EMPLOYMENT TRIBUNALS

Claimant:	**Mr M Lachiri**	
Respondent:	**The Chief Constable of North Wales Police**	
Heard at:	**Mold**	**On: 3, 4, 5, 6, 7, 10 and 11 (in chambers) October 2022**
Before:	**Employment Judge S Jenkins**	
Members:	**Mr K Ghotbi-Ravandi**	
	Mrs C Peel	

Representation:
Claimant: In person
Respondent: Ms V Von Wachter (Counsel)

RESERVED JUDGMENT

The Claimant's claims of; direct discrimination on the ground of race, direct discrimination on the ground of religion, indirect religious discrimination, harassment related to race, and harassment related to religion; all fail and are dismissed.

REASONS

Background

1. The hearing was to consider the Claimant's claims of; direct discrimination on the ground of race, direct discrimination on the ground of religion, indirect religious discrimination, harassment related to race, and harassment related to religion. Those claims were initially brought on 20 January 2019, with amendments to introduce events which took place after that date having been subsequently permitted.

2. We heard evidence, via written witness statements and orally, from the Claimant on his own behalf, and from five serving or former officers on behalf of the Respondent; former Detective Superintendent John Hanson, Detective Superintendent Jackie Downes, Sergeant Richard Evans, Detective Constable Andrew Osborne, and Detective Sergeant Jim Jones.

3. We considered the documents in the hearing bundle spanning 511 pages to which our attention was drawn, and we considered the parties' written and oral closing submissions.

Preliminary matters

4. Prior to the hearing, the Respondent indicated that it objected to the inclusion of certain paragraphs within the Claimant's witness statement and applied for an order that they be deleted. The Claimant objected to that and indicated his own concern that three documents had been included in the hearing bundle by the Respondent at a late stage without agreement, and he applied for them to be removed.

5. Both applications were considered by the Judge sitting alone as preliminary issues. For reasons given orally at the hearing, the Judge directed that several paragraphs, which broadly related to matters which had been the subject of deposit orders which were not paid and which were therefore subsequently struck out, should be redacted, but that other matters, despite being in the main significantly historic, should be allowed to remain. However, that was only on the basis that they potentially provided background to the Claimant's claims and not as claims in their own right. The Claimant had confirmed that he did not advance those paragraphs as claims.

6. The Judge also allowed the additional documents to remain in the bundle on the basis that they were referred to within some of the witness statements and therefore had relevance for the issues under consideration.

Issues

7. The issues we had to address had been finalised following a Preliminary Hearing before Employment Judge Evans on 9 December 2021, and were as follows.

    1. ***Direct racial and religious discrimination (Equality Act 2010 section 13)***

        1.1 The Claimant describes himself as being of Arab origin and a Muslim.

        1.2 Did the Respondent do the following things:

1.2.1 Allegations 2 (religion), 5 (race), 6 (race), 8 (race and religion), 10 (race), 14 (race), 17 (race and religion), 21 (race and religion), 22 (race and religion), 23 (race and religion), 24 (race and religion), 27 (race and religion), 28 (race and religion) and 29 (race and religion).

1.3 Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's.

If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated.

1.4 If so, was it because of race or religion?

1.5 Did the Respondent's treatment amount to a detriment?

2. ***Indirect discrimination (Equality Act 2010 section 19)***

2.1 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCP:

2.1.1 Officers were required to listen to their radios at all times whilst on duty.

2.2 Did the Respondent apply the PCP to the Claimant?

2.3 Did the Respondent apply the PCP to persons with whom the Claimant does not share the characteristic with or would it have done so?

2.4 Did the PCP put persons with whom the Claimant shares the characteristic, e.g. people of Islamic faith at a particular disadvantage when compared with persons with whom the Claimant does not share the characteristic such as non-Muslim people.

2.5 Did the PCP put the Claimant at that disadvantage?

2.6 Was the PCP a proportionate means of achieving a legitimate aim?

2.7 The Tribunal will decide in particular:

2.7.1 was the PCP an appropriate and reasonably necessary way to achieve those aims;

2.7.2 could something less discriminatory have been done instead;

2.7.3 how should the needs of the Claimant and the Respondent be balanced?

3. Harassment related to race and religion (Equality Act 2010 section 26)

3.1 Did the Respondent do the following things:

3.1.1 Allegations 2 (religion), 3 (race and religion), 5 (race), 6 (race), 8 (race and religion), 9 (race), 10 (race), 12 (race), 14 (race), 17 (race and religion), 21 (race and religion), 22 (race and religion), 23 (race and religion), 24 (race and religion), 27 (race and religion), 28 (race and religion) and 29 (race and religion).

3.2 If so, was that unwanted conduct?

3.3 Did it relate to race and/or religion?

3.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

3.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

4. Remedy for discrimination or victimisation

4.1 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

4.2 What financial losses has the discrimination caused the Claimant?

4.3 Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

4.4 If not, for what period of loss should the Claimant be compensated?

4.5 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

4.6 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

4.7 Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

4.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

4.9 Did the Respondent or the Claimant unreasonably fail to comply with it?

4.10 If so is it just and equitable to increase or decrease any award payable to the Claimant?

4.11 By what proportion, up to 25%?

4.12 Should interest be awarded? How much?

8. It had been agreed that this hearing would focus on liability, and therefore the issues relating to remedy would only fall to be considered at a later hearing, if the claims succeeded.

9. As can be seen from the List of Issues, the particular acts of direct discrimination and harassment were referenced in a separate Schedule of Allegations which was attached to the List of Issues as an Appendix, and which is also attached as an Appendix to this Judgment. That Schedule had been addressed and updated on several occasions, the latest, and final, iteration being set out by Judge Evans following the Preliminary Hearing in December 2021. As can be seen, although the allegations number up to 29, several were struck out, having been made the subject of deposit orders which were not paid, which meant that 18 allegations ultimately fell to be considered.

10. The List of Issues made no mention of any time limit issues. However, we noted that the Respondent continued to maintain that several of the Claimant's allegations of less favourable treatment or unwanted conduct had been brought out of time and should not be considered to be part of a course of conduct, the last act in which fell within time.

11. As the time limit points had not been addressed at any of the Preliminary Hearings in this case, and as matters relating to time limits go to the Tribunal's jurisdiction, the matter remained one for us to determine.

Law

12. The Claimant's direct discrimination and harassment claims broadly involved the same acts or omissions. Direct discrimination is dealt with under Section 13 of the Equality Act 2010 ("Act"), which provides that a person discriminates against another if, because of a protected characteristic, in this case race or religion, they treat the other person less favourably than they treat or would treat others. That therefore involves a comparison between the person claiming that they have been treated less favourably and an actual or hypothetical comparator.

13. In that regard, section 23 of the Act notes that, for the purposes of the comparison, there must be no material difference between the circumstances relating to each case. In this case, the Claimant did not cite any named comparators, but relied on comparisons with hypothetical employees, contrasting with his position as a Moroccan national, with what he described as Arab ethnicity, and an adherent of the Islamic religion.

14. Harassment claims are dealt with under Section 26 of the Act. That provides that a person harasses another where they engage in unwanted conduct related to a relevant protected characteristic, i.e. in this case race or religion, and that conduct has the purpose or effect of violating the other person's dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for them. Section 26(4) then provides that, in deciding whether any unwanted conduct has the required effect, each of the following must be taken into account; the Claimant's perception, the other circumstances of the case, and whether it is reasonable for the conduct to have had that effect.

15. Indirect discrimination claims are dealt with by Section 19 of the Act and that provides that a person indirectly discriminates against another if they; apply a provision, criterion or practice ("PCP") which they apply, or would apply, to persons with whom the Claimant does not share the characteristic; which puts, or would put, persons with whom the Claimant shares the characteristic at a particular disadvantage when compared with persons with whom the Claimant does not share it; which puts, or would put, the claimant at that

disadvantage; and which the respondent cannot show to be a proportionate means of achieving a legitimate aim.

16. The burden of proof provisions within the Act were also relevant. Section 136 of the Act provides that we would first need to consider whether there were any facts from which we could conclude, in the absence of a non-discriminatory explanation from the Respondent, that acts of unlawful discrimination had taken place. If so, the burden would then shift to the Respondent to demonstrate a non-discriminatory explanation. In that regard, the Appellate Courts have regularly made clear, for example the Court of Appeal in ***Khan -v- The Home Office*** **[2018] EWCA Civ 578**, and the Employment Appeal Tribunal in ***Chief Constable of Kent Constabulary -v- Bowler*** **(UKEAT/0214/16)**, that the Tribunal should avoid a mechanistic approach to the drawing of inferences.

17. We were also conscious that the Court of Appeal, in ***Madarassy -v- Nomura International PLC*** **[2007] ICR 867**, had noted that the bare facts of a difference in status or a difference in treatment only indicate a possibility of discrimination, and are not, without more, sufficient material from which a Tribunal could conclude that, on the balance of probabilities, a Respondent has committed an act of unlawful discrimination.

18. With regard to whether the claims were brought within the required time period, Section 123 of the Act provides that claims are to be brought, or, rather more practically, that contact with ACAS for the purposes of early conciliation must be made, within the period of three months starting with the date of the act complained of, or if we were satisfied that the conduct complained of extended over a period, within three months of the end of that period. In this case, contact was made with ACAS on 26 November 2018, early conciliation ended on 21 December 2018, and the claim was brought on 20 January 2019. That meant that any act said to have taken place prior to 27 August 2018 may have been out of time. If we decided that it had been brought out of time, we would then need to consider whether it would be just and equitable to extend time. Guidance on that has been provided by the appellate courts on many occasions, notably in ***British Coal Corporation -v- Keeble*** **[1997] IRLR 336**, ***Southwark London Borough Council -v- Afolabi*** **[2003] ICR 800**, and recently in ***Adedeji -v- University Hospitals Birmingham NHS Foundation Trust*** **[2021] ICR D5**.

19. We were also conscious that the guidance provided by the appellate courts on burden of proof, although primarily focused on the concept of less favourable treatment in relation to direct discrimination claims, was applicable to all the Claimant's claims.

Findings

20. We set out our findings relevant to the issues we had to decide below. Before doing so however, we made some preliminary observations.

21. The first was to stress that our role was only to make findings relevant to the claims brought by the Claimant and the issues which fell to be determined in respect of those claims. It was not our role to assess whether the Claimant had been treated unfairly or unreasonably, but to assess whether he had been discriminated against because of either his race or religion.

22. The second related to the evidence put before us. In terms of the witnesses, we found the evidence of the Respondent's witnesses generally to have been delivered openly and straightforwardly, with much of it finding corroboration in the contemporaneous documentation. Where there were errors in the evidence provided (for example DS Jones in his witness statement stated, in relation to allegation 23, that the Claimant had been suspended at the relevant time, when other evidence we considered confirmed that he had not been), witnesses were quick to acknowledge their errors, pointing out that it had been several years since the events occurred. We therefore largely preferred the evidence of those witnesses.

23. Although we formed that opinion, that did not mean that we considered that the Claimant was untruthful in the way that he gave his evidence. We considered that he genuinely believed that matters had developed in the way he had advanced them. However, we found little basis for his beliefs, and felt that the Claimant was someone who was unwilling to accept that matters were not as he perceived them, even when it would have been apparent to a neutral observer that that was the case.

24. At times in his evidence the Claimant made directly contradictory comments one after the other. By way of example, when discussing the permission given to him to spend 30 minutes at the mosque on Friday prayers, he stated that he was never late in returning from them, but then immediately said that any lateness was no more than in the order of 5 or 10 minutes.

25. We noted from the documents in the bundle, that the Claimant had acted in a similar manner in his interview under caution with DC Osborne. In an exchange about whether a store security guard had recognised the Claimant as a police officer and had asked him if he was a police officer, the Claimant said "*the mentioning of the police officer didn't occur at any time, only when I was actually leaving*".

26. The Claimant seemed unable or unwilling to recognise the obvious inconsistencies in some of his evidence and we therefore found his evidence less reliable.

27. We also noted that the Claimant appeared unable to appreciate the relative importance of the events giving rise to his claim. For example, he steadfastly maintained that the Respondent had failed to speak to a Debenhams employee called John, who he contended would be a key witness to the criminal allegations he faced. However, it transpired that the only evidence that John could have provided would have been to confirm that he had permitted the Claimant to pray in one of the changing rooms at the store when he had visited some time previously, the circumstances which led to John, and subsequently the store security guard who subsequently apprehended the Claimant being aware that he was a police officer. John's evidence could have had no bearing on the theft allegation that the Claimant subsequently faced in the Crown Court or the disciplinary allegations that he subsequently faced.

28. Notwithstanding our preliminary comments, in the event there was little material dispute over the core factual events, although there was significant dispute on the interpretation of them. Our factual findings were therefore as follows.

29. The Claimant was born in Morocco and moved to the United Kingdom in March 1997, settling in North Wales where he has lived ever since. The Claimant has a degree in English, and soon after his arrival became active in the local Islamic community. That included representing the Bangor Islamic Centre at steering group meetings chaired by the North Wales Police Chief Constable. As part of that, the Claimant became involved in facilitating and encouraging Muslim men and women to consider a career within the police service. Subsequently, the Claimant himself became a serving police officer, commencing his employment with North Wales Police on 6 August 2001. He then worked as a constable until his dismissal in 2019.

30. The majority of the Claimant's allegations related to events arising from an incident on 14 December 2016, when the Claimant was apprehended, having left the Debenhams store in Llandudno with a bottle of aftershave without paying for it. He was subsequently prosecuted for theft but was acquitted following a Crown Court trial in July 2017. He was then dismissed for gross misconduct following misconduct proceedings. He was in fact dismissed on two occasions, the original decision in September 2018 having been overturned on appeal on procedural grounds in March 2019, with a second Tribunal reaching the same decision in June 2019, which remained in place.

31. There were however some earlier allegations and we therefore deal with our findings in relation to each of them first. For ease of reference, we cross refer to the numbered allegation within the Claimant's Schedule of Allegations where appropriate. We note, with regard to all of them, that the Claimant did

not raise any grievance or formal concern in relation to any of them at any time.

32. The first such incident (Allegation 2) was described by the Claimant in his evidence as having taken place on a weekend some time in 2015. He contended that he was alone in the gymnasium at the force headquarters in Colwyn Bay, and, whilst exercising, he was watching a Muslim TV channel. He contended that a person. whom he had seen in headquarters but had never met or spoken to. came into the gym and said, "*Can I change that?*". In his witness statement the Claimant described that comment as having been made "*in a tone and facial expression full of dislike and disapproval*". The Claimant contended that the identity of the person became known to him as Superintendent John Hanson in 2017, when he received letters from the Respondent's Professional Standards Department signed by him.

33. Former Detective Superintendent Hanson confirmed in his evidence that he had no recollection of that exchange whatsoever, strongly denying that he would ever behave in that way. He also pointed out in his oral evidence that, whilst he had been based in the Respondent's Headquarters at the relevant time, and did, on occasions, use the gym, he principally worked on a Monday to Friday basis and therefore attended the gym on a weekday. He confirmed that he had membership of a private gym which he would make use of at weekends. He also confirmed that whilst he would occasionally be called in to Headquarters at a weekend to act as the Senior Officer in the investigation of a serious crime, his focus would then be on that investigation and he would have been very unlikely to have used the gym during that period.

34. The Claimant confirmed that it would usually be the case that there would be music playing in the gym, and that he only put the Islamic channel, showing what he described as a lecture, on the television as he was the only person in the gym. It did not seem to us therefore that there would have been anything unusual, or indeed untoward, in a second person coming into the gym asking to change the channel.

35. Overall, whilst we preferred the evidence of Mr Hanson, and therefore did not consider that this incident took place as alleged, we did not consider that, had it occurred, it would have been motivated by the Claimant's race in any event. We considered that it would have been a perfectly reasonable request to change the channel from a lecture, particularly one which the other party could not understand.

36. The Claimant contended that he had been constantly harassed by Sergeant Verburgh who continuously tracked his movements, criticised his performance and questioned his integrity (Allegation 3). He contended this happened in 2015 and through 2016.

37. Sergeant Verburgh did not give evidence before us, but it was confirmed by others, notably Sergeant Evans, that Sergeant Verburgh was known as a strict supervisor who paid close attention to detail and required that focus from those she supervised. She was not a regular supervisor of the Claimant, that being Sergeant Evans, but did supervise him from time to time when their shifts coincided. We noted that the Claimant was under performance review which would, in our view, have explained any particular scrutiny, but we did not see evidence which supported a concern that there was any form of constant harassment of the Claimant by Sergeant Verburgh or any questioning of the Claimant's integrity by her.

38. The Claimant contended that, in the similar time frame, 2015 through 2016, Sergeant Evans, his supervisor, on several occasions questioned him about his prayers and the necessity for him to keep listening to the radio whilst praying (Allegation 4).

39. The thrust of the Claimant's evidence in relation to this allegation was that he would be required to limit his time spent on Friday prayers at a local mosque, which was agreed by the witnesses to be only approximately one minute's walk away from the police station, to thirty minutes when it occasionally took slightly longer than that. He also contended that, in relation to his prayers at other times, which he undertook within the police station and which generally took some five minutes, he was required to continue to listen to his radio, which meant that his prayers were impaired, indeed in his evidence he confirmed that they were effectively "void".

40. Sergeant Evans confirmed that discussions with the Claimant about his prayers took place from time to time. He confirmed that he had commenced his role as the Claimant's direct supervisor in July 2015, at which point there was already in place an agreement relating to the Claimant's praying times. However, concerns occasionally arose, principally about the Claimant's time visiting the Mosque for Friday prayers, where it had been agreed that he could switch his radio off and therefore be uncontactable, for thirty minutes, but which, on occasions, was exceeded. This led to concerns about the health and safety of the Claimant, it being unclear, once the thirty minute period had elapsed, whether the Claimant was still in the mosque or possibly had left but was now facing some form of threat to his person. Concerns also arose from the perspective of the Respondent's ability to respond to calls for assistance.

41. The Claimant contended that, some time in 2016, Sergeant Evans had made it obligatory for him to listen to the radio when praying. However, an email sent by Sergeant Evans to the Claimant on 16 September 2016, which followed a discussion between the two earlier that day and was sent so there would be no confusion for the Claimant or his other supervisors, noted, with regard to the five minute prayers undertaken within the station, that the

Claimant was asked that he notify the Duty Sergeant so that he could easily be reached for operational emergencies. The email noted however, that Sergeant Evans was aware that the Claimant prayed with his ear piece out but his radio on, which meant that he might occasionally not be aware of the control room calling him. He asked that if the Claimant was "paired up" on nights he should also ensure that he notify the colleague he was working with, but noted that the Claimant routinely did that.

42. Orally, the Claimant developed his contentions with regard to prayers with a focus on the thirty minute period he was afforded to attend Friday prayers at the local mosque. He pointed out that this requirement only arose on a relatively small number of occasions each year, when his shift rota coincided with the timing of the prayers, and was concerned that thirty minutes was not always sufficient, as the time taken depended on the person leading the prayers. He contended that he made it clear to Sergeant Evans that if his faith was considered as an obstacle he would rather leave the job than compromise his faith any further, referring in his witness statement to Sergeant Evans's email of 16 September 2016 and stating that Sergeant Evans "*made no comment*", which we took to be an assertion that he made no comment about the Claimant's indication that he would leave the service if it was incompatible with his religion.

43. We were not satisfied that the discussion had taken place as indicated by the Claimant. First, we considered that if the discussion between Sergeant Evans and the Claimant, or any of their prior discussions, had got to the point where the Claimant had made such a comment then we felt that Sergeant Evans would have referenced it in his email. Secondly, there was no evidence before us, and the Claimant confirmed that he had not sent any, of any follow up response from the Claimant. There were in the bundle examples of emails where the Claimant had responded, on occasions robustly, to matters with which he disagreed, notably when his performance was being questioned, and we considered that if matters had developed as the Claimant contended then he would have responded, both to reiterate any comment he may have made about being prepared to leave the service and to raise any particular concerns about the agreement reached about prayers, e.g. that he might on occasion need more than thirty minutes on a Friday, and that he should be permitted not to listen to the radio whilst praying within the station. We noted in any event that Sergeant Evans's email referred to it being the Claimant's practice to pray without his earpiece but with the radio on, which did not, in our view, amount to any form of direction.

44. In November 2016, an issue arose between the Claimant and his landlady who was also a serving Police Community Support Officer ("PCSO") employed by the Respondent. The Claimant had rented the particular property for several years, but was told by his landlady, earlier in 2016, that she was putting the house on the market. Discussions took place and the

house was subsequently taken off the market, with a proposed new tenancy agreement, but the landlady then, in October 2016, whilst the Claimant was visiting his mother in Morocco, notified his wife that she had sold the house and that the Claimant and his family were required to vacate it within 6 weeks.

45. In retaliation for that, the Claimant cancelled his direct debit and then did not pay the rent that was due for November 2016. The PCSO complained about the matter to the Respondent's Professional Standards Department ("PSD"), who met with the Claimant on 17 November 2016. The content of that meeting was summarised by the PSD Officer in an email to the Claimant on 22 November 2016.

46. The email confirmed that the discussion had commenced from a welfare perspective, with the PSD Officer seeking to understand if the Claimant had been experiencing financial difficulties which had led to the rent not being paid. That was in the context of serving police officers having an obligation to service their debts, with failure to do so potentially leading to a misconduct investigation.

47. The Claimant confirmed that he had no financial difficulties and had withheld the rent because of the landlady's requirement that the Claimant and his family vacate the premises. The Claimant informed the PSD Officers that he had paid the rent the day before, i.e. on 16 November 2016. However, the PSD Officer in his email of 22 November 2016 noted that he had been informed that, by that date, the rent had not been paid. He reminded the Claimant that, as a police officer, he had an obligation to service an outstanding debt, and that any refusal to do so could result in him becoming the subject of a misconduct investigation. He commented that it appeared that the Claimant's actions to reinstate the direct debit had not been successful, and he asked him to resolve the matter by making enquiries with his bank to establish the cause of the problem. He concluded the email by noting that if the debt had not been resolved within five working days he would refer the matter to an Inspector in the PSD who may consider the matter to be a misconduct issue.

48. The Claimant contended (Allegations 5 and 6) that this contact, i.e. about a non-work related issue whilst he was on duty, was direct discrimination and harassment, as was what the Claimant described as the threat of the instigation of misconduct proceedings if the outstanding payment was not resolved. He reaffirmed that he had paid the rent the previous week and queried in his oral evidence, and in his cross examination of the Respondent's witnesses, why the PSD Officers had not checked with his landlady about the payment as opposed to going straight to him.

49. Other than the Claimant's contention that he had paid the rent, when his landlady confirmed that she had not received the payment, there was no

dispute between the parties as to what factually happened in relation to this matter. It occurred to us that confusion and delay could have arisen if the Claimant reinstated his direct debit, which the email of 22 November 2016 appeared to have been the way that the payment was being addressed, as opposed to making a direct payment. It could have taken some time for the Claimant's bank to put in place the direct debit which could then have meant that both the Claimant and his landlady were broadly correct in their interpretation of events. The Claimant would have felt that he had made the payment by setting up the direct debit, but the landlady would not by then have received the money due to it being dealt with by way of the reinstatement of the direct debit rather than direct payment. It seemed that the payment issue was resolved in short order as no further action was taken.

50. In early December 2016, the Claimant submitted a service break application to the Respondent's HR Department, seeking a career break of twelve months from July 2017. Whilst the application was not before us, it appeared that it was driven by the ill health of the Claimant's mother. She was being supported by the Claimant's sister, but she was due to marry, which it seemed would impact on the care for the Claimant's mother. The Claimant wished to spend that time in Morocco to care for his mother and arrange for ongoing care. The service break application was referred to Sergeant Evans by the member of the Respondent's HR Team on 8 December 2016, with Sergeant Evans being asked if he was aware of the application and if he was supportive of it.

51. Sergeant Evans replied on 12 December 2016, noting that the Claimant had not made him aware that he was making such an application, but that they had discussed that the Claimant's mother was unwell and that he had assumed that the application was something to do with that. He confirmed that he had spoken to the Claimant, who had indeed confirmed that that was the reason for his application, and that he had confirmed that his sister was due to get married in July 2017 and would be moving out of the Claimant's mother's home with her new husband, and that he felt that it was incumbent upon him, as the eldest sibling, to move back to Morocco for a short time to assist with the care of his mother. Sergeant Evans concluded by saying that, given the reasons put forward, he would support the application.

52. On 14 December 2016, the Claimant visited the Debenhams store in Llandudno whilst off duty. He was observed by a store security guard via CCTV to pick up a bottle of aftershave whilst on the ground floor, move within the store up to the first floor, before then moving back down and leaving the store. Throughout that time, the Claimant had the aftershave in his hand with his mobile telephone on top of it. The security guard monitored the Claimant's movements and alerted two security guards, employed in relation to the shopping centre as a whole, to intercept the Claimant. The Debenhams security officer also followed the Claimant outside the store.

53. There was some dispute as to precisely who intercepted the Claimant. The Debenhams security officer confirmed in his police statement that it was him, which was supported in statements, taken some six months later by the two shopping centre security guards. However, the Claimant contended that it was the shopping centre security guards who had intercepted him. Regardless of that, the Claimant was apprehended and returned to the Debenhams store. During his discussion with the Debenhams security officer the Claimant gave an incorrect home address, an incorrect date of birth, and an incorrect name. The security officer felt that he recognised the Claimant from a visit to the store some time previously when it had transpired that the Claimant was a serving police officer. The security officer asked the Claimant if he was a police officer, to which he replied that he was not. The Claimant was issued with Exclusion Orders. both from the store and from the shopping centre.

54. Two days later, two PCSOs were in the store and the security officer showed them the CCTV footage. One of them, in fact the Claimant's landlady, identified the Claimant and the security officer therefore reported the matter to Llandudno Police Station on 19 December 2016.

55. On 21 December 2016 the Claimant voluntarily attended at Colwyn Bay Police Station where he was interviewed under caution. in the presence of a solicitor. by DC Osborne. A transcript of the interview was in the hearing bundle.

56. The Claimant contended that DC Osborne was aggressive in this interview, noting that DC Osborne "*relentlessly provoked and coerced*" him to admit to things he had not done, commenting that he "*aggressively*" stood behind his back, leaning down on him whilst interrogating him. The Claimant confirmed in his oral evidence that it was that action of DC Osborne standing over him which he felt amounted to aggressive conduct, noting that his solicitor had mentioned this.

57. Consideration of the transcript of the interview did not give any suggestion that the approach taken by DC Osborne was aggressive. The thrust of the investigation focussed on the CCTV footage, which was on DC Osborne's laptop, so the interview did involve the Claimant and his solicitor, who were seated side by side, viewing the laptop, with DC Osborne standing between and behind them, and there were occasions when he pointed at the screen, and leant down between the two of them in order to do so. That led, on one occasion, to the solicitor saying "*Can I just sorry you're right over the top of it by asking him the question and I know…*", to which DC Osborne immediately replied "*Oh I don't mean to be oppressive sorry*". The solicitor then said "*If you're going to ask him questions I'd rather you go back to your seat or at least change of position*", to which DC Osborne replied, "*It's just a position, it*

wasn't my intention I'll be honest with you". DC Osborne then went on to say "*I'll just show you one last time and I'll move to the side of the room*".

58. That was a very brief exchange, and, in our view, it did not amount to aggression or any form of provocation. We in fact observed that, prior to the interview, DC Osborne had, via his examination of the CCTV footage in slow motion, assisted the Claimant by noting that his actions had been less sinister than alleged by the store security officer. He had indicated that he felt that the CCTV footage showed that the Claimant had attempted to scrape off the label on the aftershave bottle with his left thumb whilst he was walking through the store. However DC Osborne confirmed that the Claimant had been looking at his phone and had been scrolling through his phone whilst walking through the store. We considered that if DC Osborne had wished to provoke and coerce the Claimant into admitting something he had not done that he would not have undertaken the task of examining the CCTV in slow motion on several occasions.

59. During the interview, the Claimant was asked about a form which he completed with his details. He confirmed that he had given an incorrect date of birth and an incorrect address, confirming that he had never lived at the address included in the form. The Claimant's name was also slightly incorrect, with the surname being recorded as "Rachiri" rather than "Lachiri". The Claimant contended that his handwriting had been tampered with. He accepted however that he had himself written down an incorrect date of birth and an incorrect address, commenting that he had panicked and had not known what he was doing.

60. The case was subsequently passed to the Crown Prosecution Service who decided that the Claimant should be prosecuted for theft. That trial took place in July 2017 and, shortly before that, on 31 May 2017, DC Osborne returned to the shopping centre, at the request of the CPS, to obtain statements from the two shopping centre security officers. DC Osborne confirmed before us that he took those statements with both the officers in the room at the same time, and he accepted that with hindsight that was not the correct way of going about things, although he pointed out that if the two individuals were going to collude over matters then they had had some six months in order to do so.

61. No other evidence was provided, and the Claimant, in his evidence before us, contended that the CCTV footage outside the store should have been viewed. It appeared from the Claimant's comments that he felt that that would have shown that it was the other two officers who had apprehended him and not the Debenhams store officer. In our view however that would not have materially advanced the Claimant's case in relation to the theft allegation, in that the existing CCTV footage was clear, and indeed the Claimant accepted, that he had left the store with the aftershave without paying for it.

62. On the day after the Claimant's interview under caution, he returned to work for a shift starting at 7.00am. He had a discussion with Sergeant Evans and both agreed in their evidence that that discussion included the possibility of the Claimant telling his colleagues about what had happened or of Sergeant Evans doing so. The Claimant contended that this was done by Sergeant Evans as something of a direction, Sergeant Evans saying, "*Shall I tell the team members about what happened or will you tell them yourself*". Sergeant Evans however contended that there was more to the conversation than that. In his evidence he suggested that he had pointed out to the Claimant that it was inevitable that rumours would begin to circulate when the Claimant was restricted to office based duties, as he then was, and that the Claimant could inform his colleagues about the incident or say nothing at all. He confirmed that he offered to be present if the Claimant decided to inform his colleagues.

63. On balance we preferred Sergeant Evans' evidence. The context of the discussion was in our view fairly self-evident as the removal of the Claimant from operational duties would have been bound to have caused the Claimant's colleagues to speculate on why that was. We considered that it would have been a fairly straightforward approach of a supervisor in those circumstances to suggest that the Claimant could head off speculation by informing his colleagues about the incident. We did not consider that there was anything which amounted to any form of order or direction about what the Claimant should do.

64. As we have noted, the Claimant was put on restricted duties. Later that morning he was in fact called back from being due to give evidence in court where he himself had been the victim of an assault. The Respondent's witnesses could not recall that happening, but noted that, where a serving officer was potentially facing allegations of theft, then it would be an appropriate step to remove them from the "chain of evidence" as any conviction based on their evidence could subsequently be challenged if they were convicted.

65. In January 2017, when the decision to proceed with the prosecution was confirmed, the Claimant was then fully suspended. He proceeded to trial at the Crown Court on 20 July 2017 and was acquitted the following day. The trial and the acquittal attracted a significant amount of local publicity and comment on social media.

66. Prior to that, during the period of suspension, Sergeant Evans visited the Claimant on several occasions to check on his welfare. The Claimant contended that during one of those visits Sergeant Evans asked him if he was considering going back to Morocco and if he would get a job with the police if he went back to Morocco (Allegation 10). Sergeant Evans accepted in his evidence that he did discuss the Claimant's career plans should he

return to Morocco, that arising in the context of the Claimant having, in December 2016 applied for a twelve month career break, albeit that that had been put on hold pending the trial.

67. Immediately after the acquittal, the Claimant's Police Federation Representative was informed that the suspension had been lifted. We observed that the wording of the original suspension notification on 18 January 2017 provided that the Claimant would be suspended until all the charges had been dismissed. Arguably therefore it had automatically expired. The Claimant was not directly informed of the ending of his suspension by the Respondent but instead was notified of it by a text from his Police Federation Representative (Allegation 12).

68. Following his acquittal, the Claimant returned to work for a short period. From 24 July 2017 however, he was signed off work due to illness, and only returned at the start of January 2018. Sergeant Evans continued to meet the Claimant on a welfare basis in the latter half of 2017. The Claimant contended that during these discussions he expressed his dissatisfaction with the manner in which he had been treated by the organisation and that Sergeant Evans had given no apparent reaction (Allegation 14). Sergeant Evans' evidence broadly agreed with the Claimant's contentions. He confirmed that the Claimant did in these meetings express his dissatisfaction as to how he had been treated by the Respondent in relation to the prosecution but felt that he was not in a position to comment about that because he had had no role in it.

69. By the beginning of January 2018, the Claimant was fit to return to work and it was agreed that he would do so on a phased basis. He attended for the first time following his lengthy absence on 3 January 2018, and within a very short period of time, some five or ten minutes from the commencement of the shift, was served with an initial notice of allegation of breach of the standards of professional behaviour, commonly known as a Regulation 15 Notice, from the particular Regulation dealing with such matters within the Police (Conduct) Regulations 2012 (Allegation 20).

70. It was confirmed in evidence by all three PSD Officers, former Detective Superintendent Hanson, Detective Superintendent Downes and Detective Sergeant Jones, that, at the time, the Respondent's practice was not to serve a Regulation 15 Notice whilst the officer was on sickness absence. It was therefore served at the earliest possible point following the Claimant's return.

71. The Regulation 15 Notice, after setting out the factual background of the events from 14 December 2016 through to the acquittal on 21 July 2017 recorded the allegations as follows:

"*1. On 14th December 2016 you left Debenhams in Llandudno with a bottle of aftershave that you knew you had not paid for.*
2. When confronted by security staff and/or Debenhams staff you provided a false date of birth and address and you denied that you were a police officer.
3. Debenhams issued you with an Order of Exclusion.
4. You failed to report the incident or that you had been given an Order of Exclusion."

72. The Notice went on to say that, "*If proved, it is alleged that your conduct breaches the Standards of Professional Behaviour concerning "Honesty and Integrity" and "Discreditable Conduct".*"

73. Despite the service of the Regulation 15 Notice, the Claimant was not suspended or had any restrictions imposed on his duties and he continued to undertake his operational role. Former Detective Superintendent Hanson confirmed that he had recommended to the Deputy Chief Constable, whose decision it was, that the Claimant should be suspended in the circumstances ,but his recommendation had not been accepted. No evidence was put before us about the reason for that.

74. The misconduct hearing, before an independent panel, was originally scheduled to take place on 21 and 22 June 2018, but as those dates clashed with the Claimant's annual leave, it was rescheduled to 25 and 26 June 2018. No evidence was before us of the outcome of the hearing, although the Claimant did not raise any particular issue about it. The panel adjourned following those two days to consider their decision and then reconvened on 6 September 2018, and during that reconvened hearing it was confirmed to the Claimant that he should be dismissed.

75. The outcome of the Claimant's subsequent appeal against that decision indicated that the panel accepted a submission made on behalf of the Claimant, who was represented by legal counsel at the hearing, that the first allegation repeated the theft allegation for which the Claimant had been acquitted and was not therefore proceeded with. The appeal decision also recorded that the panel also considered that the fourth allegation did not amount to misconduct, but considered that the second and third decisions did cumulatively amount to gross misconduct.

76. The Claimant appealed against that decision, and a hearing took place before a further independent panel on 13 March 2019. The appeal panel accepted the Claimant's appeal that the issue of the Exclusion Order was an act of Debenhams and not an act of the Claimant, and also accepted that the disciplinary panel had not set out the definition of gross misconduct within its conclusions as defined in the Regulations. They therefore concluded that the case should be remitted to another panel for a fresh hearing.

77. Following the hearing the Claimant contended (Allegation 22) that DS Jones had approached him and said to him, "*This time you won't be surprised when I serve the misconduct papers on you*". DS Jones, whilst indicating in his witness statement that he could not recall whether he made that comment, confirmed that he felt that he would have made a general comment about the re-service of the misconduct papers, as that was the direct instruction of the Police Appeal Tribunal. He noted that the Claimant had taken issue with the fact that he had served the original papers on him immediately at the start of his shift following his return from sickness leave, and felt that his comment would have referenced that.

78. In the period between the completion of the original hearing at the end of June 2018 and the delivery of the judgment on 6 September 2018, the Claimant was on sickness absence. During this period he attended at Rhyl Police Station but on an escorted basis, despite the fact that he had not been suspended or had his duties restricted at that time (Allegation 21). No evidence was put before us to dispute that that did indeed take place, although we observed that the Claimant was absent due to sickness at this period and not on active duty.

79. Following the decision of the Police Appeal Tribunal, a fresh Regulation 15 Notice was served on the Claimant on 8 April 2019. That did not set out specific numbered allegations, as was the case with the original notice, but the details of the conduct that it was alleged may have breached the standards of professional behaviour were stated to be:

"On 14 December 2016 you left Debenhams in Llandudno with a bottle of aftershave that you had not paid for. When confronted by security staff and/or Debenhams staff and knowing you had an item in your possession an item for which you had not paid, you provided a false name, a false date of birth and address and you denied that you were a police officer.

"As a result of your behaviour you were issued with two Orders of Exclusion and you failed to report the incident or that you had been given Orders of Exclusion.

"If proved, it is alleged that your conduct breaches the Standards of Professional Behaviour concerning "Honesty and Integrity" and "Discreditable Conduct"."

80. Shortly after that, on 14 April 2019, the Claimant attended at Llandudno Police Station to use a computer for the purposes of checking various HR related matters. He had originally tried to access the computer from the Police Federation Office, but it appeared that he could only access the particular systems from a computer within a police station. At the time the

Llandudno Police Station was the nearest one to him and therefore the most convenient for him. He therefore attended on 14 April and used a computer there for a short period.

81. Whilst the Claimant did not come across her during that visit, it appeared that the PCSO who had been his landlady, and whose base station was Llandudno, became aware of his visit. A complaint about the Claimant's attendance was therefore raised with DS Jones, who sent an email to the Claimant's Federation Representatives on 11 April 2019. DS Jones did not name the individual member of staff, but confirmed in his evidence before us that he understood that the member of staff was the PCSO who had been the Claimant's landlady. DS Jones referred to having received some concerns from a member of staff with regard to the Claimant using a computer at Llandudno Police Station whilst off duty. He went on to say that, whilst he appreciated that the Claimant may need to use a computer for HR and other issues, he queried whether it was possible that they could come to some sort of agreement that, at that moment, he did not use Llandudno.

82. The Police Federation Representative replied, confirming that the Claimant had been advised to go to a police station to try to connect to a computer, having been unable to do so at the Federation Office. He commented that he did not see a problem (with the Claimant visiting the Llandudno station) and would indeed encourage the Claimant to have more police contact, but that if DS Jones felt that there were any restrictions he should let him know.

83. The matter was brought to the Claimant's attention, and he emailed DS Jones on 15 April 2019, apologising for any inconvenience he might have unwillingly caused (we observed that that probably should have said "unwittingly"), but commenting that he only attended the station to check emails concerning his duties, sickness and leave entitlement, that he had initially attempted to access those emails at the Federation Office, and that his choice to attend Llandudno was simply due to its proximity to his accommodation. He also pointed out that he was unaware of any restrictions imposed upon him about attending at specific police stations, and that if it was an issue he asked for clarification as to the locations he could attend to access work related emails in the future. DS Jones replied the following day and stated that the Claimant was perfectly correct and that there were no restrictions on him but pointed out that it may be prudent for him not to attend at Llandudno at this time. He concluded by saying, "*It is, of course, a matter for you and your advisors*". (Allegation 23).

84. Following the service of the Regulation 15 Notice, discussion ensued about arranging a fresh misconduct hearing. Dates of availability of the Claimant and his counsel were sought, and they provided seven possible periods of two days as available. In the event, the hearing was not arranged for any of those dates, but was arranged for dates when the Claimant's counsel was

not available. Despite representations about that, it was maintained and the hearing took place on 25, 26 and 27 June 2019, again before an independent panel. Detective Superintendent Downes confirmed that it was often extremely difficult to manage the listing of disciplinary hearings, where there was a need to take account of the diary commitments of the three independent panel members, representatives on both sides, the relevant officer, and various witnesses. Ultimately therefore arranging for the hearing to proceed in circumstances where the Claimant's representative was unavailable was the "least worst" option. The Claimant was represented by other counsel at the hearing.

85. The decisions and reasons of the second panel were in the hearing bundle. They noted that it was initially asserted that the allegation regarding the false name had not been included in the original Regulation 15 Notice, and therefore that it would be unfair to add it as a substantive allegation at the second hearing. It appeared however that that was not ultimately pursued and the allegation remained to be considered.

86. The panel had a hearing bundle which included agreed transcripts of part of the evidence at the Crown Court trial and the original misconduct hearing and the Crown Court Judge's summing up. The panel also viewed the CCTV footage, and heard evidence from the Debenhams security officer and one of the shopping centre security officers. The decision records that the panel considered that the Debenhams security officer was "*a compelling and truthful witness*".

87. The panel also heard evidence from the Claimant and recorded that they were "*not impressed with his evidence, some parts of which did not stand up to reason*". The panel concluded that the Claimant did specifically deny being a police officer at the material time, which was a dishonest act, and also that the Claimant, when he wrote down the false details on the Debenhams Exclusion Order, acted deliberately and dishonestly.

88. The panel confirmed that they found that the Claimant's "*primary motivation for not reporting either the incident itself or the Exclusion Orders was to avoid these matters coming to the attention of the Force*". The panel confirmed that, in reaching their findings, they reflected and applied the jury's verdict, and took into account the fact that the Claimant had not left the store intending to steal the item in question but had inadvertently left the store without paying for the same by mistake.

89. The panel concluded that, individually, the Claimant's provision of false details and his denial that he was a police officer amounted to breaches of the Standards of Professional Behaviour in respect of honesty and integrity and discreditable conduct, and constituted gross misconduct. The panel confirmed that, in respect of the failure to report the incident and the

Exclusion Orders, they considered that, viewed individually, that was a breach of the Standards of Professional Behaviour in respect of integrity only, which viewed individually would amount to misconduct but not gross misconduct. Ultimately however the Claimant was dismissed by reason of gross misconduct.

90. Whilst the Claimant subsequently submitted a further appeal in relation to the decision of the second misconduct panel, that appeal was rejected by an independent chair of the Police Appeals Tribunal under Rule 11(2) of the Police Appeals Tribunals Rules 2012, on the ground that it had no real prospect of success and that there was no other compelling reason why the appeal should proceed. The Claimant made representations about that decision, as catered for by the Rules, but those representations were rejected and the decision that the appeal should be dismissed was maintained.

Conclusions

91. Applying our findings and the relevant legal principles to the issues we had to address, our conclusions were as follows. Whilst we addressed each of the allegations in relation to the particular claims arising in respect of them, we also examined the second stage of the burden of proof, i.e. the reason why the Claimant was treated in the way that he was. We noted the shifting burden of proof, i.e. the two stage process of first assessing whether there were any primary facts from which inferences of discrimination could be drawn, which would then switch the burden of proof to the Respondent to demonstrate that its treatment of the Claimant was not motivated by a discriminatory reason, would be the usual way we would approach conclusions. However we noted the guidance, initially from the House of Lords in ***Laing -v- Manchester City Council and another*** **[2006] ICR 1519**, adopted by the Court of Appeal, in ***Brown -v- London Borough of Croydon and another*** **[2007] ICR 909**, and again in ***Shamoon v Chief Constable of the Royal Ulster Constabulary*** **[2003] UKHL 11**, that, particularly in cases where there is a hypothetical comparator, it might be sensible for a Tribunal to go to the second stage, as whether there is a prima facie case is often in practice inextricably linked to the issue of the explanation for the treatment.

92. In this case, our overarching conclusion was that, in relation to the treatment of the Claimant in respect of the issues arising from the events of 14 December 2016 (essentially Allegation 8 onwards) the reason was the fact that, as a serving police officer, he was initially accused and prosecuted for an allegation of dishonesty, but acutely also was that he had lied to those who apprehended him on 14 December 2016, and had not disclosed the incident and the Exclusion Orders served upon him to his employers. We saw no evidence to suggest that an employee from a different ethnic background or who held different religious beliefs would have been treated any differently in the same circumstances. In our view, the reason for the Claimant's

treatment in relation to those allegations was his provision of false information to those who apprehended him on 14 December 2016 and his failure to report the incident itself or the Exclusion Orders to his employer. That was a decision which was also reached by the independent disciplinary panel. In our view that was not a reason which was motivated, or even influenced, by the Claimant's race or religion.

93. That conclusion only, as we have noted, addresses allegations 8 and later. We did therefore address the earlier allegations, and, for completeness, he later allegations, individually, using the two stage process of assessing first whether there had been any less favourable treatment or unwanted conduct, and, if so, whether that had been on by reason of the Claimant's race or religion, taking into account the burden of proof provisions. Our conclusions then in respect of each of the allegations were as follows.

Allegation 2

94. We noted the significant age of this incident and that it had not been commented upon by the Claimant at any time prior to his claim form, some three years after the incident was said to have taken place. Overall, we preferred the evidence of Mr Hanson in respect of the allegation, notably that it would have been unlikely that he would have used the gym at Police Headquarters on a weekend. We did not therefore consider that any less favourable treatment or unwanted conduct had taken place in the way asserted.

95. However, even if it had, i.e. even if Mr Hanson had entered the gym and said, "*Shall I change that?*", we did not see that it would have been a request motivated by the Claimant's race or religion. As the Claimant himself confirmed in evidence, it would be usual for music to be playing in the gym whilst members of staff were exercising there, and we would not have considered that someone coming into the gym, faced with a lecture which he could not understand, would not have asked for the channel to be changed to something more suitable for the gym, regardless of the race or religion involved.

Allegation 3

96. We noted that this allegation was drafted as the Claimant feeling "*constantly harassed*" by Sergeant Verburgh who tracked his movements, criticised his performance and questioned his integrity. However we noted that the Claimant was, on occasions, subject to a performance improvement process. The very nature of that process would have involved the Claimant's movements and performance being tracked and, if required, criticised. We saw no evidence that Sergeant Verburgh had in any way questioned the Claimant's integrity.

97. Whilst therefore the Claimant may have felt constantly harassed, we considered that that would have been a consequence of the performance management scrutiny that he was subjected to at the time. We again noted that these events were not complained about, whether generally or by reference to the Claimant's race or religion, at the time, and were only raised for the first time by the Claimant in his claim form. Consequently, we did not consider that this incident involved any unwanted conduct made to the Claimant, but even if it had, we saw nothing to connect it with his race or religion, considering that an employee of a different ethnic background or religion would have been treated in the same way.

Allegation 4

98. We noted that this allegation is the one allegation referenced within the List of Issues as an allegation of indirect discrimination. In that regard, we noted that the asserted PCP was that officers were required to listen to their radios at all times whilst on duty. We noted however that that was clearly not, in fact, the case as far as the Claimant was concerned. Whenever his rota fell on a Friday day time, he was afforded thirty minutes to visit the local mosque during which time his radio was switched off.

99. The Claimant appeared in his evidence to be focussing more upon his prayers at other times, which he would perform within the station. Even there however the documentary evidence within the bundle indicated that it was the Claimant's own practice to pray with his radio on but with his earpiece out. We noted that despite, in his oral evidence and when cross-examining Sergeant Evans, the Claimant appeared to take issue with Sergeant Evans' summary of the praying arrangements set out in his email of 16 September 2016, there had been no response by him to that. The Claimant appeared to us, from his oral answers to questions and from the documents within the bundle, to be someone who would generally be quick to stand up for himself and would not be reluctant to raise concerns about his situation. We considered that if the Claimant felt that the prayer arrangements set out in Sergeant Evans' email were not satisfactory, and did indeed put him at a disadvantage to those who were adherent of other religions, then he would have said so clearly and formally at the time.

100. Overall therefore we were not satisfied that the Respondent had applied a PCP to the Claimant of requiring officers to listen to their radios at all times whilst on duty. Even if it had however, we considered that there would have been a clear justification for that PCP, i.e. the need for the Respondent to be able to respond to urgent calls for its assistance. We would have considered that that would have been a clearly legitimate aim and also would have been proportionate, bearing in mind the Claimant himself had adopted the practice of praying with his radio on with his earpiece out.

Allegations 5 and 6

101. We noted that there is, for obvious anti-corruption reasons, an obligation on serving police officers to clear their debts as and when they fall due. We also noted that in the particular circumstances as they arose in 2016, the Claimant did not pay his rent. That was then brought to the attention of the Respondents PSD by the Claimant's landlady who also happened to be a serving PCSO. That having been brought to PSD's attention, they were duty bound to raise it with the Claimant and did so. The evidence around it could be seen from the contemporaneous email produced by the PSD Officer. That confirmed that the approach taken was relatively low key, initially focussing on the welfare angle and querying whether the Claimant had not paid the rent because he did not have the means to do so. That was quickly confirmed by the Claimant not to be the case and was confirmed by him as being a retaliatory action against his landlady. The Claimant then noted that he would make the payment by reinstating his direct debit.

102. When, a few days later, the Claimant's landlady noted that she still had not received the payment, the email was then sent noting that there was a requirement by officers to clear their debts, that it appeared that the Claimant's action to reinstate the direct debit had not been successful, and asking him to resolve matters with his bank. Whilst the email did conclude by noting that if the matter had not been resolved within five working days it would be referred to a Chief Inspector who could consider the matter to be a misconduct issue, in the circumstances where the payment did not appear to have been effected, despite the Claimant's indication that it would, we did not consider that that was unreasonable.

103. The Claimant in his evidence appeared to be of the view that it was unreasonable, and indeed discriminatory, of the PSD Officer to ask him about any delay in payment at a time when he had effected the payment, contending that the Officers should have checked with the landlady. However, the position of the PSD Officer was that the landlady was telling him that she had not received the money, and therefore it did not seem to us that any further enquiries of the landlady would have been appropriate, or indeed fruitful, at that time.

104. Overall, we did not consider that there was any element of less favourable treatment or unwanted conduct in relation to this incident. Again however we did not consider that, even if there had been any such unwanted conduct or less favourable treatment, it had any connection to the Claimant's race or religion. The action taken was purely because the Claimant had not paid his rent as it had fallen due.

Allegation 8

105. This allegation splits into two sections, first that the interviewing officer was aggressive, and second that the investigation was flawed with the second element itself being split into two, first that proper evidence gathering was ignored, and second that key witnesses were not spoken to.

106. Having considered the transcript of the interview under caution we did not consider that the interviewing officer, DC Osborne, was in any way aggressive. There was one section where DC Osborne was leaning over the Claimant and his solicitor to point out matters on the laptop screen, following which the solicitor suggested that it was inappropriate, and in response to which DC Osborne apologised. That did not, in our view, amount to any form of aggression. We also noted in any event that the Claimant was under investigation for an allegation of theft and that robust questioning would, in any event, have been expected.

107. With regard to the investigation, we did not consider that it was flawed. The Claimant contended that CCTV footage was not viewed but it transpired that that was CCTV footage outside the store. Whilst that could potentially have cast light on the order in which the security guards approached the Claimant, that was not in any sense a relevant matter for the purposes of the criminal allegation. The relevant matter for that was the Claimant's exit from the store with the aftershave without paying for it. That was clear from the other CCTV footage, and was not in any sense disputed by the Claimant in any event.

108. With regard to key witnesses not being spoken to, the substance of allegation 8 relates to two security guards not being interviewed for some 6 months. However neither of those guards were direct witnesses. The direct witness was the Debenhams security guard who observed the Claimant's movements through the store, and his ultimate exit from the store, on CCTV. Again therefore, we did not see that evidence of these two guards was directly relevant to the theft allegation the Claimant was facing, and did not in fact consider that there was any need for the evidence of those witnesses to be obtained for the purposes of the criminal trial.

109. The Claimant also referred to evidence not being taken from an employee of Debenhams. This referred to the "John", who had dealt with the Claimant some time previously regarding his praying in one of the store's changing rooms. Again, any such evidence from that individual would have had no bearing on the Claimant's theft allegation. It could only have had a bearing on the background to the Debenhams security officer's understanding that the Claimant was a police officer, that having arisen from the Claimant's previous exchanges with "John".

110. Overall therefore we did not see that there were any flaws in the evidence gathering for the purposes of the criminal investigation. Again however, even if DC Osborne had been aggressive, and even if the investigation had been flawed, we considered that the process would still have gone through to a criminal trial. We saw nothing to connect DC Osborne's actions or the investigation generally with the Claimant's race or religion.

Allegation 9

111. As we have noted, there was a dispute in relation to the evidence in relation to this incident, the Claimant contending that he was given some form of ultimatum by Sergeant Evans requiring the Claimant to tell the team members about the Debenhams incident or noting that Sergeant Evans would do so. Sergeant Evans' evidence however was that he had raised the point with the Claimant on the basis that gossip would undoubtedly arise from the Claimant's restricted duties, and raising the point that an option could be for the Claimant to tell his colleagues about his circumstances, with Sergeant Evans potentially supporting him in that. We preferred the evidence of Sergeant Evans on this point and felt that this was certainly an area where the Claimant's own perspective may have clouded his recollection. We saw no element of unwanted conduct in Sergeant Evans's approach but, in any event, saw nothing to connect his approach with the Claimant's race or religion.

112. The Claimant also raised concerns in allegation 9 that he was informed whilst travelling to court that he should not attend and should return to the station and that he was placed on restricted duties without justification or written confirmation.

113. Whilst it may have been helpful for the Claimant to have received some form of formal record of the direction given to him not to attend court on the particular day and that his duties were to be restricted, we did not consider that the absence of any such matter amounted to unwanted conduct. Bearing in mind that the Claimant had been interviewed under caution for an offence involving dishonesty, it was not inappropriate for him to be removed from the chain of evidence in respect of any subsequent court appearances. In addition, it seemed to us that it would have been broadly self-evident that an officer in such circumstances would have been placed on restricted duties and we did not consider that any written explanation, whilst one could have been provided, was nevertheless required.

Allegation 10

114. Sergeant Evans accepted that he had indeed asked the Claimant on occasions if he would get a job with the police whilst back in Morocco. That was however in the context of the Claimant's indicated desire to take twelve

months leave of absence, during which he would receive no pay from the Respondent, to deal with the care requirements of his mother. We also noted that the comments were made during welfare visits and we did not think that it was in any way untoward, or would in any way have been surprising, for Sergeant Evans to raise a question as to how the Claimant planned to support himself whilst in Morocco, one option potentially being that he could take up duties with the police force there.

115. Whilst we could understand the Claimant's concern that this, in his view, suggested that the Respondent felt that he might not return, we did not consider that it was an unreasonable question in the circumstances of the Claimant's absence for a fairly lengthy period. Equally, we saw nothing to suggest that an employee from a different ethnic background or who adhered to a different religion would have been treated any differently. We could readily anticipate that Sergeant Evans could have asked very much the same question to an officer who was, for example, returning to Australia for a twelve month period.

Allegation 12

116. Whilst we considered that it would have been courteous for the Claimant to have been formally informed by someone in line management that his suspension was being lifted, we were content, from the evidence provided, that the action taken, i.e. that the Respondent's management would inform the officer's federation representative who would then inform the officer, was the standard step taken. We did not therefore consider that this involved any element of less favourable treatment or amounted to any unwanted conduct of the Claimant. Again, had we considered that it did, we did not see that it would in any sense have been caused by the Claimant's race or religion.

Allegation 14

117. The fact that the Claimant verbally expressed his dissatisfaction with the way he had been treated in respect of the criminal allegation was raised with Sergeant Evans, and that Sergeant Evans did not directly respond, was not in dispute. However, we noted Sergeant Evans' evidence, which we accepted, that the expressions of dissatisfaction related to the criminal investigation, and the fact that criminal charges had been laid and criminal prosecution pursued, all of which were historic and all of which he had had no involvement with. It was therefore understandable in our view that there would have been a limited reaction by Sergeant Evans to that. Whilst it seemed to us that Sergeant Evans could possibly have suggested other options, for example that the Claimant might pursue any dissatisfaction via internal grievance procedures, we noted that the Claimant had been represented by his trade union throughout and continued to be represented by his trade union and therefore would have had every opportunity to have

pursued such a matter in any event. Overall therefore, we were not satisfied that any less favourable treatment or unwanted conduct arose in respect of any lack of reaction by Sergeant Evans, but we also could see no differential treatment of the Claimant in this regard by reference to his race or religion. We saw nothing to suggest that Sergeant Evans would have treated an officer from a different ethnic background or with a different religion any differently.

Allegation 17

118. We noted that the terms of the Police Conduct Regulations required that misconduct proceedings should be put on hold whilst criminal proceedings were under way. We also noted that, other than a very short period following his acquittal, the Claimant was absent due to sickness until the start of January 2018. We also noted the evidence of Detective Superintendent Downes that, at the time, the Respondent's practice was not to serve misconduct papers on officers whilst on sickness absence. In the circumstances therefore the first opportunity that effectively arose for the Claimant to be served with misconduct papers was on his return to work on 3 January 2018.

119. Whilst DS Jones could potentially have waited to serve the papers until later in the Claimant's shift, we did not consider that there was anything untoward in him addressing the matter at the earliest possible opportunity. We saw nothing to support an allegation of less favourable treatment or unwanted conduct in relation to DS Jones' actions, but even if there had been an element of less favourable treatment or unwanted conduct, we did not consider that it arose in any sense because of the Claimant's race or religion.

120. We note that the rest of this allegation refers to the misconduct documents containing the same allegations as the Claimant had been acquitted for in the Crown Court and that his representative had been shocked and said that in his experience the Claimant's case was unique. We noted that the Claimant's assertion was fundamentally incorrect, and that appeared to cloud much of his case before us. The allegations, whilst having the theft allegation as the background, did not actually relate to the theft allegation itself. The focus was on the Claimant's actions in his communications with the Debenhams security guard and in his omissions in relation to reporting matters to the Respondent.

121. With regard to the uniqueness of the Claimant's case, we noted that Mr Hanson confirmed that he also had not come across such a situation during his time working in professional standards. That did not however, in our view, mean that the Claimant was in any sense treated unfairly, let alone that he had been discriminated against.

Allegation 21

122. We noted that the Respondent did not provide any evidence with regard to the Claimant's contentions in relation to this allegation and therefore concluded that he had indeed only been allowed into Rhyl Police Station in July 2018 whilst escorted by a particular sergeant. However, we noted that the Claimant was on sickness absence at this time and was not therefore on active duty. Whilst the Claimant might have been afforded a little bit more latitude and been allowed to move within the station a little more freely, we did not consider that there was anything particularly less favourable or unwanted about the actions taken by the relevant sergeant at the time. In any event, even if it were to be considered that the actions taken did indeed amount to less favourable treatment and/or unwanted conduct, we did not see that an officer in the same circumstances as the Claimant but with a different racial background and/or who followed a different religion would have been treated any differently.

Allegation 22

123. DS Jones broadly agreed that he had made a comment along the lines alleged here. This was in the context of the Claimant having complained about the service of the original misconduct papers. In our view it was therefore not all that surprising that DS Jones made such a comment at the end of the appeal hearing. Whilst the comment may have been rather unnecessary, and may possibly have involved an attempt at humour on the part of DS Jones or possibly have involved something more pointed, we did not consider that it had any connection to the Claimant's race or religion. We considered that DS Jones would have made exactly the same comment to an officer from a different ethnic background and/or with a different religion in the same circumstances.

Allegation 23

124. During the course of evidence it became clear to us that the member of staff at Llandudno Police Station who had been upset by the Claimant's attendance at that station was his former landlady whose base station that was. Whilst the Respondent might have taken the point up with her and noted that the Claimant might potentially attend at the station from time to time to use a computer, we also noted that DS Jones did not impose any form of restriction on the Claimant and merely made an informal suggestion that it would be better if he did not attend that station. Overall therefore, we did not consider that there was any element of unwanted conduct or less favourable treatment of the Claimant in this regard, but even if there had been, we again saw nothing to suggest that any such treatment had arisen from the Claimant's race or religion.

Allegation 24

125. Whilst the arrangement of the misconduct hearing for a date on which his counsel would not be available would, in our view, have involved an element of less favourable treatment and potentially indeed unwanted conduct, we saw nothing to connect the decision to the Claimant's race or religion. We noted that such hearings require the coordination in terms of attendance of a range of individuals, most of whom will have other demands on their time. Fixing a hearing to suit everyone may ultimately therefore be an unachievable aim.

126. We also noted, certainly in the context of employment tribunal hearings, that the availability of a particular representative is not usually considered sufficient reason to postpone a hearing listed for a particular date, and that barristers instructed to represent clients would often only get such instructions shortly before the hearing at which the representation was required and would be used to preparing their representation in a relatively short period of time. Overall therefore, we considered that any less favourable treatment or unwanted conduct would have been very minor in nature but, regardless of that, had no connection to the Claimant's race or religion.

Allegations 27, 28 and 29

127. We considered we could take these three allegations together as they all broadly related first to the decision to prosecute the Claimant and then the decision to pursue internal misconduct proceedings against him and ultimately to dismiss him.

128. We noted, in relation to allegation 29, that the Claimant contended that the misconduct proceedings and the reason for his ultimate dismissal were for the "*same original accusations acquitted for by the Crown Court in July 2017*". As we have noted previously, that was not in fact the case. Whilst the theft allegation for which the Claimant was acquitted formed the background to the misconduct allegations and the ultimate reasons for dismissal, the substance of the decision to pursue the misconduct procedures and dismiss was the Claimant's provision of false information to those who apprehended him at the time, and his failure to notify his employer about the incident and the exclusion orders that had been served upon him.

129. In the circumstances of the Claimant's admissions regarding his conduct, we did not consider that there was anything unfair or unreasonable, let alone anything which amounted to discriminatory conduct, in the actions taken by the Respondent. In circumstances where the Claimant admitted providing false information to the store security officer and where it was clear that he had indeed failed to inform his employers about the incident and the action

taken arising from it, we considered that the Respondents actions were appropriate, and certainly were not related to the Claimant's race or religion.

130. We observed, in relation to allegation 28, that the Claimant did indeed carry out his normal duties between the Appeal Tribunal and his subsequent final dismissal. We found that slightly troubling in that the Respondent, at the same time as pursuing the potential dismissal of the Claimant for matters relating to his honesty and integrity, nevertheless allowed him to interact fully with the public. We considered that that may have been driven by some of the guidance provided by the appellate courts warning against the excessive use of suspension in recent years, but nevertheless felt that it would not have been inappropriate for the Respondent to have placed the Claimant on restricted duties during the relevant period even if there had been concerns about suspending him. Nevertheless, whilst there was some inconsistency about the Respondent's actions in that regard, we noted that the decision to dismiss was ultimately taken by an independent panel, and was a decision, whilst not directly part of the claims before us, which we considered on the evidence we heard and read to have been eminently open to that panel. Furthermore, any ultimate inconsistency that may have existed within the Respondent's organisation did not in any sense give rise to a concern on our part that the action taken had been driven by the Claimant's race or religion.

131. Overall therefore, in addition to our overarching conclusions regarding what we considered to be the Respondent's reasons for treating the Claimant in the way that it did, certainly from December 2016 onwards, we did not consider that any of the Claimant's allegations of discriminatory treatment were made out and all therefore fell to be dismissed. In the circumstances, we did not need to consider the question of whether any of the Claimant's claims had been brought outside the stipulated time limit.

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Employment Judge S Jenkins
Dated: 4 November 2022

JUDGMENT SENT TO THE PARTIES ON 7 November 2022

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche

APPENDIX

SCHEDULE OF ALLEGATIONS

Incident Number	**Date** *(or approximate date)*	**Negative treatment** *(if comments, please include the words used to the best of your recollection)*	**Who did it?**	**Any witnesses?**	**Where did this happen?**
2	End 2015 Beginning 2016	Alone at the gym with an Islamic channel on TV when Superintendent John Hanson entered and said words in line of “Shall I change that”	John Hanson		Gymnasium Head Quarters Colwyn Bay
3	2015 through 2016	I felt constantly harassed by sergeant Verburgh who continuously tracked my movements, criticised my performance and questioned my integrity, Sergeant Verburgh was not my immediate supervisor.	Sergeant Verburgh		Rhyl Police station

4	2015 through 2016	Throughout the time that time that I was under the supervision of Sergeant Evans, on several occasions I had to answer questions about my prayers and the necessity to keep listening to the radio whilst praying. This made me feel very offended given the number of years that I served at the force and had to regularly be questioned about my religion.	Sergeant Evans		Rhyl Police station
5	17th November 2016	Whilst on duty, two officers from the professional standards department arrived at my work place to speak to me about a tenancy matter (rent payment). This was in relation to a disagreement I had with the then landlady PCSO Starr.	DS Rowland David Morris		Rhyl Police Station

		This is a complaint about the fact C was spoken to about this non work related issue, that it came without warning and whilst C was on duty.			
6	22nd November 2016	Email from PSD threatening instigation of misconduct proceedings if tenancy issue with PCSO Starr not resolved within five days.	David Morris		Email correspondence
8	21st December 2016	The interviewing officer was aggressive. The investigation was flawed. Proper evidence gathering was ignored and key witnesses not spoken to. This is a complaint that evidence was not taken, from an employee of Debenhams and 2 centre security guards who stopped C outside shop, until 6 months after incident and that CCTV was not viewed.	DC Osborne	Richard Black Slater&Gordon	Colwyn Bay Police station
9	22nd December 2016	Turned up for duty at 0700 hrs.		Richard Eccles, Fed rep	Rhyl police station

		Ps Richard Evans instead of showing support, approached me and said" shall I tell the team members about what happened, or you tell them yourself". On the same morning I was scheduled to give evidence in court in a case where I was a victim of an assault. On approaching the court, I was informed via airwave that I was not required and that I had to return to the station. Once at the station I was put on restricted duties by PS Richard Evans for which I was given no justification or written confirmation.	Ps Richard Evans		

10	19th January - 20th July 2017	I was suspended. Ps Evans during his welfare visits asked me a few times:" would you get a job with the police if you went back to morocco". This happened on more than one occasion when visiting C's home	Ps Richard Evans		Home address
12	24th July 2017	Text message from Federation informing that PSD lifted suspension and expected in work as normal. This is a complaint of omission – R/PSD failed to send a letter or any formal communication to C that suspension was lifted.	PSD	Richard Eccles, Fed rep	
14	Late November 2017	Meeting with Ps Evans. I verbally expressed my dissatisfaction with the manner I was treated by the organisation and colleagues. There was no apparent reaction.	Ps Richard Evans		Rhyl police station
17	3rd January 2018	Arrived at work for my first shift. Within 5/10	DS Jim Jones	PS Brumby Richard Eccles	Denbigh police station

		minutes I was served with misconduct documents (Reg15) containing the same allegations I had been acquitted for in the Crown Court. Richard Eccles was shocked and said: “in my 25 years experience in the federation, I have never seen someone treated like you. You case is unique” This is a complaint about the fact that Reg 15 documents were served, the timing of service and the circumstances			
21	July 2018	Attended at Rhyl Police Station. I was only allowed in and out escorted by Sergeant McCulloch although I was in possession of my warrant card no restrictions imposed.	McCulloch, The organisation		Rhyl Police Station

		I felt that instructions had been given that I was out of the organisation and thus to be treated for the interim time.			
	20 January 2019	ET1 claim presented			
22	13th March 2019	At the end of the PAT hearing in which I was reinstated, DS Jim Jones approached me and said: "This time you won't be surprised when I serve the misconduct papers on you." This I reminded DS Jim Jones of when he served the misconduct papers in the presence of T/CI Ahari and federation Mel Jones.	DS Jim Jones	T/CI Ahari Mel Jones	Police HQ Federation office Old Colwyn
23	14th April 2019	DS Jim Jones informed that I was the cause of upset and concern to a member of staff at Llandudno police station when I went there to use a computer. DS Jim Jones confirmed that	DS Jim Jones	T/CI Ahari	Llandudno police station

		although there were no restrictions imposed on me, I should not go there.			
24	Late May 2019	the professional standards department proposed 7 sets of dates for the misconduct hearing starting from June to December 2019. They decided that the hearing would be held on the one and only date of my counsel's unavailability.	PSD	T/CI Ahari Federation Mark Jones Mel Jones	
27	July 2017	I had to attend Crown Court for the hearings. I did not feel that North Wales Police supported me throughout this time, in fact, I felt that I was being pushed out of the force. -I was acquitted by the court on 21st of July 2017 and was able to return to work, but I was treated unfavourably by			

		management and there was a decision by North Wales police in January 2018 to instigate misconduct procedures almost six months after my acquittal by the Crown Court.			
28	June 2018	Following a misconduct hearing which started in June 2018 and concluded in September 2018 I was dismissed in September 2018. I served the public for nine months on full constable duties with no restrictions until this point.			
29	July 2019	I then received another misconduct and dismissal from the force in July 2019- all of which were for the same original accusations acquitted for by the Crown Court in July 2017. I was effectively			

		tried three times for the offence which the Crown Court determined I did not commit, Further, I will argue that the penalty of dismissal was fully disproportionate to the alleged offence.			