EMPLOYMENT TRIBUNALS

JUDGMENT

BETWEEN

CLAIMANT		RESPONDENT
MS K SODHI	**V**	**THE COMMISSIONER OF POLICE OF THE METROPOLIS**

HELD AT: LONDON CENTRAL **ON: 22, 23, 26 – 30 SEPTEMBER 2022**

EMPLOYMENT JUDGE: MR M EMERY
MEMBERS: MS J GRIFFITHS
MR B TYSON

REPRESENTATION:
For the claimant: Ms L Halsall (Counsel)
For the respondent: Ms K Loraine (Counsel)

JUDGMENT

All claims - of direct race and sex discrimination, harassment on grounds of sex and/or race, and victimisation - fail and are dismissed.

RESERVED REASONS

The Issues

1. The claimant is a serving Detective Inspector. The events in question in this claim took place from January to August 2019 and relate to the claimant's time working in the Homicide and Major Crimes Directorate at Barking as DI in Murder Investigation Team (MIT) 22. The claimant alleges that during this period she was subject to direct race and sex discrimination, she was harassed on grounds of her race and sex, and that she was victimised, having in previously settled a disability discrimination employment tribunal claim against the respondent.

2. The agreed issues are:

Jurisdiction

1. Are any of the Claimant's claims out of time as:
    (a) They occurred on or before 1 April 2019; and
    (b) They do not form part of a continuing act or state of affairs; and/or
    (c) It is not just and equitable to extend time

2. Does the Tribunal have jurisdiction to consider any claims arising from events that occurred on or after 2 July 2019, when Early Conciliation commenced, and which were therefore not the subject of that Early Conciliation?

Direct Race/Sex Discrimination (s13 EA 2010)

3. Did the Respondent treat the Claimant in the following ways as alleged:

    (a) By DSU Duffield not consulting or speaking with the Claimant about allegations that were made by DS Grey and DS Soren in or around January/February 2019

    (b) By DSU Duffield inviting SI Jones, after he joined MIT 20 in February 2019, to go and see him as his door was always open, whereas DSU Duffield would ignore the Claimant

    (c) By DSU Duffield not disclosing the details of the allegation that were made in March 2019 relating to her team's handing of a murder scene in January 2019

    (d) By DSU Duffield not consulting or speaking with the Claimant about allegations that were made in March 2019 relating to her team's handing of a murder scene in January 2019

(e) By DSU Duffield making the comment '*Kam's a big girl, I heard she took the job to an ET and won*' to DCI Holmes over the phone on 20 March 2019 and the Claimant learning of this comment from DCI Holmes shortly before 8 May 2019

(f) By DSU Duffield failing to appoint her to the acting up role in MIT 20 in April 2019 or failing to follow a fair procedure

(g) By DCI Soole failing to recognise the Claimant in his email of 29 April 2019

(h) By DCI Soole asking SI Jones to review and supervise the Claimant's work

(i) On 2 May 2019 by asking DI Jones to check an error on a matter the Claimant was investigating

(ii) On 10 May 2019 by holding a case review meeting with DCI Soole to review DI Jones caseload and not inviting the Claimant or holding an equivalent meeting with her

(iii) On 11 June 2019 at a partner agency meeting with the Claimant, stating that DI Jones would be involved in the investigation the Claimant was leading to give her 'resilience' without prior discussion

(iv) Between 8-17 July 2019 instructing DI Jones to break into the Claimant's Pod/locked drawer to retrieve and review case logs in relation to cases the Claimant was leading on while she was on annual leave

(v) By DI Jones on 27 August 2019 asking the Claimant by email about her workload and asking if she would take on some of his cases.

4. In respect of each alleged act, did this constitute less favourable treatment?

5. If yes, was the less favourable treatment because of the Claimant's race and/or sex?

6. In respect of each act, who is the comparator relied on or does the Claimant rely on a hypothetical comparator?

<u>Harassment (s26 EA 2010)</u>

7. Was the Claimant subjected to the following conduct:

(a) By DSU Duffield not consulting or speaking with the Claimant about allegations that were made by DS Grey and DS Soren in or around January/February 2019

(b) By DSU Duffield inviting SI Jones, after he joined MIT 20 in February 2019, to go and see him as his door was always open, whereas DSU Duffield would ignore the Claimant

(c) By DSU Duffield not disclosing the details of the allegation that were made in March 2019 relating to her team's handing of a murder scene in January 2019

(d) By DSU Duffield not consulting or speaking with the Claimant about allegations that were made in March 2019 relating to her team's handing of a murder scene in January 2019

(e) By DSU Duffield making the comment '*Kam's a big girl, I heard she took the job to an ET and won*' to DCI Holmes over the phone on 20 March 2019 and the Claimant learning of this comment from DCI Holmes shortly before 8 May 2019

(f) By DSU Duffield failing to (i) keep the Claimant updated; (ii) properly consider the Claimant's expression of interest; and/or (iii) appoint her to the acting up role in MIT 20 in April 2019

(g) By DCI Soole failing to recognise the Claimant in his email of 29 April 2019

(h) By DCI Soole asking SI Jones to review and supervise the Claimant's work

(i) On 2 May 2019 by asking DI Jones to check an error on a matter the Claimant was investigating

(ii) On 10 May 2019 by holding a case review meeting with DCI Soole to review DI Jones caseload and not inviting the Claimant or holding an equivalent meeting with her

(iii) On 11 June 2019 at a partner agency meeting with the Claimant, stating that DI Jones would be involved in the investigation the Claimant was leading to give her 'resilience' without prior discussion

(iv) Between 8-17 July 2019 instructing DI Jones to break into the Claimant's Pod/locked drawer to retrieve and review case logs in relation to cases the Claimant was leading on while she was on annual leave

(v) By DI Jones on 27 August 2019 asking the Claimant by email about her workload and asking if she would take on some of his cases.

8. If the Claimant was subjected to the conduct set out above, was it:

(a) Unwanted conduct related to her race and/or sex; and

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

9. If so, was it reasonable for the conduct to have that effect having regard to the matters referred at 26(4) EA 2010?

Victimisation (s27 EA 2010)

10. It is agreed that the Claimant did the following protected acts, within the meaning of EA 2010;

(a) The bringing of ET proceedings in 2017

(b) The settlement of the ET proceedings in November 2018

(c) The submission of a grievance on 23 May 2019

11. Was the Claimant subjected to the following alleged detriment(s)

(a) By DSU Duffield not consulting or speaking with the Claimant about allegations that were made by DS Grey and DS Soren in or around January/February 2019

(b) By DSU Duffield inviting SI Jones, after he joined MIT 20 in February 2019, to go and see him as his door was always open, whereas DSU Duffield would ignore the Claimant

(c) By DSU Duffield not disclosing the details of the allegation that were made in March 2019 relating to her team's handing of a murder scene in January 2019

(d) By DSU Duffield making the comment '*Kam's a big girl, I heard she took the job to an ET and won*' to DCI Holmes over the phone on 20 March 2019 and the Claimant learning of this comment from DCI Holmes shortly before 8 May 2019

(e) DSU Duffield subjected the Claimant to a detriment by not selecting her for acting up role and transferring DCI Soole from MIT20 to MIT22 to cover this role in April 2019

(f) The Claimant was subjected to a detriment when she was not appointed to perform the acting up role in MIT20 and this role was given to DI Hillier in April 2019

(g) The Respondent subjected the Claimant to a detriment by not holding a fair and transparent procedure for selection for the acting up positions for MIT20 or MIT22 in April 2019

(h) A meeting was held on 24 July 2019 regarding an operation for which the Claimant was the investigating officer. DCI Soole sent an email to all members of the team, except the Claimant who was working from home. After the Claimant found out about the meeting, she requested dial in details to participate but she was not provided with any means of participating. The Claimant believes she was subjected to a detriment in not being allowed to take part in a team meeting on an investigation where she was the investigating officer

(i) By DCI Soole asking SI Jones to review and supervise the Claimant's work

i. On 2 May 2019 by asking DI Jones to check an error on a matter the Claimant was investigating

ii. On 10 May 2019 by holding a case review meeting with DCI Soole to review DI Jones caseload and not inviting the Claimant or holding an equivalent meeting with her

iii. On 11 June 2019 at a partner agency meeting with the Claimant, stating that DI Jones would be involved in the investigation the Claimant was leading to give her 'resilience' without prior discussion

iv. Between 8-17 July 2019 instructing DI Jones to break into the Claimant's Pod/locked drawer to retrieve and review case logs in relation to cases the Claimant was leading on while she was on annual leave

v. By DI Jones on 27 August 2019 asking the Claimant by email about her workload and asking if she would take on some of his cases.

12. If so, in relation to each detriment found to have occurred was the Claimant subjected to the detriment because she did any of those protected acts?

Witnesses and Tribunal procedure

3. We heard evidence from the following witnesses:
    a. For the claimant:
        - Detective Chief Inspector (DCI) Gary Holmes, the claimant's line manager from September 2018 to April 2019; he was then on leave,

in court and working from home until his retirement in September 2019
- The claimant

b. For the respondent:
- Detective Superintendent (DSU) Tim Duffield, in operational charge of Barking Homicide and Trident Teams, now retired
- DS (now DSI) Susanne Soren, a DS in MIT 22
- DCI Chris Soole, who transferred to lead MIT 22 in April 2019
- DI David Hillier, who was appointed to act up in MIT 20 after DCI Soole was transferred to MIT 22, now retired at rank of DCI.
- DI (now DCI) Darren Jones, who transferred to MIT 22 as DI in February 2022

4. To avoid confusion, we use the rank of the officers at the time of the events in question, rather than their current rank or status within the respondent.

5. The claimant also served a signed statement from DS Sandhu. The respondent's position is that DS Sandhu's evidence was at best hearsay, that the claimant discussed some issues with her; the matters raised by Ms Sandhu are irrelevant to the issues in the claim. Ms Loraine said she would not be asking questions on these issues as they are irrelevant and are an attempt to go behind an Order which refused to allow an amendment of the claim. This evidence is *"prejudicial opinion evidence"* and while it is unusual to strike-out evidence there are *"very good grounds"* to do so here.

6. Ms Halsall argued that this statement may have some opinion evidence, but Ms Sandhu was the claimant's mentor, she was assisting the claimant, the respondent's ET3 refers to some of the issues in her statement. For example, DSU Duffield says that the claimant did not complain about some of their interactions at the time; Ms Sandhu provides evidence that the claimant was complaining. This statement is part of the factual matrix, albeit background facts.

7. Following discussion, the Tribunal concluded that we would consider Ms Sandhu's evidence, but we would make findings based on the list of issues, and relevant background evidence: we could not make findings of facts against any individual where there was no pleaded case on that issue.

8. The Tribunal spent the first day of the hearing reading the witness statements and the documents referred to in the statements.

9. The trial bundle comprised over 1000 pages. This judgment does not recite all the evidence we heard, instead it confines its findings to the evidence relevant to the issues in this case. It incorporates quotes from the Judge's notes of evidence; these are not verbatim quotes but are instead a detailed summary of the answers given to questions.

The relevant facts

10. The claimant joined the Metropolitan Police Service in 2001. In 2008 she was promoted to Detective Sergeant and in 2016 to Detective Inspector. Prior to joining Homicide, the claimant was DI in the Public Protection Unit at Islington. She transferred to Homicide in February 2018. DCI Holmes was on the assessment and interview panel which selected the claimant to become an Investigating Officer (IO) on Homicide. Shortly after and with the claimant's agreement DCI Holmes requested that the claimant be transferred to his team, MIT 22 based at Barking. This was granted and she transferred in September 2018. DSU Duffield, an experienced Homicide DSU, transferred to head the Barking Homicide Teams in October 2018.

11. MIT 22 had the following structure: DCI Holmes as DCI, he had his own office; two DIs, the claimant and DI Naomi Edwards (who was transferred and replaced by DI Jones in February 2019), the DIs shared an office. Each DI was responsible for a team of 2 DSs and approximately 10 DCs/PCs/other staff (see for example 548), who sat in an open plan area adjacent to the DCI and DI offices.

12. DSU Duffield commanded 6 Homicide teams and 6 Trident teams. He had around 200 officers under his command, including 14 DIs who were line managed by the DCI heading each team. It was only occasionally that a DSU would need to be involved in line management issues for ranks below DCI.

13. There was poor morale in MIT22 when the claimant joined the team. It had the highest unsolved murder rate in the Command, it was under-strength, one DS was under performance management. Other staff, including DS Soren and DS Grey, were working excessive hours with no rest days, and suffering from stress.

14. In his evidence DCI Homes accepted that prior to his retirement MIT 22 was a team which had difficulties – staffing shortages, increased workload, that both DIs (the claimant and DI Jones) had less than a year's homicide experience *"… we were an inexperienced team and were short-staffed"*

15. Issues arose in January 2019 between the claimant and 2 DSs in MIT 22. One arose out of a request by the claimant on 9 January 2019, a Wednesday afternoon, for Sit Reps by that Friday. DS Soren asked for an extension of time because of the amount of work she had on, that she was *"inundated";* the claimant said no because there was an operational need for this deadline to be met *"this is not an unreasonable request"* (153).

16. DS Soren's evidence was that it was unusual for DSs to prepare Sit Reps – this is usually done at DCI/DI level. They are complex, and this was a case which she had inherited which had not been charged for 3 years and there was a huge number of documents from the lawyers to go through to prepare the report. She says she told the claimant she was happy to do this but was unable to do so with everything ese she had on.

17. Later that day there was a loud exchange between DS Grey and the claimant and DS Grey left her office abruptly, speaking loudly. Other members of the team including DCI Holmes and DS Soren heard this incident.

18. The next day, 10 January 2019, there was an argument between the claimant and DS Soren, also present was DCI Holmes. DS Soren's evidence was that there was a positive meeting on an operational issue, at the end of which the claimant raised the issue of DS Grey's conduct the day before. DS Soren denies shouting, she accepts that there was an exchange between them, she says that she walked out because the claimant was speaking inappropriately.

19. After a break DCI Holmes called her and she returned to his office and spoke to him alone. She apologised and said that she should not have walked out and told him that *"we cannot have this kind of environment…".*

20. DS Soren's evidence was that she had never had this kind of stress before, she was an experienced detective who had worked on complex crimes under a huge amount of pressure. She said that in the past *"… I had supportive supervisors. But it had come to the point [with the claimant] where it was untenable. … some of the issues were caused by [the claimant] making the job more difficult"*. DS Soren gave an example of the claimant not understanding how the HOLMES system worked.

21. Her evidence was the day after she went into work *"… but I could not go into my office, I went next door … I was in tears".* She spoke to her direct manager DI Edwards, and another DS contacted the Police Federation on her behalf.

22. The claimant sent a 3½ page email to DCI Holmes on 11 January 2019 titled *"DS Soren and DS Grey".* She comments on DS Soren's *"perception"* that her conduct was "… *disingenuous with an ulterior motive, that the team and herself felt they were working in an environment in fear of being 'stuck on' …. Her and her peers in fear of being blamed for doing something wrong…"* (174-7). In a subsequent email she says that DS Soren's conduct at this meeting was *"aggressive, erratic and offensive"* (171).

23. Both DS Soren and DS Grey went off sick and both were referred to Occupational Health. On their return to work, both requested meetings with DSU Duffield and their Union rep, and at that meeting both outlined criticisms of the claimant's management style.

24. In a follow-up email to the Fed Rep, DSU Duffield says the allegations were: *"… (thus far unsubstantiated) complaints of bullying behaviour and inappropriate management style on the parts of DCI Gary Holmes (GH) and DI Kam Sodhi (KS). These issues include: Micromanaging members of the team … and Directing team activities by way of email rather than face-to-face, with unwarranted threats of discipline if matters were not progressed appropriately. Both officers have previously had strong differences of opinion with [DCI Holmes and the claimant], resulting in [both DSs] walking out of meetings prematurely. [Both] have since reported sick with work-related stress, stating they cannot continue to work under the direction of DCI Holmes and DI Sodhi."* He says that

he was *"eager"* for information even though they were not pursuing a grievance, and he asked for several questions to be answered. One possibility could, he says, be a referral to Professional Standards to assess whether a misconduct investigation was required.

25. In his evidence DSU Duffield said that if there had been a formal complaint, he would have undertaken a fact-finding exercise, and if he considered there was potential misconduct he would sent a report to the Professional Standards team. He said that he was *"Keen to establish the facts – if there was bullying, I want to know about it"*.

26. In the event, neither DSs provided further information, neither formalised their complaints. DCI Holmes forwarded an email from the claimant to DSU Duffield, in it the claimant describes a rtw meeting with DS Grey who apologised for the January incident (206). DSU Duffield's evidence was that this issue was *"resolved to my mind at two meetings with the DSs and the rtw meeting".* It was agreed that DCI Holmes would discuss outstanding issues arising from this incident with the claimant. DCI Holmes also had a team meeting to discuss issues which had arisen.

27. DSU Duffield's explanation for not discussing this issue with the claimant, when he had done so with the DS's and their rep, is that the DS's Federation rep had asked for a meeting, which he was obliged to have. Thereafter, in the absence of any formal process, the issue was being addressed by DCI Holmes, and there was no need to for him to discuss it with the claimant. If she had wanted to discuss it, his door was open.

28. In her evidence the claimant said that the failure of DSU Duffield to speak to her *"made me feel undervalued and insignificant … I was working very hard, preparing cases for trial. He could have offered some support, he could have listened, and he did not".*

29. We accepted that it was DSU Duffield's clear view and reasoning at the time of this event that an issue had arisen about the claimant's management style, there was the possibility it could become a formal process but, in the end, it was dealt with informally without his needing to discuss with the claimant.

30. In her evidence the claimant accepted that DCI Holmes had kept her informed in general terms about these complaints, but she was unaware of the detail of the allegations. DSU Duffield's evidence was that he left this to DC Holmes – *"…I never thought it would be inappropriate to go through him to deal with this".*

31. We concluded the following: that DSU Duffield had concerns about MIT22 – its morale, low detection rate, and its management by DCI Holmes and the claimant. He was fully prepared – eager – to deal with this by a referral to Professional Standards; this would have been a referral of both DCI Holmes and the claimant, as the allegations of DSs Grey and Soren had been made about them both. This did not happen because neither DSs were prepared to take this step.

32. The claimant had issues with comments made by DI Edwards about this incident. In an email she drafted on 15 January 2019 but did not send, the claimant refers to a comment made by DI Edwards, that the fear culture referred to by DS Soren *"may be due to me".* The email sets out the claimant's point of view at this time – that she had to be *"proactive in managing team 22 and the issues affecting staff. It is clear all sergeants are struggling to galvanise, therefore dysfunctional in their approach resulting in reduced communication/problem solving affecting progress and results. … I am managing them as best I can… I have gripped matters (no offence meant) as it demonstrates leadership, professionalism and is the right thing to do in the circumstances. … Unlike unfounded allegations made against me, this can be evidenced…"* (178-9).

33. One issue in the claim: DSI Duffield, whose office was on a different floor, would often walk around the teams under his command in the evening, walking the floor and chatting to officers who may be present. On 18 January 2019 the claimant sent an email saying, *"I did pop out to say hello I didn't realise you had left…"* (182). The claimant refers to at least one other incident where she says that DSI Duffield did not come into see her in her office when he was walking the floor. In her evidence she said that this happened 2/3 times, that *"my light is on, he is talking to the team, my door is open, he could have spoken to me…".*

34. The claimant accepted that there was an email exchange between them in which they tried to arrange a meeting. But she said in her evidence that generally when she tried to communicate with DSU Duffield, *"He did not want to meet with me as he did not like me."* The claimant's evidence was that DSU Duffield was not supportive, that he did not reply to an email requesting a meeting (987), that she had been *"dismissed"* on 18 January 2019 when she had tried to speak to him.

35. DSI Duffield's evidence was that he walked the floor to speak to the junior ranks, DC, and DS, as a morale booster, to be seen to be showing an interest in them and in their work. *"This method was to break down barriers that more junior officers have with senior leaders. I did this as often as I could so they could see the most senior person taking an interest".* For this reason, he did not visit the managers in their offices when doing so. His evidence was that he did not ignore the claimant, there was *"no malice/intent to ignore"* the claimant, and that claimant could have popped out of her office to say hello.

36. We noted the email evidence of the 18 January 2019 incident. Her email that evening to DSU Duffield was *"Hi Sir, I did pop out to say hello, I didn't realise you had left… maybe next time…".* His response, at 0534 the next morning, *"No worries, I'll see you Monday if you're around"* (987).

37. There was a tense email exchange between the claimant and DI Edwards on 25 January – the claimant's email started *"It is of concern that I need to write this email"* referring to a call between them in which *"alarmingly"* DI Edwards raised her voice *"and would not allow me to speak … I am disappointed in your voice towards me, I would describe this as rude and unprofessional".* In response DI Edwards said that the claimant's email was *"not a true account of what happened … The only raised voice was yours coming through the phone" (183-4)*

38. The claimant submitted a long email of concern to DI Holmes, asking for it to be passed to DSU Duffield. In it, she sets out the issues described above with DI Edwards, DS Soren, DS Grey, and another DS. In his covering email to DSU Duffield, DSI Holmes said the claimant did not want this to be a formal complaint, *"The purpose for her email is to firstly ensure that you as the MIT Manager are aware of the position from her perspective but more importantly to ensure that her concerns are recorded in date and time format, simply should it ever transpire that at some point after their return, either DS Grey or DS Soren make further malicious allegations about her which could be harmful to her career and her character".* He said that the issue had affected her badly, that the *"attacks"* on her were *"just because they were being properly managed and asked to provide updates in a timely manner";* he said that despite the adverse effect, the claimant continued to be *"professional and hard-working".* The claimant was referred to OH (186-8).

39. On 2 March 2019 DSU Duffield was emailed by a DI from another station to express concerns: *"Apologies that the first time I am communicating with you is on a negative note...".* The issue was about the response of the HAT Car team led by the claimant at a murder scene in January; she said that the standard was *"way below"* what she expected *"particularly in terms of support and direction"* (994).

40. DSU Duffield raised the issue with DCI Holmes on 19 March 2019, who immediately told the claimant that a complaint had been made, and he advised her to ensure her account of events was set out in writing.

41. DSU Duffield's evidence is that he wanted a debrief, to find out what had occurred; he was not treating this as a complaint, that issues were raised about the team and not the claimant, *"the view on how they deployed and what they did, it was not singling any one officer" … I never said to anyone this is a complaint or misconduct. I always say this was a learning experience and to debrief to see if anything needs doing better"*.

42. Following a briefing meeting the next day (20 March 2019) the claimant briefly discussed the issue with DSU Duffield, who agreed to meet with her later that day. Her account 3 days later in an email to DCI Holmes refers to DSU Duffield's comments. At that subsequent meeting. DSU Duffield told her that the *"matter wasn't a complaint but he wanted to hold a learning meeting / debrief … concerns weren't just raised towards me but my team. He explained the borough were questioning who had ownership on the night. He detailed he received the email from the DS's DI 3 weeks ago …"* (210).

43. The claimant describes the issue as about *"my professionalism in dealing with the initial stage of a murder investigation … I am shocked and disappointed that this matter has been raised … to the level of Detective Supt…".* She gave a detailed account to DCI Holmes of the events of that evening, including that a Duty Officer's handover was *"less than ideal"* but that the CID officers made a good effort. The claimant said that she had no connection with the DI raising the complaint *"therefore can I be given their name so that I have an opportunity to establish any particular motive…It is the cumulative effect of unfounded,*

unjustified and significantly, unsubstantiated criticism that makes me feel vulnerable and demonstrably affects my health…" (209-10).

44. The claimant was in a trial for most of April, which the respondent argues was reason there was no formal debrief about the HAT car issue. The claimant's evidence was that this was a very stressful issue which was not followed through; DSU Duffield *"has raised it, but he does not talk to me, if he does a debrief, I can refer to my email. But there no debrief … things were said and were not followed through."*

45. DCI Duffield's evidence was that this was an issue raised 3 months earlier, "*… my assessment was that it was low level, by March it had run out of steam … the claimant was in a trial and annual leave for over a month so the opportunity to debrief is an issue. I did not attempt a debrief".*

46. We accepted that DSU Duffield treated this as an issue to be discussed with the claimant and the team as a learning /briefing issue rather than a complaint to be investigated, and this is what he said to her. No further action was taken, and the issue was left to lie.

47. Because DCI Holmes was retiring imminently, on 3 April 2019 the claimant emailed DSU Duffield saying that *"I would relish the opportunity, should I be considered, to lead the team in the acting DCI role until a permanent replacement arrives"*. She detailed her experience and said that this would be beneficial to provide continuity for the command. In response, DSU Duffield thanked her for volunteering *"for what is no doubt a very challenging and high-risk role … I will need a little time to consider the best way forward for the team … to make an informed decision"* (240-1).

48. The claimant also gave positive praise to the team and individuals within it: for example, on the arrest of a murder suspect who had been extradited from abroad (245); specific praise to DS Soren *"I am really impressed with your response and commitment"* (237). Early on in their working relationship the claimant had a good relationship with DI Jones, as shown by texts and emails between them from April to August 2019 (212-236, 242).

49. The claimant raised issues of concern with DS Soren and another DS in emails dated 8 April 2019, including about communication between team members. She also requested of DS Soren that she made addressed by rank or title: *"On its own it may appear unimportant, but when taken with other behaviour the cumulative effect can appear sinister."* (253-4).

50. From April to early June 2019 an issue arose over the claimant requesting invoices to be paid for an external company, Sequester, a total of £15,000. This was work which the claimant had sought and gained authorisation for in advance, to analyse a large amount of cctv footage. As the claimant said in a text to DI Jones on 9 April 2019,*"I think I've upset Mr Duffield! … I've got an invoice for 15k he isn't happy ... it's all correct and authorised by others … he thinks it's extortionate..."* (218). This amount remained unpaid for some time, and the claimant received chasing invoices from the company concerned.

51. There was lots of evidence on this issue. DCI Holmes said that he was able to authorise £10,000 expenditure, that this was further authorised by DSU Duffield. DSU Duffield said that DCI Holmes was not able to authorise this payment as he was not on the PSOP system as an authoriser. DSU Duffield was out of the office for an extended period in late 2018 when this work was initially authorised by another DSU. DSU Duffield said that he became aware of this expenditure when the issue of payment arose. He had concerns about this expenditure, that there may have been a cheaper solution and he raised this with the claimant and DCI Holmes. He says that there was no question about not paying, and he left the issue to DCI Holmes to finalise.

52. However, it transpired that when submitting the invoices for payment, the claimant did not have a purchase order number, and it is only when this is gained that a contract with a 3rd party supplier can be entered. The reference details supplied to Sequester had a requisition order not a purchase order number. An email from Sequester confirms that they have been told the payment cannot be made until a purchase order reference is provided and Sequester queries whether the project has been *"officially authorised"*. DSU Duffield points out that he emailed DCI Holmes who said that he would *"get to the bottom"* of what had happened. DCI Holmes accepted in his evidence that he was *"not aware of the policy"* on requisitioning outside services.

53. The claimant's evidence is that DSU Duffield criticised her for this expenditure saying that she did not have the authority to authorise it. Her concern was that non-payment went on and on. The invoices were settled on 3 June 2019, several months after the work had been finished. DSU Duffield accepted that this was a *"knowledge gap"* in the team on the system for authorising large expenditure.

54. On 23 April 2019, an experienced DCI, Chris Soole, was transferred from MIT 20 to lead MIT 22. An experienced DI on MIT 20, David Hillier, was appointed acting DCI pending a permanent replacement.

55. DSU Duffield provided his reasoning for appointing DCI Soole in an email dated 21 May 2019, following a meeting he had with the claimant and her Fed Rep. *"I had a whole raft of reasons for doing this, which included…"*; in the 9 bullet points following he refers to DCI Soole having recently worked with and developed a *"very strong relationship"* with MIT22 staff; that MIT 22 was carrying the *"most undetected homicides"* in the Command; *"some of these were recent gun murders carrying a high degree of risk, immediate grip and strong governance was needed";* that DI Dave Hillier was an experienced detective who could provide continuity, that it *"didn't make sense"* to move her temporarily (334-8).

56. In his evidence, DSU Duffield was blunter: there was *"a raft of reasons why I would not leave inexperienced DIs to lead a team which is low on staff and with ¾ of its cases undetected. A recipe for disaster. I would make the same decision again. Over and above personal development is public safety. I looked at it objectively."* He said that he was aware of the claimant's experience, that she had not signed off on the SIO course, she had undertaken only one murder trial. It was *"not fair to the claimant, the team or victims"* to appoint her to the acting

DCI role. *"MIT 22 has the least experienced staff and I needed to embed someone pretty pronto to keep a grip."*

57. DCI Soole accepted that it was unusual to make a sideways move; he says that he was made a *"rhetorical offer"* by DSU Duffield to move, that he *"quickly accepted because of the challenges"* in the team, which needed to be bought quickly up to an operational state.

58. DCI Holmes accepted in his evidence that the MIT22 was *"non-operational"* at the time of DCI Soole's appointment, i.e., it was unable to take on any new investigations.

59. DCI Holmes also accepted that it would be reasonable to appoint DI Hillier to act up on MIT 20 as he was familiar with its investigations. He said it was a matter of *"fairness"* to consider the claimant, to allow her to put forward her strengths/weaknesses for the acting-up role in MIT 20. DSU Duffield's evidence was that DI Hillier would be acting up for a matter of weeks, and for part of this period the claimant was in court, that DI Hillier had the experience required to undertake the acting up role. He said that the claimant's lack of experience with only one trial meant that there was *"no way"* he would deploy her as acting *DCI "to lead high-risk investigations with an awful lot of threat."*

60. DCI Soole's first email to MIT 22 dated 23 April 2019 - *"Just a quick email to see hello as the process of DCI Holmes replacement happened very quickly, catching us all by surprise. …"* (273).

61. During the first months of DCI Soole's appointment, he and the claimant often communicated via texts which show a cooperative working relationship between them.

62. There were, however, still issues as far as the claimant was concerned. On 29 April 2019 she emailed herself saying that on 28 April DSU Duffield had come to the MIT22 office *"but did not speak with me…"* on a case where she was the IO. She says that he did not acknowledge her at a case meeting, and she was not invited to a subsequent meeting that day on this operation (314).

63. DSU Duffield's evidence is that there was a double murder that day, MIT22 was on call and the operation was led by DCI Soole *"I may have gone to chat with him to understand progress. … My priority was to speak to the SOI to understand are they gripping areas. Not to have a chit-chat".* He said that the 2nd meeting was informal and was for him to understand the case, a possible serial killer, to satisfy himself that the team was *"doing was what I would do"*.

64. A decision was made that day to hand the double murder case over to another Command – as the claimant said on an email to DCI Soole *"It's a huge shame … however I can understand why this was…";* but she was concerned that she was not aware of this decision prior to his team-wide email *"considering I was the IO and your deputy*. DCI Soole apologised for the delay in not telling her *"… but there were just too many things to keep track of with the emerging press interest, manhunt and ongoing enqs. Let's catch up tomorrow…"*

65. The claimant's name was not on the 29 April 2019 handover email DCI Soole sent out. She was IO, key contacts included on the email were the Case Officer (a DS), Intel Officer, CCTV officer and others (293). This became the subject of a subsequent complaint.

66. DCI Soole's evidence was that once the decision had been made to transfer this case, he quickly needed to send a handover email to the new team with the *"relevant core roles"* to ensure the new team could quickly get up to speed with the investigation. He accepts that he did not put the claimant's name as IO. He said it was *"ludicrous"* to say that this was a deliberate omission, it was typed hurriedly at a hugely busy moment; the murders were high profile with press interest, the identity of the bodies was an issue, there was an ongoing covert operation he was engaged with, *"I did the best I could to get the message out to the team"*.

67. On 1 May 2019 the claimant asked DCI Soole for developmental opportunities, to assist her progressing to DCI; his response was that *"we'll be able to find something… It would be useful to have a PDR discussion at this early stage to look at development/career progression for both you and Darren."* Another email thanked her for her work on the case handed over – *"really positive impression made in our first case together"* (295).

68. The claimant raised a concern with DCI Soole on 3 May 2019 that she had not been tasked to contact another unit to rectify an issue; she was *"surprised"* by this. DCI Soole responded at 22.43 that evening saying that he and DI Jones were in the office, he asked DI Jones *"just in case there was a quick fix. If you hadn't been engaged on other tasks … I would have probably asked you… Absolutely nothing to get concerned about, I'll sure I'll ask you to conduct an enquiry on one of [DI Jones] cases at some stage when the need arises… The roles should be flexible between the three of us to get the job done …"* (301-2).

69. DCI Soole's evidence was that this was a "minimal task" he had given to DI Jones, that no-one *"should bat an eyelid - I needed this done very quickly for an immediate answer…".* He said that he tried to give the claimant reassurance *"She did need reassurance, and I tried to reassure her that her and DI Jones were equal."* He pointed out that he responded to some of her emails late at night, to reassure her.

70. DCI Soole's email the next day to the claimant and DI Jones sets further context of this challenging period: *"… thanks to both of you for your efforts in getting us through a very busy week, it's very much appreciated. As I'm charging around like a headless chicken, I often forget to thank my DIs in the same manner as DSs & DCs."* (303).

71. The claimant's evidence was that while DCI Soole had team meetings on cases where DI Jones was the IO, he never did on cases where she was IO; it was put to the claimant that this was wrong, that there was a major operation going live in July (Operation P) which was her *"main focus"* and DCI Soole attended these team meetings. The claimant accepted he did attend some, her case was that

there were other *"complex jobs"* where DCI Soole did not attend her case meetings, but he had *"lots of meetings"* with DI Jones.

72. The evidence in the bundle shows DCI Soole emailing the claimant and DI Jones "I'm aware [the claimant] is attempting to work out a date this week for the supervisors meeting which may be easier said than done." He suggested Friday 10 May *"Looking fairly free at the moment, so I may use this time to undertake a case load discussion with you both… this will be an opportunity to discuss development opportunities and career aspirations…".* (303).

73. The meeting with DCI Soole did not take place on 10 May with the claimant; there was no evidence as to why it did not. The claimant does not refer to it in her statement, which says that she received an email on 13 May referring to a meeting with DS Grey and DI Jones on 10 May during which they discussed one of her cases (paragraph 47). DCI Soole says her spoke to DI Jones about the operation *"while I had him available".*

74. On 8 May 2019 the claimant booked an appointment with DSU Duffield on 17 May 2019 to attend with her Police Federation rep. On 16 May 2019 DCI Holmes sent her a lengthy email titled *"Welfare concerns/support & advice"*. He said he was sorry to hear about the problems the claimant had been having at work, *"I have thought carefully about what you have told me and that is why I felt the need to send you the information I have shared with you verbally… at least you will have this in writing should you ever need to refer to it at any time in the future to safeguard your welfare and protect your career…"*.

75. The email referred to comments he says were made by DSU Duffield when they were discussing the complaints of DS Soren and DS Grey. He alleges that DSU Duffield said the claimant's conduct *"was overbearing and that you micro-managed the DSs via emails … I know that [DI Soren & DI Jones] allegations were malicious and without foundation". "[DSU Duffield] made a comment to the effect of 'KAM CLEARLY GRATES ON PEOPLE'. I refuted this comment…".*

76. He says he told DSU Duffield that the claimant was hard working, driven and motivated, and that some staff members *"resented your intrusive supervision style of holding staff to account and providing clarity and direction."*

77. DCI Holmes email also refers in detail to the Islington HAT car issue on 19 March 2019, and that on 20 March 2019 he spoke to DSU Duffield about the claimant's concerns, *"… DUS Duffield then said words to the effect of, 'KAM'S A BIG GIRL. I KNOW SHE HAS TAKEN THE JOB TO AN ET AND WON. … LOOK EVERYONE I HAVE EVER SPOKEN TO ABOUT KAM DOES NOT HAVE A GOOD WORD TO SAY ABOUT HER.' This comment concerned me as I feared that DSU Duffield's perception of you was being unfairly tainted by the malicious and unfounded allegations which had previously been made. I therefore explained that as far as I was concerned he was wrong and had been listening to people who had hidden agendas (ie resented being managed and directed) and that he should not be forming negative opinions of you solely based on allegations and comments which had no basis of fact and from people who were not willing to substantiate such adverse comments/claims. … I recall DSU*

Duffield then saying words to the effect of, 'WELL THIS WILL BE LOOKED INTO. IF THERE IS CRITICISM COMING HER WAY THEN IT WILL BE. IF NOT THEN IT WON'T BE. IT WILL BE FACT-LED'…." (capitalised as written by DSI Holmes).

78. DSI Holmes email also makes it clear that the claimant should listen to DSU Duffield, to be fair to him and *"…hear him out. There may be facts unknown to you… Your meeting will hopefully therefore afford him a fair and reasonable opportunity to provide a transparent account as to why he appointed another DI into an A/DCI role at Hertford House without apparently considering you for this role also. I appreciate this is a point you have a major issue with as you feel that this is unfair. I feel that on the face of the facts known at this stage you are right – hence the importance of hearing what DSU Duffield has to say on this matter so you can be informed of all the facts…"* (317-8).

79. It was put to DSI Holmes that DSU Duffield would not have made these remarks to him, not least because he was fully aware that there was a friendship between the two, and DSI Holmes had also previously written emails supportive of the claimant (for example the January 2019 incidents with DSs Soren and Grey).

80. On the timing of this email, some months after the remarks were said to have been made, DSI Holmes evidence was that he hoped DSU Duffield would *"change his view" of* the claimant *"she was working hard but when clear that it was not going to happen, … I thought it best to put in writing … I was sincerely hoping that this would be resolved, it would not be necessary to go to an ET … I would not send a long email saying lies - this is the absolute truth."*

81. In his witness statement and in his evidence, DSU Duffield denied making these remarks. He says that he became aware that the claimant had settled a claim via rumours shortly after he joined the Barking Command. He disputed using the word 'grates' or that the claimant is a 'big girl' who took on the Met and won; *"I would not use this type of language".*

82. We also noted that the email from DCI Holmes quotes DSU Duffield as telling him on 20 March 2019 that the Islington HAT car incident may be taken further *"if there is criticism coming her way…".* This was contrary to what the claimant was told on 20 March 2019 by DSU Duffield, that the *"matter wasn't a complaint".* We concluded that there were inaccuracies in DCI Holmes account of his conversations with DSU Duffield.

83. We reached the following conclusions on the evidence to 16 May 2019:

    a. When the claimant joined MIT22 it was a poorly performing team with poor morale. DCI Holmes and the claimant formed a close management partnership in which he considered she was providing an *"intrusive"* management style to pull up performance, a style he considered was merited.
    b. The claimant tried to manage junior officers with the creditable aim of raising standards in the team. However, in doing so she had a

management style which was often abrasive and unsupportive of the DSs in the team.

c. In an understaffed and overworked team of poor morale, undertaking an incredibly difficult role, the claimant's management style had an outsize impact, leading to the events of January 2019 set out above.
d. DCI Holmes had told the claimant it was unfair 'on the facts' not to consider her for the acting-DCI role.
e. DCI Holmes had had told her that DSU Duffield held personal and derogatory views about her, including negative remarks about her previous ET claim.
f. By January 2019, DSU Duffield's developing knowledge of MIT22 was that there may be some merit in the DSs allegations – he was *"keen"* to know more. He was of the view that MIT22 was performing poorly, and that poor management may be a factor adding to this problem.
g. By March 2019, DSU Duffield had other sources of information about the claimant's management style, and he had seen the claimant had reacted badly to concerns raised about the HAT car issue.
h. In his limited discussions with DSU Duffield about the claimant, DCI Holmes expressed the view that she was a good hard-working DCI, and that she was in the right and the DSs were in the wrong
i. DSU Duffield was aware of the close management relationship between the claimant and DCI Holmes, and the complaints were also about DCI Holmes – it was their management that was being criticised.

84. We concluded that no remark was *instigated* by DSU Duffield about the claimant's previous ET claim. We concluded that in the call on 20 March 2019 DCI Holmes was acting not as a line manager but as an advocate for the claimant. And DSU Duffield was in turn concerned that DCI Holmes was not being even-handed, and he pushed back against DCI Holmes comments. We concluded that the claimant's prior ET claim was raised as part of this conversation by DCI Holmes, and DSU Duffield may have commented in response, but he did not make the remarks as alleged by DCI Holmes.

85. We note that DCI Holmes email to the claimant was written some months after some of the events in question, a lot had happened including in-depth conversations between the claimant and DCI Holmes about all these issues. DCI Holmes was supportive of the claimant, he believed her account was true, and his email to her, which was an attempt to provide her with support and information, was hyperbolic and sometimes inaccurate.

86. We concluded that the focus of DSU Duffield was on a poorly performing team that he was concluding had a dysfunctional management team. His focus was on improving the performance of MIT22 and he had no interest or concern with any historical issue, including her prior ET claim.

87. Following her meeting with him on 17 May 2019, the claimant sent a lengthy email to DSU Duffield saying her concerns related to 3 issues: why she was not considered for the acting up DCI role on MIT20. The second issue - whether she had 'upset' him, in some way, *"Because I felt as though I had been treated unfairly",* and she refers to the Sequester invoice issue as an example. The third

issue - *"I told you I felt as through you had treated me differently"* following the January 2019 issue with DS Soren and DS Grey, that they had been spoken to but not her. *"I said that not once did you ask me personally what I had to say"*. She referred to him walking the floor and ignoring her on one occasion when she tried to talk to him *"but you left without talking to me even though my office door as open and the lights were on"* (327-8).

88. In his response, DSU Duffield says that *"I was deeply shocked, saddened and disappointed you feel this way…".* He gives his detailed response to the acting DCI role, set out above. He gives his explanation for the Sequester invoice issue, including that there was no purchase order number on the Sequester invoice; also that he believed that DCI Holmes had said he would sort this issue out *"I (erroneously) believed the matter had already been resolved…".*

89. He said that the meeting with DS Soren and DS Grey was at their request; he said that he walked the floor and did not recollect the clamant wanting to speak to him but that if she had seen him walking the floor *"It would have been nice if you had popped out to say hello."* He said he had an open-door policy and could be seen at any time (334-8).

90. The claimant submitted a grievance on 23 May 2019, alleging that DSU Duffield had been *"unsupportive, unfair and treated me unfavourably and less favourably than my colleagues"*, and she referred to six *"incidents"* she considered showed this:

    1. *"Meeting with everyone except"* her, referring to the issues with DS Soren and DS Grey in January & February 2019.
    2. He *"… did not take a fair and neutral approach; rather he was happy to take the sergeants word as the truth without even discussing it with me";* only speaking in addition to DCI Holmes.
    3. The HAT car issue in January 2019 which had *"apparently"* led to a complaint in which *"my professionalism was being questioned and impugned from a distance but without any facts being presented to me".*
    4. The comments DCI Holmes alleged DSU Duffield had made: Kam clearly grates; she's a big girl, taken the job to ET and won; no one has a good word so say about her… it will be a fact led investigation.
    5. Alleging she did not have the expenditure for the Sequester expense; *"I had to spend excessive time unnecessarily justifying the expense… my integrity questioned consistently without any foundation or substance whatsoever…"*.
    6. Rejecting her request to act up; she argues that DI Hillier was less qualified than her, had not attended the 4-week SIO course: *"This situation was created so I would not get the development opportunity to support me in my future application for DCI"*. She refuted the *"assertion"* of DSU Duffield that she did not have the relevant experience to act up in this role, she said he had never asked her about her experience (342-9).

91. The claimant was informed that she was required to undertake an informal grievance process first, and a DCI was appointed to see if the claimant's concerns could be addressed locally.

92. Throughout May and June 2019, the emails show that the claimant, DI Jones and DCI Soole working well and cooperatively together, with DCI Soole showing appreciation to the claimant.

93. By June 2019, MIT22 had been renamed MIT8.

94. On 11 June 2019 the claimant raised a concern that DI Jones name was mentioned at a meeting with partners on Operation P, her key operation, and she wanted to clarify his role. She said that she and DCI Soole were *the "key decision makers … and therefore seek absolute clarity on this point. … I can't see the need to raise his name with partners …?"* DCI Soole responded, *"not a problem, thanks for raising"* and said that DI Jones would not form part of the decision-making process, that his name was mentioned as her counterpart in the team (378-9).

95. DCI Soole's evidence was that his approach was to manage the DIs as a *"two-person team"*, that he expected flexibility and that *"Good MIT teams solve murders by good team-work",* and to do so he will talk about cases with both DIs. He said that he would have asked the claimant to manage DI Jones cases when he was not in the office. He accepted that in practice the claimant may not have been asked, because the claimant had court commitments all April 2019, and on her return, she was working on Operation P.

96. His evidence was that if the claimant and DI Jones' roles had been reversed, his approach would have been the same - DI Jones would not have been asked to handle additional work had he been IO on operation P. He said that the aim behind this comment was to provide *"resilience"* to the team, "*it's not an issue of capability – it's about a contingency".* He pointed out that he has sent his response at 21.25 *"so this is a reassurance email that she is part of the team."*

97. Investigating Officers /Senior Investigating Officers are required to keep a log of key /sensitive decisions taken during an investigation and their reasoning and justification for the decision including the origins of intelligence, tactics to be deployed – the 'sensitive decision log'. They are designed to keep track of decision making with a signed and dated audit trail to show the decisions made.

98. These logs which often contain operationally sensitive material should be kept in a locked cabinet in the DCIs office. In the months leading to his retirement in September 2019, DCI Holmes either worked from home, attended court or took accrued annual leave. During this period, he caught up with his logs at home. This was, as stated in his evidence by DSU Duffield, unsanctioned, the logs were *"very sensitive and should have been under lock and key … this could have been potentially disastrous."* Shortly before his retirement the claimant fetched the completed logs from DCI Holmes and took them into the office.

99. In July 2019 an issue arose on Operation P. A DC in the team was not convinced of the rationale behind a conclusion reached by DCI Holmes. DCI Holmes had reached a view and the DC was not convinced that there was sufficient evidence to support this view. This was critical evidence to support a firearms arrest warrant application which was to be made imminently.

100. DCI Soole says, and the Tribunal accepted, that his priority was to check the sensitive decision logs for the rationale behind DCI Holmes decision. He accepted that he could have looked at the logs before the claimant went on leave, and in fact a review had been diarised for 5 June 2019, but he had not done so. He also assumed that the logs, which he was aware the claimant had obtained from DCI Holmes, were locked in the DCI office cabinet.

101. The logs were not in the DCI office cabinet when they needed reviewing, and the claimant was on holiday in Vietnam. It was thought that they may be in the claimant's desk drawer, which was locked. DCI Soole insisted, and we accepted, that the claimant had not told him before going on holiday that they were locked in her pod drawers.

102. A decision was taken by DCI Soole on 8 July 2019 to open the drawer by breaking the lock. The logs were in the drawer, and they were reviewed. A decision was taken not to apply for a firearms warrant following a review of the logs.

103. As DCI Soole put it in a subsequent report, DI Jones had discussed the issue with the DC who had concerns and concluded that *"there were a lot of holes in the intel and the original hypothesis appeared flawed".* In a subsequent meeting, he says *"I got the clear sense that we would require the majority of one day to undergo a complete review of the intelligence … to review the status of suspects and other subjects within the enquiry".*

104. There was significant evidence on the rationale for breaking into the claimant's desk. In his evidence DCI Holmes said that this was an *"unprecedented"* act, that there were other options. He accepted that the *"scrutiny is higher"* when a warrant is being sought for firearms officers to attend an arrest warrant; that the application needed to be justified with accurate information. He also accepted that the DC concerned was *"justified"* is saying that there was insufficient evidence to support the warrants. He said that he was contactable, he had not retired, and he could have been spoken to as an alternative to breaking into the drawers.

105. DCI Holmes accepted that it was reasonable for DCI Soole to want to look at the sensitive decision logs to understand the rationale for the decisions he had made. He said that DCI Soole should have sat down with the claimant before her holiday to understand the rationale behind the warrants. He queried whether the issue was urgent enough to break the pod open, *"I would have waited and spoken to her on her return".* He argued that at the least the break-into the desk should have been filmed, or a Federation Rep present.

106. DCI Holmes also accepted that it would be a *"disaster"* if the links between the suspects and the crime was not made out, and warrants were obtained on what tuned out to be false or inaccurate intelligence; that there was a *"reputational issue"* as well as a risk of harm to individuals and to police officers where a warrant is wrongly obtained.

107. The claimant accepted that the logs should have been in a locked cabinet in the DCI's office, and that they *"must be accessible at any point".* She accepted that she has responsibility for ensuring their accessibility as she had possession of them, but argued that she had *"offered them to the DCI and he did not want them. I had authority to keep them in the DI's office which is locked. The pod is locked".* She argued that DCI Soole had never asked for them, and said that he did not need them before she went on holiday *"… he should have read them beforehand …".* The claimant also accepted that there may be a *"possibility"* that the logs would have been required, she gave an example *"if intelligence came in that required access to them – absolutely".* She argued that if breaking into her pod drawers was not a malicious act, they would have had someone independent, for example her Fed Rep, present when they were being unlocked.

108. DCI Soole's evidence is that he decided not to tell the claimant immediately of the desk 'break-in' because she was on holiday, and he did not want to disrupt this. Instead, on the evening of 21 July 2019, the day before she was due to return to work, he sent her a text, *"I've sent you an important email … It's not great news I'm afraid but hopefully the rationale explains our difficulties…".* (290).

109. The email says that DI Jones *"had to gain access"* to her desk drawers, that the door was being kept locked to ensure that all other items in the drawers were secure.

110. DCI Soole met with the claimant the next day; he subsequently recorded that she was *"sickened"* by the fact her desk drawers had been opened, she asked for his rationale, which he said was *"a decision made by me to secure the sensitive decision logs …. I felt this was the only way to secure the material… required to obtain provenance for warrants… the clarification of suspect statuses was a time critical task"* (444).

111. In his evidence DCI Soole accepted that he would handle a similar issue differently in the future; he would have a Fed Rep present, and video record the incident. But he said that if the same incident had involved DI Jones pod drawer, *"… there and then on the same date I would have done the same…".*

112. It was suggested that the warrant application was not so time-critical, the warrants could have been delayed until the claimant's return from leave without jeopardising the timetable for the operation. DCI Soole disagreed, noting that the logistics of resourcing a large operation with firearms officers requires significant forward planning, and the decision on the warrant could not be delayed. The operation *"would need significant numbers of officers with the skills necessary"*; this operation also affected the resourcing of other matters.

113. Shortly after, DCI Soole organised all confidential paperwork securely in a new locked cabinet, he organised a combination code key box to ensure that ready access to those who needed to see them; he got rid of unneeded furniture and historical papers.

114. The claimant accepted in her evidence that DCO Soole did not make any criticisms of her about this incident, either the original decision to apply for a firearms warrant, or her keeping the sensitive decision logs in her desk: *"… he told me I am not to blame and it was not my mistake…"*

115. On 19 July 2019 a DC sent out an invitation for a 'Sensitive Briefing' to take place on 24 July 2019 on Operation P. This was an 'inclusion' meeting, meaning that staff would be briefed on sensitive information, and would be required to sign an 'inclusion list' which recorded they were aware of the sensitive nature of the information. The claimant was not included on the list of attendees despite her being the IO, DI Jones was on the list.

116. On 23 July the claimant emailed DCI Soole saying that she was working from home the next day (on OH advice) and that she would be *"available on the phone"* for updates /actions on Operation P. DCI Soole responded the next morning at 0927 agreeing to her working from home, saying *"As planned we have the [Op P] inclusion meeting scheduled for 1030 hrs this morning…"*. At 1044 the claimant responded, *"I was unaware that here is a [Op P] meeting this morning, You have not informed me of this …".* She said that she had asked the DC to call her on conference call while in the meeting, this did not happen.

117. At midday DCI Soole responded, he forwarded her the invite, and noted she was not included on the list of invitees. He said he had spoken to the DC concerned, who said he thought the claimant was on leave as the Team diary had her *"marked as such…",* and that the plan was for all those on leave to be briefed individually (418-9).

118. DCI Soole's view in his evidence was that the claimant should have shown some initiative to join this meeting as she had an hour's notice of it, *"it's not outside a DIs power to resolve".* DCI Soole denied the allegation that he had briefed the DC to exclude her from the email – *"this is preposterous, why would I not want the IO to attend a meeting this important? She would have to be briefed in the near future, why would I, what's the logic?"*

119. The claimant submitted a grievance about DCI Soole on 25 July 2019, saying he had treated her *"unfairly, less favourably than my colleagues and failed to be supportive".* She lists the following issues:

    a. Failure to acknowledge her role on an operation in his handover email of 29 April 2019 – "*all core role holders were referred to, except myself … this was not only humiliating but sent a signal to all others ... that I was being undermined…".* She argued a *"white male DI"* would not be treated similarly.
    b. She was excluded from the same operation on 2 May 2019 because DCI Soole asked DI Jones to resolve an issue despite the claimant being on

duty away from the office; *"… As IO I was best placed to deal with the issue… The only reasonable explanation is it was designed to undermine and exclude me."* She contrasted this to how DI Jones was treated.

c. On 11 June 2019, DI Jones name was mentioned at a partner meeting when he was not a key decision maker. This was *"highly irregular and sent a signal to all that I was being undermined";* she had not been asked to do the same for DI Jones operations.

d. Forced entry into her locked drawers on 8 July 2019 when she was on holiday*: "I believe neither necessity nor proportionality were met to conduct such action. I believe it breached policy and ethics. I am grossly offended and feel my privacy was unnecessarily violated… This was a clear demonstration to embarrass and humiliate me to the team…".* She argued that alternative options were available including speaking to other officers or awaiting her return, "*I believe the failure to consider more suitable options were discarded as it was an opportunity to undermine and humiliate me".*

e. The integrity of DCI Soole *"is in question as he lied to me during this meeting"* by saying he was not aware of her grievance against DSU Duffield, *"… I knew then his actions had been to undermine and humiliate me as the female Asian DI".* She said that she had informed DCI Soole of her grievance previously, *"… it would be inconceivable that he did not remember this. … I believe he also manipulated the drawers situation as a potential opportunity to identify any material relating to the grievance (potentially legally privileged material) …"*

120. The claimant said that she had been treated differently to the way DI Jones was treated, that the behaviour towards her amounts to race, sex and disability discrimination, and victimisation (422-5).

121. On 29 July 2019 DCI Soole responded to the grievance investigator with an initial log of events of events and emails. He said in no uncertain terms that he was *"disgusted"* with the grievance, that the claimant had *"chosen to throw allegations in my direction … the basis of which to my mind is not just ill thought through, but I feel are knowingly malicious…"* (438).

122. DCI Soole subsequently responded with a 10-page detailed response with links to relevant emails embedded within. To the assertion he is a liar, he denied having prior knowledge of DSU Duffield's grievance; he said that she had shared highly confidential information regarding her family with him, which he contended she would not have done had she *"truly harboured"* such significant concerns. (447-57).

123. On 29 July 32019 the claimant was informed that a formal grievance had been raised against by her by DS Amjad Sharif; she responded saying that she was *"in absolute shock"* (464-5). DS Sharif alleged that he had been discriminated against by the claimant because of his race and rank, he had been humiliated and bullied by her. There were four issues, including that he had been unfairly put on management action by her: one issue was he had *"electronic proof"* he had sent her a briefing she denied receiving *" …This was ignored by DI Sodhi*

and I feel this was maliciously placed on the management action". Another issue was that he had been sent home for wellbeing reasons having worked 23 days in a row, the claimant then called him and *"denied I was sent home"* … *I feel being placed on management action for working excessive hours was a personal attack on me by DI Sodhi who has a personal agenda against me"*. He said that after being put on Management action there were no meetings to monitor/direct progress, no learning and no direction.

124. On 27 August 2019, DI Jones sent the claimant an email, saying *"I was wondering if you would be open to rebalancing the IO investigations"*, saying that *"the current balance seems somewhat unbalanced",* saying that he believed she was IO on 6 investigations, he was IO on 11 (621-2).

125. The *"informal resolution summary"* into the claimant's grievance against DSU Duffield concludes that he had given the claimant *"clear explanations"* in relation to issue (1); issue (2) amounted to *"low level concerns"* raised about deployment of the HAT car *"not about [the claimant] herself".* Issue (3) – the comments allegedly made by DSU Duffield, were *"unsupported by any evidence, and without context".* Issue 4, the invoice issue – the work had not been properly organised or recorded, and had been rejected by another DSU for this reason; DI Holmes had said he would sort the issue out but had not done so; in any event DSU Duffield had made it clear in an email to the claimant that he had never accused her of being responsible for sanctioning this work, but robust governance of expenditure was required. Issue 6 – rejecting her request to act up – the summary concluded that *"the rationale here is clear"* and the claimant was told of it; DSU Duffield *"has taken a management decision to take account of all the personnel involved …. There is no apparent unfairness…"*. The report concluded that *"it is undisputed that [the claimant] feels isolated and excluded"* (561-4).

126. The claimant refused to accept the outcome of the informal resolution process, and her grievance was moved onto the formal grievance stage; these issues are outside of the scope of this claim.

Closing Arguments

127. The parties provided written submissions and gave brief oral submissions. Relevant arguments are set out in the conclusion section, below.

The Law

128. Equality Act 2010

s.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.

s.23 Comparison by reference to circumstances

1. On a comparison of cases for the purposes of section 13 … there must be no material difference between the circumstances relating to each case.

s. 24 Irrelevance of alleged discriminator's characteristics

1. For the purpose of establishing a contravention of this Act by virtue of section 13(1), it does not matter whether A has the protected characteristic.

s.136 Burden of proof

1. This section applies to any proceedings relating to a contravention of this Act

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.

Relevant case law

129. We considered the general case-law principles set out below, along with cases referred to by the parties in their closing submissions.

130. Direct Discrimination

a. Has the claimant been treated less favourably than a hypothetical comparator would have been treated on the ground of her disability? This can be considered in two parts: (a) less favourable treatment; and (b) on grounds of the age. Importantly, it is not possible to infer discrimination merely because the employer has acted unreasonably (*Glasgow City Council v Zafar [1998] IRLR 36)*

b. The requirement is that all *relevant* circumstances between complainant and comparator are the same, or not materially different; the tribunal must ensure that it only compares 'like with like'; save that the comparator is not [of the same race or sex] (*Shamoon v Chief Constable of the Royal Ulster Constabulary [2013] ICR 337*)

c. The tribunal has to determine the *"reason why"* the claimant was treated as she was (*Nagarajan v London Regional Transport [1999] IRLR 572)* and it is not necessary in every case for the tribunal to go through the two stage procedure; if the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish

discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial *(Igen v Wong [2005] EWCA Civ 142). "*Debating the correct characterisation of the comparator is less helpful than focusing on the fundamental question of the reason why the claimant was treated in the manner complained of.*" (Chondol v Liverpool CC UKEAT/0298/08)*

d. *Law Society v Bhal[2003] IRLR 640* - the fundamental question is why the discriminator acted as he did. Was the claimant (in this case) treated the way she was because of [her race or sex]? It is enough that a protected characteristic had a 'significant influence' on the outcome - discrimination will be made out. The crucial question is: 'why the complainant received less favourable treatment … Was it on grounds of [the protected characteristic]? Or was it for some other reason...?"

e. *Nagarajan v London Regional Transport [1999] IRLR 572, HL.* "What, out of the whole complex of facts … is the effective and predominant cause" or the "real and efficient cause" of the act complained of?" (*O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School [1996] IRLR 372*, *[1997] ICR 33)*

f. *London Borough of Islington v Ladele*: *[2009] EWCA Civ 1357* provides the following guidance:

1. In every case the tribunal must determine the reason why the claimant was treated as he was. As Lord Nicholls put it in *Nagarajan v London Regional Transport [1999] IRLR 572, 575*—"this is the crucial question". In most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator

2. If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial: see the observations of Lord Nicholls in *Nagarajan* (p 576) as explained by Peter Gibson LJ in *Igen v Wong [2005] EWCA Civ 142*, *[2005] ICR 931*, *[2005] IRLR 258* paragraph 37

3. As the courts have regularly recognised, direct evidence of discrimination is rare and tribunals frequently must infer discrimination from all the material facts. The courts have adopted the two-stage test, which reflects the requirements of the Burden of Proof Directive (97/80/EEC). These are set out in *Igen v Wong*

4. The explanation for the less favourable treatment does not have to be a reasonable one; it may be that the employer has treated the claimant unreasonably. That is a frequent occurrence quite irrespective of protected characteristic of the employee. So, the mere fact that the claimant is treated unreasonably does not suffice

to justify an inference of unlawful discrimination to satisfy stage one.

5. It is not necessary in every case for a tribunal to go through the two-stage procedure. In some cases it may be appropriate for the tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the *Igen* test: see the decision of the Court of Appeal in *Brown v Croydon LBC [2007] EWCA Civ 32*, *[2007] IRLR 259* paragraphs 28–39.

6. It is incumbent on a tribunal which seeks to infer (or indeed to decline to infer) discrimination from the surrounding facts to set out in some detail what these relevant factors are.

7. As we have said, it is implicit in the concept of discrimination that the claimant is treated differently than the statutory comparator is or would be treated. The proper approach to the evidence of how comparators may be used was succinctly summarised by Lord Hoffmann in *Watt (formerly Carter) v Ahsan [2008] IRLR 243*, *[2008] 1 All ER 869* … paragraphs 36–37) …"

g. *Chondol v Liverpool CC UKEAT/0298/08*, *[2009] All ER (D) 155 (Feb), EAT*: A social worker was dismissed on charges which included inappropriate promotion of his Christian beliefs with service users. His claim for direct religious discrimination failed as the tribunal found that 'it was not on the ground of his religion that he received this treatment, but rather on the ground that he was improperly foisting it on service users'. The EAT accepted that the distinction between beliefs and the inappropriate promotion of those beliefs was a valid one, and it was correct to focus on the reason for the claimant's treatment. Citing *Ladele*, the EAT again confirmed that 'debating the correct characterisation of the comparator is less helpful than focusing on the fundamental question of the reason why the claimant was treated in the manner complained of'.

131. <u>Harassment</u>

a. *Driskel v Peninsula Business Services Ltd [2000] IRLR 151*: Determining whether alleged harassment constitutes discrimination involves an objective assessment by the tribunal of all the facts; the claimant's subjective perception of the conduct in question must also be considered. The tribunal is therefore required to determine both the actual effect on the individual complainant and the question whether that was reasonable in the circumstances of the case. *Pemberton v Inwood [2018] EWCA Civ 564*: "In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph

(1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also consider all the other circumstances (subsection 4(b))." This means that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for them, then it should not be found to have done so.

b. *Dhaliwal* : "We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase. We accept that the facts here may have been close to the borderline, as the Tribunal indeed indicated by the size of its award.'

c. 'Conduct': *'Prospects for People with Learning Difficulties v Harris UKEAT/0612/11*: suspension or other acts by an employer which would not normally constitute an act of harassment, can amount to acts of harassment; in this case the lack of forethought on the part of the employer and the peremptory nature of the suspension, with scant justification and absent prior consultation with the claimant, justified the tribunal's finding of unlawful harassment in this case.

d. Purpose or effect: Harassment will be unlawful if the conduct had *either* the purpose *or* the effect of violating the complainant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. Where the claim simply relies on the 'effect' of the conduct in question, the perpetrator's motive or intention—which could be entirely innocent – is irrelevant. The test in this regard has, however, both subjective and objective elements to it. The assessment requires the Tribunal to consider the effect of the conduct from the complainant's point of view, the subjective element. It must also ask, however, whether it was reasonable of the complainant to consider that conduct had that requisite effect, the objective element. The fact that the claimant is peculiarly sensitive to the treatment accorded him or her does not *necessarily* mean that harassment will be shown to exist.

e. Related to the prohibited grounds: The conduct must be 'related to' a relevant protected characteristic, including conduct associated with that characteristic. The tribunal must apply an objective test in determining whether the conduct complained of was 'related to' the protected characteristic in issue. *Hartley v Foreign and Commonwealth*

Office UKEAT/0033/15: Where adverse comments were made by managers amount an employee, the fact that the intent of the managers was not to "aim" at her condition was irrelevant – the tribunal must assess *"if the overall effect was unwanted conduct related to her disability.'*

f. *Land Registry v Grant* [2011] EWCA Civ 769: the tribunal must be careful not to cheapen the significance of the statutory wording; i must consider carefully whether the matters above can violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for her.

132. Victimisation

a. The parties accept that the claimant made three protected acts.

b. Detriment: *MOD v Jeremiah [1979] IRLR 436*, *[1980] ICR 13, CA:* a detriment exists 'if a reasonable worker would take the view that the treatment was to his detriment'. A detriment must be capable of being objectively regarded as such- *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11*, *[2003] IRLR 285*, *[2003] ICR 337,* 'an unjustified sense of grievance cannot amount to 'detriment'. *Deer v University of Oxford[2015] EWCA Civ 52* - the conduct of internal procedures can amount to a 'detriment' even if proper conduct would not have altered the outcome.

c. Reason for the treatment: **T**he detriment must be 'because' of the protected act. *Greater Manchester Police v Bailey [2017] EWCA Civ 425* - it remains the case as under the pre-EqA legislation that this is an issue of the "reason why" the treatment occurred. Once the existence of the protected act, and the 'detriment' have been established, in examining the reason for that treatment, the issue of the respondent's state of mind is likely to be critical. However, there is no need to show that the doing of the protected act was the legal cause of the victimisation, nor that the alleged discriminator was consciously motivated by a wish to treat someone badly they had engaged in protected conduct. A respondent will not be able to escape liability by showing an absence of intention to discriminate, provided that the necessary link in the mind of the discriminator between the doing of the acts and the less favourable treatment can be shown to exist. *Woods v Pasab Ltd (T/a Jones Pharmacy) [2012] EWCA Civ 1578:* 'the real reason, the core reason, for the treatment must be identified'

d. Where there is more than one motive in play, all that is needed is that the discriminatory reason should be 'of sufficient weight' *O'Donoghue v Redcar and Cleveland Borough Council [2001] EWCA Civ 701*, *[2001] IRLR 615, CA*

e. A claim for victimisation is not dependent upon the claim which gives rise to the protected act being successful - *Garrett v Lidl Ltd UKEAT/0541/08*

Conclusions on the facts and law

133. It was clear to the Tribunal that DCI Holmes was not an impartial manager of the claimant: as his statement makes clear, he is of the view that the claimant was discriminated against in various ways, and both implicitly and explicitly he says so at the time, highlighting for example how unfair he considered the selection process for the acting DCI role. His and the claimant's working relationship was close, and he was not prepared to consider that the claimant was at fault in her interactions with more junior staff. He was also the leader of a very poorly performing team, one low in morale and which had been understaffed for a significant period prior to the claimant joining the team.

134. We considered carefully a central argument of the claimant, that the incidents *"start to add up",* there is a course of conduct, and the Tribunal should not focus on individual events in isolation. The respondent's case is that whether considered individually or cumulatively, there are either valid non-discriminatory explanations for all the conduct in question, or the conduct did not happen.

135. As can be seen below, we consider that on an analysis of each allegation, and taking all the evidence in the round, there is no evidence that there was any act of discrimination, harassment, or victimisation by DSU Duffield, DCI Soole, DI Jones, DS Soren, or any other Police Officer named in the claim and the evidence.

Direct race and / or sex discrimination

By DSU Duffield not consulting or speaking with the Claimant about allegations that were made by DS Grey and DS Soren in or around January/February 2019

136. We accepted that DSU Duffield would not expect to be involved in management duties or staffing issues involving more junior employees, these were to be dealt with by line managers without his involvement unless strictly necessary.

137. We noted DSU Duffield's rationale for not speaking to the claimant after the complaints of DS Soren and DS Grey. We noted his apparent eagerness to investigate these issues further. As we make clear above, we concluded that DSU Duffield did have concerns about both DSI Holmes and the claimant's management of MIT22.

138. The legal test is how would a hypothetical comparator have been treated. In the case of the claimant's sex discrimination claim, this comparator would be a male DI of Asian origin, of similar experience, capability, and style of management, against whom similar complaints had been made by DSs which were then withdrawn. In her race discrimination claim, the comparator would be a white DI of similar experience, capability, and style of management, against whom similar complaints had been made by DSs which were then withdrawn.

139. There is no evidence, nor is there any inference that can be drawn, that DSU Duffield would have treated such comparators any differently. He needed to speak to DCI Holmes about the DSs complaints as he line-managed DCI Holmes. He did not need to speak to the claimant immediately as he expected DCI Holmes to feed back to the claimant, this was the hierarchical chain of command. The complaints were never formalised and there was no need to speak to the claimant thereafter.

140. We concluded that there is no evidence and no inference which could be drawn which suggests that the claimant has been treated differently from a comparator, on grounds of her race or her sex. DSU Duffield would have taken the same approach, had the comparator had the same complaints made against him or her.

<u>By DSU Duffield inviting DI Jones, after he joined MIT 20 in February 2019, to go and see him as his door was always open, whereas DSU Duffield would ignore the Claimant</u>

141. The claimant's evidence was that DSU Duffield generally ignored her, as evidenced by his failure to meet, or chat with her. We did not accept this evidence.

142. We accepted that DSU Duffield's approach was to have an open-door policy, when in his office any rank could go to him with issues. We noted that DSU Duffield invited the claimant to go and see him in an exchange on 19 January 2019 and suggested the following Monday

143. DSU Duffield's approach was to walk the floor when he could, to show his face and have a chat with junior ranks. We concluded that he did not use these visits to go into management rank offices, but it was open for any Detective Inspector or above to go into the open plan area and join in these chats. We accepted that DSU Duffield's rationale was that this was primarily intended for junior ranks benefit.

144. We considered that the claimant mischaracterised the 19 January 2019 event as her being ignored. We accepted that DSU Duffield had an open-door policy, that the claimant could have gone to see DSU Duffield when he was in the office. It was not for DSU Duffield to seek out the claimant.

145. We accepted DI Jones evidence, that he made an effort to go out of his office and see DSU Duffield when he was walking the floor. We did not see any evidence that DI Jones was treated any differently than the claimant.

146. No examples were provided by the claimant other than a comment in her statement saying that DSU Duffield had welcomed DI Jones into the team, he had not done the same to her. We noted that the claimant joined MET22 prior to DSU Duffield whereas DI Jones joined when DSU Duffield was established in the role, that the circumstances were therefore completely different.

147. We concluded that there was no evidence whatsoever of any difference in treatment between the claimant and DI Jones, or between the claimant and a hypothetical comparator, DSU Duffield did not ignore the claimant, he did not give preferential treatment to DI Jones, and this allegation fails.

By DSU Duffield not disclosing the details of the allegation that were made in March 2019 relating to her team's handing of a murder scene in January 2019

By DSU Duffield not consulting or speaking with the Claimant about allegations that were made in March 2019 relating to her team's handing of a murder scene in January 2019

148. DSU Duffield did disclose details of the allegation, both to the claimant and to DCI Holmes. He made it clear to the claimant that it was not a significant issue, he did not blame the claimant and he did not suggest there would be any sanctions. It was a learning opportunity.

149. DSU Duffield did not hold the debrief as he suggested. We accepted that this was disappointing to the claimant as she wanted to 'clear her name'.

150. We considered that the claimant took an overly defensive and negative approach, in a situation where DSU Duffield was not ascribing blame, instead he wanted to ensure all HAT car teams were consistent in their approach. There was no evidence that DSU Duffield would have acted any differently had the DI been a different race or sex. For example, we concluded that DSU Duffield would have taken the same approach had a similar issue being raised in respect of DI Jones.

151. The claimant has not shown she was treated any differently than an actual or hypothetical comparator was or would have been treated; this allegation fails.

By DSU Duffield making the comment '*Kam's a big girl, I heard she took the job to an ET and won*' to DCI Holmes over the phone on 20 March 2019 and the Claimant learning of this comment from DCI Holmes shortly before 8 May 2019.

152. This call was a significant conversation about the claimant during which DCI Holes was acting as the claimant's advocate. This was not a call in which DSU Duffield was particularly engaged or believed was in any way helpful, and by 20 March 2019 he was already of the opinion that the claimant and DSI Holmes were part of a dysfunctional management team and that the two were friendly. He believed that DCI Holmes was overly supportive of the claimant.

153. We accepted that there was a refence to the ET claim in this call; this was known about. We did not accept DSU Duffield was so foolish as to make a comment which he would have suspected would be relayed back to the claimant. If there was any reference to the claimant having 'won' this was not made by DSU Duffield.

154. This claim therefore fails, the comment was not made by DSU Duffield.

By DSU Duffield failing to appoint her to the acting up role in MIT 20 in April 2019 or failing to follow a fair procedure.

155. The claimant compares herself to DI Hillier, who gained the MIT 20 acting up role. We noted DSU Duffield's rationale for appointing DI Hillier to this role, and we accepted this evidence as his reasons for doing so.

156. We accepted that the claimant was relatively junior as a Homicide Detective Inspector. We also considered that DSU Duffield had in mind the dysfunctional management of MIT 22, the low morale, the low detection rate. We accept that we concluded that he needed an experienced DCI to take over the team as a sideways move – an unusual occurrence. He suggested this to DCI Soole, who agreed. This meant that there was no need to advertise for a replacement for DCI Holmes in MIT 22, as DCI Soole could step into place quickly. There was therefore no need for an acting up DCI in MIT 22.

157. We accepted that the next focus for DSU Duffield was who was to replace DCI Soole in MIT 20 in an acting capacity, until a substantive replacement could be found. We accepted that the obvious choice was a DI who was already involved in the MIT 20 cases and who was already working with the team. We accepted that it would be inherently risky for the claimant, an inexperienced Homicide DCI to step into another team for a few weeks as acting DCI with no knowledge of that team's cases. This is particularly so when there was another, more obvious and less risky approach, to appoint a DI from MIT 20 to act up in that team.

158. We also considered the situation with hypothetical comparators, who would be a white DI / a male DI, with similar experience, working in a team whose DSU considered it to be dysfunctional with low morale; we considered that in the same situation DSU Duffield would act in the same way. The failure to appoint the claimant to acting DCI on MIT 20 had nothing to do with her race. We concluded that in the same situation, a hypothetical comparator would be treated exactly as the claimant.

159. There was no difference in treatment, and this allegation fails.

By DCI Soole failing to recognise the Claimant in his email of 29 April 2019

160. We accepted DCI Soole's evidence on the urgency of the issues which faced him, barely a week into the role, that this was an error and not deliberate. We noted that he praised the claimant about her work on the case.

161. We wondered why DCI Soole would deliberately miss the claimant's name off a hand-over email. To miss an important contact would not assist and could hinder the smooth handover in a fast moving, intense and urgent situation. We did not accept that DCI Soole did so because of the claimant's race and/or sex. This was purely an error by omission. To put it another way, had a white and/or male

comparator been the IO on this case, DCI Soole would have made the same omission.

162. There was no difference in treatment, and this allegation fails.

By DCI Soole asking SI Jones to review and supervise the Claimant's work

On 2 May 2019 by asking DI Jones to check an error on a matter the Claimant was investigating

163. We noted DCI Soole's explanation – that this was a quick/urgent check that this was part of the cooperation and teamwork he expected between his DIs. We accepted this explanation. We also concluded that he would have done the same in this situation had it been the claimant sitting in the office and he had needed a quick answer on one of DI Jones cases.

164. There was no difference in treatment between the claimant and how DI Jones would have been treated in the same situation; we also concluded a hypothetical comparator would have been treated no differently.

165. We also concluded that the claimant was not showing the cooperative attitude DCI Soole was expecting. She was at this time defensive, feeling that DSU Duffield was moving against her, she believed that she was being treated unfairly. She had lost an ally in DCI Holmes, who had fed her view that she was being treated unfairly; and she felt defensive about her interactions with DCI Soole.

166. We accepted DCI Soole's evidence that he saw that the claimant needed reassurance, and that he tried to assuage the claimant's feelings, responding late into the evening with explanations for his actions (e.g. 301).

On 10 May 2019 by holding a case review meeting with DCI Soole to review DI Jones caseload and not inviting the Claimant or holding an equivalent meeting with her

167. We noted that on 5 May 2019 DCI Soole invited both DI Jones and the claimant to a meeting to discuss caseload, career aspirations, available, the best day of availability being 10 May. We saw no response by the claimant to this email. We do not know if she was in work or not. We note also DCI Soole's reference to him struggling with the claimant's *"aversion to a team-based approach to work".* We accepted this as DCI Soole's valid viewpoint; we concluded that the claimant had not made herself available as invited on 10 May 2019 and did not suggest any alternative date for a meeting.

168. This allegation is therefore factually incorrect: the claimant was invited to a meeting. We concluded that a hypothetical comparator who similarly did not respond or suggest an alternative date would also not have had this meeting with DCI Soole. DI Jones did respond, and he did set up a meeting with DCI Soole, which is the reason why they met. There was no difference in treatment and this allegation fails.

On 11 June 2019 at a partner agency meeting with the Claimant, stating that DI Jones would be involved in the investigation the Claimant was leading to give her 'resilience' without prior discussion

169. The claimant complains that at a meeting she was present at as the IO on Operation P, DI Jones name was *"raised"*, and she queries whether this means he would be attending meetings. Her email which followed does not say that DI Jones would be *"involved"* in the investigation. We accepted the reason given by DCI Soole at the time as his valid point of view – that DI Jones will form *"no part"* in the process, that he was referred solely to as the other DI in the team*, "if in our absence they need to relay … information…"* (379).

170. We conclude that if it was DI Jones who had attended this meeting, DCI Soole would have similarly referred to the claimant has his counterpart. If a hypothetical comparator (white and/or male) had been the IO in operation P, again DCI Soole would have referred to DI Jones as the counterpart DI.

171. There was no difference in treatment, and this claim fails.

Between 8-17 July 2019 instructing DI Jones to break into the Claimant's Pod/locked drawer to retrieve and review case logs in relation to cases the Claimant was leading on while she was on annual leave

172. This again relates to Operation P. DCI Soole's explanation was one we accepted – there was an urgent need for the sensitive decision logs, her pod was broken into to retrieve them, and a consequent decision made to halt an application for armed arrest warrants.

173. It is difficult to think of a situation where there could be a more urgent need to assess such material. The operational risks were great, and the Tribunal fully accepted the reasoning in DCI Soole's mind for wanting to urgently assess the sensitive decision logs. While he could have handled this differently, and has accepted that he would do in future, the Tribunal did not accept that the claimant's race and/or sex had anything to do with this decision.

174. The reason why the pod was broken into was for urgent operational reasons. DI Jones pod would have been broken into in a similar situation. A hypothetical comparator who had left sensitive information logs in a locked drawer would also have had this broken into.

175. There was no difference in treatment, and this allegation fails.

By DI Jones on 27 August 2019 asking the Claimant by email about her workload and asking if she would take on some of his cases

176. This is an allegation related to DCI Soole's supervision of the claimant. We noted that DI Jones was developing an increasingly negative view of the claimant; he

wrote some emails to himself about his experiences working with her. It was clear that by the time he wrote this email that he had a negative view of the claimant.

177. But we accepted that all DI Jones was doing in this polite email was pointing out that there appeared to be an unfair distribution of cases, and he wanted to see if the claimant would agree to reallocate cases. It was an attempt to persuade her. She rejected this suggestion.

178. The claimant's case, which was not clear, must be that he would not have written this email to a white and /or male DI had the work-balance been the same. We did not accept this. DI Jones focus was on what he perceived was an unfair allocation of cases, and it was reasonable for him to make an informal and politel approach to see if there was a resolution.

179. DI Jones wrote this email not knowing that the claimant was working from home at times on OH advice, and he was not aware of any reasons why the workload should be different. We considered he would have approached a hypothetical comparator (i.e. a white / male comparator who was working in a similar way as the claimant), with whom he had a similar relationship in the same way making the same proposals.

180. There was no difference in treatment and this allegation fails.

Harassment – was the claimant subjected to the following conduct, if so was it unwanted conduct related to her sex and/or race?

By DSU Duffield not consulting or speaking with the Claimant about allegations that were made by DS Grey and DS Soren in or around January/February 2019

181. We accept that the claimant wanted to speak to DSU Duffield, and that therefore his failure to speak to the claimant was, for her, unwanted conduct.

182. However, there was no evidence that this conduct was related to the claimant's sex and/or race. This is an objective test, and it requires some evidence, or some inference which can be drawn from the facts. We accept that the claimant viewed these incidents, at least in hindsight, as related to her sex or race. But there was no evidence or inference to support this belief.

183. In fact, the evidence pointed to reasons other than the claimant's race / sex for acting this way: there was no formal complaint, DSU Duffield's hierarchical management style which left it to DCI Holmes to feed back. These are completely unrelated to her sex and race, and this allegation fails.

By DSU Duffield inviting SI Jones, after he joined MIT 20 in February 2019, to go and see him as his door was always open, whereas DSU Duffield would ignore the Claimant

184. The evidence is that the claimant was invited to go and see DSU Duffield, but she did not do so. The evidence is that DI Jones would create an opportunity to speak to DSU Duffield on his evening rounds, the claimant did not.

185. The claimant was not ignored by DSU Duffield. As these events did not occur, this allegation fails.

By DSU Duffield not disclosing the details of the allegation that were made in March 2019 relating to her team's handing of a murder scene in January 2019

By DSU Duffield not consulting or speaking with the Claimant about allegations that were made in March 2019 relating to her team's handing of a murder scene in January 2019

186. DSU Duffield did disclose the details of the allegation to both DCI Holmes and to the claimant, and he spoke to the claimant about it. He also told her that it was not an issue to be concerned about, that there would be a future debrief.

187. It follows that this allegation is not made out, that there was no unwanted conduct as alleged. This allegation fails.

By DSU Duffield making the comment '*Kam's a big girl, I heard she took the job to an ET and won*' to DCI Holmes over the phone on 20 March 2019 and the Claimant learning of this comment from DCI Holmes shortly before 8 May 2019

188. Had this comment been made by DSU Duffield, we accept that it would have been unwanted treatment which was related to the claimant's sex. As above, we found on the balance of probabilities that the ET issues was raised by DCI Holmes, and DSU Duffield did not make this remark. This allegation fails.

By DSU Duffield failing to (i) keep the Claimant updated; (ii) properly consider the Claimant's expression of interest; and/or (iii) appoint her to the acting up role in MIT 20 in April 2019

189. We do not accept that DSU Duffield failed to properly consider the claimant's expression of interest. He did consider it, he considered that the claimant at that stage did not have the expertise, knowledge or capability to undertake this role. We considered that he had valid grounds to consider this, based on his assessment of the leadership of MIT22 at this time. This aspect of this allegation therefore fails.

190. We accept that DSU Duffield did not keep the claimant updated before the announcement that DCI Soole was taking over MIT22 and DI Hillier appointed to act up on MIT20. We accepted that this was unwanted treatment. But we did not accept that this was in any way related to the claimant's race or sex. The claimant advanced no arguments as to why this was the case, and we could not

see any rationale for so finding. The fact is that it was a quickly moving situation, there was little time between DSU Duffield suggesting the move to MIT 22 to DCI Soole and him taking up the position, there was no connection between this and the claimant's sex and/or race. This allegation fails.

191. The failure to appoint the claimant to act up in MIT 20 was unwanted conduct. But, again, there is no evidence, or any rational argument, as to why this is connected with the claimant's race or sex. The good reasons why she was not appointed to this role was for reasons completely unrelated to her race or sex – it was because she did not, in DSU Duffield's view, have the relevant experience of the role.

192. This view of DSU Duffield was in no way connected to the claimant's race or sex, it was because of the experience he had of the claimant and the general management and poor morale in MIT 22, which preceded the claimant's arrival, but which she added to in her management approach with junior officers. This allegation fails.

<u>By DCI Soole failing to recognise the Claimant in his email of 29 April 2019</u>

193. This was unwanted conduct but was a genuine error at the end of DCI Soole's first week in post when he was the new SIO on incredibly demanding and fast-moving operations. It was not suggested how this treatment could be related to the claimant's race or sex, and we found that it was completely unrelated. This allegation fails.

<u>By DCI Soole asking DI Jones to review and supervise the Claimant's work</u>.

194. The first allegation – DI Jones checked an issue on a case where the claimant was IO; we accepted that this was unwanted conduct. But we did not see any evidence or rationale that this was conduct related to the claimant's sex or race. The reason was that DCI Jones was available and at hand, the claimant was not.

195. As noted above, the claimant was invited to a meeting on 10 May – this was when DCI Soole said he was available, and the claimant did not respond, and DI Jones did. This was not unwanted conduct, as the claimant could have but failed to arrange a meeting, on this or another day, when she was invited to do so. Even if it was unwanted conduct, there was no evidence or inference which could be drawn that it was in any way related to the claimant's sex or race.

196. The third allegation is that a partner agency was told DI Jones *"would be involved"* in the investigation. This is not what was said, and DCI Soole clarified as such in his follow-up email (378-9). As this statement was not made, it cannot amount to harassment.

197. We have dealt with the reason for the opening of the claimant's pod above. We accept that this was unwanted treatment. But again, there was no evidence, or any inference which could possibly be drawn, that this treatment was related to

the claimant's sex or race. It occurred because of the operational necessity for an urgent review of the sensitive decision logs.

198. The allegation that DI Jones asking for a review of the balance of cases between them – again there is no positive case that this suggestion was in any way related to the claimant's sex or race. The suggestion was made by DI Jones because he didn't believe there was at this time a fair allocation of work between them.

199. It follows that all allegations of harassment related to sex and/or race fail and are dismissed.

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

If so, was it reasonable for the conduct to have that effect having regard to the matters referred at 26(4) EA 2010?

200. If we are wrong, and some or all the treatment was unwanted conduct related to the claimant's sex and/or race, we accepted that this treatment did have the *effect* of violating her dignity.

201. We did not find that it created an intimidating, hostile, degrading, humiliating or offensive environment for her, and she gave no evidence to this effect.

202. The claimant was affronted, upset, and believed than the events in question were discriminatory. She had come to believe that her chain of command was both not supportive and was actively working against her. She was not helped in this viewpoint by some of the interventions of DCI Holmes.

203. But we did not consider that it was reasonable for this conduct to have this effect. All the treatment we have described above was either operationally necessary, good team practice, an attempt to seek a better and more cooperative atmosphere in the team, or, where there were errors or omissions, these were explicable in the circumstances. We considered that had the claimant been in a better frame of mind, and better prepared to accept her managers expectations and explanations, she would not have experienced these events as a violation of her dignity.

204. In the circumstances, we concluded that it was not reasonable for the conduct to have the effect of violating her dignity.

Victimisation (s27 EA 2010)

205. The respondent accepts that the claimant made 3 protected acts – her 2017 ET claim and her two grievances. It says that neither DSU Duffield nor DCI Soole had knowledge that the claimant had brought discrimination claims, nor that DCI Soole had knowledge of her grievance against DSU Duffield.

206. We concluded that DSU Duffield and DCI Soole had no actual knowledge of the claimant's ET claim being one of disability discrimination. We considered that they assumed her claims was related to discrimination, as it was not dismissal related. We also did not accept that DCI Soole had knowledge of the grievance against DSU Duffield, we accept that he was told by the claimant that here were issues, but not what they were or hat they have been formalised into a grievance.

Did any of the events amount to a detriment? If so, was the treatment because of the protected act, what was the reason for the treatment?

207. In each allegation, we concluded not. We noted that a reasonable person must take the view that the treatment was to their detriment, it must be objectively so. A victimisation detriment is different from unwanted conduct in harassment.

208. The failure of DSU Duffield to speak to the claimant about DS Grey and DS Soren's allegations: we noted that DCI Holmes was instructed to speak to the claimant, and he did so. We did not consider a DI would objectively consider this to be a detriment. No action was arising, no investigation was going to take place, the matter was dropped. Objectively, this conduct was not a detriment.

209. The allegation that DSU Duffield invited DI Jones but not the claimant to see him and he ignored the claimant. As set out above this allegation is not what factually happened: DSU Duffield did offer to meet with the claimant, it was clear to the claimant that his door was open. There was no detriment.

210. The allegation that DSS Duffield didn't disclose allegations made about the January 2019 HAT car Islington incident: in fact he did, to DCI Holmes who told the claimant; he spoke to the claimant about the issue twice in one day, the 2nd meeting giving details and saying that it was only an issue for a debrief. We did not consider that a DI would objectively consider this approach of DSU Duffield to amount to a detriment. We considered that objectively a DI would treat this as an issue which had been raised, nothing was going to come of it apart from a learning debrief. Because DSU Duffield did disclose the issue and speak to the claimant, this allegation is not made out; there was no detriment.

211. DSU Duffield did not make the comment that the claimant is a 'big girl' who took the force to an ET. Accordingly, there is no detriment.

212. DSU Duffield not selecting her for the acting up role in MIT 22, instead transferring DCI Soole: we accept that this was a negative event for the claimant. We did not accept that it was reasonable for it to be a detriment. Objectively, we considered that a relatively junior Homicide DI would not reasonably expect to be allowed to act-up as DCI, particularly given the issues that had occurred in the team to date. Objectively, a DI would consider that operational requirements are paramount, and that this request was at best an outside chance to act up, objectively it was always highly likely that this request would not be accepted. Accordingly, there is no detriment.

213. DSU Duffield not appointing her to the acting up role in MIT 20: We accept that this was a negative event for the claimant. It is reasonable for it to be treated as a detriment? We concluded not: that objectively a DI would be disappointed but would understand the rationale why this decision had been taken. It would be unusual to transfer a relatively junior Homicide DI to a new team to act up as DCI. This was not objectively a detriment as there were transparently good operational reasons for this decision to be taken and objectively a DI in the claimant's position would not have high expectations of being transferred to MIT 20 to act-up.

214. A meeting was held on 24 July 2019: this allegation does not appear in other parts of the claim. It says that DCI Soole sent an email to all bar the claimant. In fact, the email was from a DC. The detriment was *not "not being allowed to take part in a team meeting"* where she was IO. We did not accept that the claimant was not allowed to take part in this meeting. There were several people not present, as DCI Soole's email later that day makes clear who would need to be separately briefed including the claimant. Her omission from the email was because the DC thought the claimant was on leave (and she was when the email was sent). DCI Soole told her about the meeting an hour before it was due to take place, the claimant did not take any steps until 15 minutes after the meeting had started to join. As a DI, she should have shown the initiative to contact a member of the team and ask to be dialled into the meeting. As the claimant was not "not allowed" to join the meeting, this allegation fails.

215. By DCI Soole asking DI Jones to review and supervise the Claimant's work:

    a. Asking DI Jones to check an error on 2 May: We note DCI Soole's evidence, that he could not understand why this was treated so negatively by the claimant. We agreed: objectively in a fast moving and team-orientated environment, it is poor operationally for each piece of work to be siloed to the IO. This would have proven operationally impossible, we accepted DCI Soole's rationale for asking DI Jones to undertake this task. We agreed that objectively we did not consider this could be regarded as a detriment.

    b. On 10 May 2019 by holding a case review meeting with DCI Soole to review DI Jones caseload and not inviting the Claimant or holding an equivalent meeting with her: again, the claimant was invited, and she chose not to attend or suggest an alternative date. This was the claimant's choice and accordingly cannot objectively amount to a detriment.

    c. On 11 June 2019 at a partner agency meeting with the Claimant, stating that DI Jones would be involved in the investigation the Claimant was leading to give her 'resilience' without prior discussion: We repeat our conclusion at (a) above: this cannot objectively be a detriment.

    d. We accepted that breaking into the claimant's pod is a negative event, and we accept that the claimant was upset. We must consider whether in the context, the background factual matrix, it amounted to a detriment.

We concluded that objectively it was not a detriment; we considered that objectively the claimant should have considered the overall need to assess the sensitive decision logs, that objectively she should have realised that DCI Soole was faced only with bad choices on how to do access the logs, that objectively she should have realised that the logs should have been in a locked cabinet and not in her desk draw, that objectively the decision to gain access to the logs was the correct one given the change in strategy thereafter. Objectively, in these circumstances, this does not amount to a detriment.

e. By DI Jones on 27 August 2019 asking the Claimant by email about her workload and asking if she would take on some of his cases. This was a polite suggestion. We did not see how it could amount to a detriment, the claimant was able to respond and say no. We accept that she was upset by this email. However, we concluded that the reason why the claimant saw this, and the other incidents above, as a detriment, was because she saw this as part of a pattern of behaviour by her senior officers to undermine her, as victimisation. But this undermining was not in fact occurring. This incident was not a detriment.

<u>If so, in relation to each detriment found to have occurred was the Claimant subjected to the detriment because she did any of those protected acts?</u>

216. If we are wrong, and incidents above do amount to a detriment, we concluded that there was no link whatsoever between any of the detriments and her protected acts. We have set out in detail above the reason why this treatment occurred.

217. The officers involved – DSU Duffield, DCI Soole and DI Jones were making decisions which were either operationally necessary, good team practice, an attempt to seek a better and more cooperative atmosphere in the team. There were some, explicable, errors and omission. None of these incidents were because the claimant had made a protected act.

218. We repeat what we say above: had the claimant been in a better frame of mind, and better prepared to accept her managers expectations and explanations, she would not have experienced these events as detriments.

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EMPLOYMENT JUDGE EMERY

Judgment sent to the parties
On: 22/12/2022

Dated: 22 December 2022

For the staff of the Tribunal office