



EMPLOYMENT TRIBUNALS

Claimant: Miss EF

Respondent: The Chief Constable of Gwent Police

Heard at: Cardiff **On:** 9, 10, 11, 15, 16, 17, 18 (in chambers) & 19 May 2023

Before: Employment Judge S Jenkins
Mrs J Kiely
Mrs J Beard

Representation:

Claimant: Mr O Prys Lewis (Counsel)

Respondent: Mr J Walters (Counsel)

JUDGMENT having been sent to the parties on 23 May 2023, and reasons having been requested by the claimant in accordance with Rule 62(3) of the Rules of Procedure 2013:

REASONS

Background

1. The hearing was to consider the Claimant's claim of victimisation pursuant to section 27 of the Equality Act 2010 ("EqA"), arising from her claim form submitted on 4 June 2021.
2. We heard evidence from the Claimant on her own behalf, and from a number of serving and former officers of the Respondent on its behalf. They were, in order: Former Inspector Wendy Keepin, Police Sergeant Joseph Smith, Police Sergeant Dean Lanfear, Police Sergeant Leighton Healan, Acting Detective Sergeant Louise Ennis, Former Detective Chief Inspector Judith Roberts, Detective Sergeant Emma Brown, Detective Sergeant Stephen Hayward, Chief Superintendent Nicholas McLain, Chief Superintendent Leanne Brustad, and Chief Inspector John Davies.

3. We considered the documents in the hearing bundle spanning 2,184 pages to which our attention was drawn. We also had the benefit of, and took into account, an agreed cast list, chronology and list of agreed facts. Finally, we took into account the parties' representatives' closing submissions.

Issues

4. A list of the issues we had to determine had been agreed between the parties, and were as follows:

THE CLAIM

1. *The Claimant has brought a claim that she has been victimised by the Respondent contrary to section 27 Equality Act 2010.*

LIABILITY

THE PROTECTED ACT

2. *It is accepted that on 8 January 2018 the Claimant, who was a serving police constable, made a complaint to the Respondent's Professional Standards Department about a sexual assault on her by PS GH, who was also a serving officer in the Respondent force, which allegedly occurred on 5 January 2018.*

THE DETRIMENTS

3. *Did the Respondent subject the Claimant to a detriment?*
4. *The alleged detriments are as follows, as set out in the Particulars of Claim:*
 - a) *The Claimant was placed on a development plan without any prior discussion into her performance or reviews of her development. PS Lanfear placed the Claimant on a development plan because he was a close friend of PS GH and in retaliation of the Claimant's claim of sexual assault against PS GH.*
 - b) *The Claimant was withheld support in developing her skills as a*

trainee police officer.

- c) The Respondent presented spurious historic allegations against the Claimant dating back to 2017 after she reported the allegation of sexual assault in January 2018.*
 - d) The Respondent presented additional spurious allegations made by PS GH into the Claimant's conduct after the Claimant had made a complaint against PS GH.*
 - e) The Claimant was subjected to an investigation into her conduct after she had made allegations of sexual assault.*
 - f) The Respondent suspended the proceedings against PS GH to pursue allegations against the Claimant despite the fact the Claimant's complaint of sexual assault predated the complaints against the Claimant.*
 - g) The Respondent suspended the investigation into PS GH until they had completed an investigation into the Claimant in order to discredit her prior to her submitting evidence against PS GH in relation to her complaint of sexual assault.*
 - h) The Respondent dismissed the Claimant as a result of the allegations she made of sexual assault.*
 - i) The Respondent denied the Claimant the opportunity to be accompanied at the hearing on 8th March 2021 by her father.*
 - j) The Respondent has denied the Claimant the opportunity to join another police force by placing her on the College of Policing barred list.*
5. *The Respondent has addressed whether or not the alleged detriments occurred (and its explanations for those acts which it accepts occurred) in its Grounds of Response.*
6. *Do the matters set out above amount to detriments?*

7. *If they do amount to detriments, were they caused because the Claimant did the said protected act?*
 8. *In respect of the alleged detriments, has the Claimant proved that the detriments were part of a continuing act the last of which was brought in time?*
 9. *In respect of any detriments that are found to be out of time, is it just and equitable to extend time?*
 10. *If the Tribunal find that there was victimisation which caused the Claimant's dismissal, should there be a reduction in compensation in accordance with Polkey v AE Dayton Services Ltd [1987] ICR 142 on the grounds that the Claimant would have been dismissed in any event?*
5. Several of the alleged detriments set out at paragraph 4 of the List of Issues (sub-paragraphs a), c), d), e) and h)) included wording referring to the asserted detriments as having arisen after the Claimant's complaint which formed her protected act. Those references were somewhat otiose, as that state of affairs was implicit within the victimisation claim. The references to the Claimant's complaint at sub-paragraphs f) and g) were apt and were therefore retained.
 6. As noted in the List of Issues, our focus in this hearing was primarily on the question of liability, i.e. on whether or not the claim succeeded. If it did, we would then need to consider matters of remedy at a subsequent hearing, although the question of whether a reduction in compensation by operation of the "Polkey principle" should be applied was a matter for us to address in this hearing.

Law

Victimisation

7. Section 27(1) of the EqA provides that a "*person (A) victimises another person (B) if A subjects B to a detriment because ... - B does a protected act*". "*Protected act*" is then defined under section 27(2), which includes, at sub-paragraph (d), "*making an allegation (whether or not express) that A or*

another person has contravened [the] Act".

8. As noted in paragraph 2 of the List of Issues, it was accepted by the Respondent that the Claimant, at the time a serving police constable, had done a protected act on 8 January 2018 by making a complaint of a sexual assault on her by one of her supervising sergeants, GH. The List of Issues incorrectly records that the Claimant made a complaint to the Respondent's Professional Standards Department ("PSD"). In fact, she made a complaint to her then operational line manager, PS Smith, who in turn reported it to his line manager, Inspector Davies, who reported it to PSD. The error does not however detract from the fact that the claimant did a protected act on 8 January 2018.
9. Our focus therefore, was on two principal areas; had the Claimant been subjected to detriments as asserted; and, if so, had any such detriment been "because" of her protected act.

"Detriment"

10. With regard to detriment, the House of Lords noted, in ***Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337**, that a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his or her disadvantage; an unjustified sense of grievance cannot amount to a detriment, but the court did emphasise that whether a claimant has been disadvantaged is to be viewed subjectively.
11. The Employment Appeal Tribunal ("EAT") recently clarified, in ***Warburton v Chief Constable of Northamptonshire Police* [2022] EAT 42**, that although the test is framed by reference to a "reasonable worker", it is not a wholly objective test. The Court confirmed that it is sufficient that a reasonable worker might take the view that the conduct in question was detrimental.

"Because"

12. The causative element denoted by the reference to a detriment having to be "because" of the protected act has been considered by the appellate courts on many occasions, both in relation to victimisation claims, and direct discrimination claims under section 13 EqA whether same wording is used.
13. The Court of Appeal summarised the approach to be taken, and in particular the required degree of causation arising from the words "because of", in ***Chief Constable of Greater Manchester Police v Bailey* [2017] EWCA Civ 425**, where Underhill LJ stated, at paragraph 12:

"Both sections [i.e. sections 13 and 27] use the term "because/because of." This replaces the terminology of the predecessor legislation, which referred to the "grounds" or "reason" for the act complained of. It is well established that there is no change in the meaning, and it remains common to refer to the underlying issue as the "reason why" issue. In a case of the present kind establishing the reason why the act complained of was done requires an examination of what Lord Nicholls in his seminal speech in Nagarajan v London Regional Transport [1999] UKHL 36, referred to as "the mental processes" of the putative discriminator (see at p511A – B). Other authorities use the term "motivation" (while cautioning that this is not necessarily the same as "motive"). It is also well-established that an act will be done "because of" a protected characteristic, or "because" the claimant has done a protected act, as long as that had a significant influence on the outcome. See, again, Nagarajan at p513B."

14. The House of Lords also noted, in **Chief Constable of West Yorkshire Police v Khan [2001] ICR 1065**, that in relation to causation, the Tribunal must identify *"the real reason, the core reason, the causa causans, the motive"*.

Burden of proof

15. We also bore in mind the burden of proof provisions set out in section 136 of the EqA, which provide, at section 136(2), that, *"if there are facts from which the court could decide, in the absence of any other explanation, that a person ... contravened the provision concerned, the court must hold that the contravention occurred."*
16. That therefore involves a two-stage test. First, the Claimant had to prove facts from which we could decide that discriminatory treatment had taken place, i.e., in this case that there had been detrimental treatment because of the protected act. Secondly, if so, the burden of proof would then shift to the Respondent, which would have to prove, on the balance of probability, a non-discriminatory reason for the treatment in question.

Time limits

17. Section 123 EqA provides that proceedings under the Act may not be brought after the end of the period starting with the date of the act to which the complaint relates, or such other period as the Employment Tribunal thinks just and equitable.
18. With regard to conduct extending over a period, the EAT, in **Commissioner of Police of the Metropolis v Hendricks [2003] ICR 530**, noted that the Employment Tribunal must look at the substance of the complaints in question and determine whether they can be said to be part of one

continuing act by the employer, and thus linked to each other.

19. If we considered that some or all of the Claimant's complaints had been bought out of time, we would need to consider whether it would be just and equitable to extend time. In that regard, the Court of Appeal, in **Robertson V Bexley Community Centre [2003] IRLR 434**, noted that there is no presumption that a Tribunal should exercise its discretion to extend time, and indeed the Tribunal should not consider a complaint unless the claimant convinces it that it is just and equitable to extend time, such that the exercise of the discretion is the exception rather than the rule.
20. The EAT made clear, in **British Coal Corporation v Keeble [1997] IRLR 336**, that, in considering the exercise of discretion, assistance may be drawn from the factors set out in section 33 of the Limitation Act 1980 in relation to civil claims, although subsequent appellate decisions have made it clear that a Tribunal is not required to go through those factors, only needing to take care to ensure that it does not leave a significant factor out of account.
21. Further guidance was recently provided by the Court of Appeal in **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23**, that the Keeble factors should not be treated as a checklist, as that would lead to a mechanistic approach to what is meant to be a very broad general discretion. The Court of Appeal's guidance was that the best approach for a Tribunal, in considering the exercise of discretion, is to assess all the factors in the case which it considers relevant to whether it is just and equitable to extend time, including, in particular, the length of, and the reasons for, the delay.

Findings

22. We set out our findings of fact, relevant to the issues we had to decide, below. Before that however, we stress that our role was only to make findings relevant to the claim brought by the Claimant and the detriments to which she contended that she had been subjected. It was not our role to assess whether the Claimant had been treated unfairly or unreasonably, but to assess whether she had been treated to her detriment in the ways alleged because of the protected act she had done.
23. We were assisted in reaching our findings by the list of agreed facts and the agreed chronology. Where there was any dispute, we reached our conclusion on the balance of probability, taking into account corroborative evidence, particularly that which was contemporary with the events, and the general consistency and likelihood of the case being advanced by each side.

24. In the event, many of the areas where there was a dispute as to what happened were ones which were not germane to the issues we had to decide, for example, the question of how much time the Claimant was afforded to consider documents in advance of being interviewed. In addition, large parts of the evidence of the Respondent's witnesses were not challenged, and, in the absence of anything which caused us to consider that the evidence of those witnesses was unreliable, was evidence which we therefore accepted.
25. Having made those preliminary comments our findings were as follows.
26. The Claimant commenced employment as a trainee police officer in July 2016. After completing her initial training, she started work as a probationer police officer in October 2016, and was based at Chepstow police station. The probationary element of her service was anticipated to take two years, ten weeks of which were spent under the tutelage of another officer. At that stage it was anticipated that the Claimant would become a fully-fledged constable in September 2018.
27. In 2017 PS GH became the Claimant's supervising sergeant.
28. In July 2017 the Claimant suffered a back injury at work. As a result, she was absent until late August 2017, and then returned on restricted duties working four hours a day for four shifts and undertaking only station-based duties.
29. The Claimant also had difficulty driving due to her back injury, and therefore moved to Newport Central station in November 2017 to minimise the amount of driving she had to do. There she came under the supervision of PS Smith. PS GH retained a supervisory role at that stage in relation to the management of the Claimant's occupational health.
30. On Friday 5 January 2018, several individuals, largely made up of officers from Chepstow, arranged a late Christmas celebration involving a train trip to London and the visiting of several pubs before returning. PS GH attended, as did the Claimant and one of her friends who was due to become an officer at Gwent Police.
31. The Claimant alleged that she was subjected to sexual harassment, indeed sexual assault, by PS GH during the trip, and those officers giving evidence before us who were involved in the investigation of that all confirmed that they were of the view that the incidents had taken place as described by the Claimant. The Claimant's friend also asserted that she had been subjected to similar treatment from PS GH during the trip to London.

32. The Claimant texted her mother and her partner about what had happened on the day, and spoke to her mother and father about it on Sunday 7 January 2018. They helped her to put a text message to PS GH together, pointing out what had happened on the previous Friday.
33. The following day, 8 January 2018, the Claimant reported what had happened to PS Smith. Her initial position was that she did not wish to make a complaint about PS GH, but did not want to work with him and did not want to return to Chepstow. PS Smith however, noting that the incident involved improper conduct on PS GH's behalf, asked the Claimant to speak to the Station Inspector, Inspector Davies.
34. The Claimant, together with PS Smith, then reported the incident to Inspector Davies. Again, the Claimant indicated that she did not wish to raise a formal complaint, but did not want to have to work with PS GH again. Inspector Davies however, felt duty bound to raise the matter with the Respondent's PSD.
35. DC Ennis and Inspector Keepin from the Respondent's PSD then attended to speak to the Claimant about what had happened on 5 January. They reported the matter to DCI Roberts, who undertook a severity assessment, a standard step, to decide whether an investigation should be instigated. She assessed the allegations, if proven, would amount to gross misconduct, and that an investigation should be commenced.
36. DC Ennis was assigned as the officer in the case, initially supervised by Inspector Keepin until she left PSD in April 2018. The Claimant, whilst initially reluctant, was happy to support the misconduct investigation. At that stage however, she indicated that she did not wish to make a criminal complaint and no criminal investigation was undertaken.
37. DC Ennis and Insp Keeping undertook the investigation into PS GH over subsequent weeks and months. That included taking a statement from the Claimant by way of achieving best evidence on 10 January 2018, taking a statement from the Claimant's father in March 2018, and interviewing PS GH on 21 March 2018. DC Ennis then completed her investigation report and submitted it to DCI Roberts on 24 May 2018.
38. DCI Roberts reviewed the report, and sent it to the "Appropriate Authority", at the time Detective Chief Superintendent Warrender, the then Head of PSD, to make a decision as to whether there was a case to answer, and, if so, whether the matter involved potential gross misconduct, and therefore a misconduct hearing, or only misconduct, which would lead to management action. DCS Warrender signed off the investigation report on 20 June 2018, noting that there was a case for PS GH to answer for gross misconduct.

39. During the period from January 2018 onwards, the Claimant had continued to work in Newport Central under the complete supervision of PS Smith. Up until May 2018 she continued to be on restricted duties, working four hours on four shifts each week, and undertaking station-based duties only.
40. Approaching May 2018, a return of the Claimant to full-time duties was under consideration. PS Smith identified that the Claimant lacked confidence, which, in addition to being an issue generally, we did not find surprising, as the Claimant had been away from front-line policing for some ten months. PS Smith therefore discussed with the Claimant, in the presence of PS Mancino, the Respondent officer responsible for the training of probation constables, the prospect of putting in place a period of tutorship when the Claimant returned to full-time duties. No date was given to us for that discussion, but we considered that it was likely to have taken place in March or April 2018.
41. PS Smith indicated to the Claimant that he would put in place a development plan for her, similar to the initial ten-week tutorship period, to assist her return to work, although there would be no assignment to a specific officer and the tutorship would be provided by a variety of officers. The Claimant was initially content with the suggestion.
42. PS Smith did not draw up any development plan, as the Claimant was not ready to return to front-line duties, and he then left the shift to take up another role. There was then a gap of some two weeks before PS Lanfear took over as the supervising sergeant.
43. PS Lanfear took up his position on 6 May 2018, a few days after the Claimant had returned to full-time duties. PS Smith had told PS Lanfear, during his handover, that the Claimant was going to be put on a development plan when she returned to full-time duties, and PS Lanfear then drew that plan up later in May.
44. The plan was very generic and unspecific. PS Lanfear, in his oral evidence, confirmed that it *"was about as bland as [he] could make it"*. He confirmed that he had based it on one prepared for the ten-week tutorship period, and had designed it basically as a confidence-builder, which would involve the Claimant attending calls and dealing with paperwork. We observed that, by this stage, whilst the Claimant was approximately 20 months into her 24-month probation period, she had been completely absent for just under two of those months, and had then worked less than half-time for approximately eight further months. In reality therefore, she had spent probably less than 14 out of the 20 months undertaking duties when compared to an officer working full-time hours, and had spent only ten months undertaking front-line operational duties.

45. The plan was designed to run for six weeks, and was signed by the Claimant and PS Lanfear on 20 May 2018. PS Lanfear then sent the signed document to Insp Davies that day, noting in his covering email, copied to the Claimant, that the plan was designed to structure the Claimant's return to full-time duties, and to ensure that she would be in a position for her probation period to be signed off.
46. PS Lanfear also copied the email to PS Mancino, and referred to the Claimant as being unaware of a proposed four-month extension to her probation period, being of the view that she could potentially be signed off by Sergeant Mancino following a visit at the end of May. In the event, the Claimant's probation period was extended to December 2018, when she was signed off as a police constable.
47. Although PS Lanfear put the development plan in place, he was unable to supervise it to its conclusion, as he had a back operation in July 2018 and was then off work for a period of time. PS Healan then took over as the supervising sergeant.
48. PS Healan was aware of the development plan. He observed the Claimant's work and was satisfied with it, and therefore did not see any need to continue with the development plan. In his witness statement he reported having no cause for concern with the Claimant and that her "day to day work was fine". Two incidents occurred however which caused him concern.
49. The first occurred on 9 August 2018, when PS Healan and the Claimant attended an incident which led to a chase and the taking down of the suspect to the ground by PS Healan, with the Claimant assisting him after the arrest had taken place.
50. A few days later however, PS Healan became aware that the Claimant, in her court-compliant statement containing a statement of truth relating to the incident, had stated that she had chased the suspect and taken him to the ground and arrested him. Although PS Healan was concerned about that, he did not do anything about it at the time.
51. The second incident came to PS Healan's attention on 17 September 2018, following his return from annual leave. It was brought to his attention by another sergeant that the Claimant had been involved in the investigation of a serious domestic violence assault on 7 September 2018. The Claimant interviewed the suspect on the evening of that day. Prior to that, several entries had been made in the Respondent's "Niche" electronic log. Those included a record made by the sergeant that a member of the Domestic Violence Unit was going to attempt to speak to the victim again, and also

records from the Domestic Violence Unit member noting that she had spoken to the victim and had completed a witness statement.

52. By the time the Claimant interviewed the suspect however, she had not read those entries, and, following the interview, she reported to the Custody Sergeant that there was insufficient evidence to proceed further. The suspect was then released with no further action to be taken.
53. A few days later, the investigation was reviewed and the reviewing sergeant noted there was a hearsay witness statement on file from the member of the Domestic Violence Unit at the time, but that the Custody Sergeant had been unaware of it. When the Claimant was spoken to about the matter she reported that she did not know anything about the statement. She reported her conversation with the reviewing sergeant to PS Healan, and then provided a report, in which she provided conflicting comments regarding her knowledge of the member of the Domestic Violence Unit's involvement and her statement.
54. PS Healan was, as a consequence, concerned about the Claimant's honesty and integrity, particularly when considered alongside the August incident, which he had been prepared to put down to a one-off error. He therefore reported his concerns to Insp Davies, and put together a report for him on 20 September 2018. That focused on the September domestic violence incident, but also recorded the August arrest incident.
55. Insp Davies then produced his own report for PSD on the same day, providing further background to the Claimant. In that, he referred to previous concerns having been raised about the Claimant's honesty and integrity by PS Lanfear and PS Mancino, which we have not addressed in these findings as they do not bear directly on the issues we have to decide.
56. Insp Davies concluded that a meeting with PSD would be beneficial in the first instance, possibly to involve PS Mancino, so that a decision could be made as to whether the issues involved misconduct or under-performance. Insp Davies sent his report and PS Healan's report and other documents to DS Brown of PSD on 20 September 2018.
57. DS Brown then spoke to DCI Roberts about the concerns, noting that the Claimant was the victim in a misconduct case being pursued against PS GH. DS Brown discussed the possibility of the sergeant who had raised concerns about the Claimant being friends with PS GH with Insp Davies. He noted that he himself had supervised PS GH for a period some years previously, and that PS Lanfear had been PS GH's Welfare Ambassador, i.e. a person who helps signpost others to available resources, but that the two were not friends, and nor were any of the other sergeants.

58. DS Brown reviewed the information she had received and considered that the Claimant may have breached the standards of professional behaviour relating to honesty and integrity. She prepared a notification of potential conduct matter form for review by DCI Roberts, in order for her to conduct a severity assessment.
59. DCI Roberts considered that, due to the nature of the allegations, it would not be appropriate to deal with them as performance matters. She noted that, whilst she remained open-minded and that the Claimant could potentially give an account that the matters had arisen through misunderstandings on her part, should the allegations be upheld they could potentially amount to gross misconduct. There was therefore a need for further investigation to establish the facts.
60. On 4 October 2018 the Claimant was served with a Regulation 15 Notice, i.e. a notice of alleged breach of the Standards of Professional Behaviour, pursuant to Regulation 15 of the Police (Conduct) Regulations 2012, and the Respondent's PSD commenced its investigation into the Claimant, with DS Brown being the Investigating Officer. The Claimant was placed on non-public facing and non-evidential duties at this time. Further Regulation 15 Notices were subsequently issued to the Claimant later in 2018 and in January 2019, as the investigation developed.
61. By the time the investigation into the Claimant had started, the investigation into PS GH had been completed, and his misconduct hearing had been arranged for 3 to 6 December 2018.
62. By November 2018, the Respondent's PSD had brought the investigation of the Claimant to the attention of PS GH's representatives, on the basis that the fact that she was being investigated in relation to allegations relating to her honesty and integrity could have a bearing on her credibility as a witness in relation to PSGH. His representatives sought disclosure of the Regulation 15 Notices relating to the Claimant, which was provided, and they then requested an adjournment of the hearing in relation to PS GH.
63. Under the Police Misconduct Regulations once a decision to proceed to a hearing has been made, any decision relating to that hearing, including that it be postponed, lies with the Legally Qualified Chair, or "LQC", of the panel that will consider the misconduct allegations. The LQC in PS GH's case decided to postpone the hearing until at least the middle of February 2019, it being anticipated that the investigation in relation to the Claimant could be completed by the middle of January 2019.
64. DS Brown proceeded with her investigation into the allegations against the Claimant in the latter part of 2018 and into January 2019, taking statements from several witnesses. Most statements were taken by way of face-to-face

interview, by reference to a standard list of questions. With some witnesses however, where face-to-face interviews could not be arranged, they were sent the questions and asked to provide a statement by reference to them.

65. DS Brown also obtained further information from PS GH about concerns that he had previously raised about the Claimant's honesty and integrity as part of his defence to the allegations against him.
66. On 21 September 2019 an updated Regulation 15 Notice was provided to the Claimant, taking into account a number of additional allegations that had arisen from the statements taken from other officers, including some raised by PS GH. At that point there were 19 numbered allegations.
67. It was arranged for the Claimant to be interviewed by PSD on 29, 30 and 31 January 2019, in the presence of her Police Federation Representative, with the interview being undertaken by DS Brown and DS Heyward. By this stage, the Claimant was pregnant, with her baby subsequently being born in June 2019.
68. On the morning of 29 January 2019, the Claimant was served with a further Regulation 15 Notice, adding one further allegation making 20 in total.
69. The Claimant and her representative were, for the first time, provided with the documentation behind the allegations. The Claimant was given time to review that documentation with her representative, but, after approximately an hour, the Claimant's representative reported that the Claimant was highly agitated and needed to go home as she needed more time to prepare. It was arranged that the interview would commence the following day.
70. On 30 January 2019 however, the Claimant's father notified her representative that the Claimant had been awake all night and would not be able to attend for interview. It was then arranged that it would start on 31 January, but the Claimant's representative reported on that day that she had been taken to hospital and could not therefore attend.
71. The LQC in PS GH's case was informed of the delay in the Claimant's interview, and the Respondent and PS GH agreed that a further postponement of his hearing was appropriate. It was noted that it was not likely to be appropriate to interview the Claimant until at least 12 weeks after her baby was born, i.e. in September 2019. The LQC then initially postponed PS GH's hearing, to start with until 10 May 2019.
72. The Claimant provided a written response to the allegations against her on 7 February 2019, and then indicated, during a welfare visit, that she wished to go ahead with the interview before her baby was born. However,

following a referral to Occupational Health, it was considered that it would not be in the interests of the Claimant's unborn child for the interview to go ahead at that stage.

73. In April 2019, the LQC in PS GH's case then directed that his hearing should be listed as soon as practicable after 18 November 2019, anticipating that the Claimant would be interviewed in September 2019, and that, by 18 October 2019, a decision would be made on whether she had a case to answer.
74. An attempt was made to arrange the interview with the Claimant for 25 and 26 September 2019, but it ultimately did not take place until 25 November 2019. The LQC in PS GH's case then further postponed his hearing until at least 20 December 2019.
75. In the meantime, on 19 September 2019, the Claimant emailed DC Ennis, noting that she now wished the incident of 5 January 2018 to be treated as a criminal allegation of sexual assault. That was passed to DCI Roberts to consider, and she formed the decision, in January 2020, that the allegation did not meet the required evidential threshold for referral to the CPS. She did not however confirm that decision to the Claimant until September 2020.
76. The Claimant then objected to DCI Roberts's decision, and that was considered by way of review by Detective Superintendent Brustad who upheld DCI Roberts's decision. The Claimant was informed of that on 26 October 2020.
77. The Claimant then attended for her interview with DS Brown and DS Heyward on 25 November 2019. At the start of the meeting she referred to a document she had prepared which had been emailed to DS Brown by her solicitor. DS Brown then obtained that statement, and the Claimant confirmed that she would not be answering any further questions. She also produced a bundle of supporting documents. In the circumstances the interview did not proceed any further.
78. Following her consideration of the Claimant's statement and documents, DS Brown completed her investigation report and forwarded it to Superintendent McLain, the then Head of PSD, and therefore the Appropriate Authority, on 16 December 2019. DS Brown recommended that there was a case to answer in relation to 15 of the 20 allegations against the Claimant, that there was insufficient evidence to proceed in relation to four of them, and that one had already been addressed.
79. Superintendent McLain agreed, on 10 January 2020, that 15 allegations should proceed to a misconduct hearing, and the Claimant was notified of that on 14 January 2020. The LQC in PS GH's case was also notified that

the hearing would take place in relation to the allegations against the Claimant, and, on 28 January 2020, she directed that PS GH's hearing would be postponed at least until 6 March 2020.

80. The Claimant's misconduct hearing was initially scheduled for 30 March to 3 April 2020, and she was served with a Regulation 21 Notice under the Police Misconduct Regulations, i.e. a notice of hearing, on 18 February 2020, with a slightly amended version being sent to her on 25 February 2020, 13 allegations were set out, although, in the event, one was withdrawn prior to the hearing, and one was withdrawn during the hearing.
81. The Claimant provided her written response to the allegations pursuant to Regulation 22 on 16 March 2020.
82. At that time, the COVID-19 pandemic took hold, and, at a telephone preliminary hearing on 23 March 2020 before Mr Stephen Chappell, the LQC appointed to chair of the panel considering the allegations against the Claimant, it was directed that the hearing would commence on 2 November 2020, and would last for 8 days. Whilst no direct evidence was before us, it appeared that PS GH's misconduct hearing was put back further to 2021, pending the conclusion of the Claimant's hearing.
83. The Claimant's misconduct hearing took place then between 2 and 13 November 2020 with the Claimant and the Appropriate Authority both being represented by Counsel.
84. The misconduct panel ultimately concluded that, of the eleven allegations that remained to be addressed, six were found proved and five were not. Of the six found proved, two, the ones relating to the August 2018 arrest and the September 2018 domestic violence incident, were found individually to be serious breaches of the required standards of honesty and integrity which, on their own, amounted to gross misconduct. The other four were considered not to amount to gross misconduct in their own right, but, when taken together, all allegations were cumulatively serious enough to justify dismissal.
85. We observed that, even with the allegations found not proved, it could not be said that the Claimant had come through with an entirely clean bill of health, with the panel making references to the burden of proof being on the Appropriate Authority and to there being "*room for misunderstanding*" and "*scope for wires to be crossed*". At no stage did the Claimant's Counsel make any suggestion that any of the allegations against her should be dismissed on the basis that there was no case to answer.
86. Having concluded that several of the allegations had been made out, the panel went on to consider the sanction to be imposed. They noted that the

Claimant's Counsel had accepted that the two particularly serious breaches had involved operational dishonesty, and concluded that the dishonesty exhibited by the Claimant *"in telling untruths about herself and about operational policing matters were serious positive acts of dishonesty and fabrication"*.

87. The panel took into consideration a range of aggravating and mitigating factors, but concluded that the case had clearly crossed the threshold for gross misconduct by some distance. They ultimately decided that dismissal without notice was the appropriate sanction.
88. The Claimant submitted an appeal against the panel's decision on 22 November 2020. The Police Appeal Tribunal Rules 2012 note, at Rule 11, that a chair of an appeal panel shall first consider the appeal and, if they consider it has no real prospect of success, and that there is no other compelling reason why it should proceed, they should dismiss it. If the Chair is of that view, before confirming it the Rule provides that they must give the appellant, and indeed the respondent, written notice of their view together with reasons. The parties then may make further written submissions within ten working days, which the Chair must then consider before confirming their decision.
89. In relation to the Claimant's appeal, the police appeal tribunal chair, Mr Damien Moore, notified the Claimant and the Respondent, on 15 April 2021, that he was considering dismissing the appeal and provide his written reasons. The Claimant made further representations on 30 April 2021.
90. In his final decision, issued on 12 May 2021, Mr Moore noted that, despite the further representations he *"remained firmly of the opinion that the decisions of the Panel pertaining to its findings and outcome were reasonable ones, there was no breach of procedure or other unfairness which might materially have affected the findings or decisions ... and ... no new evidence presented which could not have reasonably been considered at the original hearing which could have materially affected the finding or decision on disciplinary action"*. He therefore dismissed the appeal on the basis that it had no real prospect of success and there was no other compelling reason why it should proceed.
91. Following the Claimant's dismissal, the Respondent, as required by section 88A of the Police Act 1996, reported the fact of the dismissal to the College of Policing, which then placed the Claimant on its barred list.
92. Following the completion of the Claimant's misconduct hearing arrangements were put in place for PS GH's misconduct hearing, notwithstanding that he had submitted his resignation in October 2020 and had left the Respondent's employment in November 2020.

93. On 7 January 2021 the Claimant was notified that PS GH's hearing would take place on 9 to 11 March 2021. The Claimant was asked to indicate if she was unavailable on any of those dates. A similar letter was sent to the Claimant's father and her partner as they were witnesses of the Claimant's early, i.e. contemporaneous, disclosure of the incident.
94. The date of the hearing was confirmed in a letter to the Claimant on 15 February 2021 and, on the day after, the Claimant confirmed, via her representative, that she would not be attending. The Claimant was asked to reconsider her position on 23 February 2021, it being noted that her evidence was important and that without her attendance the allegations against PS GH could be withdrawn. The Claimant, again via her representative, replied on 24 February 2021 noting that she would attend provided that her father and partner could give evidence before her and anyone else, and could then sit with her during the hearing as support.
95. We observed that the usual order of evidence would be for the Claimant, as the primary witness, to give evidence first. It would also usually be the case that a witness would not be present prior to their evidence being taken.
96. PS GH's representative objected to the Claimant's request that she not give evidence first and, whilst they had no objection to the Claimant being accompanied, objected to that person being a witness. The Claimant then indicated that, as she had just commenced a new job, she would not be able to attend on the first scheduled day of the hearing.
97. These matters were ones for the LQC chairing the panel to address but they did not, leaving the matter to the Appropriate Authority. The LQC made clear however that they were not willing to postpone the hearing, due to the length of time that the hearing had already been delayed. Detective Superintendent Brustad, the Appropriate Authority for the purposes of PS GH's misconduct hearing at the time, wrote to the Claimant, on 2 March 2021, noting that the Claimant would be required to give evidence first on the first day of the hearing, and that it would not be possible for either her father or partner to be present with her prior to giving their own evidence. Superintendent Brustad confirmed however, as she had previously indicated to the Claimant, that support could be made available from an independent sexual violence advocate via an external charity, or from one of the Respondent's Welfare Officers.
98. The Claimant's father, having originally in February confirmed his availability to attend the hearing, also indicated, on 3 March 2021, that he was no longer available to attend as a witness. DS Brustad replied to him on the same day, noting his indication of his intention not to attend as a

witness, but pointing out that if he attended in any other capacity he would be called to give evidence as a witness.

99. Ultimately, on 8 March 2021, DS Brustad, as the Appropriate Authority, took the decision to withdraw the misconduct case against PS GH in view of the difficulties that had arisen.

Conclusions

100. Considering our findings, and taking into account the applicable legal principles, our conclusions on the issues we had to decide were as follows.
101. In relation to each asserted detriment, we were conscious that we needed to assess three things. First, whether what was asserted to have happened had indeed happened in fact. Secondly, if it did, whether what happened amounted to a detriment. Thirdly, if a detriment had arisen, whether that was because of the Claimant's protected act. We considered each asserted detriment in turn.

Detriment 4 a)

102. It was accepted that the Claimant was placed on a development plan when she returned to front-line operational duties in May 2018. That was done to assist the Claimant, and to ease her return to those duties after a gap of some ten months.
103. As a matter of fact however, the Claimant was not, as alleged, placed on the development plan without prior discussion into her performance or reviews of her development. The prospect of a development plan being put in place was discussed with the Claimant by PS Smith in the presence of PS Mancino in March or April 2018, with the Claimant being told that she would spend a six-week period under the tutorship of other officers. That was something with which, at least at the time, the Claimant was content.
104. We were not therefore satisfied that this detriment was made out in fact. However, in addition we would not have been satisfied that any imposition of the development plan could reasonably have been viewed as detrimental to the Claimant. As we have noted, by May 2018 some 20 months of the Claimant's anticipated 24-month probation period had elapsed and yet the Claimant had, in effect, by reference to her time spent on sick leave and working restricted hours, only worked on a full-time basis for approximately 14 months. Furthermore she had not dealt with the public outside a police station for roughly a half of her time as a probationary officer.
105. We noted the evidence provided by PS Lanfear that he had felt trepidation at the prospect of returning to operational duties after a two- month absence

following his operation, and we noted that the Claimant herself accepted that she lacked confidence. It seemed to us that a detriment could legitimately have been said to have arisen if a development plan had not been put in place with the Claimant then being left to her own devices. We could not see that the imposition of a development plan was anything other than a benefit to the Claimant.

Detriment 4 b)

106. The Claimant made very little reference to how support had been withheld from her in relation to the development of her skills as a trainee police officer. The only specific matter raised by the Claimant in her evidence was PS Lanfear's response to a senior officer relating the Claimant's desire to attend SOLO (Sexual Offences Liaison Officer) training. There however, PS Lanfear did not, in our view, withhold support, he simply commented that he had only supervised the Claimant for a few days (it was in fact only his fourth day as her supervising sergeant), and therefore was not able to say with certainty how the Claimant would cope with the emotional aspects of that element of the role.
107. When asked by the Tribunal for further detail of how she alleged support had been withheld, the Claimant answered generally saying that, whenever she asked for anything she was told "no". It seemed to us however, from the fact that the Claimant was signed off as having passed her probation in December 2018, i.e. only three months later than initially planned despite the amount of time she had missed, that appropriate support in the development of her skills must have been provided.

Detriment 4 c)

108. The Claimant did face misconduct allegations which could accurately be described as historic, in that some of the matters put to her in late 2018 and early 2019 did relate back to 2017. However, we were not satisfied that they could be described as "spurious".
109. The initial concerns raised about the Claimant's honesty and integrity were the two raised by PS Healan in his report of 20 September 2018; the arrest incident on 9 August 2018, and the domestic violence incident which had come to PS Healan's attention on 17 September 2018. In our view it was right and proper that those matters should have been investigated on the basis that they could be considered to amount to misconduct, indeed to serious misconduct.
110. Fairly early on in the process of investigating those concerns, further ones came to light, some having occurred many months earlier. Whilst none of them were of a similar magnitude of severity as the two raised by PS

Healan, they were nevertheless worthy of investigation and, for some of them, worthy of being advanced to the misconduct hearing stage.

111. We noted that roughly a half of the allegations considered by the misconduct panel were upheld and, as we have also observed in relation to those not upheld, it could not be said that the Claimant emerged from them with a clean bill of health.
112. We also noted that at no time did the Claimant's Counsel make any suggestion that any of the allegations faced by the Claimant were so weak as to lead to a submission that there was no case to answer in respect of them. Overall therefore, we were not satisfied that it could be said that spurious allegations had been raised against the Claimant.

Detriment 4 d)

113. Similar to our conclusions in relation to Detriment 4(c), we did not consider it appropriate to describe the allegations raised about the Claimant's conduct by PS GH as being spurious.
114. As part of his response to the Claimant's complaint about him, PS GH had sought to raise concerns that the Claimant had lacked honesty and integrity in her dealings with him whilst he was her supervising sergeant. It appeared to us that this was taken with something of a pinch of salt by the officers investigating the Claimant's complaint, as the sort of point someone facing serious allegations might make in an attempt to defend themselves.
115. However, when the investigation into the Claimant was underway, PS GH's concerns resurfaced with specific detail being provided. In the circumstances, we did not consider that it was inappropriate for the Respondent to investigate those concerns, or for some of them then to be advanced as misconduct allegations before the misconduct panel. Again, we noted that the Claimant's Counsel at the misconduct hearing did not suggest that the allegations were so weak as to lead to a submission there was no case to answer.
116. As with allegation 4(c) therefore, we did not consider that the Respondent had presented additional spurious allegations made by PS GH regarding the Claimant's conduct.

Detriment 4 e)

117. As a matter of fact, the Claimant was made the subject of an investigation into her conduct, and it was clear to us how the Claimant could perceive that as a detriment. However, we did not consider that the instigation of the investigation was because of the Claimant's protected act.

118. As we have noted, the investigation was commenced following the two concerns raised by PS Healan in September 2018. Those concerns arose from two recent incidents which called into question the Claimant's honesty and integrity, with PS Healan having been prepared to put the first incident in August 2018 down as a one-off error, but ultimately being concerned, when the second incident came to his attention in September, that there appeared to be a pattern of such behaviour.
119. At that point the investigation commenced, and, in our view, it was a reasonable and appropriate step for the Respondent to take. We noted Sergeant Healan's evidence that he himself was not aware of the detail of the complaint the Respondent had raised about PS GH, i.e. that it involved an allegation of sexual harassment, and therefore was a protected act for the purposes of a victimisation claim until after her misconduct hearing. His actions in raising his concerns could not therefore be described as victimisation.
120. Beyond that, even if the roles of Insp Davies, in referring the matter to PSD, and of DCI Roberts, in undertaking the severity assessment and directing that an investigation be commenced, are considered, both of whom did have knowledge of the detail of the Claimant's complaint about PS GH, we were not satisfied that their actions were motivated by the Claimant's complaint. Whilst Insp Davies had supervised PS GH some time prior to that point, he was not friendly with him, and there was no indication that DCI Roberts had had any prior dealings with PS GH.
121. Regardless of that the two officers were faced with serious allegations of misconduct which called into question the Claimant's honesty and integrity. We did not see that they could reasonably take any action other than that which they did, and we did not consider that the Claimant's complaint had had any influence on their actions let alone the significant influence referred to by Underhill LJ, in the **Bailey** case, as being required.

Detriment 4 f)

122. The misconduct hearing in relation to PS GH had, by the time the investigation into the allegations against the Claimant commenced in early October, been listed to commence on 3 December 2018. The investigation had however been completed several months earlier, in May 2018, and the decision that he had a case to answer, and that the matter should be referred to a misconduct panel hearing, had been taken by the Appropriate Authority in his case in late June 2018.
123. The instigation of the investigation into the concerns relating to the Claimant, dealing as it did with allegations about her honesty and integrity, clearly had the potential to have implications for the misconduct case

against PS GH. He was defending himself on the basis that the incidents had not taken place as described by the Claimant, and it seemed to us that whilst there was other evidence to be used against him, in the form of the corroborative evidence of the Claimant's father and partner, that she had reported the incident to them at the time, and the similar fact evidence of the other person who had raised a similar complaint about PS GH, the primary evidence against him was going to come from the Claimant. In the circumstances, it was an appropriate step for the Respondent to bring the fact of the investigation into the Claimant to the attention of PS GH and those representing him.

124. The decision to postpone PS GH's misconduct hearing, initially from December 2018, and then on several further occasions, until the allegations in relation to the Claimant had been investigated and concluded, up to the point where the hearing against PS GH was finally ready to go ahead in March 2021, was, in our view, a reasonable and proper one. In addition, it was a decision of the LQC in PS GH's case and not of any officer of the Respondent.
125. Whilst the proceedings against PS GH were postponed, we did not consider that that could reasonably be considered by the Claimant to have been a detriment to her. Even if it did however, for the reasons we have described, we could not see any connection between that decision and the Claimant's protected act.

Detriment 4 g)

126. As a matter of fact, the Respondent did not at any stage suspend the investigation into PS GH. As we have noted, that investigation was completed in May 2018; it was only the misconduct hearing that was suspended.
127. Even if this alleged detriment is considered more broadly however, by considering it in the context of the overall proceedings against PS GH having been suspended, we could not see anything which suggested to us that that suspension had been done to discredit the Claimant prior to her submitting evidence against PS GH.
128. As we have already noted, the fact that allegations against the Claimant had arisen which called into question her honesty and integrity had an obvious potential bearing on her role as a witness against PS GH, and the suspension of the proceedings against him, whilst the allegations against the Claimant were addressed one way or the other, was, in our view, an entirely straightforward and expected step. The decision to suspend the proceedings against PS GH was also, as we have noted, that of the LQC

and not any specific officer of the Respondent. We were not therefore satisfied that this detriment was made out as alleged.

Detriment 4 h)

129. As a matter of fact the Claimant was dismissed by the Respondent, albeit following the decision of the misconduct panel, and that, fairly obviously, had been something that was to her detriment. However, we saw nothing to suggest that the decision was in any way influenced by the Claimant's protected act.
130. The misconduct panel was independent, heard evidence over a number of days, and produced a comprehensively reasoned decision. It did not find all of the allegations against the Claimant proved, seeming to give her the benefit of any doubt that may have arisen. Also, as we have noted, the Chair of the police appeal tribunal noted that he was firmly of the opinion that the panel's decisions were reasonable ones.
131. It seemed to us that the decision taken by the panel, that the Claimant should be dismissed, was one which was very much open to it, and was not in any way connected to the Claimant's protected act. As a consequence of that decision the Respondent was then obliged to implement the dismissal of the Claimant and that action again had no connection to her protected act.

Detriment 4 i)

132. As a matter of fact, the Claimant was denied the opportunity to be accompanied at PS GH's hearing by her father, and, notwithstanding that support was available for the Claimant via an independent sexual violence advocate, we could see that the Claimant might reasonably perceive that the inability to be accompanied by her father, in the fairly narrow sense outlined by the House of Lords in **Shamoon** and by the EAT in **Warburton**, was a detriment.
133. However, we again saw nothing to connect that to the Claimant's protected act. There were clear objections from PS GH's counsel to the attendance by any other witness to support the Claimant during the hearing, with cogent reasons advanced. The Claimant's father was going to be a witness, and probably, in light of the conclusions reached about the Claimant's honesty and integrity, a more important one than might have been initially envisaged. In our view therefore, the Respondent was not acting unreasonably in reacting to PS GH's counsel's objections, and in confirming to the Claimant that she could not be accompanied by her father.

134. The Respondent did not however leave things at that. Whilst the Claimant's partner could not support her, for the same reasons as prevented her father from doing so, and whilst the Claimant's mother could not attend due to her own health, the Respondent made available an independent sexual violence advocate from an independent charity. Support therefore was available for the Claimant. Had the Respondent been motivated to act to the Claimant's detriment because of her protected act we doubt that they would have gone to that step.

Detriment 4 i)

135. Mr Prys Lewis appeared to acknowledge, in his closing submissions, that the Respondent, once the decision to dismiss the Claimant had been taken by the panel, had an obligation then to refer the matter to the College of Policing. That obligation then provides a clear answer to this allegation.
136. The Claimant has, as a matter of fact, been denied, at least currently, the opportunity to join another police force by having been placed on the College of Policing barred list, and that is clearly to her detriment. However, the placing of the Claimant on the barred list was a step taken by the College following a referral that the Respondent was bound by statute to make. It therefore arose from that statutory obligation and not from the Claimant's protected act.
137. Overall therefore, none of the Claimant's complaints of victimisation were made out and her claim fell to be dismissed. We did not then need to consider the time limits and **Polkey** issues.

Employment Judge S Jenkins
Dated: 30 June 2023

REASONS SENT TO THE PARTIES ON 5 July 2023

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche