EMPLOYMENT TRIBUNALS

Claimant: Ms Stephanie Pow

Respondent: The Chief Constable Of Avon & Somerset Constabulary

Heard at: Southampton (by video)

On: 24, 25, 26, 27, 28 January 2022 and 2, 3, 4, 8, 9,10,11,15,16 (in chambers), 17 (in chambers) February 2022.

Before: Employment Judge Dawson, Mr Cross, Ms Smillie

Appearances
For the claimant: Representing herself
For the respondent: Mr Arnold, counsel

JUDGMENT

1 The claim of discrimination on the grounds of sex is dismissed upon withdrawal.

2 The remaining claims of the claimant are dismissed.

REASONS

Introduction

1. By a claim form presented on 5 February 2020 the claimant brought claims of discrimination on the grounds of disability and sex, victimisation and also that she had been subjected to a detriment because she had made protected disclosures.

Procedural background & matters

2. The claim has had a lengthy procedural background. It has been the subject of several case management hearings and there have been a number of iterations of the list of issues.

3. For the purposes of this judgment it is relevant to note as follows:

    a. Although a finalised list of issues had been agreed (version 20), at a hearing, one week before this hearing commenced, the claimant sought to widen the list of issues. That application was partly refused by Employment Judge Dawson and the tribunal understands that refusal is the subject of an appeal before the Employment Appeal Tribunal. As we set out below, for the final hearing the parties had agreed version 22 of the list of issues.

    b. Although a finalised bundle of documents had existed prior to the hearing (version 3), at a case management hearing on 17 December 2021, Regional Employment Judge Pirani directed that duplicate documents and certain privileged documents should be removed from the bundle. There is a dispute between the parties as to whether he directed that the pagination of the bundle should remain the same. Shortly before the case management hearing on 17 January 2022 the respondent served a revised bundle (version 6) which accorded with Regional Employment Judge Pirani's directions and with new page numbers. At the case management hearing on 17 January 2022 the claimant indicated that the difficulty with the revised bundle was that it meant that it was necessary for her to change the pagination in her witness statement. The respondent agreed to change the references to page numbers which appeared in the claimant's witness statement on her behalf and the claimant agreed to that. At the outset of this hearing the claimant indicated that she was still prejudiced by the change in pagination because it had affected her ability to prepare for the final hearing and cross-examination of the respondent's witnesses. She wished to revert to the version 3 pagination. The respondent agreed that it was possible to revert to the pagination in version 3 (with the documents removed as directed by Judge Pirani but without amending the page numbers) and agreed to provide new witness statements with page numbers that referred to version 3. On that basis the claimant considered that she

could continue with the hearing. Thus in order to accommodate those matters the bundle used at the hearing was version 3 with pages removed as per the direction of Judge Pirani. The lay members of the tribunal had been provided with hard copies of version 6 and continued to use that version, the parties assisting the members with pagination.

c. The claimant prepared a supplemental bundle which was comprised of the Attorney General's Guideline on Disclosure, the College of Policing Competency and Values Framework for policing, the Ministry of Justice Criminal Procedure and Investigations Act 1996 Code of Practice and the College of Policing Hate Crime Operational Guidance.

d. At the outset of the final hearing the claimant applied to adjourn the hearing because she wished to await the outcome of her appeal in respect of the refusal to allow her to widen the list of issues. That application was refused and full oral reasons were given. The parties indicated they did not require written reasons and they are not produced in this judgment.

e. The case had been listed to be heard by video on the Video Hearing Service platform. There were numerous technical difficulties, including that on Friday 4 February 2022, a message was sent at 11:41 "The Video Hearings service is currently unavailable. Urgent action is being taken to restore the service as quickly as possible. Thus today's hearings will need to be moved to another platform. We'll update you as soon as we have further information". As a tribunal, we were becoming increasingly concerned as to whether the various interruptions in the hearing caused by technical difficulties was impeding the parties' right to a fair hearing. We invited the parties to tell us if they were concerned in that respect. At that stage the parties were content to continue using the Video Hearing Service Platform. The tribunal did not sit on Monday, 7 February 2022 and there were further technical difficulties on Tuesday, 8 February 2022 including the parties being unable to hear the judge for a period and parties and the tribunal being able to see or hear one of the members on two occasions. At that point we took the view that the ongoing technical difficulties were both jeopardising the hearing timetable and also distracting from the case. The tribunal moved the hearing to the Cloud Video Platform, following which, problems ceased.

f. The parties did not require any specific adjustments to be made to the hearing but we indicated when we anticipated breaks taking place. We invited parties to let us know if they required more breaks and they did so.

g. The tribunal did not sit on Monday, 31 January 2022. The claimant sent an email to the tribunal on that day stating that on the preceding Saturday she had received a letter from the Professional Standards Department of the respondent informing her that an investigation into a previously served Regulation 17 Notice had been concluded. The Appropriate Authority had determined that there was a case to answer

in respect of gross misconduct and the claimant was to attend a misconduct meeting. The claimant had found the letter to be distressing and she felt that it was a deliberately timed intervention shortly before she was due to commence cross-examining the respondent's witnesses on 1 February 2022. At the outset of the resumed hearing on 1 February 2022 the tribunal enquired of the claimant as to what, if any, application she was making. She took some time to talk to her partner and indicated that whilst she wished the hearing to go ahead, she sought an adjournment for the rest of the day to allow her to gather her thoughts. The respondent not only did not object to that application but gave a fulsome apology stating that the letter was sent out by mistake and should not have been sent to the claimant when it was. We concluded that it was in the interests of justice and in accordance with the overriding objective that the claimant should have the day to recover and the hearing would commence on 2 February 2022.

h. The parties had agreed a timetable in respect of the calling of witnesses and the respondent concluded cross examination of the claimant's witnesses half a day earlier than intended. The claimant was also able to conclude cross-examination of all of the respondent's witnesses within the time that the parties had allocated without needing to ask for further time. We were grateful to both parties for their cooperation in that respect.

i. For the claimant we heard from herself, Catharine Fletcher Carol Pryde and Martin Rutterford. For the respondent we heard from Mark Almond, Sarah Bowden, Simon Brickwood, Adam Bunting, Lucy Edgeworth, Elizabeth Hughes, Jess Langford, Ben Lavender, Nadine Partridge, Deryck Rees, Keith Smith and James Wasiak. Most of the witnesses we heard from were current or retired police officers. Where referred to below, those witnesses are described by the rank they held at the time of the issues arising and for convenience we have maintained those titles, even in respect of officers who are no longer serving.

The Issues

4. As we have indicated, Employment Judge Dawson had partially refused to allow the claimant to amend the list of issues on 17 January 2022 but he did allow certain amendments by consent. The finalised version, taking account of those amendments, was agreed by the parties to be version 22 and it is that version which the tribunal has worked from. Although the claimant appeared to have an earlier version before her when she was giving her evidence, counsel for the respondent helpfully cross-referenced paragraphs between the two lists of issues and a further copy of version 22 was provided to the claimant during the course of the hearing.

5. The list of issues is arranged by topic rather than chronologically. The main part of the list of issues is a list of 24 allegations of detriment which the claimant says she has been subjected to. They are clustered around the following topics:

a. Denial of training opportunities and career development,

    i. People Development Programme,

    ii. CID Tutors Course.

b. Being given more onerous or mundane work.

c. Demeaning or humiliating comments/actions.

d. Insignificant issues about the claimant's conduct being unduly highlighted in the following documents;

    i. 3rd occupational health referral dated 25 July 2019,

    ii. informal action plan commence on 10 August 2019,

    iii. UAP Stage I meeting 15 August 2019,

    iv. intended formal UAP Stage I performance/action plan dated 17 January 2020.

e. The way in which grievances and disciplinary issues were handled so that the employer is not taking them seriously or dealing with them in the proper matter.

6. Version 22 of the list of issues is set out in the annex to this judgment. At the outset of the hearing the claimant withdrew the claim of sex discrimination and, as is apparent from the list of issues, allegation 23 within the list of issues has been withdrawn.

7. Unfortunately the list of issues is not in chronological order and thus, in order to give a judgment which makes sense, initially we set out our findings of fact without extensive reference to the list of issues and then explain, by reference to the list of issues, what our conclusions are on each issue. Given the amount of evidence which we have heard we have not made findings of fact on every single point presented to us. We have made the findings which we consider necessary in order to resolve the issues.

Rule 50 Orders

8. A previous order of the tribunal had directed that "in respect of the judgment reached in the above proceedings on the question of whether the Claimant is a disabled person or not" no person may publish any matter likely to lead members of the public to identify the claimant. At the outset of the hearing the claimant confirmed that she was not seeking any further orders under rule 50.

Law

Protected Disclosures

9. Section 47B Employment Rights Act 1996 deals with detriments on grounds of making protected disclosures and provides that:

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

        (1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

            (a) by another worker of W's employer in the course of that other worker's employment, or

            (b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.

        (1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

        (1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

10. Under section 43A of the Act a protected disclosure is a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

    Disclosure of Information

11. S43B Employment Rights Act 1996 provides

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

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

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

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

    (d) that the health or safety of any individual has been, is being or is likely

to be endangered,

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

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

Reasonable Belief

12. That test on belief in the public interest was set out the case of *Chesterton Global v Nuromohamed* where it was reiterated that the tribunal must ask

    a. whether the worker believed at the time he was making the disclosure that it was in the public interest and,

    b. if so, whether that belief was reasonable

13. More than one view may be reasonable as to whether something is in the public interest

14. Moreover an employee can attempt to justify the belief after the event by reference to matters which were not in his head at the time as long as he had a genuine belief at the time that the disclosure was in the public interest. That belief does not have to be the predominant motor.

15. The tribunal could find that the particular reasons why the worker believed the disclosure to be in the public interest did not justify his belief but nevertheless find it have been reasonable for different reasons. All that matters is that the subjective belief was objectively reasonable (*Nuromohamed* paragraph 29)

16. In considering whether the belief was reasonable factors include

    a. the numbers in the group whose interests the disclosure served

    b. the nature of the interests affected

    c. the extent to which they are affected by the wrongdoing.

    d. the nature of the wrongdoing

    e. the identity of the wrongdoing

Detriment due to Protected Disclosure

17. *Royal Mail Group Ltd v Jhuti* held that if a person in the hierarchy of responsibility above the employee determines that she should be dismissed for a reason but hides it behind an invented reason which the decision-maker adopts, the reason for the dismissal is the hidden reason rather than the invented reason.

18. That approach was clarified by the EAT in *Kong v Gulf EA-2020-000357-JOJ* where HHJ Auerbach noted “First, the general rule that the motivation that can be ascribed to the employer is only that of the decision-maker(s) continues to apply. Secondly, there is no warrant to extend the exceptions beyond the scenario described by Underhill LJ, which will itself be a relatively rare occurrence, and the surely highly unusual variation encountered in Jhuti. Thirdly, whether in the scenario contemplated by Underhill LJ, or in the variation described by Lord Wilson, two common features are that (a) the person whose motivation is attributed to the employer sought to procure the employee’s dismissal for the proscribed reason; and (b) the decision-maker was peculiarly dependent upon that person as the source for the underlying facts and information concerning the case. A third essential feature is that their role or position be of the particular kind described in either scenario, so as to make it appropriate for their motivation to be attributed to the employer” (para 71).

19. In respect of a claim of detriment, Harvey on Industrial Relations states “The term 'detriment' is not defined in the ERA 1996 but it is a concept that is familiar throughout discrimination law … and it is submitted that the term should be construed in a consistent fashion. If this is the case then a detriment will be established if a reasonable worker would or might take the view that the treatment accorded to them had in all the circumstances been to their detriment. In order to establish a detriment it is not necessary for the worker to show that there was some physical or economic consequence flowing from the matters complained of”. The same approach has been set out by the Court of Appeal in *Jesudason v Alder Hey Children's NHS Foundation Trust* [2020] EWCA Civ 73 at paragraphs 27 to 28.

20. In *Fecitt v NHS Manchester* [2012] ICR 372, the Court of Appeal held that the test of whether an employee has been subjected to a detriment on the ground that he had made a protected disclosure is satisfied if, “the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower”

21. In *Jesudasen* the Court of Appeal stated “Liability is not, therefore, established by the claimant showing that but for the protected disclosure, the employer would not have committed the relevant act which gives rise to a detriment. If the employer can show that the reason he took the action which caused the detriment had nothing to do with the making of the protected disclosures, or that this was only a trivial factor in his reasoning, he will not be liable under section 47B” (paragraph 31).

22. In *Panayiotou v Kernaghan [2014] IRLR 500*, at para 49 and 52 the EAT held:

> "[49] There is, in principle, a distinction between the disclosure of information and the manner or way in which the information is disclosed. An example would be the disclosing of information by using racist or otherwise abusive language. Depending on the circumstances, it may be permissible to distinguish between the disclosure of the information and the

manner or way in which it was disclosed. An employer may be able to say that the fact that the employee disclosed particular information played no part in a decision to subject the employee to the detriment but the offensive or abusive way in which the employee conveyed the information was considered to be unacceptable. Similarly, it is also possible, depending on the circumstances, for a distinction to be drawn between the disclosure of the information and the steps taken by the employee in relation to the information disclosed.'

…

[52] Those authorities demonstrate that, in certain circumstances, it will be permissible to separate out factors or consequences following from the making of a protected disclosure from the making of the protected disclosure itself. The employment tribunal will, however, need to ensure that the factors relied upon are genuinely separable from the fact of making the protected disclosure and are in fact the reasons why the employer acted as it did.'

Burden of Proof- Detriment

23. Section 48(2) Employment Rights Act 1996 provides that 'it is for the employer to show the ground on which any act, or deliberate failure to act, was done'.

Victimisation

24. Section 27 of the Equality Act 2010 provides

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

25. In every case the tribunal has to determine the reason why the claimant was treated as he was (per Lord Nicholls in *Nagarajan v London Regional Transport)*.

26. In the case of *Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830, Lord Nicholls considered that the test (must be what was the reason why the alleged discriminator acted as they did? What, consciously or unconsciously was their reason?

27. In deciding whether the claimant was subjected to a detriment we have had regard to the decision in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11 that, in respect of the definition of detriment,

> "As May LJ put it in De Souza v Automobile Association [1986] ICR 514, 522 g, the court or tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work.
>
> But once this requirement is satisfied, the only other limitation that can be read into the word is that indicated by Brightman LJ. As he put it in Ministry of Defence v Jeremiah [1980] ICR 13, 30, one must take all the circumstances into account. This is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to "detriment": Barclays Bank plc v Kapur (No 2) [1995] IRLR 87. But, contrary to the view that was expressed in Lord Chancellor v Coker [2001] ICR 507 on which the Court of Appeal relied, it is not necessary to demonstrate some physical or economic consequence. (Paragraph 34 to 35).

Disability Discrimination

Direct discrimination

28. As for the claim for direct disability discrimination, the following section of the Equality Act 2010 is relevant:

> **13 Direct discrimination**
>
> (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

29. Again the focus is on what was the reason why the alleged discriminator acted as they did? What, consciously or unconsciously was their reason?

30. In considering questions of causation, again we have relied on *Nagarajan* [1999] IRLR 572- if the protected characteristic had a 'significant influence' on the outcome, discrimination would be made out.

31. In respect of whether someone has been subjected to a detriment (see s39 Equality Act 2010) again we have applied *Shamoon v Chief Constable of the Royal Ulster Constabulary.*

Discrimination because of Something Arising from Disability

32. In respect of a claim for discrimination arising from disability, under section 15(1) of the Equality Act 2010 a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability, and A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

33. Under section 15(2), this does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

34. The proper approach to section 15 claims was considered by Simler P in the case of *Pnaiser v NHS England* at paragraph 31. She held:

> (a) A tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.
>
> (b) The tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.
>
> (c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see *Nagarajan v London Regional Transport* [1999] IRLR 572. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises, contrary to Miss Jeram's submission (for example at paragraph 17 of her skeleton).
>
> (d) The tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is 'something arising in consequence of B's disability'. That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of s.15 of the Act (described comprehensively by Elisabeth Laing J in *Hall*), the statutory purpose which appears from the wording of s.15, namely to provide protection in cases where the consequence or effects of a disability lead to

unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

(e) For example, in *Land Registry v Houghton* UKEAT/0149/14, [2015] All ER (D) 284 (Feb) a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(g) Miss Jeram argued that 'a subjective approach infects the whole of section 15' by virtue of the requirement of knowledge in s.15(2) so that there must be, as she put it, 'discriminatory motivation' and the alleged discriminator must know that the 'something' that causes the treatment arises in consequence of disability. She relied on paragraphs 26–34 of *Weerasinghe* as supporting this approach, but in my judgment those paragraphs read properly do not support her submission, and indeed paragraph 34 highlights the difference between the two stages – the 'because of' stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the 'something arising in consequence' stage involving consideration of whether (as a matter of fact rather than belief) the 'something' was a consequence of the disability.

(h) Moreover, the statutory language of s.15(2) makes clear (as Miss Jeram accepts) that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of s.15 would be substantially restricted on Miss Jeram's construction, and there would be little or no difference between a direct disability discrimination claim under s.13 and a discrimination arising from disability claim under s.15.

(i) As Langstaff P held in *Weerasinghe*, it does not matter precisely in which order these questions are addressed. Depending on the facts, a tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it

was because of 'something arising in consequence of the claimant's disability'. Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment.

35. In *Private Medicine Intermediaries Ltd v Hodkinson*, HHJ Eady QC held

> **[24]** The protection afforded by s 15 applies where the employee is treated "unfavourably". It does not necessitate the kind of comparison required by the use of the term "less favourable treatment" as in other forms of direct discrimination protection; neither is it to be understood as being the same as "detriment". "Unfavourable treatment" suggests the placing of a hurdle in front of, or creating a particular difficulty or disadvantage for, a person because of something arising in consequence of their disability. It will be for an ET to assess, but treatment that is *advantageous* will not be unfavourable merely because it might have been *more* advantageous.

General Provisions under the Equality Act 2010

36. Some parts of the Equality Act 2010 apply to more than one type of discrimination. They include the following sections:

39 Employees and applicants

(2) An employer (A) must not discriminate against an employee of A's (B) -

(a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

109 Liability of employers and principals

(1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.

(2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.

<u>Burden of Proof</u>

37. Section 136 Equality Act 2010 deals with the reversal of the burden of proof and states

> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

38. In *Madarassy v Nomura International plc* [2007] IRLR 246, the Court of Appeal held, at paragraphs 56-57,

> "The court in Igen v Wong expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent 'could have' committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.
>
> 57 'Could conclude' in s.63A(2) must mean that 'a reasonable tribunal could properly conclude' from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory 'absence of an adequate explanation' at this stage (which I shall discuss later), the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example, evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like as required by s.5(3) of the 1975 Act; and available evidence of the reasons for the differential treatment.

39. In *Hewage v Grampian Health Board* [2012] UKSC 37, the Supreme Court held "Furthermore, as Underhill J pointed out in *Martin v Devonshires Solicitors* [2011] ICR 352 (para 39) it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other."

Findings of Fact

40. References to page numbers below are to printed page numbers in the hard copy of version 3 of the bundle.

41. The claimant became a Detective Constable in 2013 with the Metropolitan Police Service. She then joined the National Crime Agency and in January 2018 joined the respondent's North East Investigation Team 4 based at Concorde House. The claimant's second line manager was DI Bunting.

42. DI Bunting told us, and we accept, that the claimant made a good start on the team. She appeared confident and was hard-working. We have no reason to believe that the claimant was anything other than conscientious and diligent.

43. That view, expressed, by DI Bunting, is consistent with an email from Detective Sgt Miller dated 21 June 2018 where she wrote to him stating "Steph Pow came to us about 6 months ago. She is a DC and due to take her sergeant's exam. She is full-time and fully competent" (page 378).

44. In June 2018 an incident had arisen in respect of one of the claimant's civilian colleagues who is a former police officer, Ms Fletcher. The colleague was disabled and another constable had made inappropriate and offensive comments about her, referring to her hobbling about and the need to open doors for her. The claimant became aware of those comments and also of the way that DI Bunting had attempted to resolve them.

45. The claimant spent some time in evidence challenging DI Bunting on his view at the time that this was not a hate crime but was, in fact, a matter to be dealt with under the police conduct regulations. DI Bunting did accept that, with hindsight, he should have recorded the matter as a hate incident. He indicated that at the time he had regarded it as an internal matter.

46. The claimant's position is that, as well as the matter being a breach of the Equality Act 2010, an offence had been committed under the Public Order Act 1986 because persons who heard the comments being made (which did not include Ms Fletcher) would have been caused harassment alarm or distress and the words used were abusive. She says that because they were about disability, they amounted to a hate crime.

47. The claimant was unsatisfied with way that DI Bunting had dealt with the matter and discussed the matter with Ms Fletcher. Ms Fletcher did not ask the claimant to take matters further but the claimant considered that it was appropriate to do so.

48. Therefore, on 21 June 2018, she wrote to Detective Chief Inspector Brickwood. She wrote a long email, concluding "Sir, the events of the past few weeks have been devastating for Catharine and in the knowledge that the DI Bunting simply wishes to give words of advice to Sandra, I felt that I needed to highlight the nature of the serious issues that are about to be swept under the carpet. Sandra's attitude towards her colleagues is undoubtedly unprofessional and… I feel that a more serious stance should be taken in the circumstances. A&S are supposed to be "disability confident". We are supposed to have respect for the public and our colleagues and according to Chief Constable Marsh we "protect the vulnerable". If these events, and Sandra's behaviour is dealt with by simply giving "words of advice" this makes a mockery of the values we claim

to uphold… Would we give words of advice to the perpetrator of a hate – crime? I would like to think not" (page 353-7).

49. The respondent accepts that that email amounted to a disclosure of information which in the claimant's reasonable belief tended show a breach of a legal obligation. However the respondent puts in issue whether the claimant's belief that it was made in the public interest was reasonable, whether the claimant's belief that it tended to show that a criminal offence had been committed was reasonable and whether the claimant's belief that it tended to show a miscarriage of justice had been committed was reasonable (issues 7.1.3 – 7.1.5).

50. We find that the claimant genuinely believed that the disclosure of the information was in the public interest. She believed that it was inappropriate, in a police service which served the vulnerable in society, for serving officers to make remarks which discriminated against their disabled colleagues and for no more than words of advice to be given to those officers. We find the claimant not only believed that the information which she was disclosing was in the public interest but we also find that it was reasonable for her to believe that. If an officer discriminates against a disabled person in a way which would amount to harassment within the meaning of the Equality Act 2010 (whether that person is their colleague or otherwise) and that officer's supervisors take the view that the appropriate way to deal with that is simply to issue words of advice, we find it is reasonable to believe that it is in the public interest to disclose information to a more senior officer about that.

51. Given that the respondent accepts that the claimant reasonably believed that the information tended to show a breach of a legal obligation (issue 7.1.2) we do not need to consider issues 7.1.4 and 7.1.5.

52. In those circumstances we hold that in in sending the email of 21 June 2018 the claimant made a protected disclosure.

53. The respondent accepts that at the same time the claimant complained to acting Detective Sgt Ryan Matthews about the lack of sufficient action taken in respect of Sandra Osborne and that amounted to a protected act.

54. Although the earliest act of detriment relied upon in respect of this protected disclosure/protected act is allegation 6 on 8 February 2019, it is necessary to consider things that happened before then. The claimant's case is that as a result of her protected disclosure/act DI Bunting and DCI Brickwood started bullying her and started a process which ensured that other line managers continued to bully her. She asserts that there was a conspiracy amongst managers and Human Resources officers to treat her badly thereafter. She contended during the course of the hearing that various directions were given to her in order to provoke a reaction, which could then be used against her.

55. In her evidence the claimant stated that the conspiracy involved Human Resources, DI Bunting, DCI Brickwood, DS Smith, DS Partridge and DI Lavender. She contended that DS Edgeworth had done things simply to

provoke her. In her closing submissions the claimant also asserted that if there had not been a conspiracy (which she maintained was the case), DCI Brickwood had engineered matters so that the claimant was subjected to detriments because of the disclosures which she had made and the protected act.

56. The respondent's case is that the claimant was difficult to manage and, in particular, resistant to any kind of feedback. The claimant had an attitude that she knew the best way of doing things and anyone who disagreed with her was wrongly regarded as either ignorant or bullying her. In fact, the respondent says, it was simply trying its best to manage the claimant and to help her. Most of the respondent's witnesses expressed sympathy for the claimant and stated that their actions were taken in order to support the claimant.

57. In July 2018 the claimant was investigating an offence in relation to the downloading of child pornography by W. It was necessary to complete MG06 disclosure schedules for the Crown Prosecution Service.

58. On 31 July 2018 Fiona Fogg, a case manager with the respondent's Criminal Justice Department sent an email to Hope Winton asking if she had received the updated schedules for the case. Ms Winton replied "I have not received an email from [the claimant] regarding updated MG06 series for [redacted]. Therefore the file still has not been submitted, it is in court on Friday." (Page 372)

59. Ms Fogg therefore wrote to Superintendent Simon Ellis, the Head of Criminal Justice for the respondent, on 1 August 2018 stating "Hope has still not received the updated MG 6 series from [the claimant] which she assured you would be with Hope by close of play on Monday. I also did not receive any response from Steph to my email I sent her on 26/08/18. The PTPH is this Friday 03/08/2018"(page 371, the 1st date in that email appears to be a typo).

60. Superintendent Ellis then emailed the claimant stating "when we spoke last week I explained the importance of this and the deadline. You assured me that I the case builders would receive the schedules with adequate descriptions etc. by close of play on Monday…. I am extremely disappointed. We need those schedules, correctly completed, as a matter of urgency. If you need help/guidance then please ask and we will be able to find someone to assist. I expect to receive the schedules today" (sic)

61. The claimant sent a lengthy response to that email in the course which she wrote "as you know [redacted] PTPH is on Friday 3rd August, at which he is likely to plead guilty. It is therefore anticipated that no schedules will be needed at all… I am fully aware that Ms Fogg is desperate for the schedules, which will be finalised as and when I have all the information regarding the direction of the case" she concluded the letter "I would like to assure you that the documents will be completed if necessary". (Page 370).

62. That email prompted a response from Detective Superintendent Wright (also on 1 August 2018) in which she wrote "this is outrageous, this DC needs to do

the schedules today. Simon is tamping with the reply below, and the CPS are close to pulling the case for it not being ready, if the correct schedules are not completed (p369)".

63. The witness statement of DI Bunting states that on 18 August 2018 he was also made aware of problems with another of the claimant's investigations in respect of allegations of grievous bodily harm involving members of the Kurdish community. He states that at the morning briefing on Sunday 19th August the claimant had mentioned that she had urgent CPS papers to complete and that the claimant had most the day to complete the work. Acting Detective Sgt Ball spoke to the claimant and advised that she needed to submit the MG6 form and any completed schedules to the CPS by the end of that day. He says that the claimant said she was not going to do that but would email instead. He says that he was made aware of the issues by Acting Detective Sgt Ball and when the claimant returned to the station at 4 PM he spoke to her about it personally and reiterated the advice that she should send through an update with the work that had been completed to date. In cross-examination he accepted that he told the claimant to send what she had got and that he had not asked to see the schedules. He stated that the schedules should have been to the correct standard. We accept DI Bunting's evidence in that respect, however we do note that the claimant had been unable to work on the schedules on the Sunday afternoon due to the fact that she had been required to conduct a rape interview for another colleague.

64. DI Bunting believed that the claimant had spent much of the weekend compiling the email about flexible working which is referred to in the below paragraph. He says he was told that was the case by Detective Sgt Maggs and Acting Detective Sgt Ball. He made a typed note at page 633 of the bundle. We accept that was DI Bunting's belief and he acted accordingly, his evidence was supported by his contemporaneous notes and we considered his evidence to be credible.

65. On 19 August 2018 DI Bunting wrote to DCI Brickwood stating "[the claimant] is continuing to cause some problems in a number of areas which I will talk to about one of which is below…" He then attached the email in which the claimant had written to Detective Sgt Miller about flexible working.

66. The claimant sought flexible working so that she could be on certain breaks with her partner who was also a police officer with the respondent. Both the claimant and her partner worked within investigations, the claimant in Team 4 and her partner in Team 3. The email went into some detail about the shift patterns of colleagues which in the claimant said she had looked into and asked whether the respondent was still within any review periods of people for whom flexible working arrangements had been made. She suggested that if that was the case the shifts of others could be reviewed and a compromise reached. She asked whether a review of any of those with weekend flexi shifts was feasible. She went on "I am also formally requesting details of the review months for other people who already have the late-turn weekend as flexible-working days, and their trial period lengths. I would like to make you aware that should no arrangement be reached before these dates, I will have no choice but to re-

submit the same flexible working pattern request the month before they are due, and if I am not supplied with this information, I feel that I will simply have to continue submitting the request every month in order for it to perchance fall within the relevant period..” (Page 366).

67. Whilst it is necessary to read the whole email to consider its full effect, the length and tone of it is such that one can understand why a more senior officer might be unhappy with it, not least the threat to resubmit the same flexible working request every month.

68. DI Bunting told us in his witness statement that following those matters he decided that he needed to intervene and spoke privately with the claimant in the company of Detective Sergeant Maggs. He says he told the claimant that he was concerned that she was very opinionated and was not doing what she was told to do by managers and the CPS. He says he was concerned by the 2 separate investigations and that he was going to set an action plan for her. It would be measured over 6 months and would be reviewed by regular discussion. His note of the conversation is at page 633. Again we accept DI Bunting’s evidence in this respect. It was consistent with the contemporaneous events and supported by contemporaneous notes. The action plan recorded there is as follows:

> 1. To comply with disclosure responsibilities as laid out under CPIA in the timely review and completion of appropriately descriptive disclosure schedules for consideration by the CPS.
>
> 2. To acknowledge and complete requests, within set time periods, for disclosure information or further evidence / information made by CPS and CJU to allow the prosecution to meet its court imposed deadlines.
>
> This will be measured over 6 months and will be reviewed by regular discussion and submission of work through the Detective Sergeants. CJU will be asked to monitor the material submitted and feedback.
>
> The above is key to DC Pow’s work as an OIC in serious crime investigation.

69. In respect of the involvement of Acting Detective Sgt Ball there is a contemporaneous statement dated 24 August 2018 timed at 09:46 hours from her. We have not heard from her and the claimant has not had the opportunity of cross-examining her in respect of the statement. The claimant does not accept its accuracy. It records that on 23 August 2018 she had asked the claimant if she could have a private chat with the intention of checking up on her welfare following being placed on an action plan. Upon her approaching the claimant, the claimant’s response was; “if you are going to tear another strip off me I’d rather leave it to another day”, ADS Ball said that was not the case and they had a 10 minute conversation. She says that during that period the

claimant was very vocal and clearly upset and very angry. She asserted that DI Bunting was trying to bully her off team and she would not allow that to happen.

70. The claimant requested a meeting with DCI Brickwood which took place on 20 August 2018 in a local Costa coffee shop. Ms Fletcher went along with the claimant and the allegations in respect of the abuse of Ms Fletcher were discussed. DCI Brickwood's evidence in chief was that although he had to end that meeting prematurely he subsequently spoke to Ms Fletcher who confirmed she did not want anything more to be done as she and the officer were now on good terms. Ms Fletcher's evidence in that respect was more muted; she denied that she was on good terms with Ms Osborne but stated that she did not want any more fuss and wanted everything to go away. She felt that the decision had been made as to how it would be dealt with and she felt she had been ignored. She was asked if she said that to DCI Brickwood and she said, not that she recalled, that at most she would have said would be that she would be civil and would make her a cup of tea when she did for anyone else. In his evidence, in answer to the Tribunal's questions, DCI Brickwood accepted that statement that Ms Osborne and Ms Fletcher were on good terms was too strong and it was better to describe Ms Fletcher as considering the matter settled. We find, having heard from Ms Fletcher and DCI Brickwood, that Ms Fletcher did say she considered the matter closed, but not that she and Ms Osborne were on good terms. At the same meeting the claimant told DCI Brickwood that she felt that DI Bunting was treating her differently to other team members and more dictatorially.

71. On 8 September 2018 ADS Ball emailed the claimant about disclosure training to take place on 26 September. She wrote " As discussed Tony Bush, trainer at HQ, has pencilled you in on the morning of 26.09.2018 for the disclosure section of the ICIDP training. It should last about 3.5, hours and I believe it starts at 09.00 but def clarify as they have a habit of moving things at the last minute. We are lates so obviously work a day." (Page 404).

72. On 25 September 2018 ADS Ball wrote to DI Bunting and Detective Sergeant Maggs stating "Have texted Steph to remind her of this and she is claiming she has had no warning of this course and has plans for the morning so can't attend!!"

73. The claimant's explanation when she was asked in evidence about her failure to attend was that when she was told she had been pencilled in there was not enough notice for her to change her personal plans that had been made for that day. When asked why she did not say that at the time she said that it was because it was none of ADS Ball's business what she was doing. When pushed further she said that she did not know why she did not reply. Either way, the position would have been unsatisfactory from the respondent's point of view. Even in her evidence she would not accept that she could be at fault in this respect.

74. At around the same time, the precise date is not clear, the claimant circulated a local male on the Police National Computer as being wanted and arrestable

for an offence of burglary. She showed on the computer that DI Bunting had authorised the entry. He had not. DI Bunting explained to us the difficulty which was that if the suspect was apprehended by a different force in another part of the country, the respondent was required to go and retrieve the suspect. Thus the claimant was committing the respondent to expending significant resources. The claimant indicated that was how things had been done in the Metropolitan Police but also accepted she was in the wrong. She agreed she should not have stated that DI Bunting had authorised the entry. At the time she invited DI Bunting to discipline her. He did not do so.

75. DI Bunting became aware of the claimant's views about his management of her and decided to have a "clear the air meeting". He spoke to the claimant alone and without a sergeant present. According to him, that was to reduce the formality of the meeting. They met on 14 September 2018 for approximately 20 to 30 minutes. DI Bunting says that he made notes shortly after the meeting which appear at page 387 of the bundle. On the same day the claimant wrote an email to DCI Brickwood which appears at page 397. In that email she said that DI Bunting had told her that she caused the entire team to be subdued when she came in for 3 night shifts over the last weekend; that she was "bolshy" and that others have passed on that she was overbearing. People on Team 4 did not want to work with her. She said that she was referring the matter to PSD.

76. Consideration of DI Bunting's notes suggest that he did make comments close to those recorded by the claimant. The notes record the following:

    - I explained that I found that she presented as a confident and outspoken individual. The DS's and myself had found her on occasions difficult to manage. This was not due to her work ethic which I emphasised was very good. I explained that she was very hard working, volunteered for tasks and had significant drive and energy. I explained that on occasions she would not always do what was asked or would express strong views / argue against what she was asked to do.

    - I told her that we had had reports form the team that they found her 'overbearing' and that some staff had expressed to supervisors that they did not want to work with her. They had described her as 'ranting' on occasions after being upset by the way we had allegedly managed.

    - I also explained that I had had reports that a member of another team had reported to me that she had been 'bolshie' in their dealings with them. I could not disclose where this has come from. I explained that this conversation with her was looking to clear the air and improve things.

77. It is necessary for us to consider whether there were grounds for the things said by DI Bunting and the extent to which he was acting in good faith when he said them. When he was asked about the basis for the "overbearing" comment he said that when Ms Fletcher had been talking to Detective Sergeant Maggs, she had said that she found the claimant overbearing and always wanted to sit next to her in the Open Plan office. She was unhappy with the way the claimant spoke to victims and also the way she knocked jobs. He pointed

to his handwritten note in the margin of page 391 of the bundle which was entered when he went to speak to D. Supt White a couple of weeks later. We accept DI Bunting's evidence in this respect, he was able to point to clear examples to substantiate what he said. There is no credible evidence that he was inventing issues simply in order to criticise the claimant.

78. Thereafter the claimant raised a grievance in respect of DI Bunting. The outcome is not in the bundle but it is apparent that the claimant's complaints were not upheld. The claimant did not seek a further review or appeal as is apparent from paragraph 11 of her witness statement.

79. As a consequence of the difficulties which the claimant was experiencing in her team at Concorde House she was (at her request) transferred to Kenneth Steel House although remained within Team 4. Her line manager became DS Keith Smith and her 2nd line manager was DI Almond. Her 3rd line manager remained DCI Brickwood.

80. DS Keith Smith says that when he was informed that the claimant was joining his team he was given a brief outline of what had occurred previously but no significant detail. He was told the grievance procedure was confidential. Likewise DI Almond says that although he was aware there had been some issues he was not aware of the details and he says that at the time he was not aware that the claimant had filed a grievance against DI Bunting.

81. DS Keith Smith's evidence is to some extent borne out by the claimant's email at page 414 of the bundle sent to him on 19 October 2018. She stated "Thanks for the chat yesterday, it was really nice to feel that you wanted to help me and not just point out problems. I know you don't want to know too much about why I ended up at KSH, but everything that happened at Concorde really knocked my confidence. I didn't want to bring it up yesterday, being in an open office, but I am struggling with moving to a new team, with new people, and feeling quite lost with the systems, and new role requirements, and things I've never previously had to do."

82. There is no evidence that there was any agreement between DS Keith Smith and DCI Brickwood to do the claimant down, nor any evidence that DCI Brickwood manipulated matters to achieve that end. DS Keith Smith seems to us to have been acting independently and appropriately as was evidenced in his discussions with the claimant.

83. It is clear, however, from page 431 of the bundle that DS Keith Smith had been told that there were issues with disclosure and discussed those with the claimant. In his email of 19 October 2018 to the claimant he records an entry that he intended to put on to the IPR that "Steph and I have discussed her move to Team 4 at KSH and some of the development areas that have been identified during her time at Concorde House. A key area that has been highlighted to me is Steph's dealing with disclosure, CPS memos and the CJU. Steph has assured me that she is confident around disclosure and believes previous issues with CPS and CJU have been somewhat exaggerated and that there is no significant issue. I have not previously worked with Steph and so I want to

offer support and development and give her the foundation to succeed at KSH" that email goes on to talk about it containing an action plan which has been set with the SMART principles in mind. This action plan was not explored in evidence and we make no further findings on it.

84. Earlier that day, there had been an email exchange between DS Keith Smith and DI Almond about the fact that the claimant had told DI Almond that she wished to take the "skippers exam". DI Almond records in an email timed at 09:30 that he had said to the claimant it was unlikely he would support it at that time because he would need to see her work over a sustained period of time first. DS Keith Smith replied to suggest that it was only the exam that she was taking and if she passed it the claimant still had quite a few hurdles to jump before a promotion process but he agreed that if "we're taking the stance that people aren't automatically supported for the exam unless they hit a required standard and she needs to wait." DI Almond replied "My view is that we hold off the PS exam until she's got through her AP and we're satisfied she is suitable, otherwise the next thing is that she'll be asking to do acting. I've told her that in a roundabout way, so if she brings it up again you can tell her that's my view.." (Page 416).

85. We find that DI Almond was motivated by the matters set out in that email and he was acting in good faith. He was able to provide a clear rationale for his view which was documented at the time in the emails we have referred to.

86. In December 2018, DI Lavender sent an email to DS Keith Smith raising concerns about the claimant's work in respect of an affray investigation. The email was discussed with the claimant and is recorded in DS Keith Smith's log at page 919.

87. The claimant went off sick on 4 January 2019. The agreed statement of facts records the reason as being "Anxiety Stress Psy". She remained off until 17 March 2019.

88. On 6 January 2019, DI Almond wrote to DCI Brickwood (his line manager) setting out in some detail the up-to-date position with the claimant. The email starts "Sorry to darken your day, but I just wanted to raise the Steph Pow issue". It goes on to explain the way in which the notification of absence had arisen, including that the claimant had been "ignoring Keith's calls" but eventually when a message was left for the claimant's partner, he replied to DS Keith Smith stating that the claimant was suffering from stress and had been "pretty much tipped over the edge after being "pulled around" at Concorde House and then "pulled around" in Bristol." He set out tentative plans going forward in respect of the claimant's work, if she was to be off work for a while (page 424).

89. When asked why he started the email in the way that he did, DI Almond stated that when someone is off and there are a number of jobs it causes a headache and is something that needs to be thought about.

90. We accept that explanation as given by DI Almond. The wording of the email is, perhaps, unfortunate but we accept that it was an email written in the course

of a busy day with a lot of pressures and reflects those pressures rather than any previous conversation or agreements arising out of the disclosure made by the claimant the previous June.

91. DCI Brickwood replied stating that in the light of the issues here and concerns that have been raised previously regarding the claimant's competence and capability there were some things which "we need to be watertight on". He stated that every interaction should be documented, there should be a review on the claimant's jobs before they are passed on and there should be a review of the action plan. He concluded "obviously, the focus needs to be on supporting Steph and encouraging her to come back to work. However the information I'm being given from those responsible for her, both previously and currently, makes me think that as things stand she's probably unfit to be a DC, so we need to either get her skills level up, or deal with her through performance measures (and probably both)" (page 423)

92. On 9 January 2019, DS Keith Smith tried to call the claimant but was unable to reach her. A text message exchange followed in the course of which the claimant said, "I know it's a bit odd but I'm not good with calls when I'm like this or people. I know that's strange….It's a sort of disorder type thing that gets out of control and makes me paranoid, have no confidence, want to hide, disconnect, etc. It doesn't happen often, but when lots of things pile up it seems to come back. It's really fucked up, I know. Would it be ok to email or stick to text message? And sorry in advance if I don't reply right away," (page 429).

93. DI Almond and Simon Wallace went to see the claimant on the evening of 20 January 2019 and she set out some of her medical history. DI Almond recorded in an email to DCI Brickwood that the claimant's doctor's note said that the claimant should have a phased return to work over 4 weeks with amended duties but the claimant said that she did not want those and did not think she needed them. He noted "This might just be Steph and a reflection of some of the previous issues of not recognising to do as she's been told or advised, but she assured me that with her medication she feels fit for normal duties" (page 434).

94. On the morning of 8 February 2019 DI Almond contacted the Occupational Health nurse Julie Francis who had had an appointment with the claimant the previous morning. He recorded, in an email to DCI Brickwood, that Ms Francis "explained to me that she had a very lengthy consultation with her in the region of an hour and forty-five minutes, where Steph spent a lot of time raising her voice and swearing about how she had been treated at Concorde House. At one point, a colleague came in to check that everything was alright." Although it may be unusual for an occupational health professional to make such a disclosure, there is no dispute among the parties that is what happened. DI Almond also recorded that the nurse had suggested that she did not think investigations with the best place for the claimant to be (page 437).

95. Following receipt of that email on 8 February 2019, DCI Brickwood wrote to Rachel Nash of Human Resources stating that it was necessary to have a discussion about the claimant, describing her as a problematic individual,

referring to performance issues and stating “I have some doubts about her general competence, and there are a number of amusing anecdotes about how she has taken senior members of the organisation to task when she disagrees with their requests…” He referred to the claimant as a challenging character. (Page 444).

96. This is a significant email in that the claimant places considerable reliance upon it as evidence of the fact that she was being treated unfavourably because of the complaint that she had made about DI Bunting. DCI Brickwood has set out an explanation for his wording in his witness statement at paragraph 11.

97. We have given the explanation provided by DCI Brickwood anxious consideration. We have asked ourselves whether the fact that the email refers to taking senior members of the organisation to task, is reflective of the fact that in the email the previous June, the claimant had complained about the way DI Bunting had dealt with matters. We must focus on whether the June 2018 email was more than a trivial influence on what he wrote.

98. We accept the explanation given by DCI Brickwood. As we have set out, the claimant did write a challenging email to DI Bunting regarding the flexible shift pattern, she did fail to comply with a request from a superintendent in respect of the disclosure schedule in the case of W, she had failed to attend the disclosure training without giving any reason, she had disclosed to DS Keith Smith that she had some form of disorder and there was evidence that she had raised her voice to the occupational health nurse, to the extent that a colleague had needed to come into the room. DCI Brickwood refers to additional points in his statement. We are satisfied that those were the matters that motivated him to write the email in the terms that he did. The disclosure in June 2018 was not more than a trivial influence. Likewise the complaint that the claimant had made to ADS Ryan Mathews but was not more than a trivial influence.

99. An occupational health report was provided on 4 March 2019 which recommended a phased return to work (page 477). On 13 March 2019, DI Almond liaised with DCI Brickwood, Helen Bond of Human Resources and the occupational health nurse about the plan upon her return to work which included the phased return and also the need to consider an unsatisfactory attendance procedure plan (UAP) and whether it would be in the claimant’s interest to be deployed elsewhere. (Page 442).

100. In April 2019 DI Almond was promoted to Chief Inspector and moved to Team 3 and DI Lavender became the claimant’s 2nd line manager. Upon her return to work the claimant applied to join Operation Remedy. She sent her application to DCI Brickwood (page 454). DCI Brickwood immediately endorsed the application, replying to the claimant “all endorsed and sent – good luck”. This is inconsistent with the claimant’s submission that DCI Brickwood was trying to prevent the claimant from leaving Team 4.

101. The claimant’s application was successful.

102. DS Keith Smith carried out a meeting with the claimant on 29 March 2019 to explain the need for a meeting under the unsatisfactory attendance procedure (UAP). It was agreed that the meeting would take place on 16 April 2019. The meeting took place on that day and there was a discussion about whether absences had been counted correctly; the claimant contended that what had been regarded as 2 absences should, in fact, be only one. Nevertheless the claimant had still met the trigger for the UAP due to the number of days absence she had had (page 457).

103. In the course of the meeting the claimant said that she was worried about the training school and bumping into former DI Bunting who had, by then, retired as a police officer but returned to teach at the training school. DS Keith Smith stated "I can contact training school to identify trainers etc beforehand if that would help" to which the claimant said that it would and he replied "we can manage that – no issues" (page 458).

104. On or about 14 May 2019 the claimant was on a training course and whilst she was in the room, DI Bunting joined the course. This caused the claimant significant distress and she left the room. She was then off sick on 19th and 20th May as a consequence. The claimant's case which we accept is that she was told to go home and take a couple of days by DI Almond.

105. DS Keith Smith accepts that he failed to contact the training school in respect of the claimant's training and the presence of DI Bunting. He says that, initially, after the meeting he reflected and decided that it would be difficult for him, as a sergeant, to contact the training school and tell them who they could put on training courses. He raised the matter with his inspectors but does not appear to have resolved that. He says that matters then became busy and he overlooked it. There was a period of some weeks between the claimant's meeting with him and her attending the training course. He says that the claimant had agreed to remind him about training courses in advance and states that she did not do so.

106. We find that it was poor that DS Keith Smith failed to contact the training school, or at least to tell the claimant that he was not going to do so. However, having heard his evidence and his explanations for his conduct, we do not consider that it was in any way motivated by the disclosure or protected acts of the claimant the previous June or that DCI Brickwood had any influence in this incident.

107. On 23 May 2019, the claimant had a meeting with DI Lavender. She was told that her recent period of sickness would not count towards her UAP and the claimant also requested a change in line manager due to the failure of DS Keith Smith to prevent the claimant coming into contact with DI Bunting. It was agreed that her line manager would become DS Partridge. At the same meeting the claimant was told that her move to Operation Remedy would not be until September due to staffing shortages. DI Lavender also told her that he had some concerns whether Operation Remedy was the right place for her due to there being an increased workload and less supervision. He had asked Occupational Health for their view (page 500)

108. In fact, on 28 May 2019, Occupational Health stated that they supported a move to Operation Remedy as soon as possible, Ms Francis stated that remaining in Investigations was detrimental to claimant's mental health (page 516).

109. On 30 May 2019, DI Lavender emailed DCI Brickwood and D. Supt Hughes asking whether the decision to keep the claimant in Investigations could be reviewed. D. Supt Hughes was, by then, within the claimant's chain of line management and sought further information from Ms Francis (page 506). Having heard from Ms Francis she then suggested to Carolyn Belafonte that the claimant should move to Operation Remedy with a trial period of 3 months to see if she could cope with the job. She stated "while this doesn't sit right with me, when considering the demand and vacancies in Investigations, I think it is the right thing to do. What I do want to ensure there is that this is performance managed appropriately with an action plan and for that I need Operation Remedy support before release." (Page 510). This evidence shows, we find, that DS Hughes was supportive of the claimant's needs in allowing her to move from Investigations but that she did want the claimant to be properly managed.

110. On 6 June 2019 Inspector Peppin wrote to Rachel Nash and Superintendent Warren expressing concern about the claimant moving to Operation Remedy. He stated that he had heard things from others (without naming them) and raised concerns both about the claimant's ability and about her behaviour (page 607).

111. On the same day DCI Brickwood stated that he was in agreement with bringing forward the move to Operation Remedy and stated that the claimant had some useful skills which would be of benefit to Remedy, particularly around financial investigations. However he reiterated that the claimant came with challenges including reacting poorly to criticism and resistance to close supervision. He also stated that he would require the claimant to clear her caseload before she should be allowed to move. (Page 612).

112. On 12 June 2019 DCI Brickwood spoke with the claimant and sent an email the following day confirming the discussion. He recorded that he had said that he was concerned that the move was not right for the claimant at that time because there was a risk it would have a negative impact on her health, he recorded that therefore there would be a 3 month trial period and stated that DI Lavender would write out a plan for those 3 months to safeguard progress and ensure there was clarity about the expectations of the role within Operation Remedy. He stated that if it transpired that Operation Remedy was not right for the claimant he would work with claimant find a more appropriate posting. The intention was for the transfer to take place at the end of the month (page 529).

113. On 15 June 2019 the claimant sent a long email to DS Coggins about the way a search had been conducted on 18 May 2019. DS Coggins was part of the Operation Remedy team. The claimant had justified concerns that the section 18 search had not been carried out properly but in the course of the email used several phrases which were bound to cause offence. They included:

a. Also, where is his BWV footage??!!

b. Is this the usual way he conducts s18(1) searches?

c. What was wrong with knocking on the door and introducing himself to those present?

d. Jones 1st BWV is even entitled "RV [redacted] Room 4[[redacted]-Conversation about room and ownership" (seriously?!)

Page 531.

114. In the meantime, on 12 June 2019 DS Keith Smith reviewed the claimant's work (partly as a matter of course and partly with a view to the move to Operation Remedy) which had led to the claimant sending a reasonably lengthy email response (page 526). DS Keith Smith took exception to the way the claimant had replied to him and sent those emails and his response to inspectors within the team. Part of this email stated "5218105697 – Steph's response to this review is my personal favourite as it highlights a large proportion of the issues we have when managing her. Firstly "I will determine what steps to take after that time"……..perhaps we shouldn't bother with the formalities of reviewing her work in future? Secondly, with a few emails to the relevant departments we could establish if these individuals are in the UK and if so where"

115. We find that this review was a genuine and honest one. In reaching that conclusion we have noted that the claimant's response did highlight difficulties in managing her, for the reasons set out by DS Keith Smith.

116. The claimant remained concerned about the way in which the section 18 search had been carried out and on 27 June 2019 made an anonymous disclosure to Professional Standards Department ((PSD), page 830). There is no doubt that this was a protected disclosure. Although the date is not clear, it is also not disputed that around the same time the claimant made a similar disclosure to DI Lavender which also amounted to a protected disclosure.

117. On 3 July 2019 DI Lavender sent an email to D. Supt Hughes. He stated that he would appreciate a call because he had concerns about the claimant's motives, mental health and ability to do the job. He stated that he felt he was unsure Operation Remedy was the right place for her due to limited supervision, type of work and support she would get. He referred to a recent file which had been submitted saying that her interview was poor. He went on to state

> "I have been giving her direction on a crime which I feel she is just trying to build up evidence about me for some grievance/industrial tribunal/PSD allegation due to the constant push back I am getting.
>
> I have attached RE "Urgent a s18" email that shows I have addressed the issues raised but more importantly shows Steph's long email to Operation Remedy Sergeant about how their team have got the job

wrong which is almost setting up a hostile environment for herself before she moves".

118. He goes on to state that the claimant appears to be spending a lot of time justifying why everyone is wrong and why she shouldn't be doing things. (Page 568).

119. On the same day DI Lavender wrote to DS Coggins stating that the claimant had raised useful learning points and asking him to address those points with the officers concerned. He stated that "this is a learning organisation and there have been some errors in process or procedure that need to be addressed." He asked that the email was not shared with officers as that would cause unnecessary hostility towards the claimant as she joined the team. He set out the problems with the search (page 595). Thus, on the face of the email to DS Coggins, he was seeking to protect the claimant from any hostility as a result of her email. We find that the email that he sent at the time reflected the way that he was feeling. This is not a case where the respondent was trying to cover matters up in respect of the disclosure. Although the claimant's reaction to his response had led to DI Lavender being concerned that the claimant may be seeking to make a complaint about him, there is no evidence that DI Lavender was seeking to subject the claimant to any detriment or was hostile towards her because she had raised concerns about the section 18 search.

120. The claimant says that around this time, DI Lavender told her that a section 18 search was basically a warrant. DI Lavender denies that he said that. He says that he did some research to ascertain whether the claimant's concerns were right or not and, if they were right, what the effect of that was. He drew a parallel between a search pursuant to a warrant being carried out in an unlawful manner and what had happened in this case and decided that, in fact, the case law supported the claimant. That is largely consistent with the entry he made on Niche on 3rd of July 2019 which states

> It should be noted I also considered case law in relation to this investigation namely:
>
> R v South Western Magistrates Court ex parte Cofie 1996 Premises split into several dwellings - specify rooms
>
> Whilst this refers to a warrant I would assume the same principles would apply to a S18.
>
> My point however remains the same until we have spoken to the individuals involved including the landlord we cannot establish how this premises was being used, either as separate dwellings, one dwelling divided by the occupant, business premises for the supply of drugs and whilst this case law may apply we need the suspects accounts before we can make that interpretation.
>
> Page 470.3

121. We do not find that DI Lavender said that a section 18 search was "basically a warrant". He was attempting to understand the impact of the points raised by the claimant in respect of the evidence obtained pursuant to the section 18 search. He researched by analogy with the situation of incorrectly executed warrants. There was nothing wrong with him doing so.

122. In any event, even if what the claimant says is accurate, we do not accept that she suffered any detriment. She says that she did suffer detriment, because DI Lavender's response suggested that he had not listened to what she had said, because he justified the officers' actions and because he undermined the issues that the claimant had raised. We do not think those points are correct. It is apparent that DI Lavender had listened to what the claimant said which is why he was referring to a warrant. He was not seeking to justify the officers' actions, he was agreeing that they had done things wrong, which is why he was considering the effect of error. He did not undermine what the claimant was saying, he analysed it.

123. We find that even if DI Lavender said what he is accused of saying, he was not doing so because the claimant had made a protected disclosure, he was exploring and responding to the protected disclosure which the claimant had made. That is evident from the contemporaneous emails and the entries on to Niche.

124. However, having made those findings, we record that we do consider that it would have been helpful for DI Lavender to explain more clearly to the claimant his conclusions in respect of the s18 search.

125. On 4 July 2019, DI Lavender shared with the claimant the plan which would move with her to Operation Remedy. The plan, however, had been created earlier than 3rd July. A first draft was sent to DCI Brickwood on 20 June 2019. This date is relevant since it pre-dates the claimant's 2nd and 3rd disclosures.

126. The plan was completed on a College of Policing Personal Development Plan pro forma. DI Lavender told us, and we accept, that he used that plan because he could not find a pro forma which was directly on point for what his plan intended. It has not been suggested that there was a pro forma plan. He told us that his plan was not an action plan in the sense of something the claimant had completed it was, rather, a plan designed to support the claimant's welfare. The plan appears at pages 535 onwards.

127. It is inaccurate to say, as the claimant does, that only section 1 of the plan pertained to the welfare of the claimant. In the 3rd column of the plan the resources and support needed for the claimant are set out and in 5 out of 6 of the objectives reference is made to support being required from the claimant's line manager or supervisors.

128. We find that the plan was initiated by D. Supt Hughes, as set out above in her email of 30 May 2019 and was intended to assist the claimant rather than penalise her. There is nothing that would enable us to find that D. Supt Hughes

was motivated by the claimant's disclosure and the evidence from the time supports her version of events. The plan was given to the claimant in the circumstances we have set out and because of concerns about her performance and attitude. It was not given to her because she had made disclosures.

129. Moreover, we find that the original decision not to release the claimant to Operation Remedy until September was because of staffing issues within Investigations (hence the comments made by D. Supt Hughes at page 510) and not because of any protected disclosure made by the claimant. The comments by DCI Brickwood and DI Lavender that they felt the move was not right for the claimant were made because that is how they genuinely felt. They were concerned about the differences in workload and the lack of supervision which would be available for the claimant in Operation Remedy. They had a basis for those concerns and, we find, were not motivated, in any way, by the disclosure(s).

130. On 5 July 2019 the claimant went off sick until 26 July 2019 due to stress.

131. During the period in which DS Partridge had been the claimant's line manager (between May 2019 and July 2019) she had also found issues both with the claimant's performance and the way she would take feedback from others. She sets out some of the issues in her witness statement between paragraphs 8 and 16. The 1st issue related to her asking the claimant to attend at a Co-op where there had been an "armed robbery". She stated that although she had asked her to go with another constable, the claimant remained at her desk for some time and she had to ask her again if she was planning on leaving. DS Partridge says that the claimant said to her the incident was in fact an aggravated burglary and should be investigated as such, to which DS Partridge replied that, irrespective of that view, the initial investigative actions would be the same as it was for her (DS Partridge) to make that determination when she had the full details of the offence. The claimant's case was that she had been looking up the law because there is no offence of "armed robbery".

132. DS Partridge was also concerned about an incident where the claimant was of the view there had been witness intimidation. DS Partridge did not think that was the case but after they had discussed it she was approached by another constable who said that the claimant had made comments about DS Partridge when she had walked away. The constable had made notes in her notebook.

133. There is a further incident where DS Partridge felt that the claimant had unnecessarily undermined a victim by suggesting to a suspect in interview that the victim's bruising could be blusher, despite the fact that that had not been mentioned by the suspect nor by any other involved party.

134. Finally (for the purposes of this judgment), the claimant and DS Partridge had a discussion about the incident which had given rise to the section 18 search. The issue was, in part, about whether the premises in which the search had taken place was a house of multiple occupation. DS Partridge suggested

that enquiries could be made of the local authority as to whether or not the house was registered as a HMO. She gave some other feedback about the claimant's investigation and the claimant became irate and stormed off.

135. In her evidence DS Partridge was able, when challenged, to substantiate her concerns and the matters set out in her witness statement. Whilst the claimant may not agree with the decisions taken by DS Partridge or the views held by her, we accept DS Partridge's evidence that those matters caused her concern as the claimant's line manager.

136. After the claimant went off sick on 5 July 2019, her line manager was changed to DS Bowden.

137. On 13 July 2019, DCI Brickwood wrote to DS Keith Smith stating that the claimant was off sick and he needed a timeline regarding interactions with the claimant as her line manager, particularly around any incidents where she may have displayed concerning/volatile/irrational behaviours. He stated "if there aren't any then all well and good but if there are can you document them in brief details and send them through to me." He went on "ultimately this is to enable an OHU referral looking at her mental health and whether there are any diagnosed (or diagnosed but undisclosed) conditions that can be assisted through reasonable adjustment." (Page 618). He had sent a similar email to DI Bunting on 12 July 2019 (page 626).

138. DI Bunting sent his contemporaneous log to DCI Brickwood on 15 July 2019 (page 626) and DS Keith Smith replied on 17 July 2019 (page 649).

139. An email discussion took place between DCI Brickwood, D. Supt Hughes, DI Lavender and Ms Langford of Human Resources on 19 July 2019 when it was planned that a home visit would be carried out.

140. DCI Brickwood also filled out an occupational health referral for the claimant which he attached to the email.

141. The referral is at page 662 of the bundle. It is a detailed referral and has 2 additional pages.

142. It is this referral that issues 8 and 12 relate to, albeit that the dates are slightly different between the list of issues and those in the bundle.

143. The claimant takes exception to the referral and the content of it. In particular, the paragraph which allegation 8 refers to is the 3rd paragraph on extension page 2 of 2. However, having considered the evidence in respect of the matters set out therein we find that the paragraph was entirely reasonable in its context. It appropriately set out the matters of concern and, given that it was seeking an occupational health view, and was accurate, it does not seem to us to have been detrimental to the claimant. In any event we are satisfied that it was not motivated by any disclosure on the part of the claimant.

144. Issue 12 raises a number of parts of the referral which the claimant says show insignificant issues being unduly highlighted. We do not agree with the claimant. We find that the referral was made carefully and after consideration by DCI Brickwood. He was attempting to obtain proper advice for Occupational Health to assist in the management of the claimant. In doing so he was not acting to the claimant's detriment. Subject to what is said below, the parts of the referral which the claimant complains about were reasonable and proper to include. There was a factual basis for the matter set out.

145. We do find, however, in relation to paragraph 6.12.1, that the entry on the occupational health form was somewhat misleading in that although the claimant had had 5 different first-line managers, they were not all changed because of her behaviour. One was on maternity leave and others were always temporary. It is true, however, that the claimant had issues with 3 of her first-line managers. Whilst this entry is erroneous, we consider that DCI Brickwood was acting in good faith even though he was mistaken.

146. One of the matters (issue 6.12.6) referred to the protected disclosure, but in this respect we accept the submission of Mr Arnold that the context of the referral is for the respondent to understand whether there may be a medical condition causing the claimant's behaviours and the focus of the referral is not the disclosure itself but the claimant's behaviour around the making of the disclosure.

147. We have considered whether the disclosures which the claimant made were more than a trivial influence on DCI Brickwood at the time he completed this referral. The disclosures in respect of the section 18 search were part of the background but we do not think that the disclosures (or the disclosure of June 2018) had more than a trivial influence on DCI Brickwood's referral. He was primarily and overwhelmingly concerned with the claimant's attitude and behaviour for the other reasons set out by him.

148. As a result of DS Bowden becoming the line manager, DI Wasiak became the claimant's 2nd line manager. At the point he became the 2nd line manager he was aware of the occupational health referral which had been completed by DCI Brickwood and the plan which had been created by DI Lavender.

149. The claimant and DS Bowden spoke by telephone on 25 July 2019 and we find that in the course of that conversation DS Bowden confirmed that she was now the claimant's line manager. It is not likely that DS Bowden would telephone the claimant and discuss with her the matters discussed, but not tell her that she was her new line manager.

150. The claimant and DS Bowden then met on the following day and the claimant gave DS Bowden a letter addressed to DI Wasiak (page 695). The letter was lengthy and set out the claimant's perspective of matters since her time being managed by DI Bunting. DS Bowden sent that email both to DI Wasiak and to Human Resources.

151. The further absence of the claimant from work meant that it was decided that her move to Operation Remedy should be put on hold. That was a decision involving HR so that, on 30 July 2019, Becca Gregory wrote to DI Wasiak stating "having discussed with Rachel Nash, the Remedy offer isn't off the table but it is on pause for now until we can ascertain where is suitable, what her needs are and what support she needs. When we have that we can then discuss what role is suitable. She needs a support plan in place regardless of the role…" (Page 710). In his email to Julie Francis later the same day, DI Wasiak wrote "Steph's move to Operation Remedy is on hold following the further absence, and a more considered referral will be forthcoming to explore the suitability of this (or other postings) for Steph in the longer term" (p710).

152. DI Wasiak held a back to work meeting with the claimant on 30th of July 2019 (page 711). He decided that the claimant should not be allocated a caseload. He says that he reached that conclusion having reviewed the documents that he had and decided that a caseload of investigations tended to cause the most pressure for the claimant.

153. As stated above, on the same day he sent an email to Julie Francis, Occupational Health Nurse Adviser, stating: "Could you provide some clarification on what work I should / shouldn't engage Steph with in the shorter term until a longer term posting is resolved. My suggestion is that Steph is not allocated a case load of investigations as this tends to cause the most pressure for staff due to managing the demands of victim, CPS and other work. My observation is that disagreements between Steph and supervisors around how to approach investigations has been a trigger for stress/absence, and by stepping back from owning investigations this could be reduced. Steph can assist with specific enquires (such as statement taking and phone downloads) that will have no onward commitment. I note this still does not entirely remove her from the team / department environment and is not ideal but I am looking for an immediate short term plan to look after Steph. Any advice gratefully received." (Page 711).

154. On 2 August 2019 Ms Francis replied

> Steph's issues have been around Management and Supervisors and not the type of work that she is doing. I am sure she is more than capable of doing the work. I am in agreement with your plan as there is no point in her taking on cases in the short time she will be there. I am certain that Steph will speak with you if she has any concerns (p786)

155. In cross-examination, DI Wasiak accepted that he had not thought enough about the impact on the claimant's welfare of her being given the work he allocated. It required the claimant spend long periods of time alone in a room.

156. We find that DI Wasiak did not implement this change to the claimant's work satisfactorily. It would have been better if he had properly consulted with the claimant about changing her workload rather than simply telling her that is what the change was to be. Had he done that, it may have been that some of

the claimant's distress could have been avoided. Nevertheless, we accept that his motivation was to try to assist the claimant. Having considered the documents that were available to him and his contemporaneous email to Ms Francis, which was both open and consistent with the documents that he had, we find his explanation to be truthful. He had looked at the documents which he had received and attempted to work out what would be best for the claimant. We do not find that he was motivated in any way by the disclosures which the claimant had made and nor do we think that DCI Brickwood had attempted to influence the way DI Wasiak behaved because of the disclosures.

157. The consequence of the claimant being off sick was that the UAP was re-engaged. However, at the same time DI Wasiak decided it was appropriate to review her work and consider whether it was necessary to set up an informal action plan around performance. He wrote to Human Resources to that effect on 1 August 2019 and requested that a complex case meeting with the Force Medical Examiner be convened (page 764).

158. On 1 August 2019 the claimant indicated to DI Wasiak that she was interested in applying for the People Development Programme. She was aware that she had to submit an expression of interest to her 1st and 2nd line managers.

159. DI Wasiak replied to her email stating that the bar was deliberately high for the People Development Programme and he could not say that she was performing exceptionally. He said he would also have to reflect the current situation around attendance. He did ask whether there was a previous line manager with a different view in which case he would review it with them said but said that focus, at present, needed to be getting back to work maintaining attendance and finding the right role/team. (Page 883).

160. DI Wasiak's reply was entirely reasonable, the claimant was not performing exceptionally and she did not meet the criteria for the course. We accept the explanation that he gave as recorded in the contemporaneous email. His decision was nothing to do with the claimant's disclosures.

161. The claimant then emailed DS Bowden, she noted DI Wasiak's view and attached her latest PDR from the NCA and said she would be happy to provide a reference from a previous sergeant in the Metropolitan force (page 882). She attached a draft copy of the expression of interest form.

162. DS Bowden replied to the claimant on 3 August 2019 stating "I understand that James has already responded to you in regards to this. We can discuss when I am next in." (Page 797). She then forwarded the email to DI Wasiak on 5 August 2019. He replied to DS Bowden the next day saying that he would speak to the claimant on the following Saturday (p889).

163. DS Bowden did not ignore the claimant's email to her, she both acknowledged it and forward it to DI Wasiak. Having heard her, we find that DS Bowden was motivated entirely by what she considered to be the appropriate way of dealing with the matter, particularly in circumstances where her line manager had already told the claimant that he would not support the

application. The claimant has pointed to no motivation for her to seek to harm the claimant's interests (beyond the alleged wide conspiracy) and it is much more likely she was simply acting as the claimant's line manager in a situation where her own line manager had already been involved in the situation and expressed a view. She was not motivated, in any way, by any disclosures of the claimant.

164. On 7 August 2019 DI Wasiak took a day to review the claimant's work. In his witness statement he states that he identified common patterns of issues with communication, document decisions and following instructions.

165. DI Wasiak decided to implement an action plan and met with the claimant on 10 August 2019 to do so.

166. The action plan proposed by DI Wasiak is at page 983 of the bundle. It was sent to DCI Brickwood, Ms Langford and D. Supt Hughes under cover of an email of 7 August 2019 in which DI Wasiak stated "attached is the key evidence I propose to discuss with Steph and action plan. There is perhaps not as much as I expected but I think it is still proportionate to raise." (Page 983). The claimant suggests that is indicative of bad faith on the part of DI Wasiak and that he had been told there would be worse material about the claimant than, in fact, there was. We do not think that the statement was indicative of bad faith on the part of DI Wasiak, indeed we think the contrary is true. He was being honest. We accept that, from reading the documents he had been given, he anticipated that there would be more evidence of underperformance, but that does not mean that there was no evidence of underperformance.

167. The claimant takes issue with many paragraphs of the action plan, we find that the action plan set out genuine and reasonable management concerns and helpful and constructive ways of dealing with them. It is interesting to note that one of the things the claimant complains about is the suggestion that she should use the Decision Rationale Action strategy for writing reports. DI Wasiak explained why that would be helpful for the claimant in terms of structuring her reports. The claimant, even at the hearing, was unable to see how that was a constructive suggestion. Her point was that because DI Wasiak went on to say he would not find that she was not performing acceptably if she did not use D/R/A, he was wrong to make the suggestion in the first place. We find that DI Wasiak was doing no more than saying "here is a strategy that might help you" but the claimant would not be considered to have failed the action plan if she did not use it. That was an entirely appropriate and helpful thing for a line manager to suggest and we find no evidence that it was because of disclosures or a protected act, indeed we find that the explanation given at the time was the real one- to attempt to assist and guide the claimant.

168. DI Wasiak had a lengthy meeting with the claimant which was recorded. The transcript is in the bundle (p1015).

169. In the course of the meeting the following exchanges took place. They are recited here because they are set out in the list of issues as allegations.

However the whole interview needs to be read for the full context be understood.

DI WASIAK …I mean we'll see when we go through the others that it's (INAUDIBLE) you disagree with a lot of people about a lot of things. I've look, I looked, I look at that, you've brought this up in a return to work interview. You talked about this incident in our return to work interview. That's why I've gone back and looked at it again.

DC POW Yes.

DI WASIAK And I look at it and you've got something which, you know, your job is to do actions on it…

DC POW Yeah.

DI WASIAK …why does it, the Niche just not start with I've been asked with progressing the following actions and this is what I've done .

….

DC POW But does it matter? At the end of the day, if I get this to Court and if I get a conviction, does it matter?

DI WASIAK This is about enhancing your performance.

DC POW No, it's about taking me out for things that you personally don't like. That's what it feels like.

DI WASIAK Ok, well I'm sorry if it feels like that to you but…

DC POW How can you think that it would feel any other way because you know, you've basically gone, oh yeah I read your, your um, application for PDP, you're just not good enough. In a nutshell, that's what you've said.

DI WASIAK We… I, I'm saying you, you, your view seems to be that everything you do is excellent. All the supervisors you work with are always wrong and aren't as competent as you.

46:44

DC POW No, no I haven't said that, I have never said that.

DI WASIAK Cos that's how it comes across to me.

…

DI WASIAK There are, Steph, there are other things that are negative that I could have brought in for the sake of it if I wanted to be difficult.

DC POW Right but that still doesn't…

1:36:35

DI WASIAK Do, do you see what I mean…

DC POW I understand that, but that still doesn't balance it with anything positive.

DI WASIAK …I'm not, I'm not trying to, I'm not trying, I'm not trying to pick on every problem I possibly can. I'm looking at you, as an individual and looking at some of the issues that have been raised, putting a fresh pair of eyes on them and I think the bottom line, what this seems to come down to is disagreeing with people on how to approach stuff and then how that gets managed from there and what I see is that where there's a disagreement, what happens is, stuff gets put on crime reports or, or said to people that's not particularly appropriate and not, uh, or the way it's written is not particularly professional, courteous and that actually, you find it difficult if you don't like doing things which you're told, which you really disagree with and sometimes actually, they have to

be done. That, and that, that's what this is about, it's not about the other aspects of, of your performance. So…

…

1:41:22

DI WASIAK I thought, I thought the fact we hadn't seized the suspect's phone, was (INAUDIBLE)…

DC POW We did seize the suspect's phone but we couldn't seize the suspect's phone, I got no reason to seize the suspect's phone. He didn't bring it with him to the VA, I've got no reason to go round and say, it was weeks since it had happened. So…

DI WASIAK Ok, I, I, I mean to, to…

DC POW …you know, I haven't got any legal basis to do that.

DI WASIAK To, to me that's a, that's an, an arrest and a search under Section 18 if you need to if you can't use powers of consent to, to search it, even if it's happened several months after cos there's no reason that the messaging history's not there. My WhatsApp history on my phone (INAUDIBLE)

DC POW But, we've got the messaging history on the victim's phone.

DI WASIAK You've got what you can see from her phone.

DC POW Well if the victim's saying it's all on my phone, then I've got no reason to disbelieve her.

DI WASIAK But you don't…

DC POW And if it isn't on her phone then she's undermined her own case anyway.

DI WASIAK Yeah, I mean, I mean to me, to have a, to have a rape investigation where we've not, where we've not…

DC POW I was told to VA him.

DI WASIAK …not used the opportunity to take the suspect's phone is…

DC POW it's what my supervisor told me to do and I VA'd him. I can't then go, oh you've turned up without your phone I'm nicking you now.

1:42:16

DI WASIAK No, but you can use you, you can use your powers can't you to say I, I need to examine your phone.

DC POW My persuade advise worn, I asked the solicitor if I was gonna get his phone, he said no, but he was happy to give a DNA sample.

DI WASIAK Yeah.

DC POW (INAUDIBLE) what more can I do than that?

DI WASIAK Well, what do you think you can do?

DC POW Nothing. I haven't got the power to go, do you know what I'm gonna nick you to do a Section 18, there is a stated case that says you can't do that. Would you like the details of it? You can't do it.

170. The comments referred to in allegation 9, when seen in context were all perfectly reasonable. An objective reading of the transcript suggests that DI Wasiak was not seeking to be offensive or rude and was not offensive or rude. Sometimes managers have to raise legitimate concerns even though they will be uncomfortable to discuss. It is not to an employee's detriment for a manager

to give honest feedback, even if the employee finds it uncomfortable. In any event we are entirely satisfied that DI Wasiak was not motivated by any disclosures made by the claimant or any protected act done. He was seeking to assist the claimant in improving her performance, consistently with the way he had behaved up to that point.

171. The claimant and DI Wasiak discussed the proposed action plan in detail in the meeting. One of the matters discussed was the section 18 unlawful search. DI Wasiak said "So what I've said at the bottom is, look, (INAUDIBLE) in the investigation will always, there'll be difficulties in deciding whether something's lawful or not, and, and ultimately the only place that can make that decision is Court". (p1069). The claimant asserts that him saying that was a detriment. She also, within the same allegation, asserts that at around the time of the section 18 issue arising, he had said that it was simply a disclosure matter for the CPS to be made aware of. In her witness statement the claimant changes the date when DI Wasiak referred to matter simply being a matter for disclosure and places the disclosure at page 1069 of the bundle (along with the "court" remark). In closing submissions the claimant stated that the comments which she was referring to were within the transcript around page 1069 but not made expressly.

172. We do not find DI Wasiak's statements to be unreasonable (even if they were made). It was a reasonable response for him to take the view that the fact that a section 18 search had not been properly carried out must be reported to the CPS. Whether or not the evidence obtained as a result of the search was admissible would, normally, be a matter for the court. It was not to the claimant's detriment for DI Wasiak to take a different view to her and there is no reason to suggest that he was motivated by the fact she had made a disclosure, he was responding to the disclosure which she had made, he simply had a different opinion to the claimant.

173. DS Bowden also held a UAP meeting with the claimant on 15 August 2019. The meeting was because the claimant had reached the relevant triggers under the UAP procedure. Following the meeting the claimant was issued with a Written Improvement Notice which set out the sickness which the claimant had had and the improvement which was required. (Page 1226). The meeting was carried out properly and professionally. DS Bowden recounted the absences which led to the meeting. The factual scenario contained within allegation 6.14.1 of the list of issues is largely accurate except that it fails to record that after the statement "some of which have been stress-related, and in duration from two days to over two months." DS Bowden added "OK?" And after the statement "the most recent absence was from 5 July 2019 to 27 July 2019." DS Bowden added "is that correct?" (Page 1158).

174. Given that the claimant had been called to a meeting under the unsatisfactory attendance policy it was necessary for DS Bowden to explain why she was there. It was not to the claimant's detriment that this was explained to her. Indeed it was to the claimants benefit, all the more so because she was given the clear opportunity to challenge those facts.

175. There is no basis for asserting that DS Bowden was motivated by the disclosures made by the claimant or, indeed, by anything DCI Brickwood said to her. It was believed that the claimant had hit absence triggers and the consequence was the UAP meeting.

176. The claimant seemed to believe, during the course of this hearing, that if absence was for a genuine reason the UAP triggers should not be treated as met. That is a misunderstanding of the absence procedure. All absences are considered, it may then be necessary to make reasonable adjustments, but that does not mean that the process is not triggered.

177. In the course of that meeting, Ms Langford sought to explain how the UAP would work going forward. She attempted to explain that not every absence would automatically trigger sanctions. The claimant complains about this part of the meeting and so we set it out here from page 1198 of the bundle.

> MS LANGFORD So this is now, as if it were the beginning, if you are, you're issued a WIN, if, I don't know, for example, touch wood it doesn't happen, tomorrow you go out into the car park, you fall over and break your leg which means you can't come to work …
>
> DC POW Hm mm.
>
> MS LANGFORD You will have a review, that does not necessarily mean you will definitely escalate to a UAP2. We will come back together, consider the circumstances of that absence, and decide if the appropriate action is to escalate to a UAP2. So what we're not saying is its never black and white because we're talking about human beings.
>
> PS O'DONNELL Alright.
>
> MS LANGFORD That's…
>
> DC POW So what's the difference between the last UAP and this UAP then?
>
> MS LANGFORD The level of absence, and ultimately, Sarah is the chair of this UAP and is the decision that it's come to.

178. Seen in context and having heard from Ms Langford, we find that the comments made by Ms Langford were reasonable and an attempt to assist the claimant to understand the process. They were not to the claimant's detriment and were not motivated or influenced by any disclosures. There is no cogent reason why Ms Langford would be motivated by the protected disclosures or the protected act.

179. One of the claimant's complaints is that Human Resources were made aware of the comments of DI Lavender in respect of the section 18 PACE issue but took no notice.

180. On 16 August 2019 on 16 August 2019, the claimant wrote to Ms Langford stating that she had forwarded information to PSD. She went on to say that management had refused to listen to her and had victimised her. She

wished to clarify her position on when she would be able to move departments (page 1278).

181. On 20 August 2019 Ms Langford replied to say that Human Resources were not aware of any complaint raised with PSD and they were the best people to investigate if they felt there was grounds regarding the illegal searches. She stated that it was possible for the claimant to move to a different team within investigations imminently but she would like to have a discussion with the claimant before deciding on the team, to ensure that the shift fit with her worklife balance (page 1277).

182. On 21 August 2019,the claimant emailed Ms Langford stating that she had appealed against the decision of PSD and referred the matter to the IOPC. She also said that she wished for the issues outlined in her letter to be addressed formally (1276).

183. On 22 August 2019, Ms Langford replied to the effect that if the complaint had been raised with the IOPC they would ensure it was actioned in the correct manner. She went on to say that it was "fine" that the claimant wished matters to be investigated formally and that she had identified an appropriate Superintendent who would investigate the issues as per the grievance process. She attached the grievance form (page 1276)

184. It was not the role of Human Resources to investigate the claimant's protected disclosures. Insofar as the claimant sought to raise issues as to her treatment, she was invited to raise a grievance, given the forms to do so and a superintendent was allocated. Therefore, we do not find that Human Resources ignored the matters raised by the claimant. They responded to those matters.

185. Meanwhile, the claimant raised an appeal against the Written Improvement Notice which was somewhat combative in its tone on 17 August 2019 (page 1228). One of the points which she raised in the course of the appeal was that her absence on 19th and 20 May 2019 was leave which she had been told to take and had been told it would not count as sick leave. She stated this was another instance of being tricked into believing that the management of Team 4 cared for her welfare (page 1252).

186. The claimant had not completed her appeal on the correct form and, therefore, she was asked to do so (page 1272). The claimant did so on 22 August 2019.

187. Thereafter DI Wasiak made enquiries of the people who had heard the 1st stage of the process leading to the Written Improvement Notice on 22 August 2019 (page 1298) and 2 September 2019 (page 1326).

188. On 4 September 2019, DI Wasiak wrote to the claimant stating "I have begun but will not have completed your appeal review today. I have all the information to hand now but other work commitments have delayed me, I do apologise. I will endeavour to complete this prior to the weekend and will let you know as soon as a decision is made." (p1342)

189. DI Wasiak made a written decision in respect of the appeal and sent that to the claimant on 7 September (pages 1378 and 1382). The outcome letter was detailed and addressed the points which the claimant had raised.

190. The UAP procedure clearly anticipates that there will be an appeal meeting rather than simply an appeal in writing (page 324).

191. The failure to provide the claimant with an appeal hearing was a failure of management practice (and indeed the advice given by Human Resources). DI Wasiak should have checked the relevant procedure and he should have been reminded of it by Human Resources. However, when the failure is looked at in the context of all the contemporaneous evidence that we have summarised, we are satisfied that DI Wasiak was not influenced by the disclosures which the claimant had made. He was simply attempting to deal with an appeal raised by the claimant in the context of a busy department and made a mistake. If DI Wasiak was trying to treat the claimant detrimentally he could just as easily have held a meeting with the claimant to protect himself from criticism. From his other behaviour we do not find that he was acting in a careless way, or that he was doing so because of the disclosures.

192. As is apparent from what we have written, the claimant was not happy in Team 4 and a move had been recommended. The claimant had requested a move to team 3. In those circumstances, on 5th September, D. Supt Wright and Rachel Nash agreed that the claimant would move to Team 3 (page 1386). The claimant was to be under DI Alan Smith and under the direct supervision of DS Edgeworth. That was accommodated in the context of the move to Operation Remedy having been paused due to the claimant's absence.

193. In October 2019 claimant indicated that she wanted to go on a CID Tutors course. She was accepted by the team leader. DS Edgeworth emailed T. Ch. Supt Rees and DI Wasiak on 24 October 2019 stating that she had been managing the claimant for the past few weeks and she was happy to say that she was fine and there were no issues to report. She went on "in fact she's taking on jobs with enthusiasm and drive." She asked their thoughts on the claimant's desire to go on the tutors course. (Page 1464). We note that this email is not consistent with any suggestion that DS Edgeworth was part of a conspiracy to harm the claimant; had she been it is unlikely that she would have committed a positive report of the claimant to writing.

194. DI Wasiak replied to say that the decision-making should properly sit with DS Edgeworth and DI Alan Smith but his view was that he would have some reservations. He pointed out that she had been on two action plans since she arrived with the respondent and she had been spoken to about inappropriate behaviours and conduct which would not be consistent with being a tutor. He offered to share his notes with DS Edgeworth if she wanted them. DS Edgeworth did not take him up on that offer but said she would speak to DI Alan Smith about it (page 1463).

195. Ultimately, DS Edgeworth decided it was not in the claimant's best interests for the claimant go on the course. If she went on the course, she would

be allocated a tutee and, given the claimant's health, she did not think that was appropriate. Having heard from DS Edgeworth, we found her evidence to be detailed and consistent. As we set out in more details below, she was able to give clear explanations for her decisions and we accept this explanation.

196. On 25 October 2019 Debbie Bonner of Resources (which is different to Human Resources) wrote to various recipients, not including the claimant, stating "… Please remove Steph Pow from the list, she won't be attending on this date. Unfortunately levels don't allow and I have had the approval of her DS, Lucy Edgeworth to remove her." (Page 1469)

197. On the same day DS Edgeworth emailed Temporary Ch. Supt Rees. DI Wasiak and Ms Langford stating "I spoke with Step and explained to her that she wouldn't be supported to undergo her tutors course given that she has an AP and WIN in place. It was not taken well." (1481)

198. On 28 October 2019 Ms Langford (assistant HR business partner) emailed DS Edgeworth in response to her earlier email stating that she felt that going on the tutors course at this time was inappropriate for her well-being as well as the fact she was subjected to a Written Improvement Notice and an Action Plan.

199. We find that DS Edgeworth did not say that it was an "HR" decision. The email that she sent on 25 October 2019 is likely to be an accurate reflection of what she said to the claimant. She had no reason to mislead the claimant. Moreover, we find that the decision taken by DS Edgeworth was taken for the reasons which she gave and was not because the claimant had made protected disclosures or done a protected act or because DCI Brickwood had influenced her decision in any way. Indeed, at this stage, DCI Brickwood was not part of the claimant's line management at this point.

200. As we have said, on 21 August 2019, the claimant had raised a grievance in respect of a number of matters (page 1268). T. Ch. Supt Rees was asked by Ms Langford to deal with it and she had a meeting with him to discuss it. He had no line management responsibility for any of the people who were involved in the grievance and his evidence to us was that he believed that he had not line managed them past.

201. Among the things about which the claimant was unhappy were the informal action plan and the Written Improvement Notice served as part of the UAP. The respondent's procedures do not allow for an appeal against an informal action plan. The respondent's interpretation of its policies is that an appeal is only open to a person where a formal action plan has been created. If an individual is unhappy with an informal action plan than their remedy is to refuse to comply with it, at which point a formal action plan is implemented and an appeal can be granted (see for instance the email of DI Wasiak of 25 October 2019 to DS Edgeworth, page 1480). There is, however, a formal route of appeal in respect of a Written Improvement Notice.

202. The claimant was told that T. Ch. Supt Rees review the informal action plan in conjunction with the grievance meeting. (page 1349).

203. T. Ch. Supt Rees met with the claimant in October 2019 and set out the results of his investigations and meeting on 28 October 2019 (page 1474). However it is not disputed that he told the claimant that review of the action plan and the Written Improvement Notice was not something within his remit. T. Ch. Supt Rees told us that, at that point, that is what he understood the position was. He did not believe that he could review the informal action plan and believed that he had been told that by Ms Langford. Whilst he was willing to accept that he may have been mistaken, he maintained that was his understanding at the time.

204. The claimant raised her dissatisfaction with the position with Ms Langford and on 20 October 2019 she contacted T. Ch. Supt Rees who confirmed that he had not considered the action plan to be part of his remit. The position was clarified, which was that he could consider it, and he met with the claimant again on 29 November 2019 (page 1534). At that meeting he did review the action plan and considered that it was well written and reflected what was a tension between investigative direction and supervision. We accepted the evidence of T. Ch. Supt Rees for a number of reasons. The claimant did not explain how she believes that he would have become part of a conspiracy to do her down, or, alternatively, how he was manipulated by DCI Brickwood. He was transparent throughout the process about the decisions that he had made and was able to give cogent reasons for them.

205. It is apparent to us that DS Edgeworth, as the claimant's supervisor was concerned for the claimant's welfare both personally and within the organisation. For example on 15 December 2019 she wrote to the claimant stating

> Is everything ok? I got the impression earlier that it wasn't – no problem if you don't want to talk about it – just checking you are ok? Here if you need a chat.
>
> I know you've been out taking that statement but please can you give me a call or text if you see various missed calls and a text from me? I'm not checking up on you – I was worried about you and just wanted to make sure you were ok.
>
> I always worry about my team when they are out single crewed for hours and I haven't heard from them.
>
> Like I say, hope you are ok and always here if you need a chat.
>
> (p1552)

206. DS Edgeworth told us, and we accept, that the problems between her and the claimant came when she tried to give feedback on ways in which things might be done better. She said that it was like a switch had been flicked in the

way that the claimant's attitude changed when she was given feedback that she did not like.

207. DS Edgeworth had a one-to-one meeting with the claimant to review her crimes on 20th of December 2019. There was one particular entry which troubled DS Edgeworth in that in a closing summary, in respect of a rape allegation the claimant had written "I then went through the other issues she had fabricated." The claimant had also written "I would therefore urge any future investigating officers to bear in mind her proclivity for deceitfulness in mind when dealing with her in the future."

208. DS Edgeworth says that she explained to the claimant that should the complainant come to the police again in the future the entry would be disclosable and significantly affect her credibility as a victim. As she explained to us in evidence, it is possible that the complainant could be raped in the future and the claimant was effectively undermining her from the start.

209. We do not think that the claimant was being castigated, the points being made by DS Edgeworth were sensible ones and should have been taken on board by the claimant. Even at the hearing before us the claimant was unable to accept that DS Edgeworth might have a point.

210. On 12 January 2020 another officer named Lucy Ford, who was a sergeant, wanted to discuss an entry which the claimant had made on Niche . 08:39 DS Edgeworth email the claimant stating "FYI Lucy E will be having a chat with you in a bit re the [redacted] job. I will come in too – don't worry about it. It's just some feedback re your massive entry on Niche …" (Page 1593).

211. The claimant then replied "Happy to have feedback in an email, but not happy to be taken into a meeting." DS Edgeworth replied "it's not a meeting – it's a chat…" The claimant replied "in my vast experience, a "meeting" and a "chat" with two supervisors is one and the same thing!! Sorry boss, but my preference is that whatever needs to be said is written. Either that or the "chat" needs to be recorded contemporaneously and I have a VA at Keynsham in an hour…"

212. DS Edgeworth then spoke to the claimant in person which resulted in the claimant leaving the meeting.

213. Later in the day DS Edgeworth sent a message to the claimant which was both reasonable and conciliatory (page 1592). The claimant replied with a lengthy email which, in part, could be seen as rude and was generally unhelpful. It included the statements:

a. "… If my entry was read properly…

b. "Your email has disappointed me. There was no need to write it, and all it does is show me that you have either no interest, or no concept in the issues I am going through, and the petty and stupid arguments I have been drawn into by a vast number of ignorant people…

c. I feel the two of you handled it very poorly, and I find the insinuation that I should 'take a breath' supercilious and patronising in the context

214. By the claimant's email, she demonstrates that she was not willing to take on board feedback or constructive assistance, she demonstrates the points made by the respondent throughout the course of this hearing about her unwillingness to accept people's views other than her own and her inappropriate responses to those who were senior in rank. In fact, we accept the evidence of DS Edgeworth that she was going out of her way to try and help the claimant. She told us that she had never had an officer, before, who she had not been able to assist. She had spent her own time trying to work out ways to help the claimant despite, as she graphically described, having three small children to look after. We accepted that evidence as honest and accurate.

215. DS Edgeworth then replied to that email by inserting text into the claimant's text. It is that text which leads to allegation 10.

216. We find all of the points made by DS Edgeworth to be fair and reasonable. She was attempting to assist the claimant while, at the same time, maintaining her status as a supervising officer who was entitled to respect.

217. On 17 January 2020 DS Edgeworth met with the claimant to review the action plan put in place by DI Wasiak.

218. She highlighted things that the claimant had done well as well as things which, in her view, could have been done better. She concluded "overall, although there are positives to each point on this action plan there is evidence of behaviours unchanged and therefore this action plan has failed to raise the DC Powell's performance. The next stage will be UPP Stage I meeting" (page 1695). UPP is a reference to the Unsatisfactory Performance Procedure.

219. Again we find that the matters raised by DS Edgeworth were reasonable, they were current and she reasonably believe they should be dealt with. DS Edgeworth was acting in good faith and for good reason. The comments made were not demeaning and, in context, were accurate. We do nt find any evidence that DS Edgeworth was motivated by the disclosure of the claimant, she was simply trying to manage her.

220. Although it was intended that a stage 1 UPP meeting would take place (page 1699) it appears that one did not, in fact, take place before the claimant went off sick on 21 January 2020.

221. On 17 January 2020 D. Supt Hughes had a meeting with the claimant to discuss the outcome of her protected disclosure made to PSD.

222. In considering the allegation which arises out of this meeting, it is instructive to review certain documents in relation to the way the claimant reacted to responses to her disclosure.

223. On 31 July 2019 the claimant wrote to Paul Burgess, an Intelligence Manager with the Professional Standards Department, asking if her complaint (being the disclosure) had been assigned to anyone or whether it was sitting with him. She indicated that she felt she had problems since bringing the issue to management's attention.

224. He replied indicating that the matter had been investigated and it was true that there were some challenges with the execution of the search warrant and stated that the matter had been addressed as a local management action along with development and learning for some staff. He stated that there was no evidence of any corruption or misconduct to justify a PSD enquiry but, in respect of the claimant's issues, suggested that she spoke with the Police Federation and considered the Grievance Policy.

225. The claimant replied on 1 August stating "So the matter was upheld?" The claimant said that she did not consider the grievance policy was sufficient to address the issues she had suffered and that a former Federation Representative was shocked that PSD did not point her towards the relevant whistleblowing policy before now. She went on "if you could send me a breakdown of the decision/debrief as per the policy I'd be obliged." (Page 776)

226. Mr Burgess replied including the statement, "I am escalating your request to my line manager, as I'm not prepared to disclose any documentation without authority and as I am now potentially in a position of conflict with your complaint." (Page 776).

227. On 5 August 2019 Mr Burgess wrote to DI Wasiak stating that he had requested the matter to be reviewed by DI Turner of PSD South (page 795).

228. In an email to which we have already referred, on 21 August 2019 the claimant wrote to Ms Langford stating "Again I had to chase the PSD for a response. It appears that they have determined that 'local resolution' is a suitable reaction to the concerns outlined in the complaint, and as such I have appealed their decision. I have also raised a complaint about their lack of adherence to their own policy. I have also given the requisite time to respond as per the instructions of the IOPC, which was also copied into the complaint" (page 1276). Ms Langford replied to state that if the complaint had been raised with IOPC they would ensure that the complaint was actioned in the correct manner.

229. On 4 September 2019, DI Stephens of PSD wrote to the claimant setting out a summary of a conversation the previous Thursday. It is a lengthy email but records that he had suggested there was a need for an independent review and oversight of the case to consider what had happened and how it should be proceeded with. He said that he would forward the details to D. Supt Hughes and Superintendent Warren and that he was satisfied that they were of a sufficiently senior level to instigate a review and take a view as to how the matter is progressed (page 1495).

230. The claimant replied suggesting that DI Stephens had not had to hand the phrasing concerning the Police Reform Act and saying “it seems that the decision has been reached not to put this incident forward to a panel for consideration, but how can that be?”. DI Stephens replied stating that he did not feel the threshold to consider the act as criminal had been reached and making some comments about misconduct panels. He confirmed that he had requested an independent review and D. Supt Hughes had agreed to that (page 1495).

231. A review was carried out by Simon Crisp on 13 September 2019 (page 1449).

232. On 31 October 2019 the claimant chased DI Stephens and he replied indicating that a review had been carried out by Simon Crisp and he expected D. Supt Hughes to have notified the claimant.

233. D. Supt Hughes then contacted the claimant on 4 November 2019 and apologised for the fact that she had not contacted the claimant. She wrote:

> In sum, the review has concluded with findings congruent with the views of DI Stephens. It also concluded that the action taken by the line managers was proportionate once these concerns were raised.
> In terms of the wider case progression the breaches of PACE would clearly meet the Disclosure Test as set out in the Codes of Practice for Criminal Procedures and Investigations ACT 1996 and these should be brought to the attention of the CPS where it will be a matter for them as to whether and how to proceed.
> I am happy to discuss but I hope this gives you some confidence that we have listened to your concerns and that I have had these independently reviewed to demonstrate transparency.
> Let me apologise again not getting back to you sooner.

234. The claimant replied stating she was confused how the findings could be congruent with both DI Stephens and Ms Grantham. She stated “I doubt that any member of the public on the outside looking in would be happy with the outcome of the issue, especially as the details of the investigation and decision-making has been kept so secretive. The only message it sends to me is that police can break into houses without relevant authority, break down doors, search where they like, and have no comeuppance whatsoever…” (Page 1499)

235. D. Supt Hughes replied on the same day stating that she was sorry with the way the claimant felt and that there were a range of actions that can be taken when mistakes are made from misconduct to words of advice. She offered to meet the claimant in person the following week. A meeting was arranged for 22nd November.

236. It appears that meeting did not take place, the reasons for that were not explored in evidence; there is some evidence that both D. Supt Hughes and the claimant cancelled planned meetings (see page 1646) but given that cross examination did not take place on these issues we make no findings.

237. The meeting finally took place on 17 January 2020. There is no note of the meeting.

238. On the same day, D. Supt Hughes forwarded the review by Mr Crisp to the claimant (page 1673).

239. We largely accept the account of the meeting given by D. Supt Hughes in her witness statement. Although there was not a contemporaneous note, the account is reasonable and having heard from D. Supt Hughes we find that the claimant was given a substantial amount of feedback in the meeting. The meeting cannot, however, be considered in isolation; it was followed by the report of Mr Crisp being sent to the claimant.

240. We have considered paragraphs 29 and 30 of the Whistleblowing Policy (page 233) and it seems to us that by 17 January 2020 the claimant had been given feedback on the report and had been given a debrief. We do not consider that the claimant was entitled to more information than D. Supt Hughes gave to her. It was explained to the claimant why a more serious sanction had not been given to the police officers in question and what the outcome of her disclosure had been. Whilst the claimant does not accept the outcome as valid, that does not mean that she was the subject of a detriment. We find that D. Supt Hughes acted in good faith and was as open with the claimant as was appropriate. She was not subjecting the claimant to a detriment and she was not influenced by the fact that the claimant had made a protected disclosure. Again we make that finding having heard the evidence and also because there is no evidence that D. Supt Hughes was being manipulated by DCI Brickwood or part of a conspiracy. The claimant's case really amounts to no more than pointing to an outcome that she did not like and an assertion that, therefore, the outcome must be because of her disclosure.

241. Having made those findings of fact, it is important that we also note the delays in the claimant being given feedback prior to 17 January 2020, for which D. Supt Hughes apologised. The respondent's policy says "An important part of the process will be to facilitate a debrief with the individual making the professional standards report. A debriefing session can often have a therapeutic value for individuals and also provides an opportunity to identify both good and bad practice". We think that policy is commendable and it is somewhat regrettable that it was not done until January 2020. Those delays should have been avoided although we do not think that, had they been, the claimant would have been any more accepting of the decision. There is no evidence that that any delay was on the ground that the claimant had made protected disclosures or done a protected act and D. Supt Hughes stated and we accept that she thought she had sent the report of Mr Crisp to the claimant but forgotten to do so. There was no reason for her to withhold the report and we accept D. Supt Hughes' evidence.

242. Those are the findings of fact which we make and we have attempted to deal with all of the factual allegations contained within the list of issues, to which we will return when we set out our conclusions. However, it is important to take

a step back to avoid risking becoming too lost in the minutiae and failing to see the overall picture.

243. When we step back, we do not see the scenario painted by the claimant. We do not see DCI Brickwood taking umbrage at the fact that the claimant has made protected disclosures or done a protected act and then seeking to manipulate other officers to do the claimant down. We do not see any evidence of a conspiracy between a number of senior officers to do the claimant down because she has made a protected disclosure or done a protected act. Taking a step back, we see a number of senior officers struggling to manage the claimant, attempting to give feedback in respect of her work and finding resistance to that feedback from the claimant. We think those officers were trying to assist the claimant, they were not influenced by the fact of the disclosures which the claimant had made, certainly not more than trivially. The disclosures which the claimant made were a small part of a much broader factual matrix in which the claimant's behaviour and attitude was considered below par. The respondent dealt with the disclosures made by the claimant but the disclosures did not assume the significance which the claimant believes they did.

244. Moreover, we are entirely satisfied that anybody who was in the same position as the claimant, who had displayed the same attitudes and made the same entries into the Niche system and written the same emails as the claimant but was not disabled by reason of anxiety and/or depression would have been treated in the same way that the claimant was.

Findings in respect of disability

245. The claimant's case is that those things amounting to allegations 10, 11, 17 and 22 arose either because of her reactions to the incidents outlined or because she was signed off sick from work.

246. Allegation 10 is the comments made by DS Edgeworth in an email chain. There is no evidence that those comments were made because the claimant was off work and we do not find that they were.

247. In respect of the claimant's case that the comments were made because of the claimant's reactions to incidents, whilst that is true, it is also necessary for the claimant to show that the her reactions arose in consequence of her disability. There is no evidence at all to that effect. The claimant's closing submissions amounted to no more than an assertion that her reactions were because of her disability. Whilst it has been found that the claimant was disabled by reason of anxiety and depression at the time of these incidents, we cannot assume from that, that her reactions were because of anxiety and depression. Not everyone with anxiety and depression would react in the same way that the claimant did and people who do not have a disability might react in the way that the claimant did. There is simply no evidence on which we could find that the claimant was treated unfavourably because of something arising from her disability.

248. In any event, as we have said, we do not think that the feedback was unfavourable treatment. It was honest feedback designed to help the claimant improve. DS Edgeworth was not placing any hurdle in front of the claimant or creating a particular difficulty or disadvantage for her, she was trying to assist her.

249. Allegation 11 is in relation to comments made by DS Edgeworth in an action plan from 17 January 2020. Again, there is no evidence that those comments were made because the claimant was off work. Again, in relation to the claimant's case that the comments were made because of her reaction to incidents, there is no evidence that the comments were made in consequence of the claimant's disability. For the reasons given we also do not think that the feedback was unfavourable treatment.

250. Allegation 17 relates to DS Edgeworth's decision to compose a stage 1 UPP. In that respect we accept that the claimant would reasonably consider being put onto a stage 1 UPP to her detriment and it would be unfavourable treatment. However, there is still no evidence that the UPP (as distinct from any UAP) was because of anything arising from the claimant's disability.

251. Allegation 22 is comprised of the alleged failures by D. Supt Hughes to address matters with the claimant arising out of the disclosures she made. We find that there was no unfavourable treatment in this respect. D. Supt Hughes provided the claimant with the information that she was entitled to. Again, however, there is no evidence that any unfavourable treatment in this respect was because of something arising from the claimant's disability.

Conclusions

252. We set out our conclusions by reference to the list of issues although we leave consideration of the question of limitation until last. In this part of our decision, references to paragraph numbers are to the list of issues (version 22) unless otherwise stated.

253. In respect of paragraph 6.1, we find that DI Wasiak did refuse to support the claimant in respect of the People Development Programme. We find that was a detriment to the claimant. We find the refusal was not materially influenced (in the sense of being more than a trivial influence) by any of the disclosures or the protected act.

254. In respect of paragraph 6.2, whilst the claimant did ask DS Bowden those matters set out in paragraph 6.2, the claimant's request was not ignored. Thus, we do not accept that there was a detriment as alleged. The claimant's real complaint is that DS Bowden did not do what she had wanted her to do. However, DS Bowden had good reason for her actions and, again, we are satisfied that her behaviour was not influenced by any of the disclosures or the protected act.

255. In respect of paragraph 6.3, we accept that DS Edgeworth decided that the claimant was not able to attend a CID tutors course due to performance

concerns. However, she did not state that the decision was an “HR decision”. Thus it was not to the claimant’s detriment that DS Edgeworth stated that the decision was an “HR decision” because she did not state that. We would accept that it was to the claimant’s detriment that she was not able to attend the tutors course however, again, we are entirely satisfied that DS Edgeworth’s decision was not influenced by any of the disclosures or the protected act.

256. In respect of paragraph 6.4, we do not accept that the plan provided to the claimant only had one section pertaining to welfare, all of the sections pertained to welfare if read fairly. Other than that, the allegations set out in paragraph 6.4 are a broadly accurate summary. The move to Operation Remedy was paused because of the claimant’s absence and the respondent’s decisions as to the best way to support her, she then moved to Team 3 at her request. We accept that the claimant would reasonably consider that she had been subjected to a detriment when she could not move to Operation Remedy when she wanted to. However we find that the decisions made and implemented as recorded in paragraph 6.4 were not materially influenced (in the sense of being more than a trivial influence) by any of the disclosures or the protected act.

257. In respect of paragraph 6.5, the summary of facts stated therein is something of a gloss and we refer to our findings of fact set out above. However, we accept that the claimant was subjected to a detriment but we find that DI Wasiak’s decisions and directions were not influenced by any protected disclosures made by the claimant; he was motivated by concerns for the claimant’s welfare, albeit that we have found his decisions could have been implemented in a better fashion.

258. In respect of paragraph 6.6, the allegation is factually accurate. However the comments referred to have been taken out of context. Even if we were to accept that the comments made were to the claimant’s detriment, we are satisfied that the email and the comments in it were not materially influenced (in the sense of being more than a trivial influence) by the protected disclosures and the protected act that had been made.

259. In respect of paragraph 6.7, we accept that there was a failure by DS Keith Smith to advise the training school or enquire as to whether Mr Bunting would have input to the course. We accept that resulted in the claimant coming into contact with Mr Bunting and suffering as a result. That was a detriment. We are, however, satisfied that DS Keith Smith’s failings were not influenced at all by the disclosure made by the claimant or the protected act done by the claimant. In respect of this issue we reiterate (as is the case for all of the issues) our finding that DCI Brickwood was not manipulating other officers or circumstances to ensure that the claimant was penalised by others or to encourage that to happen.

260. In respect of paragraph 6.8, whilst we accept that the comments alleged were made in the occupational health referral, they were not demeaning or humiliating comments and they were not to the claimant’s detriment. They were an attempt to secure help to ensure that the claimant was dealt with properly.

There was no detriment in this respect but even if there was, the comments were not materially influenced by the protected disclosures or the protected act.

261. In respect of paragraph 6.9, again whilst the comments alleged were made, in the context of the meeting they were honest and reasonable feedback. We do not find that they were to the claimant's detriment. We also are satisfied that they were not influenced by the protected disclosures or the protected act.

262. In respect of paragraph 6.10, the comments alleged were made. However they have been taken out of context and, in context, were reasonable comments to make and not to the claimant's detriment. It was in her interests to be given proper feedback to enable her to improve where necessary. In any event, again, we are entirely satisfied that DS Edgeworth's comments were not in any way motivated by the protected disclosures or the protected act.

263. In respect of paragraph 6.11, we do not accept that the comments made were demeaning. They were, again, honest and reasonable feedback. We would not accept that the comments amounted to a detriment but, even if they did, as we have said, we are entirely satisfied that there were not in any way motivated by the protected disclosures or the protected act.

264. In respect of paragraph 6.12, the comments alleged were made in the third occupational health referral. The comments, seen in context, were justifiable (subject to the point we have made above about the comment in paragraph 6.12.1). Given that the purpose of the referral was to obtain assistance in properly managing the claimant, we do not consider that the comments were to her detriment. Moreover, we do not consider that DCI Brickwood, in writing the comments, was materially influenced (in the sense of more than trivially influenced) by the disclosures the claimant had made or the protected act she had done.

265. In respect of paragraph 6.13, we have set out, above, our findings that the informal action plan was right and reasonable. However, we accept that a reasonable employee would think it to their detriment to be put on an action plan, even an informal one. However, we are satisfied that DI Wasiak was not materially influenced by any of the disclosures made or the protected act.

266. In respect of paragraph 6.14, we bear in mind that the allegation is in the section of the list of issues dealing with insignificant issues being unduly highlighted. We do not think that dealing with the claimant's absence through the UAP was giving an insignificant issue undue attention. The respondent is right to manage the absence of its employees. Apart from operational issues, it is often through a proper absence management program that things such as reasonable adjustments will be considered. The comments made by DS Bowden were entirely appropriate and not to the claimant's detriment and the comments made by Ms Langford were not to the claimant's detriment. That is sufficient to deal with the issue as pleaded but, for the sake of fullness, we would accept that being placed on a UAP would be reasonably considered to be a detriment. However, we are entirely satisfied that neither DS Bowden nor Ms Langford were motivated by the disclosures made or the protected act done

by the claimant and the placing of the claimant on a UAP was not influenced by the disclosures or the protected act.

267. In respect of issue 6.15, the comments alleged were reasonable and were not insignificant issues. We accept that they were to the claimant's detriment in the sense that they were part of a move to a formal process but we are satisfied that DS Edgeworth was not motivated by or influenced at all by the claimant's disclosures or protected act.

268. In respect of paragraph 6.16 we do not accept that the claimant was castigated and this allegation is not made out. The claimant was not subjected to a detriment.

269. In respect of paragraph 6.17, it is incorrect to say that DS Edgeworth composed a stage 1 UPP despite a lack of evidence of underperformance. There was evidence of underperformance. In any event, as we have said, DS Edgeworth was not influenced by the claimant's disclosures or protected act.

270. In respect of paragraph 6.18, the allegation is not factually made out. The comments which were made by DI Lavender were not to the claimant's detriment and were not materially influenced by the disclosures she had made or the protected act she had done.

271. In respect of paragraph 6.19, DI Wasiak did say the matter was ultimately to be decided by a court and although there is no clear evidence that he said it was simply a disclosure matter for the CPS to be made aware of, it is likely that he said something to the effect of it being a disclosure matter. Assuming that paragraph 6.19 is factually accurate, we do not consider those statements to be a detriment to the claimant, they were simply a statement of opinion by DI Wasiak. In any event we are satisfied that they were not materially influenced by the disclosures made by the claimant or her protected act.

272. In respect of paragraph 6.20, we have found that DI Wasiak did not apply the correct procedure to the claimant's appeal and that was to the detriment of the claimant. However, we are satisfied that his failure was not influenced by the disclosures made or the protected act of the claimant.

273. In respect of paragraph 6.21, the allegation is not factually made out. It is not correct to say that HR took absolutely no notice. HR responded appropriately. There was no detriment to the claimant and, even if there was, there is nothing to suggest that the Human Resources Department was influenced by any disclosures made by the claimant or her protected act.

274. In respect of paragraph 6.22, we have set out our factual findings above. We do not accept the claimant was subjected to a detriment and we are entirely satisfied that D. Supt Hughes was not influenced by the disclosures which the claimant had made or her protected act. She was responding to the disclosure but she was not subjecting the claimant to a detriment because of it.

275. In respect of paragraph 6.24, it is correct that T. Ch. Supt Rees stated that it was not within his remit or gift to overturn the informal action plan. We accept that he was wrong and, to that extent, the claimant was subjected to a detriment, temporarily, whilst the correct position was established. He did then, rectify the position. However, we are satisfied that he was not influenced by the protected disclosures or the protected act done by the claimant.

276. In respect of paragraph 7.1.3 we find that the claimant's belief that the disclosure in June 2018 was made in the public interest was reasonable.

277. We have not found it necessary to go on to consider the issues in paragraphs 7.1.4 and 7.1.5.

278. In respect of paragraph 8 we have set out our conclusions in respect of the individual allegations above.

279. In respect of paragraph 9, again, we have set out our conclusions in respect of the individual allegations above. We have found that the claimant was only treated unfavourably in respect of allegation 17.

280. In respect of paragraph 10, the treatment of the claimant in respect of allegations 10, 11, 17 and 22 was not because of something arising in consequence of a disability, either her reactions to the incidents outlined or being signed off sick from work.

281. In those circumstances we have not found it necessary to go on to consider paragraph 11.

282. In respect of paragraph 12, the sex discrimination claim has been withdrawn.

283. In respect of paragraph 13, the claimant has not proved any facts from which we could conclude that a person without her disability but who was, in all other material respects the same as the claimant, would have been treated differently to her. We are entirely satisfied that the treatment of the claimant was because of her behaviour and attitude, not because of her disability.

284. In respect of paragraphs 14 and 15, it was admitted at the outset of the hearing that the protected act had been done.

285. In respect of paragraph 16, we are satisfied that to the extent the claimant was subjected to detriment it was not because she had done a protected act.

286. We have not needed to consider whether the claimant contributed to the circumstances she finds herself in by her conduct and performance or failed to mitigate the same.

287. We have not needed to consider the question of limitation.

Overall conclusions

288. The claimant's claims are dismissed.

289. Notwithstanding the findings and conclusions we have set out above, we record that the claimant conducted the hearing with courtesy and conspicuous skill given her status as a litigant in person. We were grateful to both the claimant and Mr Arnold for the careful and professional way in which the case was presented to us.

Employment Judge Dawson
Date 9 March 2021

Judgment sent to the parties: 28 March 2022

FOR THE TRIBUNAL OFFICE

Appendix – List of Issues

IN THE BRISTOL EMPLOYMENT TRIBUNAL

BETWEEN:

STEPHANIE POW

Claimant

-and-

THE CHIEF CONSTABLE OF AVON & SOMERSET CONSTABULARY

Respondent

AGREED LIST OF ISSUES v22

The Claimant's claims

1. The Claimant makes the following claims:

1.1 Protected disclosure detriment (s.47B);

1.2 Discrimination arising from disability (s.15);

1.3 Direct sex discrimination (s.13);

1.4 Direct disability discrimination (s.13); and

1.5 Victimisation (s.27).

Limitation

2. Day A was 9 November 2019. Day B was 9 December 2019. The ET1 claim form was filed on 5 February 2020. Whether any detriment occurring before 6 October 2019 (being 4 months previously) is outside the primary limitation period?

3. If so, whether the alleged acts and/or omissions form a continuing act?

4. If not whether time is extended under the relevant jurisdiction?

Disability

5. Following the determination of Employment Judge Gray on 3 August 2020, the Claimant was disabled within the meaning of the Equality Act 2010 by reason of depression and anxiety from 9 January 2020 onwards, but not before.

Allegations

6. The Claimant makes the following allegations, derived from her original complaint and subsequent Addendum of 24 March 2020:

Denial of training opportunities and career development

(i) People Development Programme

6.1 The Claimant was refused support by DI James Wasiak on or around 01/08/2019 for her participating in a People Development Programme (**Allegation 1**);

6.2 The Claimant asked DS Sarah Bowden on 05/08/2019 if a reference from a previous police sergeant from the Metropolitan Police would assist with whether the Claimant would be permitted to participate in a People Development Programme, along with the Claimant's last Performance Development Review (PDR) from the National Crime Agency. This was ignored by DS Bowden (**Allegation 2**);

(ii) CID Tutors' course

6.3 A few days before a CID Tutors' course began on 30/10/2019, DS Lucy Edgeworth decided that the Claimant was not able to attend that course due to performance concerns, yet stated to Claimant that it was an 'HR decision' (**Allegation 3**);

6.4 The Claimant applied to join a new investigative initiative called 'Operation Remedy'. Claimant was notified that she was successful in the application process on the 27/06/2019 by Inspector Andrew Peppin, with a start date of 08/07/2019. The department had agreed to release the claimant in September 2019, but OH supported the move to Operation Remedy and suggested that the start date be brought forwards to assist with the Claimant's mental health. Despite the successful application, the Claimant was subsequently told by DCI Brickwood and TDI Lavender that they felt the move was 'not right' for the Claimant, and eventually

determined that the move could only take place if the Claimant agreed to a 'welfare plan'. The plan was written on a document entitled 'Personal Development Plan', and the only section pertaining to welfare was section 1 (out of 6). The Claimant was never released to Operation Remedy. (**Allegation 4**)

Given more onerous or mundane work

6.5 The Claimant was segregated from her team by DI Wasiak on or around 31/07/2019 and informed that she was not allowed to engage with members of the public / conduct investigations or access crime reports without his permission or a good reason. Instead, the Claimant's only work was downloading mobile telephone data, taking statements, or undertaking CCTV enquiries (**Allegation 5**);

Demeaning or humiliating comments/ actions

6.6 In an email dated 08/02/2019 DCI Brickwood wrote to Rachel Nash (of HR), cc'ing in Supt Elizabeth Hughes and Supt Marie Wright (now retired) in relation to the Claimant. In the correspondence DCI Brickwood wrote that the Claimant was a '*problematic individual*' and that he had '*some doubts about* [Claimant's] *general competence*'. He also stated that there were a '*number of amusing anecdotes about how* [Claimant] *has taken senior members of the organisation to task*'. DCI Brickwood also referred to the Claimant as a 'challenging character' (**Allegation 6**).

6.7 In May 2019, the Claimant attended a course at training school. She had asked her Supervisor, DS Smith, to ensure that Trainer Adam Bunting (former DI) would not be participating on the course due to Claimant's anxiety. DS Smith failed to advise training school or enquire as to whether Adam Bunting would have an input on the course. On 14th May 2019, due to DS Smith's failure, an interaction between Claimant and Adam Bunting occurred in the classroom, resulting in the Claimant suffering an anxiety attack in front of 10-15 colleagues in the class. (**Allegation 7**).

6.8 On or around 25/07/2019, DCI Brickwood enquired in a (3rd) Occupational Health referral "*The reasons for this referral are to consider the above text message in the context of the*

*behaviours that have been described. A formal assessment of Stephanie is requested to establish if there is any type of medical condition (***either physical or mental** *), which could account for the difficult relationship she experiences with her line managers, her persistence in resisting lines of enquiry that she disagrees with, her occasionally emotional behaviour, and a perceived lack of empathy for vulnerable victims*." [Emphasis added by the Claimant](**Allegation 8**).;

6.9 On 10 August 2019, DI Wasiak made the following remarks which were demeaning comments; "*You think you're an 'excellent' DC*", and "*I'm saying your view seems to be that everything you do is 'excellent'; all the supervisors you work with are always wrong, and aren't as competent as you, because that's how it comes across to me*" and "*You disagree with a lot of people about a lot of things*" DI Wasiak did not review any work that Claimant had done that had not been referenced in the OH referral constructed by DCI Brickwood. He also informed the claimant that there were '*other things that were negative*', that he could have '*brought in for the sake of it*' if he had wanted to be '*difficult*'. During the same meeting, DI Wasiak made comments about another investigation in which Claimant was asked to conduct a voluntary attendance interview. DI Wasiak stated that Claimant should have seized the suspect's mobile phone, however the Claimant felt she had no power to do so. DI Wasiak stated that Claimant should have arrested the suspect and used S18 PACE powers which Claimant feels shows that he refused to listen to facts of law concerning search powers, warrants, and fair legal investigatory processes. (**Allegation 9**).

6.10 On 12 January 2020 and onwards, DS Lucy Edgeworth made the following demeaning comments in an e-mail chain[1]:

6.10.1 "I don't know if you intend your communication to come across as it is taken but the tone is defensive and disputatious";

6.10.2 "I fail to see the point of this paragraph";

6.10.3 "Again, I fail to see the point in this paragraph";

6.10.4 "What is the point of this paragraph?";

6.10.5 "The point of this last paragraph?";

6.10.6 "It should be noted that DS Forde is a sergeant, what was there to 'back down' from...";

6.10.7 "This use of language is unnecessary, antagonistic, and unprofessional";

6.10.8 "Of course you have an opinion, but as per you (sic) action plan...";

6.10.9 "Your behaviour and actions made this morning into an issue, no one else. I believe I have been understanding, I'd invite you to tell me of occasions prior to today where I haven't been";

6.10.10 "What exactly are you referring to here? This specific situation? Previous situation? What course of action are you referring to? Walking out? This email? Your niche entry?";

6.10.11 "Who are you referring to as ignorant?";

6.10.12 "(As this situation is about us all I can't see that you can look at this objectively)"; and

6.10.13 "You (sic) refusal to engage this morning and walk out has led us to where we are currently."

"Kind Regards, Lucy (DS Edgeworth)" (**Allegation 10**)

6.11 From 17 January 2020, DS Edgeworth made the following demeaning comments in a formal action plan:

6.11.1 "This is opinion and adds no value and shows that feedback given about re-reading entries before submitting them was dismissed";

6.11.2 "She correspond (sic) with a lack of courtesy and respect and came across as patronising"(**Allegation 11**);

<u>Insignificant issues about C's conduct being unduly highlighted in the following documents</u>

(i) 3rd Occupational Health referral dated 25 July 2019

6.12 The 3rd Occupational Health referral dated on or around 25/07/2019 composed by

DCI Brickwood, where he stated:

6.12.1 "Unfortunately, despite this move, there have continued to be difficulties with her line manager relationships. As a result of this, she is now being managed by her third sergeant at KSH, which means that since transferring to Avon and Somerset 19 months ago she has had five different first line managers.";

6.12.2 "There have been a number on (sic) incidents on police premises where Stephanie has reacted in an unexpectedly emotional manner";

6.12.3 "In addition, there have been a number of incidents where Stephanie has persisted in a course of conduct, despite being clearly instructed by supervisors (up to the rank of Superintendent) that different action was needed.";

6.12.4 "Following a UAP meeting after an extended period of sickness, DS SMITH met with Stephanie to clarify why she was not yet working full shifts as agreed. Despite clear notes taken on the subject by the HR representative, and the recollection of DS SMITH, Stephanie disputed the conversation, saying the two attendees had misheard and mis-recorded it.";

6.12.5 "Stephanie was asked to assist with an investigation where the victim was extremely vulnerable, suffering with down syndrome. There was a clear DI review with actions stipulated, however, Stephanie put an update on the niche disagreeing with the review, disputing a number of actions, and stating the incident was less serious than the DI had assessed. The case was subsequently reallocated, and the suspect swiftly arrested and charged. Stephanie's comments were undermining to the prosecution case.";

6.12.6 "...Stephanie has some justified concerns regarding the powers of search used by the attending officers. However, her reaction to these concerns has been disproportionate, as despite clear direction from her Sergeant and

Inspector, she has resisted progressing the investigation as instructed. She has contacted PSD to complain about the officers, and sent an unhelpfully worded email to the supervisor of the team involved, despite the fact that that same team is one that she wishes to join in the near future."

(**Allegation 12**);

(ii) Informal Action Plan (undated), commencing 10 August 2019

6.13 The informal action plan never dated, but commenced on 10/08/2019, by DI Wasiak, where he stated:

6.13.1 upon issuing it: that Claimant had not had an 'open mind' when asked to undertake enquiries in relation to an investigation, and that because a Detective Inspector had already 'determined' that the incident was a 'trespass with intent to commit a relevant sexual offence', Claimant had no right to add an 'analysis' of the facts and rationale for lines of enquiry. This was because, in DI Wasiak's opinion, it added 'no value to the investigation' and it was 'listed on the disclosure schedule (MG6E) as undermining material';

6.13.2 that Claimant "shouldn't comment in writing or offer opinion on the decisions that other people have made on a crime report", unless it was her "place to do so". DI Wasiak's complaint was that Claimant was "pointing out the strengths and weaknesses of the case", and stated that this was not the correct thing to do. DI Wasiak then agreed that everything that pertains to the process of an investigation should be recorded on a crime report, which was contradictory and confusing, as he then went on to summarise the entry in layman's terms, and state that Claimant's decision to treat the crime as a burglary and not a robbery was not a 'helpful thing to do';

6.13.3 DI Wasiak then criticised Claimant's investigation structures, stating that

the 'D/R/A' (Decision, Rationale, Action) should be used, however he later went on to say "I'm not going to say that because you haven't written 'DRA', you're not performing acceptably", adding another layer of contradiction;

6.13.4 DI Wasiak also criticised Claimant's decision to bring the matter comprising PD2 to the PSD. Although he conceded that Claimant was 'within [her] rights' to have done so, he stated that the only place that could make a decision ultimately whether something is lawful or not in the progression of an investigation was 'a Court';

6.13.5 DI Wasiak stated that DS Keith Smith and TDI Ben Lavender set directions on an ongoing investigation into an incident later charged as an affray; however, Claimant felt that clarification requests from the supervisors were ignored;

6.13.6 DI Wasiak also made comments about another investigation in which the Claimant was asked to conduct a voluntary attendance interview. DI Wasiak stated that the Claimant should have 'seized the suspect's phone', despite the Claimant's feeling that there was insufficient grounds to have done so, and that there were insufficient grounds to apply for a warrant (**Allegation 13**);

(iii) UAP Stage 1 meeting 15 August 2019

6.14 The Unsatisfactory Attendance Process (UAP) Stage 1 meeting of 15/08/2019 where:

6.14.1 DS Bowden stated: The reason for the meeting is regarding your absences from the workplace, purely around the absences. We've got recorded that from August 2018 you've had four bouts of sickness, some of which have been stress-related, and in duration from two days to over two months. The recent absence was from the 5th July 2019 to the 27th July 2019. (No

further details given as to why the process had been implemented following mental ill-health); and

6.14.2 Jessica Langford, HR representative, stated: If you are issued a WIN, if I don't know, for example [...] Tomorrow, you go out into the car park, you fall over and you break your leg which means you can't come to work, you will have a review that does not necessarily mean you WILL definitely escalate to UAP2. We will come back together, consider the circumstances of that absence, and decide if the appropriate action is to escalate to a UAP 2. So what we're not saying is... It's never black and white, because we're talking about human beings..." [Claimant]: "So what's the difference between the last UAP and this UAP then?" JL: "The level of absence...", which confirms implicitly that the decision to implement the Written Improvement Notice was as a result of being signed off for suffering mental ill-health (**Allegation 14**);

(iv) Intended Formal UAP Stage 1 performance / action plan dated 17 January 2020

6.15 The intended formal UAP Stage 1 performance action plan dated 17/01/2020 composed by DS Edgeworth, where she stated:

6.15.1 "On the 12th Dec I spoke with DC Pow about recording her opinion on Niche [...] I later sat down and spoke with DC Pow about this comment [...] We discussed this in detail and I explained that I believe it was a biased comment and my reasons why [...] I asked DC Pow to re-read her OEL entries before submitting them. [...] This is backed up with a further entry on Niche [...] This is opinion and adds no value and shows that feedback given about rereading entries before submitting them was dismissed. I also believe it shows her initial affirmation that she does not believe that [the informant] was poisoned. We are entitled to form opinions but must be aware of our bias's and how these can affect how we investigation (sic)

crimes.";

6.15.2 "DC Pow placed her opinion on this Niche and then went on to give her opinion on the decision of a supervisor. This is best read in its entirety (email thread has been sent to DC Pow so she will be aware of its contents in full). Points to be taken from this are: DC Pow's refusal to speak with DS Forde and myself, choice and tone of language through the correspondence (as already noted in this AP) she corresponded with a lack of courtesy and respect and came across as patronising." This was mentioned in the action plan twice.;

6.15.3 "DC Pow started her OEL entry with OIC FINAL CONTACT and wrote that she sent the victim a letter. Unhappy with that, I decided to call the complainant myself [...] I spoke with DC Pow briefly in the office about this- She could hear how difficult the conversation was between the complainant and I and I explained that this was exactly why a letter in these circumstances would not be best- DC Pow disagreed, saying that she would usually send a letter in such circumstances."

6.15.4 "SOE request from DS Mullins. I note that x7 emails were exchanged to get this statement being (sic) completed."

6.15.5 "As per the above entry for part 1 of the AP there are elements here that merge into this point- specifically the choice of language in her email correspondence [...]";

6.15.6 "It has been brought to my attention that DC Pow has been saying negative things about DS Forde and myself to other team members. I appreciate that people need to 'vent', but the content of what is recorded as being said shows a clear disrespect for DS Forde and seeks to undermine her authority and decision making."

6.15.7 On the 14th Dec SP sent me the following email- this was prompted by me

as I was trying to organise a WIN meeting with HR. SP told me she didn't want to attend and I asked her to put something in writing. [...] The language used in this email is neither tolerant, respectful, nor courteous."

6.15.8 "...There is evidence of behaviours unchanged and therefore this action plan has failed to raise DC Pow's performance. [...] I will sent a letter out in due course inviting DC Pow to this meeting and will write an improvement notice for this meeting." (**Allegation 15**).

6.16 On 20 December 2019, DS Edgeworth castigated the Claimant for using the word 'fabricated' in a report where a female had admitted to lying that she had been a victim of crime (**Allegation 16**);

6.17 In January 2020, DS Edgeworth composed a Stage 1 UPP to impose a prepared Written Improvement Notice and action plan in January 2020, despite a lack of evidence of under-performance (disputed by the respondent) (**Allegation 17**);

<u>The way in which grievances and disciplinary issues are handled, so that the employer is not taking them seriously or dealing with them in the proper matter</u>

After raising PD2 and/or PD3 (of which, see below), the Claimant was not supported by her managers:

6.18 DI Ben LAVENDER informed the Claimant on or around 03/07/2019 incorrectly that a s.18 search was 'basically a warrant' (**Allegation 18**);

6.19 DI James WASIAK stated on or around (please see crime report for date) to the Claimant incorrectly that this was 'simply a disclosure matter for the CPS to be made aware of'; and on the 10/08/2019 that the issue was ultimately a matter to be decided 'in Court' (**Allegation 19**);

6.20 DI James Wasiak did not apply correct procedure to Claimant's appeal to UAP Stage 1 decision. No appeal meeting held and no formal appeal listened to. No consideration given to previous decision of DI Lavender for certain days not to count towards sickness (**Allegation 20**);

6.21 When Human Resources were made aware of the comments of DI Ben Lavender and management concerning the S18 PACE issue via DI WASIAK on 26/07/19 by way of letter, and reiterated on 16/08/2019, HR took absolutely no notice (**Allegation 21**);

6.22 On 17 January 2020, Detective Superintendent Hughes failed to:

6.22.1 address with the Claimant why it had been decided that police officers who had committed criminal offences would not be subject to misconduct procedures and/or the rationale for that decision;

6.22.2 confirm to the Claimant when that decision was made;

6.22.3 confirm to the Claimant who had made the decision; and

6.22.4 how the decision was justified in relation to the Code of Ethics, namely The 'Policing Principles', as well as standards of professional behaviour covered in Code 4 (Use of Force), Code 9 (Conduct), and Code 10 (Challenging and reporting improper conduct) (**Allegation 22**);

6.23 **Allegation 23** is withdrawn and dismissed;

6.24 HR confirmed with Claimant that an independent review would take place regarding the informal action plan composed by DI Wasiak, and his decision not to allow the appeal of the UAP Stage 1. Det. Supt Deryk Rees held a meeting with Claimant in September 2019. Following the meeting Claimant was advised by D.Supt Rees that it was not in his 'remit or gift' to overturn the decisions that had already been made, and that this was the position he had been he had been directed to take by HR. (**Allegation 24**)

Protected disclosure detriment (s.47B)

Protected disclosures

7. The Claimant asserts 3 protected disclosures:

7.1 Disclosing the treatment (abuse) of a colleague with a disability in an e-mail to DI Brickwood on 21 June 2018 (**PD1**) As to PD1:

7.1.1 It is accepted that the Claimant disclosed information of the treatment of a colleague with a disability to DCI Simon Brickwood in an e-mail dated 21 June 2018;

7.1.2 It is accepted that the Claimant's belief that it tended to show breach of a legal obligation was reasonable (e.g. harassment under the Equality Act 2010);

7.1.3 Whether the Claimant's belief that it was made in the public interest was reasonable;

7.1.4 Whether the Claimant's belief that it tended to show that a criminal offence, namely a hate-crime, had been committed was reasonable; and

7.1.5 Whether the Claimant's belief that it tended to show that a miscarriage of justice had been committed was reasonable?

7.2 PD2 is accepted: Disclosing orally to Detective Inspector Lavender in June / July 2019, a breach of s.18(1) of Police and Criminal Evidence Act 1984 (PACE) by police officers searching premises on [DATE (*to be found in e-mail of 4 July 2019/A&S crime report 5219****** OEL 48*)] for drugs and/or criminal damage caused by forced entry to the front door of the premise and/or common assault by search of an occupant (**PD2**); and

7.3 PD3 is accepted: Disclosing the same by similar e-mail on 4 July 2019 to the Respondent's Professional Standards Department (PSD) (**PD3**).

Detriments

8. Was the Claimant, on the ground of PDs1-3 or any of them, subjected to the following detriments:

8.1 Allegations 1-22 and 24?

Discrimination arising from disability (s.15)

Unfavourable treatment

9. Was the Claimant treated unfavourably by the following acts or omissions:

9.1 Allegations 10, 11, 17 and 22?

Because of something arising in consequence of disability

10. If so, was it because of something arising in consequence of her disability, namely the Claimant's reactions to the incidents outlined, and being signed off sick from work?

Proportional means of achieving a legitimate aim

11. If so, does the Respondent show the following aims were legitimate and proportionally achieved:

The Respondent contends that broad aims of the treatment in managing both the Claimant's (or any police officer's) attendance and her performance were:

11.1 A more efficient police service provided to the public;

11.2 Provision of supportive measures to the officer concerned, together with clear guidance as to what was expected of the officer and clear warning of the consequences of not doing what was expected; and/or

11.3 Satisfaction of statutory requirements imposed on the Respondent by the Police (Performance) Regulations and Police (Conduct) Regulations.; and

The Respondent contends that such aims were legitimate and were proportionally achieved:

11.4 It was reasonably necessary to do the same, appropriate and corresponded to a real need of the organisation; and/or

11.5 Allowances were made for the Claimant. For example:

11.5.1 The first Stage One UAP meeting resulted in No Further Action;

11.5.2 The Claimant was provided with extra days within which to appeal the Stage One UAP outcome;

11.5.3 Her requests for a change in line-management and/or teams were allowed, despite the Claimant being the cause of the request;

11.5.4 Matters of low-level misconduct, such as

(i) circulating an entry on the Police National Computer, alleging that it had been authorised by an Inspector when it had not;

(ii) recording a potential rape victim's conversation without her consent;

(iii) disobeying the order of a Superintendent; and/or

(iv) minor insubordination (despite being a disciplined service)

were overlooked.

Direct sex discrimination (s.13)

12. Was the Claimant treated less favourably by the Respondent because of her sex than a hypothetical comparator would have been, in circumstances with no material difference by the following acts or omissions:

12.1 Allegation 8?

Direct disability discrimination (s.13)

13. Was the Claimant treated less favourably by the Respondent because of her disability than a hypothetical comparator would have been, in circumstances with no material difference by the following acts or omissions:

13.1 Allegations 10, 11, 17 and 22?

Victimisation (s.27)

Protected act

14. Whether in June 2018, the Claimant complained to A/DS Ryan Matthews about the lack of sufficient action taken with regards a member of staff, Sandra Osborne, who had been derogatory about a colleague's (Catharine Fletcher) physical disability?

15. If so, whether this amounts to a protected act?

Acts of victimisation

16. If so, whether the Claimant was subjected to the following detriments by the Respondent because she had done the protected act:

16.1 Allegations 1-24 or any of them?

Contribution / mitigation

17. Whether the Claimant contributed to the circumstances she finds herself in by her conduct

and performance and/or failed to reasonably mitigate by modifying the same.

Respondent & Stephanie Pow

17 January 2022