



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: S/4107558/2014

Held in Glasgow on 14, 15, 16,17, 18, 22 May and 28 June 2018

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**Employment Judge: Ms. L Doherty
Members: Mr. H P Boyd
Mr. K McKenna**

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Mr. Michael Anthony Eivers

**Claimant
Represented by:
Mr C Edward -
Advocate
Instructed by:
Mr G A Ghee -
Solicitor**

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Advocate General For Scotland

**Respondents
Represented by:
Mrs P Macaulay -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that it does not have jurisdiction to consider the claim(s) under **Section 47B** of the Employment Rights Act -1996 on the basis that it was presented out with the statutory time limit for the presentation of such claims.

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REASONS

- 5 1. The claimant presented a complaint on 13th September 2014 under section **47 B** of the Employment Rights Act 1996 (the ERA) of having been subjected to a detriment on the grounds of having made a number of protected disclosures.
- to 2. These proceedings have been sisted for a considerable period. The decision to sist the proceedings was taken at a Preliminary Hearing (PH) in December 2014 on the grounds that the claimant had raised proceedings in the Court of Session against Central Scotland Police, (which were sisted because of possible overlap with a criminal investigation), and potentially proceedings were to be brought by the claimant against the respondents in the Court of
15 Session.
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3. After the recall of the sist, the respondents position was that that a PH should be fixed to determine if the claim was time-barred on the basis that the alleged detriments ended in April/May 2014. It was their position that the claimant had not been subjected to any detriments on those dates; the effect of such a
20 conclusion would be that the claim was out of time.
4. No issue was taken with this proposition in so far as it impacted on time bar, however the Employment Judge determined that it was not in line with the overriding objective to attempt to sever the events of April and May 2014 from the previous history of the case, and a Hearing was fixed on the Merits only.
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5. The 1st issue for the Tribunal is therefore whether it has jurisdiction to consider the claim on the basis of time bar.
6. The claimant seeks to rely on multiple alleged protected disclosures. These,
30 together with the detriments which he is said to have been subjected to are set out in tabular form in Additional Information provided by the claimant.

7. Ultimately the respondents accepted that the claimant made protected disclosures in June 2010, August 2010, October 2010, early 2011, and 15 March 2011, in that he had disclosed information to the respondents (Temporary Superintendent: Chief Superintendent Walker, Inspector Hart), the Area Procurator Fiscal Central Scotland, and Ann Maguire MP, that Police Officers from Central Scotland Police deliberately made a false allegation that the claimant was responsible for the death of Dean Geary.
8. The respondents took issue with the disclosures alleged to have been made by the claimant in March 2011, and January and June 2012, to ACC Allard, Inspector Hart, and Sgt McKeown, to the effect that have been a failure by Chief Superintendent Walker and Temporary Superintendent Gillen to investigate criminal allegations against Central Scotland Police.
9. The claimant alleges he's been subjected to 14 detriments, commencing on the 19th of August 2010 and ending on 30 May 2014.
10. The respondents not accept the claimant was subjected to any detriment on the grounds of having made a protected disclosure.
11. In the event the Tribunal has jurisdiction to consider the claim, it will therefore have to determine whether the claimant made the disclosures in dispute, and whether he was subjected to the alleged detriments on the grounds that he made the protected disclosures relied upon.

Evidence

12. The claimant give evidence on his own behalf, and evidence was given by his Police Federation representative, Mr. Regan.
13. For the respondents the Tribunal heard evidence from the following witnesses;

1. Temporary Superintendent Gillen-the claimant's 3rd line manager
2. Inspector Barbour-staff officer to ACC Allard
3. Chief Superintendent Walker-Divisional Commander Scotland and Northern Ireland
- 5 4. Assistant Chief Constable Chidley
5. Inspector Hart- claimant's line manager.

14. The parties lodged a joint bundle of documents.

10 **Findings in Fact**

15 15. The respondents are a civilian police force under the jurisdiction of the Secretary of State for Defense, working exclusively for the MoD. Their primary function is to provide security for critical infrastructure sites but they can also perform work overseas. They can be called upon to assist other police forces as part of the National Firearms Reserve.

16. The respondents are a distinct Police Force from Police Scotland, which previously operated as a number of regional Scottish Police Forces, including Central Scotland Police (Central).

20 17. The respondents have no jurisdiction to deal with or investigate crimes committed other than crimes committed on MoD property. They have no jurisdiction to deal with allegations of criminal activity levied against police officers in other Police Forces, or allegations of criminal activity other than acts alleged to have been carried out on MoD estate. They have no locus of
25 require another Police Force to disclose evidence or information uncovered as part of an investigation undertaken by that Force. It would be improper for respondents to disclose information given to them by another Police Force about an enquiry to a person who was a 'person of interest' in that enquiry. The claimant, who was an experienced police officer with the respondents,
30 was aware that this was the case.

18. The respondents operate UK wide and in Scotland provide services at sites at Faslane and Coulport.
- 5 19. Around 2011/12 the respondents undertook a significant restructuring exercise, as a result of which a number of posts were abolished. The restructuring exercise generated a considerable amount of work and change for the respondent's administration, and it was a time of considerable upheaval.
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20. The respondents have an internal Human Resources Department. This was initially called the DPPA and latterly became the DBS. Officers dealing with human resources issues could refer to these departments for advice. Advice was taken from Subject Matter Experts (SMEs) on HR matters. At the Faslane
- 15 site, advice could sometimes be obtained locally from a SMEs, (initially Tommy Murphy and latterly Alex Goodwin), however Officers could also seek advice from an HR Contact Centre. It could take around 10 days to obtain a response from queries to the Contact Centre.
21. It was the experience of Officers, that from time to time there were issues with
- 20 the H R service provided.
22. The respondents also have a Professional Standards Department (PSD), which dealt with, among other things, complaints of misconduct levied against officers.
23. The respondents have policies and procedures in place for dealing with
- 25 grievances, sickness absence, and discipline.
24. Officers can be assisted by the Police Federation, in dealing with issues arising from their employment.
25. 'Restoring Efficiency', was the absence policy in place Tn 2010. This was replaced by another policy (UPP), as of 1st April 2012. There was an issue
- 30 between the respondents and the Police Federation about the implementation

of the new policy. A meeting took place on 28 January 2013 between the respondents and the Police Federation, at which it was agreed that all cases were to be put on hold until the respondents had reviewed each case individually. These were not reviews of the facts of the case, but were reviews
5 of the processes to be utilised (page 195).

26. In terms of the Restoring Efficiency Policy the trigger point for long-term absence was 30 days. At that stage an Occupational Health referral could be made, but only with the agreement of the Officer involved.

27. Officers who were absent on long-term sick were entitled to 6 months full pay,
10 followed by 6 months half pay.

28. At management level the respondents where under a degree of pressure to deal with, and reduce long-term sickness absence. Long-term sickness absence impacted on efficiency in terms of providing policing cover. In general
15 terms it was the aim of management to resolve issues arising from long-term sickness absence within a year, although this could take longer depending on the circumstances.

29. Officers who were absent from work on long-term sickness, could ultimately
20 be dealt with either by way of ill-health retirement, or under the ill-health dismissal procedure.

30. The respondent's provider, Capita, were responsible for deciding whether an Officer was granted ill-health retirement. The criteria for granting this is that
25 the officer will be unable to return to work in the future. The Officer is awarded a pension payable immediately on ill-health retirement.

31. Ill-health dismissal was considered at a Divisional Review Board (DRB) which considered medical evidence and submissions, before deciding whether an
30 officer should be dismissed on the grounds of ill-health. In considering ill-health dismissal, the ACC who takes the decision to dismiss has to decide the rate of compensation to be awarded on dismissal. Compensation is generally

awarded at 1 or 2 years pay. A recommendation is made by the Officer's line manager as to the level of compensation awarded.

32. The Restoring Efficiency Policy, under the heading Guidance - Discretionary Compensation provides that;

Departments and agencies have discretion to pay compensation in cases where staff are dismissed on grounds of inefficiency. In the event of a decision to compensate, departments and agencies have to decide on the level of compensation which would be appropriate, this overpaid from the Business Units UIN and reflect the circumstances of the case.

Staff whose attendance is irregular may fall into 2 categories;

1. *the long-term sick-staff who have been absent for a long period whose absence cannot continue to be covered or tolerated, but whose condition is not judged appropriate for HI-health retirement. Most such cases would normally qualify for full compensation were medical evidence exists or can be obtained should to show that the inability to attend is beyond the control of the Employee;*
2. *the intermittently sick-those who have frequent sickness absences for short periods, due either to a specific illness or to apparently from the level of general health. Staff in this category might qualify for compensation where management are satisfied, firstly, after the necessary investigations (including advice from medical advisers where appropriate), as to the nature and severity of the illness concerned and, secondly, that the member of staff has done everything within his or her power, or made some effort, to alleviate the problem.*

33. Other than when an Officer is close to retirement age, ill-health retirement is generally financially more favourable than ill-health dismissal.

34. When an Officer is granted ill-health retirement a Medical Retirement Certificate is issued. The last date of the Officer's service has to be within 4 months from the date of the Certificate. On the last date of service being agreed, a letter is issued from the MoD addressed to the Officer concerned confirming the last day of service, and providing other information, including that the Officer remains bound by the provisions of the Official Secrets Act; the Business Appointment Rules which apply; and providing information about an MoD outplacement services. An example of this is produced at pages 278/279 of that Bundle. The practice is that this letter is sent to the retiring Officers line manager, and it is intended that the letter is delivered to the Officer concerned in a sensitive manner.
35. The respondents also have a scheme whereby an Officer who is on long-term sickness absence can be awarded pay at pension rate, after his entitlement to sick pay has expired. This in effects allows the Officer to receive some of his pension entitlement early. Any payment which he receives is deducted from the total value of his pension on retirement.
36. Applications can be made on behalf of officers under the Civil Service Injury Compensation Scheme. In order for an application under this scheme to be successful there has to be an injury at work; it is also a condition of payment under the scheme that the officer has no outstanding grievance.
37. The claimant, whose date of birth is the 9th of May 1960, was employed by the respondents as a Sgt at Her Majesty's Naval Base Clyde (Faslane).
38. The claimant joined the respondents in October 1992, after serving in the Royal Navy. While with the respondents he had undertaken a variety of duties, working throughout the UK, before being promoted to the position of Sgt in 2009.
39. In February 2010 the claimant was living in Stirling and working in Faslane.

40. On the morning of 7th of February 2010 there was a fatality on the road leading to Faslane. The victim was a civilian employee at Coulport.

5 41. This was a matter which was investigated by Central Scotland Police (Central).

42. Chief Superintendent Walker was the respondents Divisional Commander of Scotland and Northern Ireland at that stage. He was contacted by the head of
10 Special Branch of Strathclyde Police, Inspector Marshall, who was a personal friend and a colleague. He told Chief Superintendent Walker that he had had been contacted by Central who wished to make an approach to the MoD police. He explained that Central had formed a suspicion, and had asked him to facilitate obtaining access to telephone records and CCTV footage held by
15 the respondents. It was explained to Chief Superintendent Walker that the basis of that suspicion was that traffic flow cameras on the Stirling/Balloch road had picked up 2 vehicles travelling at great speed from Stirling, which suggested they may have been racing each other. Inspector Marshall advised him that Central also had CCTV footage from a Tesco garage which they
20 thought identified one or both of these cars, and it appeared that the drivers may have been scrutinising the cars for damage. Chief Superintendent Walker understood Central were looking to link the two. Inspector Marshall told Chief Superintendent Walker that it was thought that one or both of the cars might belong to 2 officers coming to early shifts at Faslane/Coulport, and
25 Central wanted to investigate if there was dialogue between the 2 officers or interaction on CCTV cameras.

43. In response to this request Chief Superintendent Walker contacted the ACOP
Gold Duty Commander, (ACC Chidley) at headquarters to update him on this
30 request, as he considered that it may have an impact on the reputation of the respondents Force if something was to subsequently emerge. He also contacted his own line manager, the Assistant Chief Constable of Territorial
Operations, David Allard, to advise him of the situation.

5 44. Chief Superintendent Walker was told that this was a matter for CID, and that authority rested with them to release telephone records. Chief Superintendent Walker contacted CID, and understood that a liaison officer, a Dave Kimlo, had been appointed to liaise between the respondents and Central.

10 45. Chief Superintendent Walker did not discuss this with anyone other than his 2 senior officers, and it was agreed, due to the sensitive nature of matters that there would be no further sharing of information.

15 46. Temporary Supt Gillen was the claimant's 3rd line manager. He was also contacted by a friend and professional colleague in Strathclyde Police, who had also been contacted by Central in attempt to obtain access to CCTV footage from Faslane.

20 47. Temporary Superintendent Gillen contacted the Control Room, and asked them to make sure that the tapes were secured. He was told that Central wished to interview 2 of the respondent's officers, one of whom was based at Coulport, and one of whom was based at Faslane, (the claimant).

25 48. Temp Superintendent Gillen discussed the matter with Chief Superintendent Walker. Chief Superintendent Walker was surprised that Temporary Superintendent Gillen had been approached, and he advised him that he would need to get a risk assessment, and advise the Gold Cmdr.

30 49. Temp Superintendent Gillen did not advise the Gold Commander, however he understood that David Kemlo of the CID had been appointed as the liaison officer to deal with matters, and he passed on details of the claimant's and the other Officer's rosters to him, to pass on to Central.

50. On the morning of 29 April 2010, Temporary Superintendent Gillen was contacted by an officer of Central (DCI Cravens) who advised him Officers from Central were coming to the base to interview the 2 officers. Temp. Supt

Gillen understood 2 Officers were '*persons of interest*' in Central's investigation. He understood that the Officers were to be interviewed simultaneously, he assumed to avoid collaboration, and that they were going to be interviewed at the base.

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51. The respondents Officers were under an obligation not to share what information they had from Central with any person of interest in Central's investigation. The respondents had no jurisdiction over the enquiry carried out by Central and were not provided with, and did not expect to be provided with, any documents which Central had as part of that enquiry. They had no locus
10 to ask Central to produce the documentation or evidence which they had as part of their investigation.

52. Temp. Supt Gillen made office space available at Faslane for the interview to
15 take place with the claimant. He spoke to the claimant and advised him that officers from Central wished to have a discussion with him. The Central officers arrived at the Base early, and the claimant was late in arriving at Temp. Superintendent Gillen's office, and therefore the discussion Temp. Superintendent Gillen had with the claimant was brief.

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53. When the officers from Central arrived, they asked the claimant to attend for
a voluntary interview at Stirling police station. The claimant agreed to this. It
would have been open to the claimant to refuse to attend this interview, or to
request that he attend the interview out with his working hours. The claimant
25 was under no obligation to attend for this interview. It was open to him to
leave the interview if he wished. As an experienced Police Officer, the
claimant knew this.

54. The claimant left the base at Faslane accompanied by 2 plainclothes officers
30 driving an unmarked car. The 3rd officer drove the claimant's car.

55. No charges were ever brought against the claimant. The claimant entirely
refuted that he had any Involvement In the accident.

56. The claimant was extremely distressed about what had happened to him.

5 57. Temp. Superintendent Gillen spoke to the claimant on 30 April 2010 on the telephone. In the course of that call the claimant expressed disbelief at what happened to him, and said that he had no knowledge of the collision. Temp. Superintendent Gillen formed the view that the claimant was very distressed and upset, and gave him 2 days Special Paid Leave with a view to adding that
10 on to further Annual Leave if that was necessary. The claimant was due to go on a 4-day rest period, and therefore the additional 2 days would have given him 6 days off.

15 58. The claimant was so concerned about what had happened, and fearful of the potential consequences of this, that he decided to go to Spain.

59. The claimant telephoned his line manager, Inspector Hart from Spain on 1
20 May 2010. He told Inspector Hart that he was devastated about what had happened, and that he was 100% sure that he was not involved in the accident. The claimant told Inspector Hart that the whole investigation conducted by Central was flawed, and that the forensic evidence that had associated him with the person who caused the death was never produced to him. The claimant told Inspector Hart that he could not cope with being
25 burdened with the blame for causing the fatality. He said that Central were recording the incident as unfortunate accident.

60. The claimant told inspector Hart that he was considering taking legal advice, and that he was also concerned that the family of the victim may find out his
identity, and bring proceedings against him.

30 61. Inspector Hart offered support to the claimant, by suggesting commencing a Care Package, and offered the claimant Occupational Welfare Support. The claimant declined this. Inspector Hart also told the claimant that he would

5 speak to the Police Federation to find out if they could offer any support with regard to legal advice, which he did.

62. The claimant told this Inspector Hart that it was intention to return to duty on his next set of shifts. Inspector Hart formed the view that the claimant may not be in a state of mind to do so, and suggested to him that he may wish to consider his own well-being before returning to duty.

63. From 30 April 2010 Inspector Hart made up a *MDPGA- Action Record Form*, for the claimant. This record details the absent staff member, and the care manager and then details action taken, to include telephone conversations or other contact made in the care management of the absent staff member.

64. The record or log, is generally completed by Officers using records of conversations which they have from notes such as desk diary notes. The log is maintained electronically so that senior officers can have access to it at any time out with shift patterns. In the claimant's case Temp. Superintendent Gillen, as the Senior Officer at Faslane with responsibility for operational matters had access to this log, and he also completed some of the entries in it recording his telephone contact with the claimant. Inspector Hart, who was the Care Manager, also completed the log to record telephone contact with the claimant and others.

65. Inspector Hart maintained regular contact with the claimant, and made regular offers of welfare support. He provided him with his personal mobile telephone number, and on occasion spoke to the claimant while he was on annual leave, and on rest days.

66. The claimant remained unfit for work from May 2010 until the termination of his employment by reason of his ill health retirement in May 2014.

67. On 7 May 2010 Temp. Superintendent Gillen telephoned the claimant, who again told him that he did not believe he was Involved In an accident.

5 Superintendent Gillen offered to arrange counselling for the claimant through OHS, and he told them that he had arranged to the police Federation for Strathclyde Police HS counselling services to made available to him, or that he could arrange something form the MoD welfare office. The claimant declined these offers, but said it was something he may wish to consider in the future. The claimant also said that it was his preference that he did not receive any welfare visits from the station or the Federation

10 68. On the 26th of May 2010 Temporary Superintendent Gillen attempted to contact the claimant at home, and left a message on his answering machine asking him to get in touch if you need anything from the station, the Force or the Federation, but received no reply.

15 69. On 10 June 2010 Inspector Hart contacted the claimant to enquire about his health. The claimant was angry and upset at what happened to him, and challenged the allegations that Central have made against him. An offer of welfare support and counselling was made, but declined by the claimant. The claimant said that he wanted to concentrate on clearing his name, and once this had been done he would be in a position to consider some form of counselling.

20 70. Temp. Superintendent Gillen contacted the claimant again on 24 May but received no reply, however he spoke to him on 25 May, when he again raised the issue of support including support from the Federation. Temp. Superintendent Gillen held a senior position in the Federation, and was keen to ensure that the claimant had Federation support, albeit he was not personally in a position to provide it.

25 71. On 30 May 2010 Temp. Superintendent Gillen again attempted to contact the claimant and left a message on his answering machine. The claimant subsequently phoned him back, and a lengthy conversation, which lasted in excess of 90 minutes ensued. The claimant again said that he was not involved in any accident, and he told Temp. Superintendent Gillen that he

believed there was a conspiracy by Central to 'frame him ', without any evidence. He said he thought that Central were still trying to 'get him', and that he had taken to sitting in the house with the curtains drawn. In the course of this conversation, on the basis of what he was told by the Claimant, Inspector Gillen made a comment to the effect that he was 'always dubious' about the information which Central had as it was unlikely that Central would have asked the claimant to attend on a voluntary basis if they had had strong evidence against him.

10 72. Temp. Superintendent Gillen asked the claimant he if he was receiving any medical assistance; the claimant advised him that he had now been referred by his GP for counselling. Temp. Superintendent Gillen again offered the services of the DPF and the MoD, but the claimant said he had no need of the services at that time.

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73. Temp. Superintendent Gillen suggested that it might be helpful for the claimant's rehabilitation to set a target date for returning to duty, even in a recuperative capacity. The claimant said that his faith in the police was now so diminished that he did not know if he wanted to continue be a police officer. He said he did not think he could go back to Faslane, and Superintendent Gillen offered to arrange recuperative duties at another Station if the claimant wished. The claimant said he was not in the right of mind to consider this, and went on to tell Supernatant Gillen that he was disappointed in the level of support he had received from the Force. Superintendent Gillen asked why, and the claimant said that no one had visited him. Superintendent Gillen said to the claimant that he specifically requested that no one visit him, the claimant responded that someone should have visited him anyway. Superintendent Gillen asked the claimant if you wanted either him, or the shift inspector to visit him, the claimant said no, it was too late.

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74. At the conclusion of the 30th June call Temp. Superintendent Gillen's view was that the claimant was rambling and he had concerns about the claimant's mental state. He discussed matters with InspectorHart, but formed the view,

in light of the claimant's declining his offers of support, that there was nothing he could do. He also discussed matters with the Chief Superintendent Walker.

5 75. On 18 July 2010 Inspector Hart called the claimant, and spoke to his wife who told Inspector Hart that her husband was too unwell to answer the phone, and he was on the verge of a nervous breakdown. She told him that it was unclear whether the claimant was to be charged with any offence, and if MDP Professional Standards were still communicating with Central. Inspector Hart said he would make enquiries with Professional Standards and to come back
10 to her once he had spoken to them.

76. On 25 July Inspector Hart again attempted to contact the claimant via his mobile, and by text message, but received no reply stop

15 77. On 28 July Temp. Superintendent Gillen again attempted to contact the claimant. He also had a discussion with the Federation support officer, about what further support could be offered to the claimant.

20 78. On 3 August Inspector Hart contacted the claimant to enquire about his health and well-being. The claimant told him that he was still upset and very angry about what had happened, and stated again that a flawed investigation had been carried out by Central.

25 79. By this stage the claimant had arranged for his vehicle to be forensically examined, and had obtained an expert forensic report which supported the conclusion that his vehicle had not been involved in any type of collision. The claimant told Inspector Hart that he had obtained this report.

30 80. Inspector Hart advised the claimant that he had contacted PSD, but had been told that at no time this was a PSD (Professional Services Department) investigation. PSD had assisted Central with their enquiries, and were still in contact with Central and expected a report from them on the conclusion of their investigation. He enquired if there was anything else which he could do to

assist the claimant, the claimant said no. Inspector Hart confirmed he would maintain contact with him.

5 81. By around the beginning of August Temp. Superintendent Gillen considered it likely that the claimant would lodge some kind of complaint, and on 3 August, he emailed Chief Superintendent Walker (page 91) in the following terms;

10 *'We discussed the above officer a couple weeks ago after my last telephone call to him and his perceived lack of support from the Force. I considered very likely that he will raise some form of complaint about this, but as we discussed, I really don't know what else we could have done to support him. I have attached the ongoing care record for your consideration or suggestions and equally for you to have should a complaint come in. Sandy Hart has spoken to him today, and he remains*
15 *in a pretty poor estate. He is now on antidepressants and was repeatedly crying on the phone. I know D PF support officers visited them last week to offer him support but he still says he does not want either me or Inspector Hart to visit him. His main concern seems to be that we (the MDP) in some way conspired with Central Police to have*
20 *him 'framed 'for the fatal accident that Central say he was involved in. I and Inspector Hart explained that our only involvement at the station was to provide Central with the shift patterns and that M DP were not conducting any PS D or other type of investigation. He does not seem to accept this.'*

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Grievance 27th July 2010.

30 82. On 27 July 2010 the claimant intimated a formal grievance against Temp. Superintendent Gillen to Chief Superintendent Walker (Pages 89 to 90).

83. In his letter of grievance, the claimant stated *inter alia*;

5 *I will be submitting a complaint against CSP through my M P This contains allegations of the gravest nature surrounding the misconduct and actions of Police Officers which have a devastating impact on the lives of both myself and my wife and have had a serious effect on my health, I believe my employer's actions in not offering appropriate support at the outset of the investigation and after commencement of sick leave has aggravated matters.*

10 84. The claimant outlined a number reasons for raising a grievance against Temp. Superintendent Gillen which included the following;

15 *In the weeks prior to my 'voluntary' interview with CSP Superintendent Gillen was made aware of facts by their SI O that should have been communicated directly with myself. I believe he failed in a duty of care to protect me from the suspicious actions of officers of that Force. He failed to question them appropriately as to the necessity of my public removal from my place of work. I was not afforded advance notice of the intention to interview me on a voluntary basis, therefore denying me the scope for legal advice. The circumstances surrounding the events of 29th April confirm he was fully aware of the intentions of CS P.*

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85. The claimant complained that Temp. Superintendent Gillen had told him on the morning of 30th of April that the best thing to do was take a couple of days off, and then get back to work; everything could be kept quiet and the claimant could start to put it behind him.

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86. He also complained that he had informed Temp. Superintendent Gillen that he was making a complaint against Officers of Central, which included criminal allegations, and was offered no support or guidance on this matter.

30 87. The claimant complained the 1st call initiated by his employer enquiring as to his welfare was from Temp. Superintendent Gillen took place 8 weeks after he had gone off sick. The claimant stated that he mentioned during that call that he was disappointed in the lack of support and that no home visit had

been held. He had been informed that he had not requested a visit, but the claimant said he could not recall making this statement.

- 5 88. The claimant complained that Superintendent Gillen's role in the incident left the respondents culpable in the events leading to his ill-health and that he was not offered appropriate support at the outset of the investigation, and after commencement of sick leave.
- 10 89. Chief Superintendent Walker met with the claimant, accompanied by his Federation representative, Mr Regan, on 17 August 2010 at HMS Caledonia. Chief Superintendent Walker was not accompanied by notetaker however, he took notes of the meeting which were subsequently sent to the claimant for his revision. The claimant returned the notes with his additions and revisions, and the final agreed minutes are produced at pages 99 to 102 of the Bundle.
- 15 90. Albeit the claimant had raised a Formal Grievance, at the outset of the meeting after some discussion it was agreed that the grievance would proceed on an informal basis.
- 20 91. In the course of that meeting the claimant told Chief Superintendent Walker that he was aware that Temp. Superintendent Gillen had been made aware of aspects of the investigation up to and including the planned voluntary interview on 29 April 2010.
- 25 92. The claimant also said that as Central has investigated the matter for 3 months and following an alleged forensic examination of his vehicle had failed to collect sufficient evidence to reach the threshold for reasonable grounds for a Section 14 Detention (not voluntary), this showed Central were acting in the full knowledge that there was absolutely no evidence on which to form a
30 suspicion. He stated that Temp. Superintendent Gillen should have made him aware under his duty of care of his suspicion, so that the claimant could have sought legal advice and refused to go voluntarily with Central.

93. The claimant also made allegations that Central officers had colluded in the criminal offence of Attempting to Pervert the Course of Justice as evidenced by his own independent Expert Forensic report, which concluded that his car was not involved in any accident whatsoever.

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94. The claimant gave Chief Superintendent Walker a copy of the report in the course of the meeting. Chief Superintendent scanned the report but did not reach any conclusions about the actions of Central officers on the basis of it, as that was not the focus of the grievances as far as he was concerned.

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95. The claimant said that the actions of Central officers within Faslane resulted in them committing the offence of Attempting to Pervert the Course of Justice on MoD property.

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96. Chief Superintendent Walker told the claimant that he did not consider it would have been a realistic expectation or appropriate that Temp. Supt Gillen should have assisted him in pursuing an individual case against 2 Central Officers. Chief Superintendent Walker told the claimant the best and most appropriate course of action if he felt that Central Officers had acted unprofessionally and in breach of the professional standards, would be to make a written complaint to the Chief Constable of Central, and he offered the claimant the use of his office facilities in order to facilitate the transmission of that complaint.

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97. At the conclusion of the meeting Chief Superintendent Walker considered that it might be helpful if the claimant and Temp. Superintendent Gillen were to meet face-to-face, so that Temp. Supt Gillen could explain his decisions, and see the effect of them upon the claimant, however he emphasised to the claimant that he was content throughout the process that Temp. Superintendent Gillen had balanced the needs of a serious investigation against the needs of respondents to support an Officer at work.

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98. The claimant and Mr Regan agreed to reflect on this and consider whether an informal discussion with Temp. Superintendent Gillen could take place to

achieve a potential resolution, without the need to progress to a formal grievance. They both undertook to report back to Chief Superintendent Walker as soon as possible.

- 5 99. After the meeting there was some correspondence back and forward between Chief Superintendent Walker and the claimant regarding the minutes of the meeting which were finally agreed. Part of the additions which the claimant added to Ch Superintended Walker's draft minutes was the allegation that Central Officers had committed an offense on Mod property.

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Claimant's letter to Chief Superintendent Walker 1st September 2010.

100. The claimant wrote to Chief Superintendent Walker on 21 September (page 98). He advised that he continued to suffer from trauma as a result of the incident and had been diagnosed with depression and continued with regular counselling sessions. He also advised that he was waiting for a response to his formal complaint to the Chief Constable of Central, which had been copied to the Area Procurator Fiscal. The claimant advised that while a facilitated meeting with Superintendent Gillen might prove beneficial, he did not believe that his mental state was at a stage where he could cope with such a meeting.

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101. Chief Superintendent Walker did not consider that he had to respond to this letter given what the claimant said about his health and ability to meet with Temp. Superintendent Gillen at that time.

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102. In his role Chief Superintendent Walker had regular monthly meetings with Mr Regan in his capacity as a Federation rep. to discuss matters, including ongoing employment issues. Chief Superintendent Walker and Mr Regan discussed the claimant's case on a regular basis.

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103. In the course of the meeting In August Chief Superintendent Walker suggested to the claimant that he made an application for compensation to the Civil Service Injury Benefit Fund, as he was about to go on half pay. The prerequisite for such an application is that the applicant has sustained an injury at work.

104. Chief Superintendent Walker took the view that the claimant had not sustained an injury at work at consequence of carrying out an instruction, but he was satisfied that he could support an application on the basis that the claimant's ill-health arose because of the claimant's perception that there was a lack of transparency and sensitivity shown to him by his 3rd line manager, and he perceived this to be a significant contributory factor to his stress-related condition. Chief Superintendent Walker was therefore prepared to acknowledge the perceived causal factor linkage which the claimant wished to make, and he supported the claimant's application. He instructed his administrative assistant to submit the relevant form (page 92 to 94), which contained his statement of support for the claimant's application.

105. There was a delay in the Civil Service Injury Benefit Fund receiving the application due to an administrative error, and the claimant and his Federation Representative had to pursue this.

106. Ultimately the application was unsuccessful because under the Scheme, an award could not be made if there was an outstanding grievance.

107. In the period from August 2010 Inspector Hart continued to contact the claimant a regular basis to enquire about his health and well-being. On 14 October 2010 he contacted the claimant, who advised him he was still medication and was still fighting to clear his name. The claimant told Inspector Hart that he had informed the Occupational Welfare Service of his absence and completed an Occupational Health referral. Inspector Hart asked if the claimant wish a visit, which he declined. The claimant said it was not his decision to arrange for Occupational Health, and that Occupational Welfare

was mandatory. Inspector Hart reminded him that had been his decision to decline any previous offers of support.

Claimant's letter to Chief Superintendent Walker 27th October 21010

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108. On the 27th of 2010 the claimant wrote again to Chief Superintendent Walker (page 116 /118). He had had a telephone discussion with the Chief Superintendent Walker 13 October, and he asked him to consider a number of matters, including Central's claims to have carried out a forensic examination revealing evidence of a 60-mph collision, but that immediately on receipt of the vehicle, a further forensic examination instructed by the claimant concluded the exact opposite, which questioned not just accuracy, but the existence of the forensic evidence which Central claimed to have. The claimant advised that he had presented these facts to his Westminster MP, 10
15 and had contacted the Chief Constable of Central and submitted a complaint against Central and behalf of himself and his wife. He suggested the way forward was that as he had provided evidence of a criminal offense taking place within MoD's jurisdiction, the respondents should be demanding an explanation from Central.

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109. The Claimant concluded the letter with the following;

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I welcome your attempts to seek resolution on the various matters contained within my original formal grievance. I understand my situation may be unique and that certain aspects, as you point out, cannot be undone. It remains the case that the matters within my original grievance currently remain unresolved require to be addressed in order for progression to be made.'

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110. Chief Superintendent Walker did not consider that this letter allowed him to move forward with the grievance. He did not respond to it. He considered the claimant was ill and was unable to move forward with the grievance. In addition, Chief Superintendent Walker took the view that he should continue

to try to facilitate the resolution of the grievance by the means of the face-to-face discussion which had earlier been identified. He remained optimistic that the claimant would rebuild his mental state, and able to have a face-to-face discussion with Superintendent Gillen so that the matter could be resolved.

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111. Chief Superintendent Walker continued to discuss the claimants case with Mr Regan, regularly enquiring of Mr Regan as to whether the claimant was fit to meet with Temp.Supt Gillen, however it was never the case that Mr Regan reported that the claimant was fit enough to do so. CI Walker wrote to the claimant on the 21st April 2011 stating that he was waiting for confirmation if the claimant felt in apposition to enter into discussions with Temp. Superintendent Gillen.

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Grievance 15th March 2011

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112. On 15 March 2011 the claimant wrote to Assistant Chief Constable Allard instigating a formal grievance against Chief Superintendent Walker, and Temp. Superintendent Gillen (pages 123/131). In that letter the claimant set out the background of events on which his complaint was based, and complained that he had a very little contact with the respondents since 29th of April, with the exception of his direct line manager.

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113. The claimant stated in the letter that on 24 June 2010 during a telephone call with Superintendent Gillen he updated him on the developments including the conclusions of the forensic examination. He stated that he informed him that this was clear evidence that he had no involvement in the incident and that obviously had been used as a scapegoat by corrupt Central Officers. The claimant said that Superintendent Given told him that he *was' always dubious'* of the evidence Central claim to have, as surely, they would have used this evidence to detain him under Section 14 rather than to ask the claimant to accompany them voluntarily.

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114. The claimant complained that Superintendent Gillen gave no explanation as to why he chose not to act on his suspicion to prevent Central Officers from carrying out their actions. He also complained that to further aggravate matters Superintendent Gillen had not combined this suspicion with the claimant's evidence and opened an investigation or approached Central on the matter.

115. The claimant also complained that during his meeting with Chief Superintendent Walker he had shown him a copy of the forensic report which clearly corroborated his allegations against Central but that his position was that it would be *'unrealistic and indeed inappropriate'* for the respondents to approach Central on this matter. The claimant complained that Chief Superintendent Walker referred to Central Officers actions as misconduct rather than criminal, and that he referred to the claimant's allegations as his view, or perception despite being shown supporting forensic evidence.

The claimant disclosed the following information;

(i) *"From the outset of this horrendous situation I have protested my innocence to Superintendent Gillen and Chief Superintendent Walker, both verbally and in writing. I have told them in detail of CSP's groundless accusations while explaining my evidence to both of them. I have clearly reported to them that the CSP Officers involved committed at least an Attempt to Pervert the Course of Justice and possibly other offences within MDP jurisdiction. "*

(ii) *"On 24 June 2010 during a telephone call to Superintendent Gillen I updated him of developments including the conclusions of the forensic examination. I informed him this was clear evidence I had no involvement in the incident and that obviously I had been used as a scapegoat by corrupt CSP Officers. Superintendent Gillen told me he was "always dubious" of the*

evidence CSP claimed to have, as surely they would have used this evidence to detain me under a Section S14, rather than ask me to accompany them voluntarily. Superintendent Gillen gave no explanation as to why he chose not to act on this suspicion and failed to prevent CSP Officers from carrying out their actions. However, to further aggravate matters he has not, since 29 April 2010 combined his suspicion with my evidence and opened an investigation or approached CSP on this matter.

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(Hi) I expected that my allegations, especially when corroborated by a forensic report would have been taken seriously and investigated by MDP. However, Superintendent Gillen and Chief Superintendent Walker clearly chose not to acknowledge this. Rather than facing the reality of the situation they prefer instead to trivialise the matter and to treat it was a matter between CSP and myself. I do not believe it to be an unrealistic or inappropriate expectation that crime reported on the MoD Estate be investigated by MDP. On the contrary, the Scottish Crime Recording Statistics are clear on the obligation to record and action such matters. I found the refusals to take my allegations seriously to be completely unacceptable and a Neglect of Duty by a Senior Police Officer of MDP.

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(iv) MDP were willing co-architects of the situation. Incredibly, although dubious about the evidence, Superintendent Gillen nonetheless engaged directly with CSP. He played an active part in concealing the highly suspicious activities of CSP prior to my 'voluntary attendance' on 29 April 2010. MDP are therefore Jointly culpable for creating the situation that I now find myself in. I assert that MDP have failed their 'duty of care' to me prior to and following this incident and have merely paid lip service to the

problem by offering home visits designed to tick boxes rather than provide remedy to this nightmare. "

- 5 116. Further to the submission of this grievance there was some email correspondence back and forward between the claimant, and an Alex Ballantyne, who was the staff officer for ACC Allard at that time.
- 10 117. The claimant complained to the Area Procurator Fiscal in early 2011 about the conduct of the Central Officers. At some point thereafter Strathclyde Police were appointed to investigate the allegations.
- 15 118. On 6 June 2011 Chief Inspector Wilcox of the Professional Standards Department wrote to the claimant (page 155) and advised him that he had responsibility for making an initial decision regarding a Formal Grievance from members of the MoD police. He advised the claimant that his formal grievance referred to and involved a live matter which was still being reviewed by the Procurator Fiscal and was therefore being treated as Sub- Judice. It was explained that to safeguard the claimant's position and that of any officer's subject to any complaint and/or grievance that the Grievance of 15th March 2011 would not be addressed until this matter was closed.
- 20 119. On 11⁰¹ August 2011 the claimant's complaint of March 2011 was passed from ACC Allard to ACC Chidley, due to the high volume of matters which ACC Allard had to deal with.
120. Inspector Ballantyne, confirmed this to the claimant in an email (page 163). He also stated that;
- 25 121. **The case has now been on hold as a result of the matters being sub Judice. / have checked and there is no requirement for this. (Unlike many PSD matters which are held up by court cases) ¹*
122. On 2nd September Inspector Abram, ACC Chidley's staff officer wrote to the claimant confirming receipt of the papers and advising that the paperwork would be reviewed.
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123. On 22nd November 2011 the claimant wrote to Inspector Abram complaining about the lack of progress. Inspector Abram replied on the same day advising that he had received confirmation from PSD on 26th October 2011 that they considered the case was subject to Subjudice. In that e-mail, Inspector Abram stated (page 167):

"In relation to progressing, I personally have been trying to establish from PSD whether we could action the grievance, and it didn't help that including myself, also the SO to ACC DO had changed.

I had finally received written final confirmation from PSD on 26 October 2011 that the case was subject to Subjudice, and I apologise you got 2nd party from John Regan DPF, but leading up to this date, I wanted to make sure I got the facts in writing.

Please don't hesitate to keep the email link with myself in relation to your grievance, as I have the file and each time I do receive an update from PSD, I have briefed ACC CO directly."

Pay at Pension Rate withheld- May /June 2011

124. In circumstances where and due to the length of his absence an Officer is no longer entitled to sick pay, the Officer can become eligible to receive sick pay at pension rate. This is a scheme whereby an Officer who is absent on long term sickness effectively receives payment of part of his pension at an earlier stage.

125. Inspector Hart had been in contact with the claimant on 17th May 2011 to discuss his health, and in the course of that conversation the claimant voiced his anger about how he was being dealt with, but declined offers of support.

126. The claimant told Inspector Hart that he had been in contact with Occupational Health and he asked Inspector Hart to make enquiries with PPPA for information about claiming back his annual leave from previous years; Inspector Hart contacted the claimant again on 24th May to confirm he had done this.

127. Inspector Hart also contacted DBS and asked their advice about whether he should approve sick pay at pension rate (SPPR) for the claimant. The advice which Inspector Hart received from the centrally located DBS unit was that an Officer would be eligible for SPPR if the likelihood was that they would be able to return to work in the near future. On the basis of the information which Inspector Hart had about the claimant he did not consider that it was likely the claimant would come back to work in the near future, and therefore he completed the relevant form (page 146) declining to approve SPPR for the claimant.
128. On 24th May 2011 Inspector Hart was contacted by the MOD Welfare Officer on behalf of the claimant and was asked to reconsider how the criteria for the payment of SPPR was applied to the claimant. He was also spoken to by Mr Regan regarding his decision. In the course of their conversation about it Inspector Hart indicated that the decision came from 'upstairs'.
129. Inspector Hart contacted Central DBS again and spoke to a different advisor. The advice he received on this occasion was that there had to be a likelihood of the Officer returning to work, but without the addition of "in the near future".
130. On the basis of what he was told on the second occasion, Inspector Hart decided that he could revisit his decision as to whether or not approve SPPR, and he did so. The effect of his approval, was that while the claimant was not paid SPPR in May and June 2011, he was subsequently awarded this, and it was backdated to cover those months.
131. Inspector Hart continued to approve payment of SPPR for the claimant for the following year.
132. Inspector Hart contacted the claimant on 14th July 2011 and advised him that he had been in contact with PPPA for authorisation of SPPR and that he had now completed the relevant paperwork and the claimant would receive a back payment dated to 3rd May.

133. Inspector Hart continued to keep regular contact with the claimant on the telephone about his current state of health, and enquiring if there was any support which could be provided to him.

134. In November 2011 the claimant applied for ill-health retirement, but his application was rejected by Capita.

III Health dismissal 2011/2012

135. Temporary Superintendent Gillen was responsible for operational issues arising from the policing of the Faslane site, and the long-term sickness absence of an Officer impacted on this.

136. From an operational perspective Temp. Superintendent Gillen wanted to deal with long term absence, including the claimant's long-term absence. On the 29th December 2011, there was a discussion between HR, (Tommy Murphy), Temp. Superintendent Gillen, and Inspector Hart about the claimant's situation.

137. Further to that, Inspector Hart wrote to the claimant on the 19th December (page 168) inviting him to attend a meeting with his Senior Police Officer (DA/SPO) to discuss any possible reasonable adjustments which could be made to assist him and return to duty. He was advised he could have a representative present, and if he would prefer, he could to discuss matters over the telephone.

138. Inspector Hart contacted the claimant on the 5th January 2012 to discuss this and to arrange a suitable date to meet. The claimant enquired who the DA/SPO would be, and Inspector Hart confirmed it was Temporary Superintendent Gillen. Inspector Hart told the claimant that there had been a case conference meeting with the HR Consultant, and Temp. Superintendent Gillen, and a decision was made to send out a letter to discuss any possible adjustments and a return to duty. He explained and this was the process before moving to ill-health dismissal. Inspector Hart advised the claimant that the process could have started six months after the initial sickness, but he

had allowed it to continue for fifteen months because of the unique situation, but they had started the process following the advice of the HR consultant.

139. The claimant told Inspector Hart that he thought it was wholly inappropriate that someone who he had a grievance against, and who was also the suspect of criminal allegations involving a cover up regarding the death of a member of the public, should have any influence over the management of sick absence. The claimant took offence at the thought of having a meeting with Temp Superintendent Gillen. Inspector Hart told him that Temp Superintendent Gillen was providing him with support and guidance as his line manager and that as the Deputy Police Officer he was responsible to overseeing such cases.
140. The claimant said he would be reporting the matter to the Professional Standards department and went on to say that Temporary Superintendent Gillen and Regional Commander Walker would be going to jail. He said a crime had been reported to them on 13th April and they had failed to take any action which was their duty, and that in itself was a criminal offence.
141. In the course of the telephone call the claimant requested that Inspector Hart find out why, when he had reported the claimant on 30th April to the Deputy Senior Police Officer and the Divisional Commander, it was not recorded and followed up. Inspector Hart e-mailed temporary Superintendent Gillen with these details of this conversation on 5th January (page 169/170).
142. At the end of January, an Occupational Health report was received for the claimant, and on 22 February, the claimant's wife contacted Inspector Hart to advise that the claimant was ill due to a back complaint; she advised that the claimant was seriously considering a previous invitation to a case conference meeting but was unable to attend at present.
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143. Inspector Hart consulted with the HR consultant, Tommy Murphy for advice and a decision was made to extend the meeting date to 8th March.
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144. This meeting eventually took place on 28th March with the claimant and Inspector Hart, at the claimant's home address. The claimant was

accompanied by his Federation representative at that time. Inspector Hart recorded a summary of the meeting in the log (page 65/67).

- 5 145. Inspector Hart discussed with the claimant any possible reasonable adjustments the respondents were in a position to offer him, and there was also a discussion about the criteria for Statutory Sick Pay Pension Rate.
- 10 146. Inspector Hart told the claimant that the next stage of long term sickness would be the claimant's attendance at an ill-health dismissal hearing, should reasonable adjustments be unsuitable, and the claimant failed to return to duty. In view of this the claimant wanted to explore options open to him, the first being a career break, and the second at VERS. The claimant also asked Inspector Hart to pass a copy of a number of questions to the DBS HR consultant Tommy Murphy in relation to pay, and pension.
- 15 147. After this meeting, Inspector Hart noted his content of the meeting in the log, and then sent an e-mail to Temporary Superintendent Gillen and Mr Murphy outlining what was discussed.
148. As the Senior Police Officer at Faslane, Temp. Superintendent Gillen had an input into operational decisions such as the ability to accommodate adjustments, a career break, or VERS.
- 20 149. Temp. Superintendent Gillen e-mailed Chief Superintendent Walker on 17th April 2012 advising him that Inspector Hart had discussed a potential career break with the HR advisor, who considered that would be an inappropriate course of action, as that part of the criteria for awarding a career break is that there must be a reasonable expectation or position for the Officer to return to, and in the claimant's case because of the medical recommendations it was
- 25 unlikely that there would be a position to suit his specific needs. Temp. Superintendent Gillen therefore indicated that he felt there was no further consideration of this request necessary, but stated that he was aware of the sensitivities of the case and felt that Chief Superintendent Walker may wish to take a view on it prior to his line manager returning to the claimant.

150. Chief Superintendent Walker replied on 18th April confirming that he considered Gillen's position to be justified.
151. On 30th April, Chief Superintendent Walker e-mailed Temp. Superintendent Gillen and said he was not clear that he could progress to a DBR with the claimant, given that both he and Temp. Superintendent Gillen was subject to an independent enquiry into their conduct. Temp. Superintendent Gillen replied on the same day indicating he had sought advice from the HR advisor, that advice was to the effect that a DBR absence process falls to the claimant's line manager (Inspector Hart), and to that extent both he and Chief Superintendent Walker were removed from the process.
152. At this stage a DBR had been fixed for 21st June (which had been postponed twice), and Temp. Superintendent Gillen indicated he thought that DBS would be reluctant to delay it any further. He suggested that if he had any concerns about the DBR, Chief Superintendent Walker may wish to ask Chief Inspector McLaughlin to either conduct a further case conference, or to independently review the file before it went to DBR.
153. Chief Superintendent Walker concluded that it was not appropriate to proceed with the DBR because of the claimant's outstanding grievance, and therefore the DBR of 2012 did not go ahead. In an e-mail to Chief Superintendent McLaughlin (page 198) he stated: -

**7 have made it clear in the past and I believe that PS Eivers clearly perceives the actions of the Investigating Force and, to a lesser extent, MDP facilitating that investigation to be the main contributory factors in his stress related continuing absence from work. Until the enquiry is complete into the actions of Central Scotland Police and, as a subsection, the actions of the named MDP officers in facilitating and/or assisting the enquiry, I do not believe that it is sensible to proceed to DBR at this time. "*

154. The claimant objected to the decision not to hold the DBR.

155. On 3rd February 2012 the claimant had emailed Chief Inspector Wilcox complaining about Temporary Superintendent Gillen's involvement in the ill-health dismissal process, complaining that it was bullying at best or at worst witness intimidation.
- 5 156. Chief Inspector Wilcox replied to the claimant on 6th February, confirming firstly that it was Capita's decision to decline ill-health retirement and secondly, he confirmed that when an officer had been absent from work for an extended period, the respondent's policy was to discuss the possibility of reasonable job adjustments, and that the officer's line manager, and Deputy
10 Senior Police Officer (in the claimant's case Temp Superintendent Gillen) would be involved. Chief Inspector Wilcox indicated he understood the claimant's reluctance to participate in discussions with now Chief Inspector, Gillen, and this was accepted as a reasonable request.
157. The email stated that Chief Inspector Wilcox had spoken with Chief Inspector
15 Gillen and he confirmed he had no involvement in any Capita decisions regarding ill-health retirement. The email stated, "*Chief Inspector Gillen will have no part in any of the processes re ill-health*".

Grievance (Bullying and Harassment Complaint) 29th June 2012

- 20 158. On 20th June 2102, the claimant forwarded a complaint to his Federation representative, now a Constable McEwan, and asked her to forward this to the Chief Constable. The letter of complaint is produced at pages 207-213 of the bundle. In this letter the claimant disclosed the following information

25 *"On 29 April 2010 when CSP carried out their completely unjustified and high-profile removal of me from my place of work at HMNB Clyde, they did so with the help of Chief Inspector Gillen and Chief Superintendent Walker. Chief Inspector Gillen willingly provided his assistance at my place of duty, in spite of him stating to me that he always dubious that CSP had the evidence they claimed to have. This assistance allowed the CSP to carry out their attempt to pervert the course of justice.*

.....

5 On 27 October 2010 I wrote to Chief Superintendent Walker to reiterate that the forensic report I showed to him was evidence of CSP committing an offence on MoD estate. I also suggested avenues to provide resolution of my grievance. Despite Chief Superintendent Walker confirming to John Reagan of DPF that he had received this letter, to date I have received no answer. It has been ignored.

.....

10 On 15 March 2011 I submitted a formal grievance against Chief Superintendent Gillen and Chief Superintendent Walker. This was due to my dissatisfaction at the handling of the original grievance. Clearly there was a need for MDP's collusion with CSP to be thoroughly investigated. On 29 March I received an email from Inspector Ballantyne, Staff Officer to ACC Allard confirming receipt. "

15 159. The claimant's complaint of 20th June was received on 4th July 2012. It was initially received by Inspector Barber, who was by then acting as Temporary Staff Officer to ACC Allard. He was carrying out a number of duties in addition to the Staff Officer duties which he shared with another officer.

20 160. All communications to an ACC are via their staff officers, and the ACC's rely on their Staff Officer to deal with administration on their behalf and to bring matters to their attention when they require to be actioned.

161. Inspector Barber kept a log of his involvement with the claimant's file, (pages 187 to 189 and 214 to 215.)

25 162. Inspector Barbour discussed the claimant's grievance with ACC Allard and a decision was taken that this was linked to the previous complaint/grievance submitted by the claimant which sat with ACC Chidley and was on hold pending the investigation by Strathclyde Police.

163. Following these discussions Inspector Barber undertook to liaise with Chief Superintendent McLaughlin who had been tasked by ACC Allard with pulling all the issues together and arranging for the claimant to be spoken to regarding the postponement of the DRB hearing.
- 5 164. On 13th July Inspector Barber spoke to Chief Inspector McLaughlin informing him that Superintendent Johnson was dealing with the matter (page 218). Inspector Barber told Constable McEwan that the matter was being passed to Inspector Johnson. Inspector Barber also discussed the fact that the claimant's grievance was being passed to ACC Chidley, with ACC Chidley's
10 Staff Officer.
165. This was the first bullying and harassment complaint which Inspector Barber had dealt with. He was unaware that he should have sent the complaint to PSD to allow them to identify where the links in the grievances were. He was unaware that he should have registered the complaint with PSD.
- 15 166. Inspector Barber realised that he had made a mistake when he received an email from Chief Inspector Wilcox on 17 December 2012 (page 232)]
167. The claimant emailed Chief Inspector Wilcox on 13 December, complaining about the fact that he had not heard anything. Chief Inspector Wilcox emailed Inspector Barber and the other Staff Officer on 17th December asking them to
20 check their records as he could only trace one complaint by the claimant was live but was Sub Judice.
168. Inspector Barber replied to Chief Inspector Wilcox on the same day advising that the bullying and harassment complaint was linked to the previous one submitted by the claimant, and a decision had been made that Superintendent
25 Johnson would deal with the issue relating to the postponement of the DRB hearing, and other issues raised in the claimant's complaint were linked to those with a previous complaint and therefore were on hold pending an ongoing police investigation.

169. When Inspector Barber realised his mistake, he spoke to Chief Inspector Wilcox explaining what had happened, and offering to personally apologise to the claimant for what had gone wrong.

5 170. The claimant emailed Chief Inspector Wilcox on 8 January 2013 asking for an update on his bullying and harassment complaint, complaining that he had received no reply. Chief Inspector Wilcox wrote to the claimant on 9 January 2103 stating that he had checked the records with PSD and there was no record of any submission of a bullying and harassment complaint by the claimant.

10 171. The email stated: -

15 *7 have sought confirmation from Inspector Barber; concerning your email, re our communication dated 17th December 2012, and allowing for the Christmas break have not received any positive news in reply. I have copied him in and Inspector Harney into this email and seek any information they may hold of your submission again. "*

172. Inspector Barber responded on receipt of this email and took issue with the suggestion that he had not been in touch with Chief Inspector Wilcox. He stated that they had a telephone discussion at length about the email which the claimant sent on 13th December together with numerous email trails that
20 accompanied that email, and that Inspector Barber had informed Chief Inspector Wilcox that the paperwork had been received and after review aspects relating to the complaint/harassment etc were linked across the original complaint and were therefore Sub Judice as well. He went on to explain that he had not replied to the claimant as it was not his place and the
25 file had been given to Chief Superintendent McLaughlin to deal with; he had arranged for Johnson to undertake a review and visit the claimant to discuss and get the DBR hearing back on track. He confirmed that all the documents were scanned and sent Inspector Johnson for relevant action (not including the complaint.)

173. Chief Superintendent Wilcox then wrote to the claimant on 14th July 2013 (page 230) advising that the Divisional Operations Department had located the file and passed it to him and he confirmed that the recognised process is that all allegations of harassment and bullying should be directed automatically to PSD however on this occasion this did not occur but the relevant details were passed to Superintendent Johnson who had discussed points with the claimant during a lengthy interview. Chief Superintendent Wilcox told the claimant that he would come back to him once he had made his assessment with the head of the PSD and a decision was made on any future action which should be taken, and he apologised for the delay in processing the bullying and harassment complaint

174. On 20th January 2012 the Area Procurator Fiscal wrote to Chief Inspector Wilcox stating *inter alia*: -

"Mr Eivers some time ago made a complaint against Central Scotland Police in respect of various matters and he has recently written to me regarding complaints against the Ministry of Defence Police. It may be that he has already raised these matters with yourselves and you have not brought these matters to my attention considering them not to be criminal allegations. His complaints appear to relate to the actions of Chief Superintendent Walker and Superintendent Gillen and relate to what he considers to be corruption and an attempt to pervert the course of justice.

In order to clarify the complaints against Central Scotland Police and in view of the serious nature, I have asked them to appoint an external Police Force to carry out the investigation on my behalf. I anticipate having further statements from Mr and Mrs Eivers in the first instance to assist me in the task of confirming which aspects of their complaints fall within my area of responsibility.

It is not immediately clear to me from Mr Eivers' letter regarding the Ministry of Defence Police whether the allegation is criminal although he clearly considers that it is. In view of the fact that an external force

is to deal with the allegations against Central Scotland Police it would seem sensible that the allegations against the Ministry of Defence Police are also dealt with on this basis."

175. As of August 2012, there have been communications between the claimant
5 and Chief Superintendent Wilcox regarding the ongoing criminal investigation,
C. I. Wilcox had written to the claimant advising him he understood that the
allegations against the respondents' officers had been withdrawn with a view
to the sub judice label being removed. He expressed the view that if the
respondents' officers were to be witnesses against the Central officers this
io may impact on this.

176. On 28 August 2012 the claimant wrote to Chief Superintendent Wilcox (page
221) stating that *inter alia*' -

15 *"Clearly there has been interaction between the Central Scotland
Police Officers in respect of my criminal allegations and officers of the
Ministry of Defence Police and this must be investigated. In respect
of the issues of Sub Judice this would also need to be clarified with the
APF*

20 *I have been in contact with Ch/Supt David Flynn of CPS. He has been
tasked to carry out a misconduct investigation, however I have raised
concerns with APF that enquiries into possible criminal proceedings
have not yet been exhausted and serious questions remain
unanswered. I have also raised these concerns with Ch/Supt Flynn
who has given me his assurance that any evidence of criminal activity
identified during his investigation will be reported back to the APF. "*

25 177. Chief Inspector Wilcox replied on the same day (page 220) stating: -

30 *"Thank you for your reply and the information supplied regarding the
ongoing criminal investigations and interactions between Central
Scotland Police Officers and the Officers from the Ministry of Defence
Police. This information is in direct contrast to the information supplied
by Ann Donaldson dated 8 August 2012, which stated you wished to*

withdraw all complaints against the Ministry of Defence Police, which you consider to have been as a result of criminality. I have copied this to you again today. As a result of this information I think it is reasonable that the Sub Judice rules still apply. "

- 5 178. The claimant replied on 11 September confirming that he had withdrawn criminal allegations against Officers Walker and Gillen. He stated however that: -

10 *"CSP are currently running a misconduct investigation and I have been assured by Chief Superintendent Finn CSP that any evidence revealed of criminal activity by CSP Officers will be reported to the APF.*

15 *There is evidence that these CSP officers and MDP officers interacted both during and after the events of 29 April 2010. It therefore follows that this makes the MDP officers potential witnesses of any potential criminal investigation.*

In addition to this, the misconduct investigation into these MDP officers has yet to be held and may yet reveal evidence of criminal activity.

I hope this clarifies matters and apologise for any misunderstanding I may have caused. "

- 20 179. Chief Superintendent Wilcox replied to the claimant on 12 September 2012 thanking him for the clarification and stating: -

I am reassured by your explanation and support your view that our officers may be witnesses in the CSP investigations. "

- 25 180. Chief Superintendent Wilcox concluded that the Sub Judice still applied to the claimant's grievances of March and June which had been linked, and which sat with ACC Chidley.

181. The claimant's grievances were never brought back to the attention of ACC Chidley with an indication that they were no longer subject to Sub Judice.

Grievance against Inspector Barbour - February 2013

182. In February 2013 the claimant lodged a grievance against Inspector Barber *
(page 245) in connection with his handling of the grievance.

183. Inspector Barber was subsequently told by Chief Inspector Hewitt, that this
5 grievance had been withdrawn, and the respondents believed that it was no
longer insisted upon.

Ill-health Dismissal Procedure 2013.

184. At the beginning of January 2013, a further DRB was proposed for the
claimant, and Inspector Hart discussed this with the claimant. HR proposed
10 fixing the further DRB; they advised that the DRB should progress despite the
grievance being on hold, as opposed to the claimant's position that the DRB
should not take place until such time as his grievances had been resolved.

185. The Restoring Efficiency Policy had been replaced by the URP policy, and
there was a dispute between the respondents and the Federation around this
15 about this. It was agreed between them that all cases would be put on hold
until they were reviewed individually, and this included the claimant's case.
Eammon Keating, of the National Police Federation, wrote to Sergeant Barber
on 7th February, advising that as a result of assurances the Federation had
received in order to close down the formal disagreement which the Federation
20 had about the introduction of the new policy it was agreed that all cases be
put on hold until they had been reviewed individually; the claimant's case was
mentioned specifically as an example of the type of cases this would apply to.

186. Inspector Hart contacted the claimant on 1st February 2013 to advise him that
the hearing was no longer going ahead. No further action was taken in relation
25 to this DRB.

Recommendation on Compensation on ill health dismissal

187. Had the claimant been subjected to the ill-health dismissal procedure, the
deciding officer who is an ACC, would take the decision as to whether he
should dismiss the officer on the grounds of ill-health. The officer's line

manager has to make a recommendation as to the level of compensation which should be awarded.

188. The task of making this recommendation therefore fell to Inspector Hart in the claimant's case.

*5 189- Inspector Hart took advice from Alex Goodwin of HR as to what level of compensation he should recommend. Inspector Hart understood from the advice he received that if the Officer had not cooperated fully with management in attempting to get back to work, then it was appropriate to make a recommendation for a reduction in compensation. Inspector Hart took the view that the claimant had rejected the offers of welfare support, or counselling which had been made by the respondents. Inspector Hart considered on this basis that the claimant had not fully participated with management in an attempt to return to work, and therefore he considered it was appropriate to make a recommendation of 50% compensation in the event the claimant was dismissed on the grounds of ill-health.

190. Inspector Hart did not know the terms of the policy, and did not check the policy himself but simply took advice from HR on the matter before making his recommendation.

191. Inspector Harte subsequently altered his recommendation, and made a recommendation of 100% compensation.

192. In any event, ill-health dismissal procedure did not take place and no award of compensation was ever considered.

II Health retirement April / May 2014.

193. Around March 2013 the claimant made another application for ill-health retirement. Inspector Hart was contacted by the DPF Welfare Liaison Officer, DC Batt, who asked that he support the application for ill-health retirement. Inspector Hart supported the claimant's application for ill-health retirement, and supplied information to DC Batt in connection with this.

194. The claimant's application for ill-health retirement was granted. On 3rd April 2014 Alex Goodwin of HR wrote to the claimant confirming that his ill-health retirement application had been successful, enclosing a copy of his Medical Retirement Certificate dated 1st April 2014. The letter advised that the last
5 day of service must occur within four months and 10 days of the date of the certificate.

195. The letter also advised the claimant as follows: -

10 *"Your line manager will contact you to agree your last date of service. Once you have agreed this date your line manager will advise me in writing. On receipt the DBS Civilian HR Leaving Team will write to you to confirm your last date of service and include the appropriate forms for completion. "*

15 196. Inspector Hart contacted the claimant on 10th April 2014, and discussed ill-health retirement. The claimant told Inspector Hart that he would return to him with a suitable leaving date. Inspector Hart told the claimant he would check what annual leave payments were due to the claimant, which he did (page 265).

30 197. Inspector Hart also contacted Claire Batt on 12th April confirming he had spoken with the claimant, and the claimant was going to come back to him with a preferred leaving date. Inspector Hart indicated he would complete any forms which he needed, and he congratulated Ms Batt on support and help she had given the claimant in order to achieve a successful application.

25 198. Inspector Hart phoned the claimant again, and the claimant provided him with a leaving date of 10 May, and indicated to Inspector Hart that he wished to leave as quickly as possible.

199. Inspector Hart wrote to Mr Goodwin on 17 April (page 266) advising he had been in contact with the claimant and agreed a date of service of 10th May, and asking if he required to complete any forms in relation to his impending ill-health retirement.

200. Alex Goodwin wrote to DBS Leaving Services on 22 April confirming the claimant's ill-health retirement and providing details of the claimant's line manager as 'Sergeant Sandy Hart'.
201. DBS Leaving Services wrote to Inspector Hart on 30 May 2014 addressing the letter to 'Sergeant Sandy Hart' (pages 269 to 270). They advised they had been informed that Inspector Hart was the liaison officer for the claimant, and enclosed paperwork to be forwarded to him. That paperwork comprised a letter, (pages 271 to 272) addressed to the claimant confirming his ill-health retirement had been accepted, and advising that he remained bound by the Official Secrets Act and that Business Appointment Rules apply, and providing details of the Ministry of Defence Out Placement Services. This letter was addressed to the claimant at his old address, albeit the claimant had informed the respondents of his change of address.
202. Inspector Hart did not receive the DBS letter of 30 May and therefore did not forward the enclosed letter to the claimant.
203. The claimant received no correspondence at his new address but retrieved mail from his old address dated 30 June 2014 relating to his pay, which indicated that his employment had come to an end on 10 May. He then contacted HR and spoke to Alex Goodwin, who arranged for a copy of the letter of 30 May 2014 to be forwarded to him on 12 June.
204. On 13 June 2014 the claimant wrote to Inspector Harte complaining *inter alia* that: -

"When I spoke to you in April, following your holiday in Portugal, I accept at that time I indicated my preference to leave my employment as soon as possible once the ill-health retirement process was concluded and a notional date of 10 May 2014 was discussed. Since then I have heard nothing in relation to either my termination date or conclusion of the ill-health retiral process. "

205. Inspector Hart did not receive this letter, but he did continue to correspond with the claimant about issues relating to holiday pay; he understood the claimant expressed gratitude for his continued involvement in that.

Note of Evidence

5 206. The Tribunal heard from a number of witnesses in this case and while there were some relevant factual disputes, the most significant issue for the Tribunal is to determine why individuals acted as they did. This then required the Tribunal to assess the credibility of the witnesses, as well as resolving the relevant matters upon which the Tribunal heard conflicting evidence.

10 The Claimant's Witnesses

207. Claimant. The Tribunal did not form the impression that the claimant in any way set out to deliberately mislead. Indeed, it formed the impression that he sought to recall the detail of his involvement with the respondents from April 2010. However, the Tribunal also formed the very strong impression that the
15 claimant's keen sense of injustice about how he had been treated by Central, and subsequently about how he felt he had been treated by the respondents, affected his interpretation of events to the extent that his view of what had occurred significantly lacked objectivity.

208. In any event, a considerable amount of the claimant's evidence amounted to
20 opinion as to why particular things had happened, rather than disputing what actually occurred.

209. There were some exceptions to this however, and the first related to the contents of a telephone conversation between the claimant and Temporary Superintendent Gillen on 29 or 30 April 2010. It was the claimant's position
25 that what he said to Temporary Superintendent Gillen that there was a blatant 'fix up' on the part of Central. The claimant said that Temp. Superintended Gillen's response was to take a couple of days off and keep it quiet which the claimant found to be entirely inappropriate.

210. It was Superintendent Gillen's evidence that he spoke to the claimant who was in a state of shock and disbelief about what had happened, but at that stage no accusations were made against Central Police.

5 211. On balance, the Tribunal preferred the evidence of Temp. Superintendent Gillen on this matter. In reaching this conclusion it takes into account the contemporaneous log which was kept of contact with the claimant, and the fact that in that log there was no mention in the telephone call of 30th April of the claimant stating that he had been 'fitted up'.

10 212. This statement does however appear in Temp. Superintendent Gillen's log of his telephone call with the claimant on 30 June, which recorded a telephone call lasting in excess of 90 minutes, and records the fact that the claimant complained there was a conspiracy by Central to frame him without any evidence.

15 213. For reasons given below, the Tribunal in general found Superintendent Gillen to be a credible and reliable witness; the fact that he was readily prepared to accept in evidence that the claimant had made this disclosure in June, and that he recorded that, rendered his evidence that no such disclosure was made on 30 April credible. It was not plausible that he would have omitted this information in his log of the 30th April call, had it been said, when he had
20 no difficulty in recording that was the claimant's position in June.

214. The second conflict arose in relation to what occurred at the meeting between the claimant and Chief Superintendent Walker. It was the claimant's evidence that when he gave Chief Superintendent the forensic report, he handed it back saying to him *7 am a man of faith*'. Chief Superintendent Walker had no
25 recollection whatsoever of saying that, and on balance the Tribunal did not conclude it was likely that he did. C.I Walker accepted he scanned the report, but did not pay a huge amount of attention to it, as it was not core to what he had to consider. The Tribunal did not think that a great deal turned on this matter, but on balance it was not persuaded that Chief Superintendent Walker
30 had said that he was a man of faith on receiving the report, as the comment attributed to him made no sense.

215. There was also an issue in relation to the minutes of the meeting with Chief Superintendent Walker. In evidence-in-chief, and also in cross-examination, that claimant was adamant had taken the minutes, and that Chief Superintendent Walker had taken no minutes at the meeting. The claimant
5 subsequently changed this position on this, accepting that C.I. Walker had taken the minutes, which he had revised. Albeit the claimants position changed the Tribunal did not attach much weight to this, as ultimately the minutes were agreed.

216. In submission Mr Edwards asked the Tribunal to draw an inference from the
10 fact that the part of the minutes which detailed the disclosure which the claimant relied upon were not initially included by Chief Superintendent Walker, and had to be added by the claimant. The Tribunal drew nothing adverse to the respondents from this. Chief Superintendent Walker was clearly engaged in a process with the claimant whereby he was seeking to
15 agree the minutes, and there was no suggestion that he was not prepared to include information which the claimant sought to have added to them.

217. One of the material aspects of the claimant's credibility which the Tribunal has to determine is whether the claimant genuinely believed that the respondent's
20 officers had committed a crime in allowing Central officers to come Faslane and ask to speak to him, and whether he believed respondents had an obligation to investigate allegations of criminal activity which the claimant had made against officers at Central. These are matters which are relevant to whether the claimant made some of the protected disclosures he relies upon, and the relevant tests for the purposes of determining if there was a protected
25 disclosure are considered in more detail below under *Consideration*.

218. As a matter of fact, however the Tribunal was satisfied that there was no
obligation on the respondents to investigate an allegation of criminal activity
levelled against another Police Force. The Tribunal was satisfied that
evidence to that effect from Officers Gillen and Walker, that this would be a
30 matter for that Police Force or the area Procurator Fiscal, was without doubt correct. It was also satisfied that the claimant was aware of this, in that he

sought to suggest that a crime had been committed on MOD estate as a means of involving the respondents, and rendering it necessary for them to carry out an investigation.

5 219. The Tribunal was also satisfied on the basis that the evidence of Temporary Superintendent Gillen and C. I. Walker, that it would have been entirely inappropriate for the respondents to have shared with the claimant what information they had about Central's investigations, or to have enquired with Central as to what information they had. Both officers gave robust evidence on this point, and it appeared to the Tribunal that their evidence on these
10 matters was entirely credible and accurately represented the position.

220. Support for these conclusions was also found to some degree in the Claimant's evidence. In cross examination he accepted that Central were under no obligation to share information about their investigation with the respondents, and that the respondents could not have asked them for this.
15 He accepted that it was Central's investigation, however it was also and his position was that it became Mod Police's investigation when Central attempted to pervert the course of justice on Mod estate.

221. **Mr Reagan**, who was the claimant's Police Federation representative gave evidence, and the Tribunal found his evidence to be credible and in the main
20 reliable. As with all the witnesses, Mr Reagan's evidence was affected, in the Tribunal's view appropriately, by the passage of time, so that his recollection of events was not always clear. He did however confirm in evidence that he had had discussions with Chief Superintendent Walker on a monthly basis about cases which the Federation supported, and he accepted this would
25 have included discussions about the claimant's case, although he had no clear recollection about what was discussed.

222. Mr Reagan also gave evidence to the effect that he had spoken to Inspector Hart on the telephone about his recommendation that the claimant did not receive pay at pension rate. His evidence was Inspector Hart said that he had
30 been "to/d from upstairs" and he surmised from that, that senior managers may have suggested it.

223. Inspector Hart had no recollection of this conversation or having said this. His evidence was that he had sought advice from HR about the payment.
224. The Tribunal was satisfied on balance it was likely that Inspector Hart had said something along the lines suggested by Mr Reagan.
- 5 225. It was not satisfied however the inference which Mr Reagan drew was correct. In coming to this conclusion, it takes into account that Mr Reagan's evidence was that he had spoken to Inspector Hart and given him a few weeks to sort matters out, and Inspector Hart had told him that he had spoken to HR and was waiting to hear back from them. This chimes with Inspector Hart's
10 evidence about taking advise from HR, and the Tribunal drew no adverse inference from the statement to the effect he had been "*told from upstairs*".

The Respondents* Witnesses

226. The Tribunal assessed the credibility of the respondent's witnesses in the order in which it had heard from them.
- 15 227. **Temp Superintendent Gillen.** The Tribunal found Mr Gillen to be a credible and reliable witness other than the extent to which his memory of events was in the Tribunal's view appropriately diminished by the passage of time. In reaching its conclusion on Superintendent Gillen's credibility the Tribunal took into account that he readily conceded what on the face of it were
20 inconsistencies between his position and that of Chief Superintendent Walker. An example of this was that he accepted he had not contacted Gold Commander, even when an email from Chief Superintendent Walker suggesting that he was instructed to do so was put to him, and his willingness to accept what on the face of it was a shortcoming on his part enhanced his
25 credibility in the Tribunal's view.
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228. It was suggested by Mr Edwards that Temporary Superintendent Gillen was behind a number of actions taken by Inspector Hart which were detrimental
to the claimant.
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229. The first of these was that the claimant did not receive pay at pension rate in May 2011, after his entitlement to sick pay had expired. It was suggested that Mr Gillen lay behind this decision, and in support of that position Mr Edwards relied on the evidence of Mr Reagan, to the effect that when he had spoken to Inspector Hart about the decision he had said something along the lines of that it came from "upstairs". For the reasons given above the Tribunal did not draw any inference adverse to Temporary Superintendent Gillen from this piece of evidence.

230. Mr Edwards also relied on the fact that Temporary Superintendent Gillen was involved in the ill-health dismissal process in 2012. The Tribunal was taken to the email trail in relation to this between Temporary Superintendent Gillen and Chief Superintendent Walker. It was apparent from this that Temporary Superintendent Gillen did remain involved in the process, and he candidly accepted that he wished to bring an end to a situation where he had an officer who had been unable to attend work for two years. It seemed to the Tribunal that this was an entirely credible explanation as to why Temporary Superintendent Gillen considered it was appropriate to commence an ill-health dismissal process in 2012. He was the Officer in charge of operations, and it was entirely plausible that the absence of an Officer on long term sickness impacted on operations and was a situation which he legitimately considered had to be dealt with.

231. Mr Edwards made the point that Temporary Superintendent Gillen remained involved in the process even after the claimant had complained, and he himself was the subject of a grievance, and he compared his position to that of Chief Inspector Barber, who had insured that he had no further involvement with the claimant after the claimant lodged a grievance against him.

232. The Tribunal was satisfied however that Chief Inspector Barber's position and that of Superintendent Gillen were not the same, in that Superintendent Gillen had an ongoing responsibility for operations at Faslane and therefore legitimately had an interest in matters which impacted on Operations, such as the long-term absence of a member of staff, or what kind of adjustments could

be put in place to allow a member of staff to return to work. That was different to Inspector Barber. There was another staff officer who could take over the duties which he performed, and there was no operational need for him to be involved further with the claimant's case.

5 233. Furthermore, the Tribunal formed a very strong impression that Temporary Superintendent Gillen had no idea that Inspector Hart had the ability to make a recommendation as to whether the claimant received pay at pension rate. He seemed genuinely perplexed when he was taken to the documentation in the bundle where Inspector Hart had made the recommendation, saying more
10 than once that he did not understand how he could have made the recommendation as he did not think he had the authority to do so. His evidence impressed the Tribunal as entirely credible on this, and it did not reach the conclusion that Temporary Superintendent Gillen had influenced Inspector Hart in his decision not to recommend pay at pensionable rate in
15 May and June 2011.

234. The Tribunal did not conclude that Temporary Superintendent Gillen was involved in the ill-health dismissal procedure which took place in January 2013, or that Temporary Superintendent Gillen was involved in the decision taken by Inspector Hart to make a recommendation to reduce the maximum
20 pay after dismissal by 50%. The Tribunal was satisfied that this was a decision of Inspector Hart alone, after having taken advise from HR. The Tribunal did not infer from the fact that Temporary Superintendent Gillen had been involved in the ill-health dismissal process in 2012, or indeed any other matter, that he was behind this decision.

25 235. **Chief Superintendent Walker.** The Tribunal formed the view that Chief Superintendent Walker was a credible and generally reliable witness, albeit his reliability was impacted on occasions by the passage of time.

236. The claimant alleges a number of detriments at the hands of Chief Superintendent Walker, the first of which is his failure to action the claimant's
30 application for payment under the Civil Service Injury Benefits Scheme.

237. The Tribunal did not conclude as a matter of fact that Chief Superintendent Walker failed to action this application. The suggestion that the claimant make the application had in fact come from Chief Superintendent Walker in the course of the grievance meeting in July 2010. Further the Tribunal was satisfied that Chief Superintendent Walker found a way to support the application which was intended to compensate officers who had suffered any injury at work, by linking the claimant's condition to the stress he felt at the way in which his third line manager had handled matters. The fact that Chief Superintendent Walker effectively went out of his way to assist the claimant in this way is inconsistent with the notion that he would then fail to action the application.

238. Chief Superintendent Walker accepted that there had been a delay in the application being processed, and he was unable to explain whether this was at the hands of his Assistant, or otherwise, but regardless of where the fault lay, the Tribunal did not conclude that the delay in the application being considered under this scheme lay at the door of Chief Superintendent Walker.

239. Furthermore, the Tribunal was satisfied that the reason the application was ultimately refused was because there was an outstanding grievance.

240. The claimant's position was Chief Superintendent Walker failed to action his grievance of July 2010. As a matter of fact, the Tribunal was not satisfied that Chief Superintendent Walker failed to action the grievance which he received in July 2010. A meeting was arranged which took place in August, which was attended by the claimant and his Federation representative. Minutes of that meeting were agreed and the conclusion of the meeting was an agreed attempt at informal resolution, with the claimant meeting face to face with Temporary Superintendent Gillen. Albeit the claimant lodged a formal grievance, contemporaneous documents, the evidence of Mr Reagan, and indeed the claimant himself, support the conclusion that it was agreed in August that there would be an attempt at informal resolution.

241. The Tribunal found Chief Superintendent Walker's evidence as to why he adopted this approach and suggested a face to face meeting with Temp.

Superintendent Gillen to be credible. It was plausible that he would seek to resolve the grievance at as low a level as possible. He had convincing reasons as to why he thought a face to face meeting with Temporary Superintendent Gillen might be beneficial for the claimant, in that it would allow the claimant to understand why Temporary Superintendent Gillen had approached matters as he did, and allow Temporary Superintendent Gillen to see how distressed the claimant was by what had happened.

242. The Tribunal did not conclude that Chief Superintendent Walker had ignored the claimant's letter of 21 September 2010 (page 98). In that letter the claimant indicates that a facilitated meeting the Temporary Superintendent Gillen may prove beneficial but did not believe that his mental state was at a stage where he could cope with such a meeting. That, it appeared to the Tribunal, did not require Chief Superintendent Walker to arrange a meeting between the two officers as at that date.

243. It was also said that Chief Superintendent Walker ignored the claimant's letter of 27 October 2010 (pages 116/117). The Tribunal did not conclude that Chief Superintendent Walker continued to ignore the grievance after the date of this letter, in that it was satisfied on the basis of his evidence, which was corroborated to a degree by that of Mr Reagan, that he continued to raise the claimant's grievance with him. He did not however respond to the claimant and he did not move the grievance from an informal to a formal one and the Tribunal considers that below further, under the heading of '*Consideration*'.

244. Inspector Barber. The Tribunal found Chief Inspector Barber to be a credible and reliable witness. Overall the Tribunal's view as to the credibility of Inspector Barber's evidence was enhanced by his readiness to accept that he had made a mistake in failing to register the claimant's second grievance with PDS.

245. There were a number of areas where the credibility of Chief Inspector Barber's evidence was an issue.

246. The first was whether he genuinely made a mistake in not registering the claimant's grievance to Chief Constable Allard with 20 June 2012 with PSD. The Tribunal was satisfied that Inspector Barber's evidence on this matter was entirely credible and believable. Support for this is found in the contemporaneous documentation, in particular an email from Inspector Wilcox to the claimant on 9 January (page 239) copied in to Inspector Barber and to which Inspector Barber responded the following day, in which he confirms that he had had a telephone conversation with Inspector Wilcox following an email sent by the claimant on 13 December, where he informed Inspector Wilcox that paperwork had been received in ACC Allard's office had been reviewed, and that aspects of the complaints of harassment were linked across to the original complaint and were therefore Sub Judice.
247. Chief Inspector Barber went on to say that Inspector Wilcox had told him the file should be given to PSD for logging and review, and that was noted for future reference.
248. This is consistent with his evidence that he received the complaint, it was assessed and linked to the original complaint made by the claimant in March 2011, and was therefore Subjudice, but that he had made an error in not logging it with PSD.
249. Another aspect of credibility in relation to Inspector Barber's evidence related to the complaint raised by the claimant against him. Inspector Barber could only give limited evidence in relation to this however, what he did say was that he was told by an Inspector Hewitt that the complaint had been withdrawn.
250. Inspector Barber did not seek to suggest in his evidence that he had any information about how the complaint had been withdrawn, or how this had been communicated to Inspector Hewitt, but on the basis that the Tribunal found Inspector Barber to be a credible witness, it was satisfied that Inspector Hewitt had told him that the complaint made by the claimant against him had been withdrawn.

251. There was another issue of credibility relating to Inspector Barber's evidence to the effect that he was advised by HR (DBS) that the ill-health dismissal process should proceed despite the fact there was an outstanding grievance. The Tribunal found Inspector Barber's evidence credible on this, in that it was supported by the contemporaneous notes made in his log (produced at page 5 192). Inspector Barber recorded a summary of his telephone conversation with the claimant's Federation representative, Constable McEwan, discussing the fact that the claimant had complained about the DBR having been postponed, but was unhappy about a date now being fixed for a DBR, and his 10 advising Constable McEwan that it was HR who had advised that the DBR should progress despite the grievance being on hold.

252. It seemed by the Tribunal to be implausible that Inspector Barber would have made this note had it not accurately reflected the position. He had no plausible motivation for doing so.

15 **Assistant Chief Constable Robert Chidley**

253. The Tribunal found Assistant Chief Constable Chidley's evidence to be credible and reliable; however, his recall of events was impacted by the passage of time.

254. The Tribunal formed the impression that in reality ACC Chidley did not have a great deal to do with the claimant's complaints in practical terms. It was clear from the evidence, including the claimant's evidence, that ACC's relied on Staff Officers to deal with the administration of their business, and that matters for the attention of an ACC effectively went through the Staff Officer; this was confirmed by ACC Chidley (and indeed the claimant). He confirmed 25 that the day to day management of the grievance was conducted by his Staff Officer, and he relied on the Staff Officers to report to him about a grievance coming in, or needing to be dealt with, and that his Staff Officers were involved with PSD, _____

255. ACC Chidley could speak to the emails having been sent by his Staff Officers although he did not always recollect of the content. _____

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256. It was unclear whether or not there was an issue in relation to this, but for the avoidance of doubt, the Tribunal was satisfied that ACC Chidley agreed to take over the consideration of the claimant's grievance from ACC Allard, because ACC Allard was in Divisional Operations and was very busy.
- 5 257. There was an issue in relation to ACC Chidley's evidence as to why he did not investigate the claimant's grievance, either when it was initially passed to him, when it had been assessed by ACC Allard's Staff Office as no longer Subjudice, or later, as there was no reason for it to be Subjudice.
- 10 258. Inspector Alex Ballantyne, temporary Staff Officer for ACC Allard, emailed the claimant on 11 August 2011 advising that due to a high volume of personnel matters that Mr. Allard agreed with Mr. Chidley that his case would be transferred to Mr. Chidley. He went to state that the claimant's case had been on hold as a result of matter being Subjudice, but he has checked and there is no requirement for this.
- 15 259. ACC Chidley's staff officer (Abram) then e-mailed the claimant on 2nd September advising that the ACC was reviewing his correspondence. Nothing further was heard by the claimant, until an e-mail of 22nd November, which Inspector Abram sent, (having received an e-mail from the claimant on the same day asking what progress had been made), advising that he had
20 finally received written confirmation from PSD that the case was still subject to Sub judice.
- 25 260. ACC Chidley did not recall any specific conversations he had about the claimant's grievance. His evidence was however from looking at the information which he had, was that the correct decision was to regard the complaint as Sub judice. He disagreed with Inspector Ballantyne's
assessment of it. ACC Chidley considered the fact that there was a criminal investigation by into potential criminal activity, which also involved MDP
30 officers amounted to circumstances which would legitimately justify the decision that the complaints were Sub Judice. His view was that these were allegations of serious criminal behavior against Central Officers and there were key senior MoD Police Officers involved in that, either as witnesses or

involved in inappropriate conduct. He considered the view expressed by his Staff Officer in earlier correspondence that the matter was not Sub Judice, was wrong.

5 261. It was put to him in cross-examination that such a position was inconsistent with the fact that Central were carrying out a misconduct enquiry into those officers, to which he responded that that would be a PSD decision.

10 262. The Tribunal found ACC Chidley to be a credible witness, albeit his recall of events had faded with time. It was satisfied that the view he expressed about the grievance being properly regarded as Subjudice was genuinely held by him, and was not one which in light of the ongoing criminal investigations could be said on the face of it be wrong, even if it could be argued that this may not have been the only approach which could have been adopted.

15 263. The extent of ACC Chidley's evidence was that PSD advised that the matter should remain Subjudice, that was reported to him via a staff officer, and he concurred with that decision, and the grievance was never brought to his attention as no longer being Subjudice. Given its overall impression as to credibility of ACC Chidley's evidence, the Tribunal accepted his evidence on those points.

20 **Inspector Hart.**

264. The Tribunal formed the view that Inspector Hart was a credible and reliable witness. From time to time his memory of events had faded, but the Tribunal drew no inference adverse to his credibility from this, but rather was again satisfied that this was due to the passage of time.

25 265. The Tribunal found that to a significant degree Inspector Hart's actions were motivated by his concerns for the welfare of the claimant. It was apparent that he kept in regular contact with the claimant to make enquiries about his welfare, and the fact that he did so is inconsistent with the notion that he acted
30 in a manner which was contrary to the claimant's interests because the claimant had made a protected disclosure.

266. There are a number of matters where the credibility on Inspector Hart's evidence was put in issue.
267. The first of those related to the reasons why he recommended that the claimant did not receive pay at pension rate in May and June 2011.
- 5 268. It was Inspector Hart's evidence that he took advice about this from Central HR, and was told that a recommendation should only be made with the likelihood that the officer could come back to work *in the near future*.
269. It was Inspector Hart's evidence that having assessed the claimant's circumstances, he did not consider that he would meet this criterion, and
10 therefore that was the basis in which he made the recommendation. He said he was then approached by an officer from Welfare on behalf of the claimant, and was asked if he could reconsider matters which he did, and he went back again to Central HR. On this occasion he said he was told that there had to be a likelihood that the officer would return to work, without the addition of "*in*
15 *the near future*". He queried this advice, but it was a different person who had gave the advice on this occasion, and therefore he re-assessed the position from this perspective, and decided to make the recommendation.
270. Mr Edwards submitted that this lacked plausibility, and he submitted that there was no entry in a log which he kept for the advice which he had received from
20 HR.
271. That however is not strictly accurate. The log (page 161) records that Inspector Hart was contacted by MOD Welfare and asked to reconsider the claimant's case. It was then recorded on 14th July 2011 that he contacted the
25 claimant to enquire about his state of health, and confirmed to him that he would now receive backdated payments to the 3rd of May of pay at pension rate. Inspector Hart recorded at that stage, that he had been in contact with HR, and they had changed the criteria that they had previously stipulated for authorisation of pay at pension rate. This appeared to the Tribunal to be an
30 indication that Inspector Hart had received different advice about the criteria for authorising this payment when he had contacted HR on the second

occasion, and it was satisfied that the reason he made the recommendation not to make the payment in the first place, was because of the advice he received from HR, and that his consideration in the claimant's circumstances were such that there was no likelihood of him returning to work in the near
5 future. Given the claimant's state of health, and the indications which the Inspector Hart was receiving in his telephone calls with the claimant, this was not an unreasonable assessment for Inspector Hart to make.

272. The second matter related to Inspector Hart's recommendation was the reduction of maximum pay after dismissal by 50%, in February 2013. The
10 Tribunal again accepted Inspector Hart's evidence that he had taken advice from HR about this, and had not himself read the policy. Inspector Hart readily accepted when the policy was put to him that because of the nature of the claimant's long-term illness, it would not have been appropriate to make a recommendation for a reduction in pay. The fact that Inspector Hart was
15 prepared to make appropriate concessions and accept that he had not read the policy and that he was wrong in his recommendation (matters which potentially did not reflect well on him) tended to enhance his credibility in the Tribunal's view. The Tribunal was satisfied that the reason he made the recommendation was that after having spoken with Alex Goodwin he received
20 advice to the effect that if the officers do not comply with management then a recommendation can be made for a reduction.

273. The Tribunal accepted that Inspector Hart did not consider the claimant had cooperated with management in an attempt to return to work. The Tribunal was supported in this conclusion, in that Inspector Hart contacted the claimant
25 regularly with offers of support which were declined, and therefore it was plausible in the Tribunal's view, that he concluded that the claimant had not engaged with management in trying to get back to work.

274. The Tribunal is also supported in its conclusion that Inspector Hart made the recommendation for this-reason, in that when he was contacted by the
30 claimant on 4th March 2013 complaining about it, he contacted Alex Goodwin the following day to review his decision.

275. Similarly, when the claimant's Welfare officer had contacted Inspector Hart complaining about the failure to pay the pension rate, Inspector Hart reconsidered his decision.
276. Inspector Hart's readiness to reconsider his decisions is inconsistent with the notion that he was motivated by anything other than the factors which he spoke to in evidence, and taking this into account, together with its overall impression of Inspector Hart's credibility, the Tribunal was satisfied that he made the recommendations in relation to both these aspects of payment for the reasons which he said he did in evidence
277. In relation to Inspector Hart's involvement in the ill-health dismissal process in 2013 the Tribunal formed the impression that that the stimulus for fixing the DBR came from HR, and the Tribunal accepted his evidence that if anything he would have slowed the ill-health dismissal process down to enable the claimant to obtain ill-health retirement.
278. The Tribunal is supported in this in that the e-mails which Inspector Hart sent to the Officer who assisted the claimant with the ill-health retirement process congratulating her on the support which she gave the claimant, are indicative of Inspector Hart wanting the claimant to secure ill-health retirement, which was likely to be financially more beneficial to him.
279. The Tribunal accepted Inspector Hart's evidence that he was not influenced by Chief Inspector Gillen in any decisions which he made. In reaching this conclusion, the Tribunal took into account that Inspector Hart adequately explained his rationale for taking decision which he did, and Chief Inspector Gillen played no part in this.
280. There were two matters relating to the claimant's ill-health retirement process when Inspector Hart's credibility was in issue, and these are dealt with below.

Authorities

281. The Tribunal was provided with the following list of authorities:

- (i) *Fecitt & Others v NHS Manchester* [2012] ICR 372

- (II) (ii) *Shamoon v Chief Constable of Royal Ulster Constabulary* [2003] ICR 337
- (Hi) *Mr G Aspinall v MSI Meeh Forge Limited (EAT/891/01)* [2002] WL31784653
- 5 (iv) *London Borough of Harrow v Mr M S Knight* [2002] WL31 476435
- M *Blackbay Ventures Limited Trading as Chemistree v Miss K Gahir* [2014] WL1 21939329
- (vi) *Mr John Arthur v London Eastern Railway Limited (Trading as One Stansted Express)* [2006] EWCA Civ 1358
- 10 (vii) (vii) *Oxfordshire County Council v Miss E Meade* [2015] WL3875638

Submissions

282. Both sides helpfully lodged written submissions which they supplemented with oral submissions.

Claimants Submissions

15 283. Mr Edwards took the Tribunal to the relevant law, including the definition of a detriment, and the relevant provisions on the burden of proof. He submitted it was for the respondent to show that making the protected disclosure did not materially influence the treatment of the claimant.

20 284. Mr Edwards dealt with the protected disclosures which the claimant relies upon. He submitted that the claimant told Chief Superintendent Gillen in a telephone call on 30 April that he was "being fitted up" by Central and this was a disclosure of information regarding a criminal offence having taken place. He submitted this was a disclosure concerning allegations of criminal behaviour by police officers and was clearly in the public interest. Mr Edwards

25 submitted the claimant had reasonable belief that the information disclosed tended to show criminal behaviour by Central. The claimant was not charged with any offence, and he was not shown any forensic evidence-te-back up the allegations which had been made. The claimant reasonably held this belief as he had not collided with the pedestrian, he was also aware the police would

have been likely to have charged him with attempting to pervert the course of justice if he had removed evidence of the collision. The claimant obtained his own forensic report which established there was no damage to his vehicle and therefore he had a reasonable belief that the police were lying to him about forensic evidence which they did not seriously believe that he had removed. He reasonably believed he was being *fitted up* as the person responsible for the fatality.

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285. In relation to the disclosures which are said to have been made about actions of the respondent's officers, Mr Edwards position was that the claimant had a reasonable belief that no investigation was carried out by the respondents, when he complained about criminal conduct on the part of Central Officers. That was undeniably correct, as there was no investigation carried out by the respondents. This was a disclosure in terms of Section 43B (1) (b) in that he reasonably believed the respondents had a legal obligation to carry out an investigation about a crime which had been reported to them, in line with the Scottish Crime Reporting Standards.

286. Mr Edwards then made submissions as to each of the alleged detriments upon which the claimant relied, submitting reasons as to why each act complained of amounted to a detriment.

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287. The failure to process the application for Civil Service Injury Benefit meant that payments stopped completely in April and May 2011.

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288. The respondents failed to action the claimant's grievances, which caused him distress and upset. These were genuine grievances, which he felt were being ignored. Although the claimant was not ultimately dismissed by way of ill-health dismissal procedure, his health deteriorated as a result of the respondent's treatment and refusal to progress his grievances. The claimant was naturally upset at his illness leading to ill-health dismissal procedure.

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289. There was a disadvantage to the claimant by Inspector Hart making a recommendation to reduce pay by 50% after dismissal, which was going to impact on him financially.

290. There was also a detriment in the claimant not receiving pay at pension rate in May and June. This was a financial detriment.

291. The claimant was shocked to discover he was no longer in employment and had not been since 10 May. He found this treatment after 21 years of service to be disgraceful. The claimant was denied written confirmation of termination of his employment, he was not reminded of duties under the Official Secrets Act and his restrictions on new employment and not informed of post-employment support available to him.

292. In relation to the issue of causation, Mr Edwards made submissions as to why the Tribunal should reach the conclusion that the fact that the claimant made disclosures was the reason why he was subjected to these detriments. He relied on the Tribunal drawing inferences. These included drawing an inference from the fact that Chief Superintendent Walker did not include details of the criminal allegation in the first set of minutes produced from the meeting in August 2010. He submitted it was reasonable to draw the inference that the claimant's grievance was not progressed beyond October 2010 because of the nature of it.

293. Mr Edwards submitted it was reasonable to infer that the respondents failed to progress the claimant's application to Civil Service Injury Benefit, and the claimant believed that Chief Superintendent Walker deliberately did not act on this due to his reluctance to engage with the claimant in his grievance.

294. The reason why the grievances of March 2011 and June 2012 were not dealt with was because of protected disclosures which had been made. There was no reason for the respondents to apply a Subjudice label to it, and there were gaps during which the respondents could have investigated, when it appeared the complaint was not regarded as Subjudice. There was no reason why the respondents could not have investigated complaints of misconduct against officers in any event. No reason at all was provided as to why the claimant's complaint against Inspector Barber had not been dealt with.

295. In relation to sick pay at pension rate, Mr Edwards relied on the evidence given by Mr Reagan, and asked the Tribunal to infer that Inspector Hart had been told to make this recommendation by Temporary Superintendent Gillen. The reason for that was that the claimant raised grievances containing protected disclosures about Temporary Superintendent Gillen.
296. Mr Edwards submitted that the claimant was subjected to ill-health dismissal procedure as a means of exiting him from the respondents employment because the respondents did not want his grievances and complaints which contained protected disclosures to be actioned or investigated.
297. Mr Edwards submitted that Temporary Superintendent Gillen was clearly attempting to push the ill-health process through despite the fact he had been informed in February 2012 that he should play no part in the ill-health process of the claimant. Temporary Superintendent Gillen was clearly involved in April 2012 despite knowing there were two grievances against him and despite PSD having instructed him not to be involved.
298. Mr Edwards also submitted that Inspector Hart failed to give an adequate or convincing explanation for his recommendation to reduce maximum pay by 50% and submitted his explanation as to why he made this recommendation lacked credibility and the inference has to be drawn that the reason given by Inspector Hart was not the real one, and it was reasonable to infer that Temporary Superintendent Gillen was instructing or influencing Inspector Hart on his decision.
299. In relation to the selection of employment date by the respondents with no warning, lack of notice and termination, and failure of Inspector Hart to deliver the letter confirming ill-health retirement, Mr Edwards submitted that the claimant denied a final termination date was agreed, and he submitted that Inspector Hart's explanation as to why the letter was not sent lacked credibility. He accepted that it would have been sent to him and not to the claimant directly was so that it could be hand-delivered.

300. Inspector Hart also denied receiving the claimant's email of 13 June which set out his concerns about not receiving the letter but his position on this was not credible. He stated that he had a number of telephone calls with the claimant in June, July and August but it was not credible the claimant would not have mentioned his letter complaining about a failure to agree a termination date or issue the letter of 30 May. The inference to be drawn was the real reason behind this treatment was that Temporary Superintendent Gillen was instructing or influencing Inspector Hart. It was clear that Temporary Superintendent Gillen was involved with what happening to the claimant throughout this time that decisions were ostensibly being taken by Inspector Hart. The logical inference was that Temporary Superintendent Gillen was playing a much bigger part than he or Inspector Hart would admit to and the reason for that was that he was trying to avoid an investigation into protected disclosures which the claimant made.

15 The Respondents Submissions

301. For the respondents Ms Macaulay set out the background of the claim, setting out which issues she suggested are agreed findings of fact, and contested findings of fact. She also referred the Tribunal to the relevant law.

302. Ms Macaulay accepted on behalf of the respondents that the claimant had made disclosures on 24 June 2010, 17 August 2010, 24 October 2010 and early 2011 to the effect that Central Scotland Police had falsely claimed to have forensic evidence against the claimant, and that this was a disclosure within Section 43B(1)(a) of the ERA. She also accepted this disclosure was made in a letter to ACC Allard on 15 March 2013.

303. It was not accepted by the respondents that this disclosure was made on 30 April 2010 in a telephone call between the claimant and Temporary Superintendent Gillen. Nor were the remaining disclosures accepted, which were disclosures said to have been made by the claimant that there was a failure by Chief Superintendent Walker and Temporary Superintendent Gillen to investigate criminal allegations against CPS. It was accepted that the claimant disclosed information, but did that this information qualified as -a~

disclosure in terms of Section 43B(1)(b). It was Ms Macaulay's position that the claimant who is an experienced officer, could not have had a reasonable belief that the disclosure which he was making was in the public interest. The claimant must have known, as an experienced officer, that where a serious investigation was being undertaken by an outside force Temporary Superintendent Gillen could not disclose to him such information as he had about the investigation, which was in any event limited, as to do so would have been entirely inappropriate and would have exposed the MDP to allegations of corruption. The claimant must also have known given his experience it was not necessary for Central to disclose to Temporary Superintendent Gillen the evidence it had against the claimant or any other officer before their facilitating an interview with the claimant which interview took the form of a voluntary interview. He must have appreciated there was no crime committed on 29 April, and taking these factors into account, it could not be said that the belief was reasonably held by the claimant in relation to alleged conduct of Temporary Superintendent Gillen or Chief Superintendent Walker.

304. Mrs Macaulay then dealt with whether there was a causal connection between alleged disclosures and alleged detriments. She submitted there were two elements to causation under Section 47B. The first was whether the worker was subjected to a detriment, and the second was that the worker was subjected to that detriment because he or she had made a protected disclosure. The claimant therefore required to prove he made a protected disclosure and there has been detrimental treatment. The respondent then has the burden of proving the reason for the treatment. If the respondent does not prove an admissible reason for the treatment, the Tribunal is entitled but not obliged to infer the detriment was on the grounds that the worker had made a protected disclosure (*Ibekwe v Sussex Partnership NHS Foundation Trust* UKEAT/0072/14.) In *ibekwe* the EAT relied on the reasoning in cases such as *Kuzel v Roche Products Limited* [2008] IRLR 530, and this approach to the burden of proof in detriment cases was also confirmed in *International Petroleum Limited & Others v Osipov & Others* UKEAT/0229/16) paragraph 115 and *Malik v Kenkos Securities Pic*

UKEAT/0100/17) paragraph 80C. There must be a causative link between the protected disclosure and the reason for the treatment in the sense that the disclosure being the real or core reason for the treatment (Aspinall v MSI Meeh Forge Limited UKEAT/891/01) paragraph 14 and London Borough of Harrow v Knight [2003] IRLR 140 paragraphs 14 to 16.

5 305. Ms Macaulay then took the Tribunal through each of the alleged detriments, and submitted that they were neither no detriments or in the event that they were found to detriments, they were not meted out to the claimant on the grounds he made a protected disclosure.

10 306. The claim was in any event time barred. A claim for detriment under Section 47B of the ERA must be presented before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates. The focus on the date of the act giving rise to the detriment not the consequences that follow (Unilever UK Pic v Hickinson & Another UKEAT/01 92/09). Ms Macaulay submitted there was no continuing act here
15 which brings the claim within the requisite time limit. The last alleged detriment relates to the termination of the claimant's employment. There was nothing to suggest that this was linked to the protected disclosure and therefore could not be relied upon to extend the time limit for submission of a
20 claim.

307. Reference to Temporary Superintendent Gillen influencing the management process was in Ms Macaulay's submission an attempt by the claimant to convince the Tribunal there was a continuing course of similar acts. There was however no compelling evidence to support the exertion of influence and
25 control as suggested by the claimant. The fact that Temporary Superintendent Gillen was updated and authority sought in relation to operational matters such as a career break was not demonstrative of his having undue influence over the process.

308. Mrs Macaulay therefore submitted the claim was out of time and should be
30 dismissed.

Consideration

309. The claimant presents a claim under Section 47B of the Employment Rights Act 1996 (the ERA). The Section 47B(1) provides;

5 *"A worker has a right not to be subjected to any detriment by any act, or a deliberate failure to act, by his employer done on the ground if the worker has made a protected disclosure.*

310. The Section 48 (1) (B) provides that a person may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of Section 47B (1).

10 **Section 48 (3) provides;**

(3) *An Employment Tribunal shall not consider a complaint under this section unless it is presented -*

15 (a) *before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them or*

20 (b) *within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.*

(4) *For the purposes of sub section (3) -*

25 (a) *where an act extends over a period, the "date of the act" means the last day of that period, and*

 (b) *a deliberate failure to act shall be treated as done when it was decided on;*

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act

inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

Section 43A provides;

5 *In this Act, a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.*

Section 43B provides: -

10 (1) *In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following:*

(a) *that a criminal offence has been committed, is being committed or is likely to be committed,*

15 (b) *that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*

(c) *that a miscarriage of justice has occurred, is occurring or is likely to occur,*

(d) *that the health or safety of any individual has been, or likely to be endangered,*

20 (e) *that the environment has been, is being or is likely to be damaged, or*

(f) *that information tending to show in any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.*

25 311 There is an issue of time bar in this case, however a case management decision was taken that the Tribunal should hear all the evidence before considering whether the claim is time barred. The Tribunal has therefore

made extensive findings in fact to reflect the evidence which it heard in this case, and it considered that notwithstanding the jurisdictional point the correct approach was firstly to determine, (where it is disputed), whether the claimant made a protected disclosure. It did so as to has to consider whether the detriments (including those which brought the claim in time) were on the grounds of having made the disclosure.

312 The claimant relies on 8 alleged Protected Disclosures.

313 These are specified in the Additional Information which the claimant provided as follows;

- 10 (1) **30th April 2010** - to Temporary Superintendent Gillen. Police Officers from Central Scotland Police deliberately made a false allegation that the claimant was responsible for the death of Dean Geary.
- 15 (2) **24th June 2010** (by phone) - to Temporary Superintendent Gillen. Disclosure that Central falsely claimed to have forensic evidence against the claimant
- (3) **17th August 2010** (meeting) to Chief Superintendent Walker. Same disclosures as items 1 and 2.
- 20 (4) **27th October 2010** (by letter) to Chief Superintendent Walker. Same disclosures as items 1 and 2
- (5) **Early 2011** To Area Procurator Fiscal, Central Scotland, and Ann Maguire, M P. Same disclosure as item 1

- (6) **15 March 2011** (by letter) - to Assistant Chief Constable Allard.
 - (1) Same disclosures as items 1 and 2.
 - 25 (2) Failure by chief Supt Walker and Temporary Supt Gillen to investigate criminal allegations against Central.

(7) 7th January 2012 (by phone) to Inspector Heart - failure by Chief Superintendent Walker and Superintendent Gillen to investigate criminal allegations against Central

(8) 20th June 2012 (by letter) to Sgt McEwan - same disclosure as item 6.

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314 Disclosures 1 to 5, and 6 (1) are said to be disclosures under Section 43B(1 a) and (c)

315 Disclosures 6 (2), 7, and 8 are said to be disclosures under Section 43B(1b)

316 It is accepted by the respondents that Disclosures 2 to 6 (1), were protected
10 disclosures, and therefore this was not in issue for the Tribunal. The Tribunal was in any event satisfied that these did amount to protected disclosures.

317 The Tribunal had to consider whether there was a disclosure on 30th April to the Temporary Superintendent Gillen, and for the reasons set out above under *Note on Evidence* the Tribunal was not satisfied that the claimant had
15 disclosed information which showed or intended to show that a criminal offence had been committed or was likely to be committed, or that there had been a miscarriage of justice. The Tribunal was satisfied that in this conversation the claimant expressed absolute disbelief about what had happened, albeit this was soon followed up allegations of wrongdoing on the
20 part of Central. It may be however a great deal does not turn on this point.

318 Thereafter, the Tribunal considered whether the disclosures relied upon by the claimant are said to have taken place on the 15th March 2011 and 5th January and 20th June 2012 to ACC Allard, Inspector Hart, and Sergeant McKeown, (that there was a failure by Chief Superintendent Walker and
25 Temp. Superintendent Gillen to investigate criminal allegations against Central), amounted to a qualifying disclosure in terms of Section 43 B (1) (b).

319 The alleged disclosures which the claimant relies upon are made in his letter to ACC Allard of 15 March 2011 and are set out in the Findings in Fact, but are repeated here for ease of reference.

5 (i) *"From the outset of this horrendous situation I have protested my innocence to Superintendent Gillen and Chief Superintendent Walker, both verbally and in writing. I have told them in detail of CSP's groundless accusations while explaining my evidence to both of them. I have clearly reported to them that the CSP Officers involved committed at least an Attempt to Pervert the Course of Justice and possibly other offences within MDP jurisdiction. "*

10 (ii) *"On 24 June 2010 during a telephone call to Superintendent Gillen I updated him of developments including the conclusions of the forensic examination. I informed him this was clear evidence I had no involvement in the incident and that obviously I had been used as a scapegoat by corrupt CSP Officers. Superintendent Gillen told me he was "always dubious" of the evidence CSP claimed to have, as surely they would have used this evidence to detain me under a Section S14, rather than ask me to accompany them voluntarily. Superintendent Gillen gave no explanation as to why he chose not to act on this suspicion and failed to prevent CSP Officers from carrying out their actions. However, to further aggravate matters he has not, since 29 April 2010 combined his suspicion with my evidence and opened an investigation or approached CSP on this matter.*

25 (Hi) *I expected that my allegations, especially when corroborated by a forensic report would have been taken seriously and investigated by MDP. However, Superintendent Gillen and Chief Superintendent Walker clearly chose not to acknowledge this. Rather than facing the reality of the situation they prefer instead to trivialise the matter and to treat it was a matter between CSP and myself. I do not believe it to be an unrealistic or inappropriate expectation that crime reported on the MoD Estate be investigated by MDP. On the contrary, the Scottish Crime*

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Recording Statistics are dear on the obligation to record and action such matters. I found the refusals to take my allegations seriously to be completely unacceptable and a Neglect of Duty by a Senior Police Officer of MDP.

5 (iv) *MDP were willing co-architects of the situation. Incredibly, although dubious about the evidence, Superintendent Gillen nonetheless engaged directly with CSP. He played an active part in concealing the highly suspicious activities of CSP prior to my 'voluntary attendance' on 29 April 2010. MDP are therefore jointly culpable for creating the situation that I now find myself in. I assert that MDP have failed their 'duty of care' to me prior to and following this incident and have merely paid lip service to the problem by offering home visits designed to tick boxes rather than provide remedy to this nightmare. "*

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15 320 The alleged disclosures which the claimant relies upon to Inspector Hart on 5 January were made in a telephone call in which he asked Inspector Hart to find out why, when the claimant had reported a crime on 30 April to the D/SPO and Divisional Commander, it was not recorded and followed up.

20 321 The alleged disclosures which are said to have been made in the letter of 20 June 2012 are the same as those said to have been made in the letter of 15 March 2011. The statements in that letter which the claimant relies upon in that letter (again set out in the Findings in Fact , but repeated here for ease of reference) are as follows:-

25 (i) *"On 29 April 2010 when CSP carried out their completely unjustified and high-profile removal of me from my place of work at HMNB Clyde, they did so with the help of Chief Inspector Gillen and Chief Superintendent Walker. Chief Inspector Gillen willingly provided his assistance at my place of duty, in spite of him stating to me that he always dubious that CSP had the evidence they*

claimed to have. This assistance allowed the CSP to carry out their attempt to pervert the course of justice.

5 (ii) *On 27 October 2010 I wrote to Chief Superintendent Walker to reiterate that the forensic report I showed to him was evidence of CSP committing an offence on MoD estate. I also suggested avenues to provide resolution of my grievance. Despite Chief Superintendent Walker confirming to John Reagan of DPF that he had received this letter, to date I have received no answer. It has been ignored.*

10 (Hi) *On 15 March 2011 I submitted a formal grievance against Chief Superintendent Gillen and Chief Superintendent Walker. This was due to my dissatisfaction at the handling of the original grievance. Clearly there was a need for MDP's collusion with CSP to be thoroughly investigated. On 29 March I received an email from*
15 *Inspector Ballantyne, Staff Officer to ACC Allard confirming receipt. "*

322. There was no issue taken in any of these instances that the claimant disclosed information; the issue is whether the information he disclosed was in the reasonable belief of the claimant a disclosure made in the public
20 interest which tended to show that there had been a failure on the part of the respondents to comply with a legal obligation which they were subject to. The legal obligation which is relied upon is the obligation to record and investigate the report of a crime

323. To qualify as a disclosure under this section, the worker need only have a
25 reasonable belief that his disclosure is made in the public interest.

324. By the time the claimant first made these disclosures in March 2011, the Tribunal was satisfied that it was likely that his state of mind was such that he may have believed making this disclosure was in the public interest. The test which the Tribunal has to apply however is not however entirely subjective, in
30 that the claimant's belief has to be held reasonably by him.

325. In considering whether the claimant had a reasonable belief that the information disclosed was in the public interest and showed or tended to show the breach of the legal obligation identified, the Tribunal took into account the claimant's circumstances. These included not only what he felt about what had happened, but also included that he was a very experienced police officer.
326. The disclosure relied upon is that that the respondents failed to record or investigate a report of a crime, and failed to record and investigate a crime reported to have been committed in a MOD estate.
327. There is no doubt that the respondents Officers did not record or investigate a report of criminal activity. However, given the claimant's experience he would have known that Mod police had no power at large to investigate a crime alleged against another Police Force. He could not reasonably have believed that the respondents had a legal obligation to record and investigate a report of this alleged crime, and therefore could not reasonably have believed that the information he disclosed showed the respondents failing in their legal obligation (to record and investigate the report of a crime).
328. The alleged crime said to have been committed on MoD property amounted to MoD officers facilitating enquiries from another Police Force which led them to attending Faslane and asking the claimant to attend for a voluntary interview, which he attended on a voluntary basis. This was not recorded as a report of a crime or investigated.
329. The claimant's point was that Temp. Superintendent Gillen allowed the Central to come to Faslane when he said in a subsequent telephone conversation with the claimant that he was '*always dubious*' about their evidence. The claimant suggested that this statement demonstrated that Temp Superintendent Gillen was applying a two-tier system; saying it is Central Police and therefore we cannot do anything, whilst simultaneously saying that Central did not have the information they say they have.

330. This however is inconsistent with the claimant's acceptance that Central did not have to disclose the evidence they had in order to attend at Fasiane, and his acceptance that he attended for the interview with Central on a voluntary basis. He also accepted (albeit he was very critical of how Central conducted the interview) that he was aware as a Police Officer of what attending an interview on a voluntary basis meant. He therefore knew he did not have to attend for the interview or that he could have left the interview at any point.

331. Even allowing for the claimant's perception of matters, and the fact that at the point when he made that disclosure he may have believed it to be in the public interest, the Tribunal has to consider whether it was in the reasonable belief of the worker making the disclosure that it was made in the public interest, and applying that test the Tribunal could not conclude that the claimant, as an experienced police officer, could have reasonably believed that he was disclosing information which showed the respondents had failed in their legal obligation to record and investigate the report of a crime, and was therefore was protected in terms of Section 43B(1B).

332. That however is not the end of matters, in that it is accepted that the claimant did make a number of protected disclosures in this case, and therefore the Tribunal went on to consider the claims of detriment.

333. It was at this stage that the Tribunal addressed the issue of time bar, and it commenced by considering the detriments which are alleged to have taken place in April/May 2014 at the hands of Inspector Hart.

Those detriments are said to be;

1 **April/May 2014** - selection of employment termination date by the respondent with no warning.

2 **April/May 2014** lack of notice of termination of employment.

3 30th May 2014 failure of Inspector Hart to deliver a letter confirming ill-health retirement.

334 The Tribunal has taken this approach as unless the claimant establishes that he was subjected to a detriment on these dates, then it is accepted that the claim is out of time. No argument was made that time should be extended on the grounds that it was not reasonably practicable to bring the claim in time in this case.

335 There were two matters relating to the claimant's ill-health retirement process where Inspector Hart's credibility was under attack. The first related to the alleged selection of the claimant's date of termination of employment by Inspector Hart without warning. This was said to have occurred around April/May 2014 and resulted in a lack of notice of termination of employment.

336 There was a direct conflict of evidence between Inspector Hart and the claimant in relation to whether a date had been agreed between them for the termination of his employment. It was Inspector Hart's evidence that he agreed a date of 10th May with the claimant. He said that he phoned the claimant, and had a discussion with him about a potential leaving date. He said the claimant phoned him back about a week later, and gave him a date of the 10th May; his evidence was the claimant said he wanted to go as soon as possible.

337 The claimant's evidence was that he proposed a date of 10th May in his discussion with Inspector Hart, but that date had to be accepted by the respondents, and it was not an agreed date.

338 On balance the Tribunal preferred the evidence of Inspector Hart to that of the claimant. In reaching its conclusion, it takes into account that Inspector Hart e-mailed HR on 17th April, confirming that a date of 10 May had been agreed. It appeared inherently unlikely to the Tribunal that he would have done so had he not believed that to be the case.

339 The Tribunal also takes into account the terms of the letter which the claimant sent to inspector Hart on 13th June (page 282 to 283J, in which he stated that he had indicated his preference to leave as soon as possible, and a notional date of 10th May was discussed. The claimant said in cross examination that

the date had to be accepted, however there was nothing beyond the claimant's accretion to suggest that was the case. The paperwork from HR did not suggest that here was a need for the claimants proposed date of termination to be accepted.

5 340 On basis its findings in fact, the Tribunal did not conclude that the selection of the termination date of 10th May amounted a detriment. In order to be a detriment, there should be some quality which disadvantages the claimant. The Tribunal was satisfied the claimant had discussed and agreed this date with Inspector Hart.

10 341 Even if the Tribunal was wrong in this, and there was some confusion on the mind of the claimant (or Inspector Hart was mistaken as to what had been agreed), it was satisfied that Inspector Hart understood that the leaving date of 10th May had been agreed, and it was for that reason, as opposed to a reason connected with any of the disclosures made by the claimant, that that
15 date was selected for the termination of the claimant's employment.

342 The Tribunal therefore did not conclude there was any detriment to the claimant due to lack of notice of termination of employment, and even if there was a detriment, it was not on the grounds of his having made a protected disclosure.

20 343 There Tribunal also consequently concluded there was no detriment on account of lack of notice of termination of employment.

Failure to deliver ill health retirement letter- May 2014

344 The Tribunal then considered whether there was a detriment in that Inspector
25 Hart failed to deliver the letter confirming the claimant's ill-health retirement on 30th May 2014.

345 It is accepted that Inspector Hart failed to deliver this letter. The Tribunal considered whether this amounted to a detriment. In considering this the Tribunal took into account the guidance given in the case of *The Ministry of Defence v Jeremiah* 1980 ICR 13CA, In that case the Lord Justice Brandon

said that a detriment was simply “*putting under a disadvantage*” . The Judgment of Lord Justice Brightman stated that the test for detriment is that it “*exists if a reasonable worker would or might take the view that it is the action of the employer*” was in all the circumstances to his detriment.

5 346 The Tribunal also took into account the guidance given in the case of
Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337
House of Lords. It emphasised that a grievance which is not justified would
not be sufficient to constitute a detriment; in considering if a detriment had
occurred however the Tribunal has to take into account the point of view of
10 the victim and if the victim reasonably considers that the treatment
complained of is a detriment.

347 The detriment alleged in this case is that the claimant did not receive the letter
dated 13th May 2014 from DBS Personnel which provided some information
about his ill-health retirement, and provided details of the MOD in placement
15 services available. There is no issue that it was intended this letter should
have been sent to the claimant via his line manager, but this was not done.

348 The claimant did receive a copy of the letter having telephoned HR, and it was
sent to him on the 12th June 2014.

349 There was therefore a gap of around two weeks between the date when the
20 claimant should have received the letter, and when he actually received it.
The claimant required to telephone HR to obtain a copy of the letter.

350 On balance the Tribunal was satisfied that the fact that the claimant did not
receive the letter from his line manager as was intended, did constitute a
detriment. Albeit he received the letter within a fairly short timescale
25 thereafter, he required to telephone HR to obtain a copy. It was clear that the
claimant felt aggrieved about having to make this enquiry and about not
having received a letter when it was intended to be sent. The Tribunal also
took into account that the letter confirmed the last date of the claimant’s
service after a long career, and was satisfied that the claimant’s sense of
30 grievance about having to make a telephone enquiry to receive a copy of the

letter was a reasonable one. Taking these factors into account the Tribunal was satisfied that the claimant's not having received a letter from his line manager, as was intended by the respondents, constituted a detriment in terms of Section 47B of the ERA.

5 351 Having reached this conclusion the Tribunal then went on to consider whether the claimant was subjected to that detriment on the ground that he had made the protected disclosures which had been found to be established.

352 Section 48 of the ERA provides "48(1A) -

10 (1) a worker may present a complaint to an Employment Tribunal that he has been subjected to a detriment in contravention of Section 47B....

(2) When a complaint under sub section (1), (1ZA), (1A) or (1B) it is for the employer to show the ground on which any act, or deliberate failure to act was done. "

15 353 It is therefore for the employer to prove, on the balance of probabilities, the grounds on which it acted.

354 Mr. Edward referred to the case of *Feccitt and Others v NHS Manchester 2012 ICR 372* in particular to paragraphs 41, 43 and 45, in support of his submission that the respondents must show that the making of a protected disclosure did not materially influence their treatment of the claimant.

20 355 The Tribunal agrees that this is the correct approach, and it took into account the Judgment of Elias LB at paragraph 45 in that case, in which he stated: -

25 *"In my Judgment, the better view is that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower. "*

356 Mr Edwards asked the Tribunal to reject Inspector Hart's evidence to the effect that he had not received the letter from HR. In support of this, Mr Edwards asked the Tribunal to draw an inference from the fact that the

claimant wrote to Inspector Hart on 13 June 2012, complaining amongst other things, about not having received the letter of 30 June (pages 282 to 283), but that Inspector Hart claimed not to have received this letter either.

5 357 Mr Edwards submitted that this was simply too convenient. Inspector Hart said in evidence that he had communications with the claimant in July and August about other issues, and the claimant had thanked him for his help. It was simply not credible that this claimant would not have complained about the missing letter or demanded an explanation.

10 358 Mr Edwards asked the Tribunal to draw the inference that the real reason behind this treatment was that Temporary Superintendent Gillen was influencing Inspector Hart. In support of this proposition Mr Edward submitted that even after Temporary Superintendent Gillen had been instructed by PSD not to be involved in ill-health processes in February 2012, and having informed Inspector Hart of that, Inspector Hart emailed him with an update on
15 what was happening on issues which were not the concern of Temporary Superintendent Gillen.

20 359 The Tribunal however did not draw this inference. It took into account that Temporary Superintendent Gillen remained in charge of operations at the Faslane Base and therefore had a legitimate interest in operational issues, and would have access to the information contained in the email via in the log, regardless of whether or not Inspector Hart emailed it to him.

25 360 It was suggested that Temporary Superintendent Gillen continued to play a part in matters in order to avoid investigation into the protected disclosures which the claimant made. The Tribunal however was not persuaded that this was a realistic motivation for Temporary Superintendent Gillen, or indeed any of the other police witnesses from whom it heard. In relation to the allegations
30 which the claimant made against MoD officers, the Tribunal formed the impression that the witnesses were genuinely perplexed as to what the complaint was about, as it was clear they had no jurisdiction to carry out a criminal investigation about the conduct of another Police Force, and they could not understand how it could be said that a crime had been committed

on MoD estate. The complaint made by the claimant about Central officers was a matter for Central, or the Area Procurator Fiscal, and therefore did not involve the respondents Officers. It therefore did not appear to the Tribunal that it would be likely that the respondent's witnesses would be motivated and act as they did because of the information which the claimant disclosed or, as suggested by the claimant, in order to avoid investigation into his grievances about these matters.

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361 It was put to Temporary Superintendent Gillen in cross-examination this was his motivation. He answered this robustly to the effect that as a line manager of a number of Officers he is used to dealing with grievances, and that he would have much preferred to have dealt with the grievance at an earlier stage rather than to have the case escalate to where it now was, the Tribunal found this evidence on his part to be convincing.

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362 Inspector Hart was adamant he had not received the letter from HR with the accompanying letter which was intended for the claimant. On the balance of probabilities, the Tribunal accepted this. In reaching this conclusion the Tribunal took into account it's impression that that Inspector Hart attempted to assist the claimant throughout his absence. The steps he took included maintaining contact with the claimant on a regular basis, providing him with his personal mobile number, speaking to him when he was on holiday or rest days, regularly offering assistance, being prepared to reconsider decisions about pay when he was asked to do so on behalf of the claimant, and supporting the ill health retrial process.

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25 363 It lacked credibility that that Inspector Hart would have deliberately omitted to send this letter to the claimant had he received it. It was not plausible that having supported the claimant in achieving ill-health retirement, Inspector Hart would then have attempted to prevent the claimant from receiving the documentation which confirmed details of this.

30 364 The Tribunal was similarly satisfied that Inspector Hart had not received the claimant's letter of 13 June 2014, and it accepted his evidence that he

continued to attempt to assist the claimant in resolving issued to do with leave pay after that date.

365 The Tribunal concluded that the reason why Inspector Hart did not forward
the letter of 30 May 2014 to the claimant confirming his last date of service
5 was because he had not received it, and this was in no way connected to the
fact that the claimant had made a number of protected disclosures.

366 The effect of that conclusion is that the last acts in the alleged series of acts
did not amount to detriments to which the claimant was subjected on the
grounds of having made a protected disclosure. The effect of that conclusion
10 is that the claim is out of time.

367 It is not suggested in this case that time should be extended on the grounds
that it was not practicable to bring the claim within the statutory time limit. The
claim is therefore out of time, and the Tribunal has no jurisdiction to consider
it.

15 368 Given that the Tribunal heard evidence over a number of days about a number
of matters, it has however set out below the conclusions which it would have
reached in the event it had jurisdiction to consider this claim.

369 **Detriment 19 August 2010 onwards - failure by Chief Superintendent to
action the claimant's application for payment under the Civil Service
20 Injury Benefit Scheme.** The Tribunal did not conclude that Chief
Superintendent Walker failed to action the claimant's application. He
supported the application; an administrative error caused delay in the
application being considered. The Tribunal was satisfied that ultimately the
reason the application was rejected was because there was an outstanding
25 grievance and that this was in line with the rules of the Scheme. Given the
support which Chief Superintendent Walker provided in making the
application in the first place, and the fact that he suggested making the
application, it was not pTausfbTeto suggest that tre then failed to action-the
application on the grounds the claimant had made a protected disclosure.

370 To the extent there was a delay in the application being received and considered, the Tribunal was satisfied that this was due to administrative error and was in no way connected to the fact that the claimant had made a protected disclosure

5 371 **On 27 July 2010 onwards - failure to action the claimant's grievance to Chief Superintendent Walker of 27 July 2010.** The Tribunal did not conclude that Chief Superintendent Walker failed to action the claimant's grievance of 27 July. He met with the claimant in August, and a way forward was agreed, which involved the claimant meeting face to face with Temporary
10 Superintendent Gillen. The reason that did not happen at that stage was because the claimant did not feel fit enough to undertake such a meeting. There was no detriment to the claimant.

372 **21 September 2010 onwards - Ignoring the claimant's letter to Chief Superintendent Walker of 21 September 2010.** In this letter is the claimant
15 stated that while a facilitated meeting with Superintendent Gillen may prove beneficial he did not believe that his mental state was at a stage where he could cope with such a meeting. The Tribunal was not satisfied that in light of that statement it could be said that the claimant was subjected to a detriment by Chief Superintendent Walker failing to act having received that
20 letter. It was agreed that this was the way in which the grievance would be resolved, and the claimant was simply reiterating that he did not feel able to undertake the meeting with Temporary Superintendent Gillen at that point.

373 **27 October 2010 onwards - Ignoring the claimant's letter to Chief Superintendent Walker of 27 October 2010.** The Tribunal did not conclude
25 that Chief Superintendent Walker ignored this letter, albeit he could be criticised for not responding directly to the claimant, and not corresponding with him about it until April 2011 (page 140). The Tribunal was satisfied however that he discussed the claimant's grievance on a regular basis with the claimant's representative Mr. Reagan. Furthermore, in that letter the
30 claimant again reiterates that he would be unable to meet face to face with Temporary Superintendent Gillen. The way forward which the claimant

suggested was that as he has been providing evidence of a criminal offense taking place within Mod jurisdiction, CI Walker should be demanding an explanation from Central.

5 -374 It was clear that the respondents had no jurisdiction to investigate another Police force, and CI Walker had no understanding of how it could be said a crime had taken place on MoD property, and the Tribunal was satisfied it was these factors which explained why he did not adopt the course suggested by the claimant, as opposed to the claimant having made protected disclosures.

io 375 The Tribunal was satisfied that Chief Superintendent Walker concluded from the terms of the letter of 27th October that the claimant was still indicating that he was unable to meet with Temporary Superintendent Gillen, but it was satisfied that CI Walker hoped that the claimant, who was still unable to attend work due to his ill health, could rebuild his mental state and that there was still a way to try to resolve the grievance, and he continued to liaise with the claimant's representative about an informal resolution. The Tribunal found Chief Superintendent's Walker's evidence on these points convincing. It would no doubt have been better had Chief Superintendent Walker corresponded directly with the claimant to convey this, however it Tribunal was satisfied that he was motivated and continued to be motivated towards achieving an informal resolution of a grievance with an officer who absent from work on long term sickness.

25 376 Mr. Edwards submitted that the grievance remains uninvestigated and unresolved and the reasonable inference was that it was because of the nature of the grievance and no alternative reason has been given at this point. For the reasons given above the Tribunal did not draw this inference. The grievance remained unresolved at the hands of CI Walker because the claimant in turn complained about Chief Superintendent Walker in his complaint to ACC Allard.

30 377 Support for the Tribunal's conclusion is also found in that CI Walker made his office facilities available to the claimant to assist him in making his complaint against Central. The fact that he did this is inconsistent with the notion that he

failed to deal with the grievance because of the protected disclosures relied upon.

378 **15 March 2011 onwards** - Failure to action the claimant's grievance of Assistant Chief Constable Allard of 15 March 2011.

5 379 There has been a failure to resolve this grievance, but the Tribunal did not conclude there was a failure to action it, in that the Tribunal was satisfied that it was considered, and considered to be Sub Judice. Mr. Edwards submitted that the grievance was submitted on 15 March 2011 but there is no evidence of it being stalled because of being Sub Justice until 6 June 2011. He submitted no explanation was given as to why no action was taken during this period, and it may be reasonably inferred the respondents did not wish to investigate Temporary Superintendent Gillen's handling of Central's action, nor the involvement of ACC Allard.

15 380 The Tribunal did not draw this inference. As indicated above, it did not appear to the Tribunal plausible that the respondents were motivated to act to the detriment of the claimant on the grounds of the disclosure which he made. These disclosures involved a different Police Force over which they had no jurisdiction.

20 381 There was an ongoing criminal investigation into the conduct of Central officers on the basis of a complaint made by the Claimant, which potentially involved the respondent's officers as witness, and that being the case the Tribunal was satisfied the respondents did not investigate the grievance because they considered it Subjudice, and not because of the disclosures.

25 382 There was a delay between the grievance being received, and the claimant being advised that with regard to Subjudice however given that the grievance had to be processed during a period of significant change and administrative upheaval, the Tribunal did not draw any adverse inference from this.

30 383 Mr. Edwards also submitted that the point where the grievance was transferred from ACC Allard to ACC Chidley in August 2011, there was a period between August and October 2011 when Inspector Ballantyne, (ACC

Allard's Staff Officer at that stage), considered the claim was not Subjudice. Mr. Edwards submitted that there was a reverse of Subjudice in October 2011, and there was no explanation for that.

5 384 ACC Chidley had no clear recollection of discussions about the grievance, however he expressed the view that Inspector Ballantyne's assessment in August 2011 was incorrect, that the matter was properly regarded as being Sub Judice.

10 385 Even if there is disagreement or argument as to whether the claimant's grievance was correctly labelled as Subjudice by the respondents, the Tribunal was satisfied that it was the respondents conclusion that the grievance was Subjudice, and that was the reason why the respondents did not progress it. Had a grievance been lodged by another Officer in the same circumstances, but who had not made any protected disclosures, the Tribunal was satisfied that the respondents would also have regarded it as Subjudice,
15 and would not have progressed that either.

386 While the respondents could have done a significantly better job at keeping the claimant apprised of what was happening and kept in more regular contact with him, this was not sufficient to give rise to the inference that they failed to deal with the matter because of the disclosures made.

20 387 May 2011/June 2011 pay withheld. The Tribunal was satisfied there was a detriment to the claimant to the extent that payments were not paid in these months, albeit the decision not to pay SPPR was reconsidered and backdated. For the reasons given above however the Tribunal found
25 Inspector Hart's evidence credible as to the reasons why he made the recommendation in the first place, and it did not draw an inference that he was influenced by Temporary Superintendent Gillen. The Tribunal did not conclude that the disclosures which the claimant had made had any influence on Inspector Hart's decision-making process in relation to the recommendations which he made for SPPR.

388 **Early 2012 to 2013- being subject to ill-health dismissal procedure in 2013.** The Tribunal was satisfied that by the time the claimant was subjected to the ill-health dismissal procedure, the reason for that was his absence from work. By that time the claimant had been absent from work for almost 2%
5 years. It was the respondent's aim to deal with long term absence after approximately a year, and therefore the Tribunal was satisfied that the reason why the claimant was subjected to his procedure was because of his absence, and was in no way connected to the fact that he had made a disclosure. It was suggested by Mr. Edwards in submission that Temp. Superintendent
10 Gillen were attempting to push through the ill-health dismissal procedure in order to avoid the grievance being dealt with, however the Tribunal found that unconvincing, and it was satisfied that the reason why the claimant was considered for ill-health dismissal in 2013 was because of his long-term absence.

15 389 **8 February 2013 onwards - Failure to action the claimants grievance to ACC Allard on 8 February 2013.** The claimant lodged a further grievance on 8 February 2013 in connection with the actions of Inspector Barber.

390 There was little evidence before the Tribunal in connection with this, and there is no doubt that this grievance ultimately was not dealt with. The only
20 evidence which the respondents led was that Inspector Barber had been told by an Inspector Hewitt that the claim had been withdrawn. The claimant accepted Inspector Barber's evidence on that matter for reasons given above, he impressed the Tribunal as a credible and reliable witness.

391 The claimant was adamant he had not spoken with Inspector Hewitt and had
25 not withdrawn the grievance.

392 The respondents have to prove on the balance of probabilities that the detriment complained of was not on the grounds the claimant had made the disclosure; the claimant's grievance was about Inspector Barber's handling of his complaint, and did not contain any of the disclosures upon which the
30 claimant relied. On the balance of probabilities, the Tribunal was satisfied, given Inspector Barber's evidence, it was likely the respondent understood

that the complaint had been withdrawn and it was for that reason it was not progressed.

393 **8 February 2013 recommendation of reduction in maximum pay after**
dismissal by 50% by Inspector Hart. For the reasons given above, the
5 Tribunal was satisfied as to the reason why Inspector Hart made this
recommendation, and did not to draw the inference he had been influenced
by Temporary Superintendent Gillen. Mr. Edwards submitted that Inspector
Hart was vague about what the claimant's failure to engage with the process
was. The Tribunal however formed the view that Inspector Hart considered
10 the claimant had not engaged with the process because he had repeatedly
refused the offers of assistance which Inspector Hart made. He gave
examples of the kind of assistance which the claimant could have obtained,
for example by attending police treatment centers, or attending regularly with
OH. The Tribunal was satisfied that Inspector Hart believed the claimant failed
15 to engage with management, and on the basis of advice from Alex Goodwin,
he believed he was entitled to make the recommendation which he did, and it
was for that reason the recommendation was made.

394 As noted above these matters are in any event out of time.

395 The effect of the Tribunal's conclusion in relation to the detriments alleged to
20 have taken place in 2014, is that the claim is presented out of time and the
Tribunal has no jurisdiction to consider it.

25 **Employment Judge: L Doherty**
Date of Judgment: 28 June 2018
Entered in register: 06 July 2018
and copied to parties

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