjustments the views of the human resources advisor are likely to be invaluable because the matters to be taken into consideration, as summarised in the Code of the Commission, are unlikely to be ones with which the decision maker is familiar.

287. The unfavourable treatment was not proportionate, or reasonably necessary, as attendance could have been achieved and the legitimate aim met without any significant difficulty had a different approach been adopted.

Employment Judge D N Jones
Date: 18 January 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
Date: 19th January 2022

Schedule of Allegations

Claim No.: 1802775 /19

Direct Discrimination

1. Offering the claimant no support or development opportunity during his time at Leeds District City and thereby actively undermining his position during his time at Inner East and North East.

Subjecting the claimant to overt and detailed scrutiny in his role as Chair of the WYBPA, by:

2. His first Line Manager, Inspector Mick Preston was immediately abrupt and hostile towards the claimant, as compared to the other Sergeants. During an initial meeting, on 20 March 2018 with Inspector Mick Preston, the claimant's role for WYBPA was discussed. Inspector Preston pointed to his forearm and stated to the claimant that he was “more of an ethnic minority” than the claimant. The claimant was concerned by the comment as he had not discussed or raised his race or ethnicity with Inspector Preston at all. He also stated that having two staff network roles was being “greedy”. The claimant sought to assure Inspector Preston that these roles brought additional skills which increased the claimant's effectiveness in core policing roles (para 20, grounds of complaint).

3. On 17 July 2018 Inspector Preston arrived during the Natural Born Leaders' course, without an invite or being a delegate or speaker for the course, nor would he have known about the change of venue or the reasons for it. He proceeded to count the number of BAME staff from the Force who were in attendance, in order to try and demonstrate why the claimant's presence was not necessary. Inspector Preston's actions were humiliating and distressing for the claimant and a number of other colleagues in attendance. This behaviour has never been done before in the history of the programme. The claimant found Inspector Preston's behaviour offensive and degrading (para 38, grounds of complaint).

4. In or around August 2018, Inspector Preston had some liaison and contact with ACC Angela Williams with regards to the claimant's roles as both BPA Chair and a Federation Representative. Unprecedented, ACC Williams directed a meeting, on or around 24 August 2018, with the claimant as Chair WYBPA, Inspector Preston, Chief Inspector Mohammed and Senior HR Manager Amanda Booth. No other Staff network Chair has had such close scrutiny or management around their roles. It was apparent in the meeting that Inspector Preston had an agenda to limit and control the claimant in his roles. The claimant has always maintained that the roles cannot be serviced effectively without organisational, including first and second line manager, support. When the claimant raised that

maybe the role of NPT sergeant was not suited to the additional roles and he would look to identify other roles, Chief Inspector Mohammed intervened and was adamant that the claimant would be supported (para 46, grounds of complaint).

5. On 24 January 2019 once again ACC Angela Williams emailed several recipients, including another Chief Officer, copying in the claimant, misrepresenting the amount of the claim [for funding of the NBL Award Ceremony – see §87], suggesting that £650 was being requested, suggesting the claimant's event would wipe out the staff network budget, and stating that she would require the claimant to attend a meeting with her and the Chief Inspector to resolve the matter (para 88, grounds of complaint).

Refusing to allow the claimant to be moved from Leeds North East.

6. On 5 February 2019 the claimant again met with Chief Inspector Fryer and Sarah Higgins HR. Chief Inspector Fryer opened the meeting stating that she had been informed that the claimant had stated that “she was out to get him”. The claimant denies ever having said this nor thinking it, and sought to reassure Chief Inspector Fryer, given he had gone to her for help. It is unclear to the claimant why Chief Inspector Fryer had accepted as fact, something that was wholly untrue and based on rumour, gossip and speculation. The claimant was not informed as to how Chief Inspector Fryer had become aware of this falsehood (para 90, grounds of complaint).

7. The claimant informed Chief Inspector Fryer that he was suffering a serious eye condition and needed to be moved away from Inspector Preston and Inspector Horn, to a safe environment. The claimant was informed that he would not be moving, stating that this was not an option as he was being “performance managed”. Chief Inspector Fryer suggested that the claimant had been “disingenuous” about the reason he had been moved previously by Chief Inspector Mohammed and informed the claimant that he was “not achieving” as a Sergeant. The claimant reiterated his representations to Chief Inspector Sally Fryer to be moved to a different team, asking her to facilitate a move to a safe environment (about 91, grounds of complaint).

8. The claimant asked to be returned to a different team that would be a safe environment for him to work in and facilitate his recovery. Inspector Horn's attitude towards the claimant was dismissive and indignant, causing the claimant further anxiety (para 101, grounds of complaint).

The claimant was treated less favourably by Inspector Preston, namely:

9. Preventing the claimant from attending the full TSS seminar on 27 June 2018 - the claimant was due to attend a TSS seminar, which had been arranged by the Force and approved previously. On 26 June 2018 the claimant received an email at 21.45hrs from Inspector Preston informing

the claimant that he should not attend and expressing his view that there was no value in the claimant attending the TSS lecture. The claimant felt pressured not to attend, and had been placed in an uncomfortable situation. He therefore only attended half the lecture and then came into his home station in order to comply with Inspector Preston's instructions (para 30, grounds of complaint).

10. Requiring the claimant to amend his WYBPA corporate signature - Inspector Preston had circulated an email to all staff requiring an elaborate corporate signature. He informed the claimant that he had worked with another Staff Network Chair and used his signature as an example for the claimant. The claimant complied with the instruction and amended his signature. For information, the comparator Chairs' signature was in rainbow colours. In or around late June 2018 Inspector Preston informed the claimant that he should further amend his corporate signature's reference to the role as Chair of the WYBPA, as it was highlighted in black, asking him to remove this (para 32, grounds of complaint).

11. Hindering the claimant's attendance at the NBL on 3 July 2018 (set out - On 3 July 2018, Inspector Preston sought to prohibit the claimant's attendance to the Natural Born Leaders, informing him that his shifts had been amended and that his abstraction would not be authorised. At this late stage, this would have severely hampered the claimant from coordinating the event, including him being able to ensure appropriate quality assurance and necessary safeguards that were in place (35, grounds of complaint).

12. By attending a the NBL on 17 July 2018, seeking to embarrass the claimant by counting BAME staff in attendance - On 17 July 2018 Inspector Preston arrived during the Natural Born Leaders' course, without an invite or being a delegate or speaker for the course, nor would he have known about the change of venue or the reasons for it. He proceeded to count the number of BAME staff from the Force who were in attendance, in order to try and demonstrate why the claimant's presence was not necessary. Inspector Preston's actions were humiliating and distressing for the claimant and a number of other colleagues in attendance. This behaviour has never been done before in the history of the programme. The claimant found Inspector Preston's behaviour offensive and degrading bracket (para 38, grounds of complaint).

13. Reporting the claimant to PSD on or before 1 October 2018 - On 1 October 2018, the claimant was informed that the PCSO's RTC and the claimant's Report following the same had been submitted by Inspector Preston to the Force's Professional Standards Department for assessment. The referral was made without liaising or reference to the claimant. If the Report had been sub-standard or not in-depth enough, constructive or development guidance should have been provided on what further enquiries, if any, were required. The claimant requested the rationale for Inspector Preston doing so, but this has never been

provided to the claimant, despite repeated requests. The claimant avers that that this referral to PSD was malicious and unnecessary, causing the claimant anxiety and distress (para 49, grounds of complaint).

14. Providing the claimant with no support in completing his NPPF - The claimant had completed 98% of his NPPF Sergeants portfolio, having submitted it to his assessor, who assessed and recorded his work as complete. Although initially accepted, the assessor and the claimant were informed that unfortunately the portfolio and evidence had not been assessed correctly resulting in the claimant having to rework the whole portfolio. This is still ongoing and has caused the claimant substantial further work to his detriment. The claimant has sought guidance outside of Force to assist in completing the NPPF portfolio. The claimant avers that he was given inadequate support, to his detriment in comparison to colleagues (para 52, grounds of complaint).

15. Intentionally seeking negative examples of performance - Subsequently, the claimant was informed by other colleagues, and his own team members that Inspector Preston had been approaching them, team members and even members of the public asking them for negative examples about the claimant's performance. Inspector Preston was attempting to create an adverse discipline and performance footprint and caused the claimant stress and anxiety (para 53 grounds of complaint).

16. Subjecting the claimant to an entirely negative PDR meeting on 17 December 2018 - With no advanced notice, Inspector Preston scheduled a PDR meeting on 17 December 2018. The claimant reluctantly attended and the meeting took place at Stainbeck Police Station, Leeds. The tone of the meeting was entirely negative and the claimant feared that he would not receive a fair and balanced appraisal (para 79, grounds of complaint).

17. Producing a long PDR Report that was neither fair nor balanced so as to create an adverse performance footprint on the claimant’s professional record - With no advanced notice, Inspector Preston scheduled a PDR meeting on 17 December 2018. The claimant reluctantly attended and the meeting took place at Stainbeck Police Station, Leeds. The tone of the meeting was entirely negative and the claimant feared that he would not receive a fair and balanced appraisal. The same day [i.e. 14 January 2019 – see §82], the claimant accessed the Force's PDR system and was presented with a 13 page detailed PDR report, prepared by Inspector Preston. The claimant avers that the PDR is inaccurate and is an unfair and unfavourable criticism of his performance. The PDR report also seems to have been done as a response to the document the claimant had provided Chief Inspector Fryer in which he had set out a chronology of events. It does not accurately reflect the work done or the achievements of the claimant and his team. The claimant found reading the report also incredibly stressful, he felt wholly intimidated and frustrated that he was being treated unfavourably by Insp Preston. The claimant avers that this is an attempt to create a substantial adverse performance footprint on his professional record (para’s 7984, grounds

of complaint).

Treated less favourably by Inspector Horn, namely:

18. Belittling the claimant's concerns about the OCG member - Prior to transferring, the claimant's father, a prominent member of the Leeds Muslim Community, had contact with a Kurdish Muslim male, who had been a labourer for their house extension in 2006. The male enquired about the claimant and asked if he could contact him as he was in trouble with the Police. Upon contact, the claimant then realised the male may be an Organised Crime Group (OCG) member and that the claimant and his family may be at risk. In order to be entirely transparent, reported this straight away to Inspector Horn and explained the circumstances. It transpired that the male was an OCG member, however Inspector Horn deemed the level of risk to be low (para 56, grounds of complaint).

His general dismissive attitude towards the claimant, seeking to undermine, belittle and intrusively manage him - The claimant avers he was subjected to onerous, constant and unnecessary micromanagement by Inspector Horn.

19. He had excessive numbers of PEN entries. These are comments on the Performance Example Notebook system. PEN entries are normally short, factual comment about an individual's performance, good, observational or bad, used by supervisors. It can also be utilised to record Individual Accountability Meetings (IAMs). Normal practice is for Sergeants to conduct an IAM quarterly with their staff and every fourth IAM being the Officer's PDR. Each conversation the claimant had with Inspector Horn was subsequently recorded as a PEN, including personal details that the Clamant avers was inappropriate to be included on the system. On almost every occasion that he would find a PEN entry, this would then require challenge or correction as it had been misrepresented. The constant challenge began to impact on the claimant's health. He started to feel constantly anxious and stressed. The claimant had immediately made Inspector Horn aware, that every PEN he did was automatically copied to both Inspector Preston and Chief Inspector Mohammed, neither having any continued managerial responsibility for the claimant. The claimant informed Inspector Horn that he· found this highly embarrassing as he had ongoing issues with Inspector Preston and had a great deal of respect for Chief Inspector Mohammed. The PEN entries were detailed, often negative and demonstrated hostility towards the claimant. The claimant avers that the majority were not factually correct and when requested to do so, Inspector Horn refused to amend the entry, instead posting a further PEN entry, in CAPITALS (Paras 62, 63, 64, 65 and 66 grounds of complaint).

20. Inspector Horn undermined the claimant's authority as a Sergeant. In January 2019, when a female member of staff, who had recently suffered a miscarriage, called to report that her grandmother had died. She requested compassionate leave to support her mother and make funeral arrangements. In line with Force Policy, the claimant authorised a few days of compassionate leave, making Inspector Horn aware of his

decision. Inspector Horn did not support the decision, despite it being within guidelines and the claimant had to recontact the staff member to state only one day had been authorised (para 67, grounds of complaint).

21. An experienced PCSO colleague had not been performing well recently. The claimant had frank discussions with the colleague and was able to re- engage him and saw a marked improvement in performance. Inspector Horn suggested an action plan, but as the claimant was seeing substantial improvement he felt it would be detrimental to the progress. Inspector Horn took exception to the claimant's decision and constantly recorded on PEN that the claimant had not addressed the issue, which was untrue. The claimant believed that formal actions plans should only occur when informal management intervention has not resolved the issues (para 68, grounds of complaint).

22. A relatively new, female officer had started on the team. With scant detail, Inspector Horn told the claimant that the officer had been talking about “who she would like to have sex with”. No context or detail or witnesses were provided, so the claimant said he would speak with the officer. The officer denied the comment but advice was provided about being aware of surroundings and that culture within NPT was different to that on Response. Inspector Horn has continuously raised that the matter was not dealt with harshly enough, despite the claimant's concern that there was not enough evidence to proceed as he had suggested an informal ad-hoc management intervention was appropriate. The claimant also avers it is wrong to make judgements about colleagues based on rumour, gossip and speculation (para 69, grounds of complaint).

23. Recording an inaccurate and negative IAM on the PEN system on 5 December 2018 - On 5 December 2018 the claimant had another IAM with Inspector Horn, who subsequently recorded it on the PEN system, but the claimant sought to challenge this, questioning the accuracy and disputing the negative nature of the entry (para 78, grounds of complaint).

24. Recording an inaccurate and negative IAM on 14 January 2019 - On 14 January 2019 the claimant attended another IAM meeting with Inspector Horn. The meeting took nearly 2 hours. Inspector Horn was entirely negative and critical of every action and decision the claimant had made. Such was the hostile and degrading atmosphere, that an hour into the meeting the claimant asked Inspector Horn if he actually had any positive comment or observation to make, which he did not. The claimant found the meeting incredibly stressful, he felt wholly intimidated and unfairly singled out for criticism by Inspector Horn. The claimant avers that his working environment was made hostile by the Inspectors, who sought to degrade the claimant (para’s 82 and 83, grounds of complaint).

25. Refusing to arrange an alternative point of contact for his welfare - The claimant informed Chief Inspector Fryer that he was suffering a serious eye condition and needed to be moved away from Inspector Preston and Inspector Horn, to a safe environment. The claimant was informed that he would not be moving, stating that this was not an option as he was being “performance managed”. Chief Inspector Fryer suggested that the claimant

had been “disingenuous” about the reason he had been moved previously by Chief Inspector Mohammed and informed the claimant that he was “not achieving” as a Sergeant. The claimant reiterated his representations to Chief Inspector Sally Fryer to be moved to a different team, asking her to facilitate a move to a safe environment. The claimant informed the Force, providing fit note and reporting the matter to HR, logging the incident as an incident on duty on 22 March 2019. On 7 March 2019 the claimant attended a purported welfare meeting with Inspector Horn. During the meeting the claimant explained his medical condition, asking that Inspector Horn contact him in the morning and not in the afternoons or at night, as his contact was causing the claimant increased stress and anxiety, impacting on his ability to sleep. The claimant asked that this would allow him time to process information and not prevent him being able to sleep. Despite this request, Inspector Horn continued to contact the claimant by text and calls in the afternoons and evenings. On 7 May 2019 the claimant attended a Case Conference, at Elland Road Police Station purported to be a supportive meeting to assist the claimant back to work. The meeting was attended by Inspector Horn, Sarah Higgins of HR and the claimant's Federation Representative. Again the claimant asked that his contact could be with someone else, given Inspector Horn had contributed to his current medical impairment (para’s 91, 93, 94 and 99, grounds of complaint).

26. Recording a detailed PEN entry on 9 May 2019, which was factually inaccurate, defamatory and personal in nature - On 9 May 2019 the claimant received notification of a further detailed PEN entry submitted by Inspector Horn that contained factually inaccurate information of a very personal nature that the claimant considers to be defamatory. The information caused great distress, upset and anxiety to the claimant. Inspector Horn had not mentioned the issues detailed in the PEN entry at the meeting on 7 May 2019, nor at any other time before it was entered on the system, which would have allowed the claimant the opportunity to discuss and respond to the allegations. The claimant avers that the PEN entry was produced to seek to damage the claimant's reputation and discredit him, as a direct reaction to informing Insp Horn of his intention to bring a claim in the Tribunal (para’s 103 and 104, grounds of complaint).

<u>Treated less favourably by ACC Williams and/or Emma Walton:</u>

27. In seeking to shame the claimant in her widely circulated emails dated 27 November 2018, questioning the future support of the NBL - On 27 November 2018 Emma Walton emailed ACC Williams, misrepresenting the claimant's request for a contribution for the Award Ceremony, including the full amount of the event itself. ACC Williams in tum emailed the claimant, copying in six others, accusing him of recklessness, disregard for protocol and belittling the claimant. This response was sent to the other recipients without seeking to ensure the email from Emma Walton was correct. The claimant found the email professionally and personally embarrassing and was upset by the inaccuracy of Emma Walton's communication and the tone and content of the email from ACC Williams. He responded respectfully on 4 December 2018 (para’s 76 and

77, grounds of complaint).

28. Sending a further email circulated widely on 24 January 2019 that was inaccurate and demeaning to the claimant - On 22 January 2019 Emma Walton emailed ACC Angela Williams again in relation to the funding of the NBL Award Ceremony. The event had been paid for by a Colleague on his credit card. The claimant had agreed with the colleague that should sponsorship not come through, they would split the bill amongst themselves. Authorisation from the PCCs office for the community sponsorship had still not come through and the claimant believed it would have been inappropriate to try and claim that now. The Superintendents Association had paid the colleague £100 directly, and there was an amount of £122 to be claimed from the Federation, which would have left an amount of approximately £300 to be claimed from West Yorkshire Police, if they were willing to make the contribution. On 24 January 2019 once again ACC Angela Williams emailed several recipients, including another Chief Officer, copying in the claimant, misrepresenting the amount of the claim, suggesting that £650 was being requested, suggesting the claimant's event had would wipe out the staff network budget, and stating that she would require the claimant to attend a meeting with her and the Chief Inspector to resolve the matter. The claimant was again very distressed by the email and the suggestions contained, which the claimant believed was unnecessary and unfair. Again the ACC's email was inaccurate and did not reflect the true situation. The Natural Born Leaders Course had run successfully for many years and had not received the hostility and scrutiny the claimant was now experiencing. Such has been the hostility and degrading treatment of the claimant and other BAME colleagues that they have now shelved any plans to run the NBL Course again for the time being. The claimant avers that these actions by the Respondent contravene the submission made to the Home Affairs Select Committee about the level of support and encouragement given to the claimant and WYBPA and the NBL programme (para's 87, 88 and 89, grounds of complaint).

Harassment

29. Inspector Preston's suggestion that he was "more of an ethnic minority" than the Claimant.

30. Inspector Preston's attendance at the NBL and counting the number of BAME staff in attendance on 17 July 2018;

31. Inspector Horn's use of the PEN entries, including that of 9 May 2019.

Victimisation:

32. The claimant informed Inspector Horn that he had engaged in the ACAS process and intended to pursue a claim in the Employment Tribunal, being a protected act. The claimant avers that Inspector Horn's detailed PEN entry made on 9 May 2019, notified to the claimant on 11 May 2019 was a detriment because of this protected act.

33. The claimant has supported an official complaint of Islamophobia against Emma Walton to PSD, being a protected act. The claimant avers that the misrepresentation made to ACC Williams around funding of the Award's event and the resulting widely circulated email communication on 27 November 2018 and 14 January 2019 was a detriment because of this protected act.

Claim No 1801428/2020

Reasonable Adjustments

1. The application of the Police (Performance) Regulations 2012 to the claimant, consideration of the same at the Meeting, and imposition of the AP and WIN was a provision, criterion or practice ("the PCP"). The PCP puts a disabled person at a substantial disadvantage in relation to the application of the Police (Performance) Regulations 2012 because they are more likely to take absences from work than a person without a disability. The Respondent should have taken reasonable steps to avoid the disadvantage, but it did not. The claimant suggests the Respondent could have disregarded periods of the claimant's absence which were caused by his disabilities or could have imposed absence targets without the imposition of the WIN which ultimately moves the claimant one step closer to dismissal.

Discrimination Arising from disability

2. The application of the Stage 1 Meeting under the Police (Performance) Regulations 2012 was unfavourable treatment. The same moves the claimant one step closer to dismissal, prevents his substantive promotion, and essentially sets the claimant up to fail in the context of his previous absences and medical conditions. The treatment was levied against the claimant because of his absence from work. The claimant's absences from work arose in consequence of his disability. The treatment was not a proportionate means of achieving a legitimate aim.