



EMPLOYMENT TRIBUNALS

Claimant: Ms N Povey

Respondent: The Commissioner of Police of the Metropolis

Heard via CVP (London Central)

On: 4, 5, 6, 7 April 2022

Before: Employment Judge Davidson
Ms D Keyms
Ms N Sandler

Representation

Claimant: Mrs L Mankau, Counsel

Respondent: Ms K Shields, Counsel

RESERVED JUDGMENT

It is the unanimous decision of the tribunal that the claimant's complaints of direct sex discrimination and harassment on grounds of sex fail and are hereby dismissed.

REASONS

The Issues

1. The issues for the hearing had been agreed at a case management hearing in June 2020, with sixteen incidents of alleged less favourable treatment having been identified by the claimant as constituting her case. The day before this hearing, the claimant narrowed the list down to four incidents and withdrew the other twelve.
2. The witness statements and the bundle had been prepared on the basis of the wider claim involving sixteen incidents. The narrowing of the issues took place too late to amend the witness statements. This had the result of the witness statements addressing matters not in issue and, at the same

time, dealing with those matters still in issue in less detail than might have been the case if the focus had been on the narrower issues when they were drafted. The witnesses were able to give more detail in oral evidence on these matters. We have taken these circumstances into consideration when assessing the reliability and cogency of evidence given orally which was not in the relevant witness statement.

3. The revised List of Issues is as follows:

Direct discrimination because of sex (section 13 EQA)

3.1 Did the respondent subject the claimant to the following treatment?

- a. Officer 1 revoked/removed her firearms licence on or around 5 November 2019;
- b. Officer 1 commented on or around 5 November 2019 that she would be *“too stressed to hold a firearm after the shock of being informed that she may be subject to UPP Stage 1”* or words to that effect.
- c. In his email to PC Prior dated 5 November 2019 Officer 1 said *“due to the shock you mention and the obvious emotion to such a process maintaining Nicky’s Blue Card for a period of time is the correct one”*;
- d. In respect of an Occupational Health referral made by Officer 1 on 29 November 2019: the fact of this referral, the manner of this referral i.e. it was made without consulting the claimant and the comment in the referral from that her firearms licence was removed *“due to the additional stress UPP was likely to induce”*.

3.2 Was this treatment less favourable treatment i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others in not materially different circumstances? The claimant relies on a hypothetical comparator. The claimant contends her firearms Blue Card was removed due to Officer 1’s negative and stereotypical view of a woman not dealing well with stress.

3.3 If so, was this because of the claimant’s sex?

- a. Has the respondent shown that the treatment was not because of her sex (section 136(3) EQA)?
- b. Has the claimant proved facts from which the tribunal could conclude that the respondent treated her in this way because of her sex (section 136(2) EQA)? The claimant contends that she was treated less favourably because of her sex in that the respondent made negative and stereotypical assumptions about her, based on sex. The claimant maintains that she would not have had her Blue Card removed and/or been subjected to the same treatment and/or the same degree of criticism if she were a man.
- c. If so, has the respondent shown that the reason for this treatment was in no sense whatsoever because of her sex?

Harassment related to sex (section 26 EQA)

4. Did the respondent engage in unwanted conduct? The claimant relies on the same allegations identified above at paragraph 3.1 (a) – (d).
 - 4.1 If so, did it relate to the claimant's sex?
 - 4.2 Did the conduct have the purpose or (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

Remedy

5. If the claim succeeds, in whole or part:
 - a. To what pecuniary losses, if any, should the claimant be awarded?
 - b. To what compensation, if any, is the claimant entitled in relation to injury to feelings and / or aggravated damages?
 - c. Should the tribunal make any recommendations?

Evidence

6. The tribunal heard evidence from the claimant and PC Richard Prior (Police Federation Representative) on the claimant's behalf and from Officer 1 (Police Sergeant – the claimant's line manager) and Officer 2 (Detective Superintendent – the line manager of Officer 1) on behalf of the respondent. The respondent also submitted witness statements from a Detective Inspector (the claimant's previous line manager), a Detective Inspector and a Police Constable colleague of the claimant but these witnesses did not give live evidence and were not cross examined.
7. The tribunal had sight of an agreed bundle running to 768 pages and the parties submitted an agreed chronology.

Facts

8. The tribunal found the following facts on the balance of probability.
9. The respondent is the provider of policing services in London. The claimant joined the respondent on 5 May 2003. At the relevant time, she was serving as a Police Constable in MO3, a surveillance team, which she had joined in April 2017.
10. The claimant is an Authorised Firearms Officer (AFO) and she is issued with a 'blue card', which enables her to sign out firearms from any of the respondent's armouries.

11. MO3, as with many units within the respondent, is accepted to be predominantly male and white although steps are being taken to recruit a more diverse workforce. Some of these initiatives have been led by Officer 1, who has been successful in this endeavour.
12. In May 2018, the claimant's then line manager (who is female) started a Performance Development review, an informal plan to improve performance.
13. On 24 June 2018, the line manager sent the claimant and a male colleague an email warning them about their failures in relation to firearms storage. They retained their blue cards.
14. On 7 September 2018, the claimant's line manager told her that she should not carry a firearm or taser until the end of the year so that she can focus on the other aspects of surveillance work. She retained her blue card.
15. On 6 December 2018, the claimant was placed on a development plan, which is an informal way of addressing poor performance. This was then extended in March 2019.
16. On 14 March 2019, papers (including a witness statement in the claimant's name) were found in a police vehicle. The claimant denied responsibility although the respondent noted that she had control of the car they were found in.
17. In April 2019, the claimant's firearm was returned to her in the hope that it would improve her performance.
18. On 19 June 2019, the claimant's line manager sent her and a male officer an email regarding incorrect handling of firearms and rounds, noting that this was not the first warning they had received of this nature. Their blue cards were not removed.
19. On 26 June 2019, the claimant applied to join the Royalty and Specialist Protection Unit (RaSP), and her application was supported by MO3's Detective Inspector.
20. In July 2019, Officer 1 became the claimant's new line manager. The claimant sent him her Development Plan. Officer 1 held one-to-one meetings (121s) with the claimant every month.
21. On 15 August 2019, an officer in MO3 contacted Officer 1 regarding issues with the claimant's performance during a deployment.
22. On 24 August 2019, Officer 1 told the claimant that her Development Plan remained active as there had not been sufficient opportunity in the seven previous months for her to demonstrate the required improvement.
23. Officer 1 told the claimant at the August '121' that a Police Constable would act as mentor to her. The PC mentoring the claimant provided feedback at the end of each day and invited the claimant to comment, which she did not do. She said that she had not realised that the mentoring would be

documented, to which the PC replied that Officer 1 had asked her to do some sort of report but that anything not part of the development plan was confidential between them.

24. The claimant commented that she felt under pressure because everything was being scrutinised.
25. Officer 1 also advised the claimant to speak to another female officer for surveillance advice regarding maintaining cover on the streets as the claimant had stated that she felt it was harder for women to maintain cover. This offer was not taken up by the claimant and was repeated at the September 121. The claimant then spoke to the female officer as she was in the same location as the claimant at the time.
26. On 1 November 2019, after a deployment involving the claimant and Officer 1 as part of a wider team, Officer 1 was concerned about the claimant's actions during the deployment and her failure to take on board advice given at earlier 121s, such as not having props with her. He was also concerned that she gave her account at the debrief about the length of time she took to exit her vehicle to move on foot and this account differed from what Officer 1 had observed at the time. When he raised this with her privately, she became tearful and left the room. Officer 1 saw her a few minutes later and asked if she wanted to chat over coffee but she said she wanted to go home.
27. Officer 1 was becoming concerned that the claimant's lack of confidence in a surveillance role was becoming unsafe for her, her colleagues, the public and the operations being carried out by the team. He spoke to three senior colleagues and they agreed that the situation had become a performance issue rather than a developmental one.
28. On 5 November 2019, Officer 1 asked the claimant to a meeting at which he informed her that she was being removed from operational duty and being put on an Unsatisfactory Performance Procedure (UPP), which is the formal performance management process. She immediately became angry and said that she was not prepared to continue with the meeting without her Federation representative present. She had tears welling up and she got up to leave the room. As she was leaving, Officer 1 was sufficiently concerned about her reaction that he asked her to surrender her blue card. She was unhappy about this but he would not let her leave until she had done so. The meeting lasted about a minute.
29. It is accepted that a UPP for performance (as opposed to attendance) is rare and that it does not automatically result in the removal of the blue card if the officer is an AFO. Being subject to a UPP can have implications for an officer's application for internal transfer and can ultimately result in an officer's demotion or even dismissal. We do not accept PC Prior's suggestion that, since UPP is a supportive process, there would be no stress attached to it. On the contrary, we find that any officer would be concerned to be under a UPP.

30. It would normally be the case that the manager would discuss the arrangements for the UPP with the officer and ensure that any welfare matters were taken into account. In this situation, as the claimant removed herself from the meeting on hearing about the UPP, Officer 1 was not able to carry out this step with her.
31. Following the meeting on 5 November 2019, the claimant removed herself from the team's WhatsApp group. This raised queries among the team who were not sure what had happened. Although she no longer carried a firearm and was not on operational duties, the claimant continued to work within the team, mostly as a 'loggist', keeping a record of the operations. As she was not on the WhatsApp group, Officer 1 had to notify her separately of details she needed to be aware of, which previously would have been sent via WhatsApp.
32. Officer 1 subsequently completed Form 6621 to record that he had removed the claimant's blue card. The guidance notes for completing the form include a heading "Stress and additional responsibilities" which draws attention to the possibility of performance as an AFO being affected by an officer experiencing difficulties at work or at home which could exacerbate the inherent stress of carrying a firearm.
33. On the form, he gave the reasons as i) the additional stress/pressure likely to be incurred as a result of UPP; ii) being non-operational, there was no requirement for a firearm/taser; and iii) the risk of the claimant rushing through her weapons test for the RaSP application. He discussed this with the Inspector and it was countersigned by Officer 2, who did not know the claimant and relied on the information from Officer 1.
34. We find that the reasons that Officer 1 removed the blue card were more nuanced than appears on Form 6621. We find that it was the claimant's anger at being told of the UPP that informed Officer 1's decision, seen in the context of her failure to engage with the development process and her tearful reaction at a previous 121 when challenged. He could see from these interactions that her reaction when faced with an uncomfortable reality could be intemperate. We also find that he took account of the guidance note and concluded that the history of the claimant's development plan, her performance shortcomings and the UPP constituted 'difficulties at work' which he had to take note of.
35. In our view, the second limb of Form 6621 records the absence of a counter argument that she should keep the blue card rather than constituting a stand-alone reason.
36. The third limb was related to the possible negative implication of the UPP on the claimant's RaSP application and the possibility that the claimant would rush her firearms test through in order to complete it before the UPP kicked in.
37. The claimant consulted her Police Federation representative, PC Richard Prior. He discussed with the Chief Inspector whether the claimant could avoid the UPP if she put in a voluntary transfer request out of MO3. It was confirmed that the UPP only related to the claimant's performance in a

surveillance role and it would be cancelled if she was not longer intending to carry out a surveillance role.

38. It is clear from the evidence before us that the claimant was an excellent police officer in roles which did not involve surveillance, but that a surveillance role did not suit her skill set. Despite support offered to her within MO3, she continued to have performance issues, although there were elements of her performance which were good. It was accepted that there would be no need for the UPP if the claimant was in a role which did not involve surveillance and the UPP was targeted specifically at the surveillance part of her role.
39. Officer 1 was not aware of the exchange between PC Prior and the Chief Inspector. He therefore started the UPP Stage 1 meeting on 12 November 2019. PC Prior raised the issue of voluntary transfer and Officer 1 agreed to postpone the meeting to allow the claimant to make the voluntary transfer request, which would have the effect of cancelling the UPP. It was the claimant's understanding that the blue card had been removed due to the stress which might be part of a UPP process and that, if the UPP was avoided, there would be no reason not to return the blue card.
40. Later than day, Officer 1 informed the claimant that he would contact the Chief Firearms Instructor (CFI) about the return of the blue card as his original concerns no longer applied. Although Officer 1 is able to remove the blue card, he cannot return it without the authority of a senior officer.
41. On 13 November 2019, the claimant requested the return of her blue card so that she could carry out firearms training, as required for the RaSP role. Officer 1 contacted the Inspector and made representations for the return of the blue card but the Inspector was unable to reach the CFI on that day.
42. On 14 November 2019, PC Prior emailed Officer 2 to request clarification of the claimant's firearms status and to express his concern at her treatment.
43. On 27 November 2019, the claimant submitted a voluntary transfer request. She applied for roles for which she was not eligible due to technical errors on the online form.
44. Officer 2 replied to PC Prior informing him that he had requested an Occupational Health (OH) referral to be made before returning the blue card. This was because the reason for it being removed in the first place was related to stress and he wanted to ensure that this factor was no longer relevant before allowing the claimant to carry a firearm or taser. PC Prior replied that the claimant did not want to be referred to OH and alleged that she was being treated unfairly due to her sex.
45. On 29 November 2019, a Detective Constable in MO3, who was standing in for Officer 1 while he was on away on a course, had a conversation with the claimant about sleep. He noted that she looked tired and she said she had not slept well the night before. They were on 'early turns' which involves and early start. The DC relayed this conversation to Officer 1. The claimant found out about this when she saw that Officer 1 had included it in the OH form and challenged the DC in a private WhatsApp conversation.

46. On 29 November 2019, the claimant and Officer 1 spoke on the telephone and the OH referral was mentioned. It is not clear what exactly was said. We find that Officer 1 probably talked about an OH referral being required before giving her back the blue card but he probably did not explain the contents of the form to the claimant. He completed the form through the OH portal and submitted it with authorisation to send a copy to the claimant. We accept his evidence that he believed that she had been sent it. We also accept her evidence that she did not receive it and attribute the fact that the claimant did not receive it to a system fault within the OH portal. This is separate from the normal email system so evidence that Officer 1's emails were working that day is not relevant to whether the portal was working as it should.
47. The OH form incorrectly stated that the claimant was subject to disciplinary proceedings. The UPP is not a disciplinary process. On the form, Officer 1 explained why the blue card had been removed and why the claimant wanted it returned. He also made reference to the claimant 'not sleeping' on the basis of the information he received from the DC earlier that day, making it a general comment rather than a reference to a specific instance. The reason for the OH referral was stated to be that the CFI requested that the claimant was assessed before making a decision regarding returning her blue card.
48. On 3 December 2019, the claimant submitted a second voluntary transfer request. She received an OH appointment for 16 December, which was then moved to 17 December.
49. On 9 December 2019, PC Prior submitted an appeal to the Commander against the removal of the blue card, on the claimant's behalf.
50. The claimant then withdrew her voluntary transfer request. She also cancelled her OH appointment because she did not think it was necessary and the referral form contained inaccurate information.
51. On 19 December 2019, Officer 1 sat with the claimant and drafted an amended OH referral form, which he submitted and also sent a copy to the claimant. The OH appointment took place on 12 January 2020. OH concluded that there were no concerns regarding the claimant's ability to carry a firearm. The claimant was sent a copy of the report on that day and authorised OH to send a copy to Officer 1 but did not forward a copy herself.
52. On 22 January 2020, the UPP Stage 1 meeting took place following which the claimant was issued with a written improvement notice. It was apparent that Officer 1 was not aware of the OH report. On the same day, PC Prior notified Officer 2 that OH had no concerns about the claimant and requested the return of the claimant's blue card.
53. On 23 January 2020, Officer 2 contacted the CFI with his recommendation to return the blue card to the claimant.

54. On 27 January 2020, Officer 2 and the CFI confirmed that the claimant's blue card could be returned. The return of the blue card to the claimant was confirmed on 30 January 2020.
55. As a result of the claimant not having her blue card, she was unable to take part in some of the training courses required for RaSP. She has undertaken these subsequently. Her application to RaSP has been approved but she has not yet transferred as there is no position yet.
56. The claimant transferred from MO3 on 19 June 2020 to MO19 Specialist Firearms Command which she now works as a Staff Officer to OCU Commander.

Law

Equality Act 2010

57. Section 13 EqA, provides:

"(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others..."

58. Section 23 EqA provides that:

"(1) On comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case.

59. The definition of harassment is contained in section 26 EqA, which provides:

"26. Harassment

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

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

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

(i) violating B's dignity, or

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

...

(4) In deciding whether conduct has the effect referred to in subsection

(1)(b), each of the following must be taken into account –

(a) the perception of B;

(b) the other circumstances of the case;

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

Direct discrimination

60. In determining complaints under the EqA, a Tribunal must apply the shifting burden of proof under section 136(2), which provides, where relevant:

"(1) ...

(2) *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

(3) *But subsection (2) does not apply if A shows that A did not contravene the provision.”*

61. Guidance on the burden of proof was given by the Court of Appeal in *Igen v Wong* [2005] ICR 931. In *Igen* the Court of Appeal established that the correct approach for an employment tribunal to take to the burden of proof entails a two-stage analysis. At the first stage the claimant has to prove facts from which the tribunal could infer that discrimination has taken place. Only if such facts have been made out to the tribunal's satisfaction (i.e. on the balance of probabilities) is the second stage engaged, whereby the burden then 'shifts' to the respondent to prove — again on the balance of probabilities — that the treatment in question was 'in no sense whatsoever' on the protected ground.

62. Direct discrimination also encompasses *unconscious* discrimination. As stated by Lord Browne-Wilkinson in the House of Lords case *Strathclyde Regional Council v Zafar* [1997] UKHL 54:

“Claims brought under the Act of 1976 and the Sex Discrimination Act 1975 present special problems of proof for complainants since those who discriminate on the grounds of race or gender do not in general advertise their prejudices: indeed they may not even be aware of them.”

63. Unreasonable or unfair treatment is not sufficient to transfer the burden of proof to the respondent. There must be other indications of discrimination relating to the treatment in question according to the EAT in *Commissioner of Police of the Metropolis v Osinaike* [2010] UKEAT 0373.

Determination of the Issues

64. We unanimously determine the issues as follows.

Direct sex discrimination

65. We find that the claimant was subjected to the following treatment:

65.1 Officer 1 revoked/removed her firearms licence on or around 5 November 2019 (Item 1);

65.2 Officer 1 commented on or around 5 November 2019 that she would be *“too stressed to hold a firearm after the shock of being informed that she may be subject to UPP Stage 1”* or words to that effect (Item 2);

65.3 In his email to PC Prior dated 5 November 2019 Officer 1 said *“due to the shock you mention and the obvious emotion to such a process maintaining Nicky's Blue Card for a period of time is the correct one”* (Item 3);

- 65.4 In respect of an Occupational Health referral made by Officer 1 on 29 November 2019: the fact of this referral, the manner of this referral i.e. it was made without consulting the claimant and the comment in the referral from that her firearms licence was removed *“due to the additional stress UPP was likely to induce”* (Item 4).
66. We must consider, in relation each of these, whether that treatment was less favourable than the treatment the respondent would have given to others in not materially difference circumstances.
67. We find that items 1 – 3 above did not constitute less favourable treatment. Prior to the hearing, the claimant had not identified an actual comparator and relied on a hypothetical comparator. Despite having the assistance of an experienced Police Federation representative, the claimant was unable to find an actual comparator. We must therefore consider the position of a hypothetical comparator.
68. The claimant has characterised the removal of the blue card being based on a stereotypical assumption that a female officer would be too fragile to cope with the stress of a UPP. The submission is that Officer 1 would not have made that assumption about a male officer.
69. There is nothing in Officer 1’s comments which indicates that this was his reasoning. He refers to the claimant showing ‘emotion’. From the evidence before the tribunal, we find that the overriding emotion which motivated Officer 1 to remove the blue card was the claimant’s display of anger at the meeting on 5 November 2022, seen in the context of earlier emotional reactions by her in other circumstances, such as when Officer 1 challenged her account of a surveillance operation on 1 November 2019. It was not the claimant’s supposed fragility as much as her aggression that prompted Officer 1 to remove the blue card. We accept his evidence that he had not planned to take this step prior to the meeting (which might have been expected if he was concerned that the female officer was ‘fragile’) and that it was the claimant’s conduct in that meeting which led to him taking that step.
70. As far as the referral to OH is concerned, we find that there is insufficient evidence to establish that this was less favourable treatment. There is no less favourable treatment in the fact of the referral. It was a decision made at a senior level for the purpose of making an informed decision about the return the blue card to the claimant and would have been made in any situation where the blue card had been removed due to a concern about the officer’s level of stress.
71. In terms of the manner of the referral, there were mistakes on the form, with some information exaggerated and irrelevant material included. The reference to disciplinary proceedings was incorrect and Officer 1 did not update the reasons for the removal of the blue card to include his later support for its reinstatement. We find that these mistakes were due to Officer 1’s inexperience in completing the form and it is more than possible that he would make similar errors for another officer in similar circumstances. We note that the second OH form corrected these mistakes and was accepted by the claimant.

72. There is a conflict of evidence regarding the input of the claimant in the first OH referral form. We have found that Officer 1 believed that he had sent it to her but there was a system problem which meant that the claimant did not receive it. If there was a failing by Officer 1 in relation to the inclusion of the claimant in drafting the original form, we find that this was not due to the claimant's sex.
73. During the tribunal hearing, Officer 1 was asked if any male officers had cried in front of him. He told the tribunal of one example of an officer who had suffered a bereavement and was upset and cried in front of him. He confirmed that this officer's blue card was not removed from him
74. The claimant now relies on the bereaved officer as a comparator. We do not agree that his circumstances are the same or similar to those of the claimant, as he was not facing a UPP after being on a development plan and having performance concerns raised. He had suffered a bereavement but there was no suggestion that this would affect him in a work context and we were not told anything more than that he had suffered a bereavement.
75. On the evidence before us regarding the comparator, we cannot conclude that his circumstances are analogous to the claimant's. We note that there were occasions when the claimant cried in front of Officer 1 and this did not result in the removal of her blue card. In any event, our finding is that it was not the claimant's crying which led to the removal of the blue card but her anger and aggression.
76. If we are wrong and any of the treatment relied on by the claimant is less favourable treatment, we do not find that it is related to the claimant's sex. The basis of the claimant's claim is that there was a conscious or unconscious assumption on the part of Officer 1 that she would be 'emotional' if she was put under the stress of a UPP and that this assumption is because she is female and females are stereotypically more emotional than men. Even if this stereotype is a commonly held view, which we had no evidence of before us other than the claimant's assertion, we do not agree that this was Officer 1's thought process. If she had remained in the meeting on 5 November and engaged with Officer 1, we do not believe he would have removed the blue card. If a male officer had shown anger and aggression when learning of a UPP, we believe that Officer 1 would have removed his blue card.
77. The claimant relies on a diary note of Officer 2 in which he references his experience of a 'female officer' who took a firearm which she discharged and committed suicide as being something in his mind when considering whether to return the blue card. She suggests that Officer 2 made reference to the officer's sex because he thought that was a relevant factor. Officer 2's evidence was that he would generally put the sex of a relevant officer when reporting such an incident, whether the officer was male or female, and this was just stating a fact. The claimant asks us to note that he had not referred to officers being male in his email to the team on 20 December 2018 which reported two incidents by officers failing to follow instructions at the Armoury. We do not know whether those officers were male or female and no evidence was before us about this. Officer 2's position was that he would generally include the sex of a person he was describing as a matter of course. We

note that, on surveillance reports, the sex of those observed is sometimes included as part of the description. For example, in Officer 1's work diary, he writes "At approximately 11:30 a male and female were put out of the address." . In any event, there is no allegation against Officer 2 in relation to his decision to ratify Officer 1's decision to remove the blue card.

78. We are satisfied that the treatment of the claimant was not based on her sex. It is not for us to determine whether we would have removed the blue card in those circumstances, or whether that was a fair decision. We must focus on whether we believe the decision was due to the claimant being female. By the same token, there are clearly errors on the first iteration of the OH referral form. We are asked to determine whether we believe these errors are related to the claimant's sex. Even if we consider that some of the treatment may be unfair or unreasonable, we find that the reason for this is not related to the claimant's sex.
79. We have also considered whether the gender imbalance within the respondent is relevant to our considerations and we find that it is not. There is nothing to suggest that the claimant was singled out for being female or that she was anything other than an equal and valued member of MO3.
80. We therefore find that the claimant has not shifted the burden of proof and that the direct sex discrimination fails.

Harassment related to sex

81. As set out above, we do not find that the treatment identified as unwanted conduct by the claimant related to her sex.
82. The claimant's evidence does not support the claim that there was a hostile working environment. Her own evidence was that she did not feel harassed. Any comments she made about a negative work atmosphere clearly related to her former line manager and not Officer 1. Those matters are not issue before the tribunal and we make no findings relating to the previous line manager.
83. The documentary and witness evidence before us shows that Officer 1 treated the claimant with courtesy and took numerous steps to support her, even when she showed a lack of engagement. He gave honest feedback about her performance, identifying areas which required improvement and noting when her performance was good. This evidence was not challenged.
84. To the extent that the claimant is aggrieved at having her blue card removed and being put on the UPP, which she regards as unwelcome, we have found that that treatment is not related to her sex.
85. If there is unwelcome conduct by the respondent, we find that the purpose of that conduct was not to violate the claimant's dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment for her.
86. If it is the claimant's perception that the conduct did have that effect, having taken into account the other circumstances of the case, we find it is not reasonable for the conduct to have that effect. We find that Officer 1 was

carrying out his duties as the claimant's line manager in the way that he thought appropriate and proportionate in the context of the claimant's own behaviour.

87. We therefore find that there has been no harassment related to sex and the claimant's harassment fails.

Employment Judge Davidson

Date 13 April 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
13/04/2022.

FOR EMPLOYMENT TRIBUNALS

Note

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was CVP. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.