



EMPLOYMENT TRIBUNALS

Claimant: Mr C Tierney

Respondent: The Chief Constable of the Lancashire Constabulary

HELD AT: Manchester

ON: 20-24 June 2022

BEFORE: Employment Judge Slater
Ms A Jackson
Mr B McCaughey

REPRESENTATION:

Claimant: In person

Respondent: Mr M Holdcroft, counsel

JUDGMENT having been sent to the parties on 8 July 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Claims and issues

1. The claimant's claims were clarified at a case management preliminary hearing on 17 December 2021. The parties confirmed at the start of the hearing that the claims and issues remained as identified in the record of that hearing. During the course of the hearing, some concessions were made, and agreement was reached on some points which affected some aspects of this list.

2. The complaints to be considered by the Tribunal are complaints of direct sex and race discrimination. The claimant identified an actual comparator for all his complaints, being PC Turki. Prior to closing submissions, in answer to a query from the Tribunal, the claimant said that he would like to rely, in the alternative, on a hypothetical comparator if the Tribunal concluded that PC Turki was not an appropriate comparator.

After taking instructions, Mr Holdcroft informed the Tribunal that the respondent did not object to the Tribunal considering, in the alternative, a hypothetical comparator.

3. The same matters were alleged to be sex and or race discrimination. These were as follows, using the numbering in the original list of issues:

1.2.1 The respondent undertook a disciplinary investigation into the claimant of over 20 months in length which was inordinate and unjustified. During the course of the hearing, it was agreed that the investigation itself was around 14 months rather than 20 months and the claimant agreed that the respondent was justified in undertaking the disciplinary investigation. The point remaining in dispute, therefore, was whether the length of time for the investigation was inordinate.

1.2.2 the respondent's investigation failed to adhere to the College of Policing Code of Ethics, the Home Office Guidance on the Performance of a Professional Standards Department in Policing, statutory guidance for the referral of matters to the IOPC, the Police Conduct Regulations 2020, and the ACAS guide to disciplinary matters.

1.2.3 The respondent failed to consider breaches of standards by the comparator but did consider alleged breaches by the claimant.

1.2.4 The Respondent failed to undertake a professional standards investigation into the comparator despite evidence justifying such an investigation.

4. There had been a complaint, at 1.2.5 about referring the claimant to a misconduct hearing. However, during the course of the hearing, the claimant agreed that it was justified and confirmed that he was no longer relying on this as a complaint of unlawful discrimination.

5. The list of issues identified that, if the respondent did the things alleged, the Tribunal needed to consider whether this was less favourable treatment. The Tribunal was to decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimants. The claimant relies for his comparator on PC Turki. The claimant says he was treated worse than PC Turki. Following the discussion prior to final submissions, as noted above, the Tribunal was also to consider, in the alternative, whether the claimant was treated less favourably than a hypothetical comparator of the other sex and/or another race.

6. If the claimant was treated less favourably, the Tribunal was to consider whether this was because of sex or race.

Consideration of anonymity orders

7. The Tribunal raised the issue, before we started hearing evidence, as to whether we should make a restricted reporting order and an anonymity order, to protect the identity of the claimant, as the alleged victim of a sexual offence, which gives him the

right to lifelong anonymity. The claimant unequivocally waived his right to anonymity so, given the principle of open justice, we made no orders.

8. After closing submissions, the Tribunal raised the issue of whether we should make an anonymity order protecting the identity of PC Turki. We invited submissions from the parties and gave them time to consider the matter before making their submissions. The respondent made submissions in favour of making an anonymity order. The claimant made submissions opposing the making of an anonymity order.

9. We concluded that PC Turki's Article 8 rights were engaged. Our judgment would involve putting into the public domain information personal to her, relating to her personal relationships and her mental health. We took into account that she was not the claimant or respondent to these proceedings and was not a witness. She had not had an opportunity to address us on the impact which this might have on her. We noted that her identity was kept private by the police misconduct hearing into the claimant's conduct, but the panel had refused anonymity for the claimant. It is possible that misconduct proceedings will be taken against PC Turki and that she will not be given anonymity in relation to that hearing. We can anticipate that having her private information in the public domain may cause PC Turki distress and could potentially cause embarrassment or even damage to relationships with family or friends if they were not aware of this information. However, we have no evidence as to likely harm.

10. Article 6 and Article 10 are engaged. Article 6 is the entitlement to a fair and public hearing. Article 10 is the right to freedom of expression which includes the right to receive and impart information.

11. Any derogation from the principle of open justice is exceptional. The general rule is that hearings are carried out in, and judgments and orders are, public. Derogations from the general principle can only be justified in exceptional circumstances, when they are strictly necessary as measures to secure the proper administration of justice.

12. We decided that, balancing PC Turki's A.8 rights, A.6 and A.10 rights, the A.6 and A.10 rights outweighed, in this case, PC Turki's A.8 rights. PC Turki's right to a private life will be interfered with by this public judgment identifying her and disclosing information about her personal relationships and mental health condition. However, we have no clear and cogent evidence that harm would be likely to result to her because of this information becoming publicly available, which would outweigh the public interest in open justice.

Facts

13. The claimant became a police constable with the respondent in 2008 after two years as a special constable. The claimant identifies himself as white British.

14. PC Turki joined the respondent on 1 July 2016. She had moved from London, away from friends and family, to work with the respondent. She was early on in her police career, being a student officer for some of the relevant time. PC Turki has a white British mother and a Tunisian father and identifies herself as British, of Arab origin.

15. The claimant and PC Turki met at work in 2017. The claimant was 30 or 31 at the time, with about nine years' experience as a police constable. PC Turki was eight years younger, at the start of her career. Whilst the claimant is correct to say that he and PC Turki held the same rank, we find that there was a considerable difference in their professional experience at the time of their relationship. There was also a considerable difference between them in experience of life and relationships.

16. We have been told, and the claimant accepted, that PC Turki had PTSD.

17. In the years 2018 to 2020, the claimant and PC Turki had an on/off personal relationship.

18. In March 2020, Detective Constable Normanton reported a concern to a senior officer, based on conversations with PC Turki, that PC Turki may have been subjected to coercive and controlling behaviour by the claimant. This report was passed to the Professional Standards Department (PSD). They began a fact find, interviewing PC Turki in early April 2020. The claimant agreed in evidence that PC Turki was not the person who initiated the PSD investigation.

19. It appears that, from an early stage in relation to the investigation of the claimant's conduct, the respondent accorded PC Turki victim status, although they were not conducting a criminal investigation.

20. A crime was not recorded at the time of information being supplied to PSD in April 2020, although one was later recorded in March 2021 after DC Toothill took over the investigation from DC Cooper who retired at the end of March 2021.

21. PC Turki produced a large quantity of electronic messages that had been sent by her and the claimant but did not agree to provide the respondent with her mobile phone to interrogate. It is common ground that the respondent did not have power to seize her phone. Later in the investigation against the claimant, the claimant also did not surrender his phone but supplied selected messages.

22. Based on the messages which PC Turki provided to PSD, DC Cooper identified that some messages from the claimant appeared to be racist and could lead to misconduct proceedings.

23. The messages provided by PC Turki also gave rise to some concern about messages of a potentially discriminatory nature sent by PC Turki to the claimant. A decision was taken by DCI Clegg, who was the appropriate authority within PSD at the time, to "pend" any investigation into PC Turki until the outcome of conduct proceedings against the claimant. PC Turki was a potential witness in the case against the claimant. DCI Clegg acknowledged that this was not a criminal investigation but considered that the same degree of consideration should be given as in a criminal matter in that PC Turki had suffered harm of a mental and emotional nature. In view of her rights as a victim in the conduct matter against the claimant, he believed it would be wholly inappropriate to undertake an investigation into the conduct of PC Turki until the case against PC Tierney had been concluded.

24. The claimant was served with notice of investigation on 14 May 2020. The allegations were about communications with PC Turki which were identified as being potentially gross misconduct. The claimant was placed on alternative duties at this time. He remained either on alternative duties or on sick leave until the misconduct hearing which led to his dismissal. The claimant has made various complaints in his evidence about the lack of work and working conditions when he was on alternative duties. We do not consider this relevant to the complaints of discrimination which we need to consider so make no findings of fact in relation to these matters.

25. Further concerns were raised about the claimant and his behaviour in relation to other young female officers, pursuing them at work with a view to a relationship. Witness statements were taken from various officers. Constabulary systems were also checked, which revealed that the claimant had used police systems possibly for non-policing purposes.

26. A further notice of investigation was served on the claimant on 23 September 2020 in relation to his conduct towards other female police officers and use of police resources. This conduct was categorised as potentially misconduct.

27. The first interview with the claimant took place on 9 October 2020 and was around five hours long. The interview included the claimant making an allegation that PC Turki sexually assaulted him in December 2019. He had not reported that at time. The respondent concedes that they should have recorded this as a crime within 24 hours of the interview and should have referred PC Turki's conduct to the IOPC within two days of the interview. They did not. The crime was recorded in April 2021.

28. Statements were taken from other potential witnesses. There was a telephone conversation with a former police officer, Reagan Arlis, who was a witness to some of the events at the time of the alleged sexual assault although, on the claimant's account, would not have been able to see the actual assault. DC Cooper attempted to follow this up by emails to Ms Arlis. Unfortunately, as was discovered during this hearing, the email address for Ms Arlis had been recorded incorrectly so Ms Arlis did not receive the emails. No further effort was made to contact Ms Arlis. However, her evidence would have been more relevant to allegations against PC Turki than in relation to the conduct charges the claimant was facing.

29. The second interview with the claimant took place on 2 November 2020. This was again around five hours in length. It is agreed that the claimant's later written complaint dated 12 April 2021 did not contain anything that he had not raised in the two interviews.

30. Further statements from witnesses were taken in November and December 2020.

31. Throughout the investigation, DC Cooper, and later DI O'Neill, provided updates to the claimant on a regular basis. DC Cooper had a prompt on the respondent's system to contact the claimant every 28 days. Updates were provided, usually via the claimant's Police Federation representative but sometimes via his welfare officer.

32. On 21 December 2020, DC Cooper informed the claimant that she was compiling her final report.

33. On 12 January 2021, DC Cooper updated the claimant via his welfare officer and Federation representative that the final report was being reviewed by her immediate line supervisor.

34. DC Toothill began in PSD on 1 March 2021. She worked alongside DC Cooper and took over cases, including that involving the claimant, when DC Cooper retired at the end of March 2021.

35. On 3 March 2021, DC Cooper provided an amended final report for further review by her immediate line supervisor.

36. On 15 March 2021, a statement was taken from Zahid Dudhia, who was employed by the respondent as a PST adviser. He was asked to comment on the messages exchanged between the claimant and PC Turki. He wrote that, having read the comments made by both the claimant and PC Turki, he found it disturbing that they were both police constables serving the diverse communities of Lancashire with some of the offensive terminology used in their conversations. He feared their impartiality would come under scrutiny whilst dealing with certain members of groups of the force's communities, thus bringing the organisation into disrepute.

37. On 19 March 2021, a timeliness report was submitted to the Office of the Police and Crime Commissioner. This was to explain why the investigation had not been completed by 12 months. The reason given for the length of time taken to investigate was that the investigation had been extensive with lots of evidence and material generated. The estimated completion date was given as 19 March 2021. Since this was the date the report was submitted, this date was clearly incorrect.

38. DC Cooper provided the final report for review by her second line supervisor Detective Inspector O'Neill. On 23 March 2021, DI O'Neill requested a meeting with Lancashire Constabulary legal services to include discussion about the conduct of both the claimant and PC Turki. This meeting took place on 31 March 2021.

39. The claimant was provided with a draft report on 9 April 2021.

40. On 12 April 2021, the claimant sent to PSD a 52 page document with counter allegations about PC Turki. In response to a question from the respondent, the claimant confirmed on 15 April 2021 that he was not making a criminal complaint. The respondent recorded, on 15 April 2021, a crime as alleged by the claimant against PC Turki.

41. The claimant continued to receive updates from DI O'Neill, via the claimant's welfare officer. The claimant was advised, via his Federation representative on 12 May 2021, that legal advice was being sought following receipt of his statement.

42. On 17 May 2021, the respondent created a conduct case on Centurion, the system used within PSD, for the allegations made against PC Turki.

43. On 7 June 2021, DI O'Neill provided the claimant with a crime number and explained the process, writing that they were taking legal advice and that the situation was complicated, with allegations both ways.
44. The respondent took legal advice. Following this, DC Toothill began to finalise the investigation report. This was submitted on 21 July 2021 to DCI Clegg.
45. On 4 August 2021, DCI Clegg informed DC Toothill that he intended to refer the claimant to a gross misconduct hearing. Both the claimant and PC Turki were informed of this decision on 5 August 2021.
46. On 5 August 2021, the claimant notified ACAS of a potential claim under the early conciliation process. The early conciliation certificate was issued on 11 August 2021.
47. DCI Clegg confirmed, after review, his decision to "pend" a potential misconduct investigation against PC Turki until after the claimant's case had concluded and to maintain her victim status.
48. The claimant again confirmed on 10 August 2021 that he did not wish to pursue any criminal complaint against PC Turki.
49. On 17 August 2021, the claimant presented a claim to the Employment Tribunal.
50. DCI Clegg completed his final assessment of conduct in relation to the claimant on 7 September 2021. He directed that the claimant was to attend a misconduct hearing to face charges of gross misconduct and misconduct.
51. A legally qualified chair was appointed in September 2021 but, in December 2021, declined to chair the panel as a result of national issues relating to indemnities. A new legally qualified chair was appointed in January 2022.
52. The respondent referred the matter alleged against the claimant to the IOPC on 16 September 2021.
53. In a response to the allegations of gross misconduct dated 24 March 2022, the claimant broadly admitted all the facts alleged against him. In an addendum response dated 28 April 2022, the claimant admitted gross misconduct in relation to equality and diversity and discreditable conduct.
54. The misconduct hearing panel dismissed the claimant with immediate effect.
55. On 26 May 2022, DC Toothill made a mandatory referral to the IOPC in relation to the allegation made by the claimant against PC Turki of sexual assault. On 1 June 2022, the IOPC replied, directing that the investigation into PC Turki should be a local investigation undertaken by the respondent.
56. As at the date of this hearing, the Tribunal was told that PC Turki had not yet been served with notice of the investigation and continues to serve without restriction on her duties.

57. We heard evidence from both DC Toothill and DS Clegg about times taken to deal with investigations and workload within PSD. We find, based on this evidence, that there is a demanding case load in PSD. It is not uncommon for investigations to last for more than 12 months. DC Toothill took over a caseload of 10 cases and, as one is completed, she is allocated another. In her 12 months of experience in PSD, the investigations into 6 of the cases she has dealt with have taken more than 12 months.

Submissions

58. Mr Holdcroft, for the respondent, provided written submissions and made brief oral submissions. The claimant made oral submissions only.

59. The respondent submitted, in summary, that there was no evidence of less favourable treatment or evidence from which an inference of discrimination might be drawn. The respondent submitted that there were material differences between the position of the claimant and PC Turki, such that she was not an appropriate comparator. The respondent admitted some breaches of requirements but submitted that the admitted breaches showed a common failure to adhere to the letter of the requirements and that the claimant and PC Turki were treated in the same/similar manner in that regard.

60. The claimant submitted that the respondent had taken an inordinate length of time to deal with his case; there was no reason why the initial interview could not have been conducted earlier. After the second and final interview, there was a further nine months before the respondent decided to progress to a gross misconduct hearing. The hearing was delayed for a further nine months after a decision to progress. The claimant referred to the case of **Credit Suisse v Volkova** [2019] where a judge criticised a 17 month investigation. The claimant confirmed that this was a case of unfair dismissal.

61. The claimant submitted that there were clear breaches of policies. He submitted that victim status applies where there is an alleged criminal offence. The claimant said he had not been subjected to a criminal investigation so the policy could not apply. The respondent had tried to make this fit a misconduct matter.

62. The claimant said he failed to see how this investigation had been objective when the actions of his comparator had never really been considered. The claimant accepted that PC Turki suffered from complex PTSD. The claimant submitted that the authority had made flawed decisions, treating his comparator preferentially. He submitted that, if there had been a joint misconduct hearing, i.e. the claimant and PC Turki, he would not be at this Tribunal.

63. The claimant submitted that PC Turki was an appropriate comparator. He said there was only an eight year age difference between them; she was an adult female and he was an adult male. Both of them were warranted officers of the same rank.

64. The claimant submitted that the respondent had failed to address the lack of investigation into his comparator.

Law

Direct discrimination

65. Section 13(1) Equality Act 2010 (EqA) provides: “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”.

66. Section 23(1) EqA provides that “on a comparison of cases for the purposes of section 13....there must be no material difference between the circumstances relating to each case.”

67. Sex and race are protected characteristics.

68. Section 136 EqA provides:

“(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.”

69. The Tribunal makes findings of fact, having regard to the normal standard of proof in civil proceedings, which is on a balance of probabilities. A party must prove the facts on which they rely. A claimant must prove they suffered the treatment alleged, not merely assert it.

70. Once the relevant facts are established, the Tribunal must apply section 136 in deciding whether there is unlawful discrimination.

71. The Tribunal must consider, at the first stage, all the evidence, from whatever source it has come, in deciding whether the claimant has shown that there is a prima facie case of discrimination which needs to be answered.

72. The fact that a claimant has been subjected to unreasonable treatment is not, of itself, sufficient as a basis for an inference of discrimination so as to cause the burden of proof to shift.

73. If the claimant establishes facts from which the Tribunal could conclude there was unlawful discrimination, the burden passes to the respondent to provide an explanation for its actions. The Tribunal must find that there was unlawful discrimination unless the respondent provides an adequate, in the sense of non-discriminatory, explanation for the difference in treatment.

74. Less favourable treatment will be because of the protected characteristic if the characteristic is an “effective cause” of the treatment; it does not need to be the only or even the main cause. The motivation may be conscious or unconscious.

75. In some cases, particularly those involving a hypothetical comparator, it may be appropriate for the Tribunal to proceed straight to the second stage, considering the reason why the respondent acted as it did.

Conclusions

76. The matters listed at 1.2.1 to 1.2.4 in the list of issues are the matters the claimant alleges to be less favourable treatment because of sex and race. In relation to each matter, the claimant compares himself with PC Turki or, alternatively, with a hypothetical comparator.

77. The claimant made various other complaints in his evidence. However, the complaints we are to consider are those which were identified in the list of issues, which the claimant confirmed at the hearing were the complaints with which the Tribunal was concerned.

78. It appeared to us that much of the claimant's evidence and submissions related to the claimant's view that he had been unfairly treated. However, this is not a complaint of unfair dismissal. Police officers cannot bring complaints of unfair dismissal in the Employment Tribunal. The claimant's case is one of sex and race discrimination. Case law is clear that unfair treatment or unreasonable treatment (if this were to be found) is not enough to give rise to an inference of unlawful discrimination. In reaching our conclusions, we have to apply the law relating to sex and race discrimination to the facts we have found.

79. Although, at the stage of closing submissions, we agreed, with the consent of the respondent, to consider whether the claimant had been less favourably treated than a hypothetical comparator, as an alternative to the actual comparison with PC Turki, the claimant's evidence and arguments have been directed to how he considers himself to have been unfairly treated by comparison with PC Turki. We accept that there is a superficial similarity between the situations of the claimant and PC Turki if one considers only the allegations about text messages sent by each to the other. However, there were significant differences between the situations of the claimant and PC Turki and the investigation identified significant other issues relating to the claimant which did not relate to PC Turki e.g. a potential pattern of behaviour in the claimant pursuing personal relationships with other young female officers and use of police systems for non-policing purposes. The trigger for the investigation into the claimant was a senior officer raising concerns about a potentially coercive relationship between the claimant and PC Turki, with the claimant being the one suspected of the coercive behaviour. There was a considerable age disparity and disparity in experience in service and life experience between the claimant and PC Turki. The claimant also had PTSD. These were aspects which made PC Turki potentially vulnerable to being the victim in a coercive relationship. The respondent decided, in the circumstances, to accord PC Turki victim status during the conduct proceedings against the claimant, putting on hold an investigation into concerns which came to light about PC Turki until after the outcome of those conduct proceedings. The claimant has accepted that, initially, it was right to accord PC Turki victim status. We conclude the decision of the respondent to accord PC Turki victim status until the conclusion of proceedings against the claimant was one open to the respondent in the circumstances, which does not appear to be tainted by sex or race discrimination. The way the claimant's conduct case was progressed to a misconduct hearing and PC Turki's was not, at the same time, flows from this decision.

80. We need to consider whether PC Turki was an appropriate comparator in relation to each of the complaints or, alternatively, whether the claimant has proved facts which would allow us to conclude there was less favourable treatment than a hypothetical

comparator. In relation to the majority of the particular complaints, we have concluded that PC Turki is not an appropriate comparator.

Complaint 1.2.1

81. In relation to the undertaking of a disciplinary investigation into the claimant, the only issue remaining in dispute was whether the length of the investigation was inordinate. It was agreed that the investigation took just over 14 months. This began with the serving of notice on 14 May 2020 and concluded with the submission of the final report on 21 July 2021. There is an expectation in the Home Office guidelines that the majority of cases will take between 6 to 12 months to complete but a recognition that investigations which are particularly complex may take longer than 12 months. This was a complex investigation. For example, DC Toothill told us that there were over 500 documents to review. However, we do not consider that the length of time taken for the investigation can be entirely attributable to the work needed to be done in relation to that investigation. There was a lengthy delay between the serving of the first notice on the claimant in May 2020 and his first interview in October of that year that is not wholly accounted for by the work done on the case. We consider it likely that delays were also attributable to the other workload in PSD. We have no evidence that other investigations, for women or people of a different race to the claimant, were done more speedily. The evidence we do have is that it is not uncommon for investigations to take longer than 12 months.

82. The burden is on the claimant to prove facts from which we could conclude that the length of the investigation was less favourable treatment because of sex and or race. The claimant has compared himself with PC Turki and, alternatively, with a hypothetical comparator. PC Turki is of a different sex and race to the claimant. For PC Turki to be an appropriate comparator, there must be no material difference between the claimant's circumstances and PC Turki's circumstances. We conclude that the circumstances of PC Turki were not the same. The claimant was being investigated; PC Turki was not being investigated at the same time. The claimant was being investigated because a concern was raised by another officer about potentially coercive behaviour from the claimant towards PC Turki. Further concerns were then raised about the claimant's conduct in relation to approaching other young female officers for personal relationships and other concerns emerged in the course of the investigation. Possible conduct concerns were identified in relation to PC Turki, arising from messages between the claimant and PC Turki. However, a decision was taken to "pend" any investigation into PC Turki until the conclusion of the disciplinary process in relation to the claimant, in which PC Turki had victim status and in relation to which PC Turki might have been a witness.

83. Following the claimant's dismissal at the misconduct hearing, fact-finding has begun into PC Turki's conduct. She has not yet been served with a notice of investigation. We do not know how long the investigation will take. The claimant and PC Turki were at different stages of the disciplinary process so a comparison with PC Turki is not appropriate.

84. The claimant has not proved facts from which we could conclude that a hypothetical comparator of a different sex and race in the same material circumstances would have been subjected to a more expeditious investigation. We

consider the relevant material circumstances would have been that concerns had been raised about the comparator's conduct, leading to a fact-finding and then service of a notice of investigation and that further concerns then came to light about the comparator which made the investigation more complex than it initially appeared. The evidence we have heard about other investigations is that it is not uncommon for investigations to last more than 12 months.

85. We conclude, therefore, in relation to the matter at 1.2.1 of the list of issues, that the complaints of direct sex and race discrimination are not well founded.

86. Had we concluded that the burden of proof passed to the respondent, we would have been satisfied that the claimant's sex and race were not material factors in the length of the investigation. The length of the investigation was due to the matters to be investigated and the workload in the professional standards department.

Complaint 1.2.2

87. The claimant alleges that the respondent's investigation failed to adhere to the College of Policing Code of Ethics, the Home Office Guidance on the Performance of a Professional Standards Department of Policing, statutory guidance for the referral of matters to the IOPC, the Police Conduct Regulations 2020 and ACAS guide to disciplinary matters.

88. We conclude that the ACAS guide to disciplinary matters does not apply to police officers, who are officeholders rather than employees. The claimant suggested that, even if the Code did not strictly apply, the respondent should have followed its guidance. It is not relevant for us to consider, or express a view, as to whether there were things suggested by the Code but not done by the respondent, which it would have been reasonable or fair to do. We have to consider whether failure to follow the ACAS Code, which did not apply to police officers, was direct sex or race discrimination. We have no evidence to suggest that the respondent would apply the standards in this Code when dealing with conduct allegations against officers of a different sex and or race to the claimant. We conclude that the complaint, in so far as it relates to the ACAS Code, is not well founded.

89. The respondent has made concessions in relation to some breaches of the other standards. They concede that the respondent did not record the crime of the alleged sexual assault against the claimant within 24 hours of the claimant's interview in October 2020 and that they should have done so to comply with national crime recording standards. They concede that the failure to record the allegation of the crime in time is an arguable breach of the code of ethics. They also concede that they did not refer PC Turki's conduct to the IOPC within two days of the claimant's interview on 9 October 2020.

90. The respondent recorded the alleged crime against the claimant in April 2021.

91. The respondent recorded the alleged crime with PC Turki as the victim and the claimant as the offender (a domestic abuse-related incident) in March 2021, although this had come to the attention of PSD in late March or early April 2020.

92. DC Toothill recorded both crimes after she had taken over the case.

93. The respondent did not refer either the claimant's or PC Turki's conduct to the IOPC within two days of the matters being reported, as they should have done. The respondent referred the matter alleged against the claimant on 16 September 2021, a delay of approximately 17 to 18 months. The respondent did not refer the matter alleged against PC Turki until 26 May 2022, a delay of approximately 19 months.

94. We consider a comparison can be made between the claimant and PC Turki in relation to breaches of the relevant standards and guidance about recording of crimes, and reporting to the IOPC, given that alleged offences by both the claimant and PC Turki, which required recording and reporting, came to the attention of PSD. However, we conclude that the claimant has not proved facts from which we could conclude that this was direct sex and or race discrimination. The evidence shows that there were comparable delays in recording alleged crimes against both the claimant and PC Turki. There is no evidence to suggest that the claimant was treated less favourably in this respect than PC Turki. There is no evidence that the decision making was influenced by the sex or race of the claimant or PC Turki.

95. Other matters the claimant appears to rely on as constituting breaches of the standards and guidance are delays in the disciplinary process. The Home Office guidance includes an expectation that investigations will normally be completed within 6 to 12 months. It does not set down a mandatory timetable. We have dealt with the matter of the length of investigation in relation to issue 1.2.1, concluding that this was not less favourable treatment because of sex and or race.

96. The claimant takes issue with the timeliness report prepared by the respondent. In accordance with Home Office guidance, if the investigation is taking more than 12 months, this report has to be produced. It appears that the claimant's primary concerns about this report are with what he considers to be a lack of substance in what is written. Although the information given is brief, we do not consider that the lack of more detail is itself a breach of the Home Office guidance. It does appear to us that there is a minor breach of the guidance in that the expected date of completion is given as being the date on which the report was submitted, which is clearly incorrect. The expected date of completion is one of the matters required to be included in the report. In relation to the timeliness report, PC Turki cannot be an appropriate comparator because there has not been an investigation into her lasting more than 12 months and, therefore, requiring a timeliness report. We have no evidence which would allow us to conclude that a hypothetical comparator of a different sex and or race would have had their timeliness report completed entirely in accordance with the guidance.

97. The Police Conduct regulations require updates every four weeks to a person under investigation, during the course of the investigation. We have found that the claimant was regularly updated, in accordance with this timescale. In addition, PC Turki could not be an appropriate comparator, since there was no investigation ongoing against her at the time and there is no evidence to suggest a hypothetical comparator would have been treated more favourably in relation to updates.

98. We conclude that the claimant has not proved facts from which we could conclude that any breaches of the Code of Ethics, the Home Office guidance, statutory guidance

for the referral of matters to the IOPC and the Police Conduct Regulations 2020 constituted less favourable treatment because of sex and or race.

99. We conclude that this complaint is not well founded.

Complaint 1.2.3

100. The claimant alleges less favourable treatment because of sex and or race in that the respondent failed to consider breaches of standards by the comparator but did consider alleged breaches by the claimant.

101. The respondent considered breaches of standards by the claimant, leading to his dismissal for gross misconduct. They did consider the possibility of breaches of standards by PC Turki but they put on hold an investigation into these breaches until the outcome of the claimant's disciplinary proceedings. The respondent, as previously noted, had accorded PC Turki victim status. It was possible that PC Turki would have been a witness in the disciplinary proceedings against the claimant. The respondent moved swiftly after the outcome of the claimant's disciplinary hearing to contact the IOPC and, when directed by them to carry out the investigation locally, to start the fact-finding. As at the date of this hearing, no notice of investigation had been served on PC Turki. We note that, in relation to the claimant, the instigation of fact-finding was the end of March or beginning of April 2020 and it took until 14 May 2020 to serve the claimant with a notice of investigation. A similar amount of time has not yet passed since the instigation of fact finding into PC Turki.

102. The respondent is now considering alleged breaches by PC Turki. Insofar as the claimant's complaint is that the respondent did not investigate alleged breaches by PC Turki at the same time as investigating alleged breaches by the claimant, the claimant has not proved facts from which we could conclude that the decision to "pend" the investigation into PC Turki until after the conclusion of the claimant's disciplinary proceedings was tainted by sex or race discrimination. If the burden of proof had passed to the respondent, we would have concluded that the respondent had provided a non-discriminatory explanation for their actions, as referred to previously.

103. We conclude that this complaint is not well founded.

Complaint 1.2.4

104. This allegation is that the respondent failed to undertake a professional standards investigation into the comparator despite evidence justifying such an investigation. We consider that this complaint is, in effect, the same as that at 1.2.3. For the reasons given in relation to 1.2.3, we conclude that this complaint is not well founded.

Overall conclusion

105. For the reasons given, we have concluded that none of the complaints of sex and/or race discrimination are well founded and the complaints are dismissed.

Employment Judge Slater

Date: 19 July 2022

REASONS SENT TO THE PARTIES ON

19 July 2022

FOR THE TRIBUNAL OFFICE

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