EMPLOYMENT TRIBUNALS

Claimant: Mr R Murray

Respondent: The Chief Constable of Thames Valley Police

Heard at: Reading **On:** 2, 3, 5, 9, 11, 12, 15, 16, 17, 22 May 2023

Before: Employment Judge Shastri-Hurst

Representation
Claimant: Mr C Banham (counsel)
Respondent: Mr A Rathmell (counsel)

JUDGMENT

1. The claimant's claim of automatic constructive unfair dismissal pursuant to s103A is not well-founded and fails.

REASONS

Introduction

1. The claimant commenced his service with Thames Valley Police ("the Force") on 21 July 2003. The period covered by this claim is 2017 to 2020: during that time the claimant held the ranks of Inspector and Chief Inspector.

2. By claim form of 23 December 2020, the claimant brought a claim of automatic constructive unfair dismissal (whistleblowing) under s103A of the Employment Rights Act 1996 ("ERA").

3. The respondent contests the claim, denying liability at every stage of the legal test I am required to apply in this matter.

4. Mr Banham represented the claimant and Mr Rathmell appeared for the respondent. I am grateful to both counsel for the reasonable, courteous and pragmatic manner in which they conducted proceedings.

5. I had before me a bundle of documents numbered up to page 758 (referenced within this judgment as [798]). The claimant gave evidence in support of his claim, and the respondent called 15 witnesses in support of its defence to the claim (job roles as at the time relevant to the claim):

   5.1. Sharon Warwick ("SW") – Senior Information Governance Manager of the respondent's Joint Information Management Unit;
   5.2. Regella Kaemena-Stokes ("RKS") – Employment and Wellbeing Lead Advisor;
   5.3. Norma Brown ("NB") – Head of Employment and Wellbeing;
   5.4. Rory Freeman ("RF") - Superintendent;
   5.5. John Campbell ("JC") – Deputy Chief Constable until April 2019 then Chief Constable from April 2019 to April 2023;
   5.6. Darran Hill ("DH") – Chief Inspector;
   5.7. Penelope Jones ("PJ") – Acting Detective Chief Inspector;
   5.8. Jason Hogg ("JH") – Deputy Chief Constable 2019 - 2023;
   5.9. Timothy De Meyer ("TDM") – Assistant Chief Constable;
   5.10. Bhupinder Rai ("BR") - Superintendent;
   5.11. Ashley Smith ("AS") – Acting Chief Inspector;
   5.12. Christine Kirby ("CK") – Head of People Innovation and Change;
   5.13. Lindsey Upton ("LU") – Chief Inspector (maiden name Finch);
   5.14. Christopher Ward ("CW") – Temporary Assistant Chief Constable;
   5.15. Nicholas John ("NJ") - Superintendent.

6. Mr Banham indicated that he did not require PJ to attend to give evidence. The remaining 14 witnesses for the respondent attended and were cross-examined. References to witness statements in this judgment are [AB/WS/X], to refer to paragraph X of AB's witness statement.

7. This hearing was originally listed for 15 days, however counsel were unavailable on 4 and 10 May, and I had judicial training on 18 and 19 May 2023, as well as a remedy hearing with members on 12 May, and a part heard preliminary hearing on the morning of 15 May. Therefore, the hearing length was reduced down to 9.5 days. We were able to sit for one hour on the morning of 12 May 2023, to accommodate witness availability.

8. I explained to the parties on Day 3 of the hearing that, in order to manage expectations, I would not be in a position to give them a judgment at the end of the hearing, but would need to reserve my decision, given the factual complexity of this matter. By the end of the hearing, both parties had provided their oral and written submissions.

Preliminary issues

9. On the first morning of the hearing, there was some dispute about two documents, and also two witness statements produced by the respondent: one from Superintendent Katherine Lowe ("KL"), and one from TDM.

10. It was agreed between the parties and myself that it would be prudent for me to read into the case before hearing argument on the admissibility of the above-mentioned documents. I therefore spent Day 1 reading.

11. On Day 2, I considered the admissibility of:

11.1. Emails regarding the claimant's enquiries into a possible role for him in Hampshire – [756-758] ("the Hampshire emails");
11.2. The respondent's amended/updated Privacy Statement with comments - [747-755] ("the Privacy Statement");
11.3. The supplementary statement of TDM;
11.4. A new statement from KL.

12. Mr Banham helpfully clarified that he no longer took objection to the admissibility of the Privacy Statement, or the Hampshire emails and so those documents were admitted into evidence.

13. In relation to the statements, Mr Banham objected to the admission of those, for the following reasons:

    13.1. Regarding TDM's supplementary statement, Mr Banham said that it is unusual for a witness to have a second bite at the cherry, and that TDM had had the benefit of reading the claimant's witness statement and decided to respond to some specific points in that statement. Mr Banham said that, ordinarily, many Judges would not permit supplementary questions to be asked in examination in chief, and that this was a way of the respondent getting in evidence that would otherwise not normally be permitted. Normally, Mr Banham said, witnesses are stuck with the content of their (first) witness statement as being the extent of their evidence in chief. There was no good reason to stray from that principle here, and the late service of this statement had slightly derailed the claimant's team's preparation.

    13.2. In relation to KL's statement, Mr Banham said that the respondent did not initially see it as necessary to serve a statement from KL. It was only on sight of the claimant's witness statement that the respondent determined to provide a statement from KL. It was submitted that this was not proper procedure, and that the late production of this statement is unfair. Considering matters from the claimant's perspective, there would be a sense of unfairness in admitting this statement, and it would not be in line with the overriding objective.

14. I clarified with Mr Banham that KL is not alleged to have been someone to whom a protected disclosure was made, and nor was she alleged to be a perpetrator of adverse treatment towards the claimant.

15. In response, Mr Rathmell made the following points:

    15.1. Regarding KL, in light of the clarification that no specific allegation is levied at KL, he was content to leave her statement to one side for the time being. He would raise it if he considered it necessary in light of any oral evidence given by the claimant. He therefore did not seek to admit that statement. In fact, he did not renew his application in relation to KL's statement at any stage of the proceedings. I have therefore put that statement out of my mind.

    15.2. In relation to TDM's supplementary statement, Mr Rathmell stated that reply statements are not rare, and this was not a second bite at the cherry. The statement was made in direct response to two points raised within the claimant's statement: (a) whether the claimant had

communicated to TDM that he was offended when TDM drew a link between the claimant's mental health and his voluntary demotion, and (b) a question of honesty around this point. Mr Rathmell said that TDM had a right to respond to those points. Practically, Mr Rathmell averred that in fact having a supplementary statement was helpful to the claimant and his team. Without the statement, Mr Rathmell would seek permission to ask supplementary questions of TDM: this way, the claimant has the opportunity to see TDM's response to the two points mentioned in advance of giving his (the claimant's) evidence, and hearing the evidence of TDM.

16. Given the concessions made by both counsel, the only issue I needed to determine was the admissibility of TDM's statement.

17. On that point, I granted the respondent's application to admit that statement. TDM was already a witness in proceedings, and his supplementary statement is short, and in direct response to points in the claimant's witness statement (paragraphs 81/82). My practice, if asked, would be to permit Mr Rathmell to ask supplementary questions, given that they would be in response to something arising for the first time in the claimant's witness statement. I considered that it was more helpful (for both parties and the Tribunal) for that supplementary evidence to be received in writing, as opposed to being dealt with orally at the beginning of TDM's evidence.

18. Although I understood that it was an inconvenience to the claimant's legal team, TDM is not due to attend to give evidence until later in proceedings, and therefore they will have time to discuss this new evidence and make any changes to cross-examination preparation prior to TDM giving his evidence. I could see no real prejudice to the claimant in permitting the statement to be admitted. In terms of fairness to the claimant, he is very ably represented. In order to rectify any prejudice perceived to exist in my granting of the application, I gave Mr Banham permission to ask the claimant any supplementary questions he may wish to ask in response to TDM's second statement. In the event, Mr Banham did not take that opportunity.

19. The supplementary statement of TDM was therefore admitted into evidence.

Issues

20. The parties had agreed a list of issues prior to the commencement of the hearing, that had been prepared for a preliminary hearing in this matter. I was satisfied that the list included all matters that I needed to determine, and therefore was content to adopt that list.

21. The list of issues is appended to this judgment, and includes two schedules: Schedule 1 contains the list of alleged protected disclosures, and Schedule 2 contains the list of alleged adverse treatment, said to amount to a fundamental breach of the claimant's contract.

22. As a general note at this point, the Schedules lacked clarity in some places. First, it was not initially clear to me who were said to be the alleged perpetrators of the detriments; albeit by the time of closing submissions this had been clarified. Second, some of the alleged protected disclosures were vague, without setting out clearly what words were said to have been used by

the claimant on each occasion. Third, some of the detriments were also lacking in clarity; for example, Adverse Treatment 10 is said to be "the respondent's failure to take its legal obligations towards data protection seriously". This is said to have occurred on "various" dates.

23. There were two specific issues that arose at the point of submissions regarding the list of issues:

    23.1. The claimant attempted to argue that another gateway under s43B ERA was relevant in this case, namely that the disclosures, in the reasonable belief of the claimant, tended to show that a criminal offence had been, was being, or was likely to be committed. This was raised, for the first time, in the claimant's written closing submissions.

    23.2. The claimant identified CK as being a perpetrator of Adverse Treatment 5 and 10. This occurred for the first time after all the evidence had been heard, on the parties and myself discussing logistics of closing submissions.

24. I will deal with both these points as they arise in my conclusions below.

Legal framework

Employment status

25. It is common ground that the claimant satisfied the extended definition of worker under s43K ERA, in order that he is eligible to bring a claim of automatic constructive unfair dismissal.

Protected disclosure

26. The meaning of protected disclosure is set out at s43A ERA:

> In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of the sections 43C to 43H.

27. S43B ERA sets out the meaning of disclosures qualifying for protection:

> (1) In this part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –
>
> a. That a criminal offence has been committed, is being committed or is likely to be committed,
>
> b. That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> ...

28. In terms of the application of ss43C-43H, from the agreed list of issues, it is understood that the respondent does not argue that the claimant did not make any disclosures in line with those sections.

<u>Disclosure of information</u>

29. A practical example of the difference between a disclosure of information, and an allegation, was set out in Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325. Placed in the context of a hospital ward, a disclosure of information would be "yesterday, sharps were left lying around", whereas an allegation would be "you are not complying with health and safety requirements". However, the disclosure should not simply be categorised into "disclosure of information" or "allegation". The key point is that a bare allegation, such as the example above, cannot amount to a disclosure of information. It is however possible for an allegation to contain sufficient information to be capable of tending to show a failure (or likely failure) to comply with a legal obligation (for example) - Kilraine v London Borough of Wandsworth [2016] IRLR 422.

30. An enquiry, or request for information, as opposed to the supply of information, will not amount to a disclosure of information – Blitz v Vectone Group Holdings Ltd EAT 0253/10, Parsons v Airplus International Ltd EAT 0111/17.

Reasonable belief

31. The issue for determination is whether the words used by the claimant, in his reasonable belief, tended to show a failure (or likely failure) to comply with a legal obligation, or that a criminal offence had been, was being or was likely to be committed.

32. This is both an objective and subjective test, requiring a tribunal to determine whether the claimant held the requisite belief and whether, if so, that belief was reasonable – Babula v Waltham Forest College [2007] ICR 1026.
33. This test will require the Tribunal to look at all the circumstances of the case: someone with professional or insider knowledge will be held to a different standard that lay persons – Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4. For example, the CEO of a supermarket will be held to a different standard than an employee who stacks shelves. The reasonable belief test in relation to "tending to show" is a fairly low threshold but does require a claimant to have some evidential basis for his belief, as opposed to, say, unfounded suspicion. It is also not necessary for the belief to be correct, as long as it is reasonable in the circumstances in which the claimant finds themselves.

34. As put in Soh v Imperial College of Science, Technology and Medicine EAT 0350/14, there is a difference between "I believe X is true" and "I believe that this information tends to show that X is true". It is the latter, not the former, that is required here.

35. Regarding the requirement that the claimant had a reasonable belief that the disclosure was made in the public interest, it is important to bear in mind the purpose of making this addition to the legislation. Government added the need for reasonable belief that a disclosure is made in the public interest to avoid protection being received by employees raising private employment disputes (the effect of Parkins v Sodexho Ltd [2002] IRLR 109).

36. This again is a relatively low threshold; and now there is no longer a requirement of disclosures being made in good faith at the liability stage. A list

of (non-exhaustive) factors for consideration as to whether it is reasonable to regard a disclosure as being in the public interest was provided by the Court of Appeal in Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening) [2018] ICR 731:

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

b. The nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;

c. The nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;

d. The identity of the alleged wrongdoer...the larger or more prominent the wrongdoer (in terms of the size of its relevant community i.e. staff, suppliers, clients), the more obviously should a disclosure about its activities engage the public interest.

37. The Court of Appeal in Chesterton held that:

> Where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker"

38. In relation to the gateway of a disclosure tending to show that a criminal offence has been committed, the requirement of public interest will almost always be met in such cases. This is because disclosing a criminal offence, or likely to criminal offence, will almost always be in the public interest – Ellis v Home Office 1953 2 QB 135, CA.

Breach of legal obligation

39. The term "breach of legal obligation" has a fairly wide remit. It covers legal obligations set out in statute, secondary legislation and those deriving from common law. However, it will not encompass breach of guidance or best practice, or breach of any moral codes.

40. There is no need for a claimant to give precise detail about the legal obligation in question, however there must be more than just a belief that something is wrong – Eiger Securities LLP v Korshunova [2017] ICR 561.

41. If on the facts the identity of the legal obligation is obvious, then a claimant need do little to specify the obligation further. If, however, the legal obligation at play is not obvious, it will be necessary for a claimant to provide some detail so that the Tribunal is satisfied that the concern is not simply about guidelines or morals, but is in fact a legal concern.

Commission of a criminal offence

42. It matters not if a claimant was mistaken about the existence of a criminal offence. His disclosure will be qualifying provided he can demonstrate that he had a reasonable belief that the offence he believes he was discouraging did in fact exist – Babula v Waltham Forest College [2007] ICR 1026, CA.

43. The claimant here relies upon the offence under s170(1) of the Data Protection Act 2018, which provides that:

> (1) It is an offence for a person knowingly or recklessly –
>
> a. to obtain or disclose personal data without the consent of the controller,
> b. to procure the disclosure of personal data to another without the consent of the controller, or
> c. after obtaining personal data, to retain it without the consent of the person who is the controller in relation to the personal data when it was obtained..

Reason for dismissal

44. The only claim is one pursuant to s103A ERA. The dismissal in this case is one under s95(1)(c) ERA, namely that:

> "the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct".

45. A claim under s103A ERA will only succeed when a tribunal is satisfied that the principal reason for dismissal was the "making" of a protected disclosure – Price v Surrey County Council [2011] 10 WLUK 752 (a case of automatic constructive unfair dismissal, whistleblowing). Where the claim is one for constructive dismissal, "the principal reason" is to be read as meaning the principal reason for the respondent's conduct leading to the claimant being entitled to terminate his contract without notice – Salisbury NHS Foundation Trust v Wyeth [2015] 6 WLUK 425

46. "Principal" reason has been held to be the reason operating on the alleged perpetrator's mind at the time of the conduct in question; in other words, the primary reason – Abernethy v Mott, Hay and Anderson [1974] ICR 323.

47. This is a question of fact, which requires the Tribunal to answer the question "*what consciously or unconsciously was the perpetrator's reason for acting as they did?*".

48. When a claimant relies upon several disclosures, the question for the Tribunal is whether, taken as a whole, the disclosures were the principal reason for dismissal – El-Megrisi v Azad University (IR) in Oxford EAT 0448/08.

49. In Kong v Gulf International Bank (UK) Ltd [2022] IRLR 854, it was held that where a dismissal is due to the manner of the disclosure, or some other fact about the disclosure, as opposed to the disclosure itself, then a claimant will not have been automatically unfairly dismissed. This has been referred to as "*the separability principle*". Simler LJ held that:

> 56...there may in principle be a distinction between the protected disclosure of information and conduct associated with or consequent on the making of the

> disclosure. For example, a decision-maker might legitimately distinguish between the protected disclosure itself, and the offensive or abusive manner in which it was made, or the fact that it involved irresponsible conduct such as hacking into the employer's computer system to demonstrate its validity.

The implied term of trust and confidence

50. The implied term of trust and confidence has been defined in *Malik v Bank of Credit and Commerce International SA* [1997] IRLR 462 as:

> The employer shall not without reasonable and proper cause conduct itself in a manner calculated and (read as "or") likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.

51. A breach of the implied term may consist of a series of acts/omissions by a respondent which, taken individually, do not amount to a breach of the term. However, when taken together, the cumulative effect will be to amount to such a breach – Lewis v Motorworld Garages Ltd [1985] IRLR 465

Fundamental breach of contract

52. It is not enough for a claimant to show that a respondent has behaved in a manner that is unwise or unreasonable. The conduct must equate to a breach of contract based on the objective contractual test – Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27.

53. The question for me is not whether a reasonable employer would have concluded that there was no breach, but whether on the evidence before me I consider that such a breach has occurred.

54. I remind myself also that the intention of the employer is irrelevant – Leeds Dental Team Ltd v Rose [2014] IRLR 8. Conversely, it is not enough for an employee subjectively to feel that a breach has occurred – Omilaju v Waltham Forest London Borough Council [2005] IRLR 35. Nor is it sufficient to prove that the employer did not believe that the breach was fundamental in order to successfully defend a constructive unfair dismissal claim – Millbrook Furnishing Industries Ltd v McIntosh [1981] IRLR 309.

55. Where there is a breach of the implied term of trust and confidence, this will amount to a repudiation of the contract – Woods v WM Car Services (Peterborough) Ltd [1981] IRLR 347.

Last straw

56. Where a series of acts/omissions by a respondent are relied upon as forming a fundamental breach of contract, the last act/omission is the "last straw". This last straw event need not in itself be a breach of contract (or here, terms of service): it must be more than trivial, and be capable of contributing to a breach of the

implied term of trust and confidence – Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 1493. In other words, it must be part of a series of actions, the cumulative effect of which is a breach of the implied term.

Resigning in response

57. The fundamental breach need not be the sole cause of the resignation, provided it is an effective cause – Jones v F Siri & Son (Furnishers) Ltd [1997] IRLR 493. This means that the employee must resign, at least in part, because of the fundamental breach – Nottinghamshire County Council v Meikle [2004] IRLR 703.

Affirming the contract

3. An employee must make up his mind "soon" after the conduct that he alleges amounts to a fundamental breach – Western Excavating, otherwise he will lose his right to rely upon the breach to terminate his contract. There is no time window within which an aggrieved claimant must resign, it is a question of fact in each case, and a reasonable period will be allowed.

Findings of fact

58. Below, I set out the findings of fact that I have made. I have not included findings on everything about which I heard evidence, but have focused on making findings in relation to the matters set out in the List of Issues. Where there was a dispute about what happened between the parties, I have made a decision on the balance of probabilities, in other words I have decided what I think is more likely to have happened, given the evidence that I have heard and seen.

Nomenclature

59. The following are acronyms that have been used in this case, and are referenced in this judgment:

59.1. AMT – Area Management Team
59.2. AMP – Attendance Management Policy
59.3. CCMT – Chief Constable Management Team
59.4. LHRG – Local Health Review Group
59.5. LPA – Local Policing Area
59.6. JIMU – Joint Information Management Unit
59.7. ORM – Operational Review Meeting – synonymous with CCMT
59.8. RDF – Recuperative Duties Form
59.9. SAB – Senior Appointments Board
59.10. South & Vale – South Oxfordshire & Vale of White Horses LPA
59.11. SRP – Supportive Recovery Plan
59.12. SSAMI – System Support and Management Information

Introduction

60. The claimant commenced his service with the Police on 21 July 2003. He became a substantive police constable in 2005, and was promoted to sergeant in 2007, and inspector in 2011.

61. At the beginning of 2017 (the year in which the relevant facts commence in this case), the claimant was Inspector, posted at Reading Police Station. He was selected to perform the role of Acting Chief Inspector in the South and Vale LPA on 11 September 2017, and was posted to Abingdon Police Station - [612]. The role of Chief Inspector is also referred to as Deputy Commander of the LPA, reporting to the relevant Superintendent.

62. From September 2017 to July 2020, the claimant alleges that he made 21 protected disclosures, referred to as "PID 1 – PID 21". These disclosures are said to have related to the manner in which the Force handled sensitive personal medical/health information for its officers.

63. The claimant was formally promoted to the rank of Chief Inspector on 9 October 2017, reporting to RF, the Superintendent at the time - [613]. The claimant remained posted to Abingdon Police Station.

64. He took the decision to demote to rank of Inspector, a decision that was actioned on 27 November 2018, and relocated back to Reading Police Station – [613].

65. The claimant was off sick with anxiety from 15 May 2019 to 22 November 2019 inclusive – [627]. He returned to work on 25 November 2019 in the role of Incident and Crime Response Inspector Reading.

66. The claimant raised a grievance on 19 December 2019, regarding the same issues that were the subject of his disclosures: namely what he considered to be the unlawful handling of sensitive health data of officers. A grievance hearing was held with CK on 10 January 2020. The final grievance report was sent to the claimant on 30 March 2020 - [395].

67. The claimant tendered his resignation on 15 July 2020 - [417]. The claimant had an exit interview on 30 July 2020 - [422 redacted/422a unredacted]. His last day of service was 13 August 2020, as he worked his notice period.

68. The claimant claims that his disclosures led to him receiving adverse treatment from various of his colleagues. The adverse treatment has been distilled into ten distinct acts/omissions, referred to as "Adverse Treatment 1 – Adverse Treatment 10".

69. It is the claimant's case that he was automatically constructively unfairly dismissed: he was forced to resign due to the manner in which he had been treated as a result of making his protected disclosures – ss95(1)(c) & s103A ERA.

70. The claimant commenced the ACAS Early Conciliation process on 10 October 2020. This process ended on 24 November 2020, and the claimant presented his ET1 to the Tribunal on 23 December 2020.

The claimant's line management

71. The claimant had various first line managers during the relevant period, as follows:

    71.1. October 2017 – November 2018: RF
    71.2. January 2019 – September 2019: DH
    71.3. September 2019 – November 2019: Deputy Chief Inspector Dave Turton (“DT”)
    71.4. November 2019 – August 2020: AS

72. His second line managers were as follows:

    72.1. August 2019 – April 2020: BR
    72.2. April 2020 – August 2020: NJ

Data protection legislation

73. Prior to May 2018, legislation governing data protection in the United Kingdom was found within the Data Protection Act 1998 (“the 1998 Act).

74. On 25 May 2018, the General Data Protection Regulation (”GDPR") came into force in countries that were part of the European Union at the time. The Data Protection Act 2018 (“the 2018 Act”) brought the GDPR into the law of the United Kingdom.

Respondent’s computer systems

75. I will spend some time going through the respondent’s computer system to provide some explanation as to the various programs in place.

76. The overarching system is SSAMI. This system contains various areas, tabs and information: access to the information varies depending on the role of the user attempting to gain access. SSAMI covers a range of matters, from performance development reviews to overtime, and includes the AMP.

77. As mentioned, on SSAMI there is a section for attendance management which contains information about sickness absences and recuperative duties, amongst other matters, and includes access to SRPs.

78. In terms of access, only LPA commanders and deputies should have access to the attendance management information in relation to all staff and officers in the LPA. The respondent’s reasoning for this access is the need to manage and deploy staff appropriately, and deal with resilience and management of sickness across the LPA in question.

79. As well as the commanders and deputies, employee relations specialists also have access to this information in relation to staff and officers for whom they are responsible.

80. There is a reminder on the attendance management section of SSAMI, that the misuse of personal data could amount to a contravention of the Data Protection Act 1988 – [537].

81. The Force also uses a section of SSAMI called Team View. This section provides information to officers' first- and second-line managers, enabling those managers to see the whole team on one screen. Information on sickness absences within Team View is pulled across from "PeopleSoft" entries.

82. PeopleSoft is a separate software package and an internal human resources system. It deals with information regarding line management and sickness absences.

83. Within Team View, hyperlinks are available for individuals' SRPs, as well as their sickness records.

84. When the line management of an individual changes, this should be updated via PeopleSoft, which in turn should change accessibility in Team View. However, when this accessibility change does not happen as standard, there is an option within the Team View page that officers can click to report any errors including, for example, if they have access to the wrong officers' information - [175].

Sickness management

85. In the bundle I have an extract from the AMP at [661-674]. The department with ownership of that document is People Directorate, the respondent's Human Resources Department.

86. RDFs are a mechanism for management to establish what duties an officer is capable of undertaking either on return from work from a leave of absence due to sickness, or whilst at work, but still recuperating. An example of an RDF is found at [653], and shows a drop-down answer for the majority of questions, the possible answers being "yes" and "no". There is a small text box at the end for any other information deemed relevant to be included by a manager.

87. Once an RDF is completed, it should be sent to the deputy commander who then reviews and ratifies the form and then sends it on to the resource management teams.

88. Another form relevant to the AMP process is the SRP. This form records information such as contact made with an officer who is on sickness leave. SRPs were brought in as an informal stage of development prior to a formal stage regarding, for example, poor performance being commenced.

89. Local health review groups (LHRGs) are generally chaired by the Chief Inspector (deputy commander) of an LPA: the specifics of these meetings vary across LPAs. Reading meetings were, at the time relevant to this case, normally attended by 10 to 12 people including inspectors, HR managers, Federation members, and union staff. The purpose of these meetings was to discuss each person of the team who was off sick, and ensure that their leave was being managed effectively, and in line with the AMP. These meetings took place roughly every 4 to 6 weeks - [RKS/WS/12]. In advance of the meetings, People Directorate would supply to the deputy commander and inspectors information regarding sickness absences for their teams.

90. There was a change to the way in which LHRGs were run. Initially the LHRG meetings combined resource resilience and discussion of sickness absences. Following the claimant raising his concerns, the resources resilience aspect of the meeting was siphoned off to be dealt with separately - [RKS/WS/14]. The remaining LHRG meeting was conducted only by the deputy commander and the employment and well-being lead adviser for the team in question. This separation of the two types of meeting occurred by at least June 2018 - [RKS/WS/14].

The claimant's concerns

91. The claimant's concerns regarding data protection within the Force fell into three main categories. It has been conceded by the respondent in its written submissions that the claimant made disclosures of information in relation to 3 issues of data protection (paragraph 55 of the respondent's closing submissions) (the "Concerns"):

    91.1. some disclosure of employee sickness data in management meetings, in particular LHRGs, to an extent which may be unnecessary and therefore potentially unlawful;
    91.2. access to employee sickness data in particular SRPs stored in PeopleSoft, which may be wider than necessary (because of out of date line management lists) and therefore potentially unlawful;
    91.3. access to RDFs, some of which include health information, which may be wider than necessary and therefore unlawful (these forms dated back at most to 2017 and were accessible to chief inspectors force wide).

92. It seems to me that the above summary is a fair reflection of the claimant's concerns.

The chronology begins – 2017

93. On 28 July 2017 Gini Simonet, Lead Advisor in the People Directorate ("GS"), sent an email regarding electronic RDFs, attaching guidance about the process of using those forms - [114]. The process of completing an electronic RDF for all supervisors of LPA officers was a new system that was to commence from 31 July 2017 - [117]. The guidance is found at [116], and sets out line managers' responsibilities in terms of the RDFs. In the guidance, there is no mention of restricting the personal, sensitive, medical data that is to be contained within the RDFs. RKS accepted in her evidence that the guidance may have needed altering, in light of the ability for free text to be inputted in the text box.

94. The purpose of these RDFs was to enable a system whereby supervisors provide the LPA Command Team with information from which it can make a decision as to whether to grant a request for an officer to be placed on recuperative duties - [125]. The process further was designed to make Tasking & Resilience more efficient in the deployment of officers.

95. On 9 October 2017, the claimant was promoted to the rank of Chief Inspector and Deputy LPA Commander South Oxfordshire and Vale. In this role, the claimant had access to and was responsible for the RDFs of his team, and

was responsible for chairing the LHRGs for the LPA. RF was the claimant's first line manager from October 2017 to November 2018.

96. The claimant alleges that, from September 2017, he raised numerous data protection complaints, those being his PID1 – PID21.

Protected Disclosure 1 (since Sept 2017) - the claimant raised numerous data protection complaints verbally to RKS about his concerns – Grounds of Complaint ("GOC") paragraphs 8, 33(a)

97. Paragraph 8 (repeated at 33(a)) of the GOC: "Since September 2017, …, he made numerous complaints surrounding his Concerns to the local HR Advisor, RKS. These were largely verbal complaints, both on a one-to-one basis and in meetings."

98. The claimant raised numerous data protection complaints verbally to the local human resources adviser RKS about his Concerns. It is conceded by the respondent that there was disclosure of information around or after September 2017 which, in the reasonable belief of the claimant, tended to show that there had been, was, or was likely to be a failure in legal obligation.

99. The claimant covers PID 1 in paragraphs 22 to 30 of his witness statement, referring to discussions that took place on the following dates:

    99.1. around October 2017 in a meeting Abingdon police station (Protected Disclosure 1a);
    99.2. at an LHRG in early 2018 at Abingdon police station (Protected Disclosure 1b);
    99.3. at an AMT meeting in spring 2018 (Protected Disclosure 1c);
    99.4. in a meeting with RKS, for which we have handwritten notes [628] but no date (Protected Disclosure 1d).

100. I have to analyse what words were used in relation to each alleged disclosure. I note that, where the respondent has conceded that a disclosure of information has been made in relation to the claimant's Concerns, I do not consider it necessary to establish precisely what was said in each case, particularly when the disclosure of information is in a written document. I consider it is sufficient for there to be a finding that the claimant's Concerns were raised.

101. In relation to PID 1a, the claimant in his witness statement paragraph 23a records that he stated in this meeting "it was not appropriate for the officers' personal health information to be shared among other people who had no need to be privy to that information. I expressed that it was a breach of data protection and this was why I was not prepared to divulge such information".

102. In relation to PID 1b in early 2018, the claimant records at paragraph 23b that he asked RKS "not to raise sensitive issues in an open forum". He goes on in the same paragraph to explain that as at the end of that meeting he explained to those present that "we could not hold these discussions in such a large forum as providing such personal details about an officer's medical condition was a breach of data protection".

103. In relation to PID 1c, the claimant covers this at paragraph 23c of his witness statement. At this meeting the claimant stated "that GDPR was replacing the Data Protection Act in May of that year and that our processes were actually not compliant with existing laws and the force would need to change the processes around sickness management". He also says that at this meeting he raised issues regarding "sensitive personal data being shared in meetings and the volume of data being stored such as the SRPs".

104. In relation to PID 1d, the claimant alleges at paragraph 23d of his statement he said "I was concerned that information was being shared unlawfully in these meetings and that I would like our KS2 meet with the respect of inspectors and work in partnership with them".

105. The claimant was not challenged on his version of events in relation to what he said in these paragraphs. RKS, in her evidence, very candidly stated that she could not remember precisely what the claimant said, and therefore did not dispute his recollection. I accept his evidence as to what he communicated as set out immediately above. The respondent suggested that in fact these disclosures took place in early 2018, as opposed to late 2017. However, in her evidence, RKS accepted that she was in attendance at an LHRG meeting in October 2017. I therefore accept the timeframe placed on this disclosure by the claimant.

106. At this stage of my findings I will deal solely with whether disclosures of information were made. Matters of reasonable belief will be dealt with in my conclusions.

Early 2018

107. In early 2018 the claimant and RF were having a discussion, in which the claimant raised with RF his concerns about how the Force handled personal data regarding sickness. RF advised the claimant to speak to NB, who was Head of the Employment and Well-Being Team. RF himself spoke to NB a few days later to inform her of his discussion with the claimant. He also discussed this matter with TS.

108. It was around early 2018 when the LPA's approach to LHRGs changed. Until that point, the Resourcing and Resilience meeting had been held together with the LHRG, meaning that there would be several people in attendance. At around the beginning of 2018, this pattern changed. Resourcing and Resilience meetings were held separately to the LHRGs. From that time on, it was only the Deputy LPA Commander and RKS who would attend the LHRGs. It was RKS's evidence that this change occurred as a result of the claimant's concerns. I have no evidence to the contrary, and therefore accept that some progress was made as a result of the claimant raising concerns.

109. On 19 February 2018, there was a meeting of the Deputy LPA Commanders - [129]. On 20 February 2018, Alison Whitehouse ("AW"), now Deputy Head Strategic Governance, emailed Alison Murphy ("AM"), HR Business Partner – Innovation and Change, to record that concerns about data protection and particularly SRPs and their storage were raised - [129]. AM replied to say that an audit had been done and there would be an action plan to address any changes required before 25 May 2018 - [128]. SW's take

on this was that consent was not required for the SRP process, as that was not the legal basis relied upon - [128].

110. On 2 March 2018, this email chain was forwarded on to the claimant by Chief Inspector Neil Kentish ("NK"). The claimant replied to NK, as well as responding to TS, AW, SW and AM. In his email he stated the "need to get this right before May" - [127]. He had clearly done some research into GDPR, by looking at the ACAS website - [126].

111. AM responded to the claimant's email, stating that further advice would be given around health data once the audit had been completed – [126].

April 2018

112. The claimant met with RKS in the first week of April 2018, in which he highlighted some of his concerns around him being able to access sickness information on the SSAMI Attendance Management Application for other departments and LPAs.

113. On 9 April 2018, RKS asked the claimant to send to her and Priyan Shah, Business Systems Information Accountant, ("PS") a screenshot of the access he had to officers' RDFs - [135]. RKS had to chase the claimant on 17 April 2018 - [134]. The claimant responded with a screenshot on the same day - [132/133]. This screenshot showed that the claimant had access to RDFs completed in relation to officers who were not within his LPA, and for whom he had no line management responsibilities.

114. PS's response was to state that, if there is sensitive data kept on the RDFs, then that would be an issue. PS stated that "the guidance should be that there is not sensitive data as part of the process ..." - [132]. The guidance for the completion of RDFs was not altered to include such guidance.

115. PS was sufficiently concerned to suggest that, if no review of the RDF process was possible before the GDPR came into force, the RDF process should be withdrawn until reviewed – [132].

116. It was the claimant's contention that even a blank RDF would still amount to sensitive information, as one could infer from it that there was some health condition requiring recuperative duties to be considered - [131].

117. RKS summarised the position in her email of 19 April 2018 - [130/131]. She stated that:

> "the form should not contain sensitive medical information"
>
> "[GS] has flagged up your concerns with [AM] and Kate Saunderson ("KS") and will discuss this further".

118. In April 2018, NB headed up a review of the AMP. The introductory email, asking for input, was sent to the claimant and several others - [136]. The email set out that it was envisaged that 3-4 meetings would be needed in order to complete this review, and the proposed dates of those meetings were

included in the email - [138]. The claimant did not attend any of these meetings - [RKS/WS/10].

Protected disclosure 2 (May 2018-August 2018) - the claimant raised data protection concerns verbally at the quarterly Deputy Commanders' meetings – GOC paragraphs 9, 33b

119. Paragraph 9 of the GOC: "the claimant requested that the subject of GDPR was placed on the agenda at the quarterly deputy commander's meetings. At several meetings between May 2018 and August 2018 he raised his concerns".

120. Paragraph 33b of the GOC: "from May 2018 onwards, at the quarterly deputy commander's meetings he raised his concerns on numerous occasions"

121. At [C/WS/32(a)], the claimant sets out a meeting which he thinks occurred in March 2018, chaired by C/Insp Kentish. The claimant's evidence as to what he said is that he had concerns around data in terms of sickness processes, namely the volume of data retained, the period it was retained for, and the way in which the force managed sickness processes such as the LHRG meetings. He also says that he raised that the information Commissioner's office can levy fines.

122. At C/WS/32(b), the claimant sets out his evidence in relation to a June 2018 meeting, chaired by C/Insp Burroughs. The claimant says he expressed some concerns about the sickness management processes, given the impact of the coming into force of GDPR legislation. In the claimant's witness statement at paragraph 32(b), he states that he asked questions of the HR team. However, he also goes on to say that he gave the example that he could view everything about an officer who was off in 1997 with vomiting.

123. It is the respondent's case that it is only aware of two specific deputy commander's meetings within the timeframe set out here. Those meetings took place in February and June 2018. The claimant was not able to comment as to whether those were the only two meetings in this timeframe, or not.

124. [LU/WS/3] provides evidence on this point. LU states there that she recollects one Deputy Commanders' meeting at which the claimant raised GDPR issues. This, she told me, was in March 2018. The extent of LU's evidence, both in her witness statement, and in oral evidence, was that the claimant mentioned GDPR, and said that the Force was not doing enough to prepare for its implementation. I note the wording of the witness statement, "I do not recall the specifics of what he said" - [LU/WS/3]. In her evidence to me, she said "I can't remember the extent of the conversation". This is different from LU positively saying that the claimant gave no specifics.

125. I note that, in terms of timing, at the time of any June 2018 meeting, LU was not in attendance, as she had taken on the role of T/Supt, LPA Commander, and so did not attend the Deputy Commander's meetings for a few months. She returned to her Deputy Commander role in August 2018 – LU/WS/3.

126. I have contemporary evidence of a meeting in February 2018, on [129], an email from Ali Murphy on 20 February 2018, in which it is recorded that, at that Deputy Commander's meeting, "...the issue of GDPR was raised. There was a specific concern around SRPs and the storage of these as individual [sic] will consent to the information written in these but not specifically about the storage".

127. In relation to a meeting in June 2018, at [139], it is clear that TS envisaged issues regarding GDPR being raised at this meeting.

128. I accept that in a meeting (February 2018), chaired by C/Insp Kentish, the claimant disclosed information that he had concerns around data in terms of sickness processes, namely the volume of data retained, the period it was retained for, and the way in which the force managed sickness processes such as the LHRG meetings. He also raised the fact that the Information Commissioner's Office can levy fines.

129. Furthermore, I accept that in the June 2018 meeting, chaired by C/Insp Burroughs, the claimant expressed some concerns about the sickness management processes, given the impact of the coming into force of GDPR legislation. In [C/WS/32(b)], the claimant states that he asked questions of the HR team. However, he also goes on to say that he gave the example that he could view everything about an officer who was off in 1997 with vomiting.

130. The claimant's evidence during cross examination on this point was clear and consistent with the evidence provided in his witness statement.

131. I find that at both these meetings, the claimant disclosed information regarding his concerns.

Protected disclosure 9 (July/August 2018) – the claimant raised data protection issues verbally at a meeting with TS and RKS – GOC para 17, 33(i)

132. Paragraph 17 of the GOC: "the claimant attested that the existence of the [RDF] was sensitive data because it related to medical information and that it was a breach of GDPR. In the claimant's view there was no requirement for him to have sight of all of these forms".

133. Paragraph 33(i) of the GOC: " in or around July or August 2019, the claimant attended a meeting with TS and RKS regarding a new process for line managers… The claimant raised concerns over the new process and how it would be in breach of GDPR due to him having access to medical information for the entire force".

134. In terms of disclosure of information, at [C/WS/37], the claimant says that he was invited to a meeting to discuss the use of RDFs, and that he:

> "explained that there was a free text box that often contained detailed descriptions of health conditions and the form was only created if a person was not able to perform full duties, and in such cases its very existence was sensitive data. I also explained I had access to every form that had ever been written and that these did not need to be retained as this form was only a snapshot in time".

135. He went on to state that the fact that officers were bound by a Code of Ethics "did not absolve us of our responsibilities to protect and safeguard sensitive data".

136. It was put to the claimant in cross examination on this point that one of the issues he raised was that the RDFs used contained too much health information. The claimant affirmed this, going on to state that his concern was also that anyone of his rank could see that medical information.

137. RKS's evidence on this point was that there was a meeting around the new RDF system, at which the claimant stated that the existence of an RDF demonstrated that the individual was on recuperative duties. She also confirmed in her evidence to me that the claimant raised the point that he could see every RDF on the system. RKS denied being at the specific meeting to which this PID refers (see RKS/WS/21 and in cross-examination).

138. I find that this was a disclosure of information as alleged at PID 9.

Adverse Treatment 1 (since September 2017) - (i) the claimant's feeling that his concerns were not listened to; (ii) RKS would behave in an unprofessional manner, sighing and tutting in meetings chaired by the claimant; (iii) when challenged, RKS would say "we are all managers here" to try to justify why managers had access to information they should not – GOC 8, 12, 37(a) - alleged perpetrator RKS

139. It is RKS's case that the claimant caused her some anxiety in the manner in which he dealt with her meetings:

139.1. paragraph 14 of her statement she states "it was common for the claimant to disregard the LHRG meeting; I generally had to remind him, and I was hesitant to raise it as it always caused me a degree of anxiety and dread, as it was clear that he did not consider it worthwhile";
139.2. at paragraph 18, "I found the claimant to be difficult at meetings from the start, which I did raise with my line manager, TS and later on to RS and NB";
139.3. RKS ended up going on sick leave, purportedly because of the claimant's behaviour towards her - [RKS/WS/18];
139.4. RKS states that she found the claimant's attitude towards her difficult in meetings as it was "aggressive and patronising" - [RKS/WS/19].

140. This issue in the working relationship of the claimant and RKS appears to have come to a head in a meeting of 30 August 2018, at which RKS told me she broke down in tears and left the meeting. It was disputed that meeting to lead to RKS becoming upset.

141. An LHRG meeting was held between the claimant and RKS on 30 August 2018. RKS made notes of this meeting after the event, on Monday 3 September – see reference at [634]. The notes are at [628-636] in their entirety. It is at this meeting that RKS alleges that the claimant said to her that she "added no value to the LPA or any meetings" - [632]. RKS alleges that the claimant's treatment of her in this meeting led to her breaking down in tears and leaving the meeting. This is recorded in RKS's note at [634].

142. The claimant alleges, conversely, that RKS rolled her eyes and tutted at the claimant (**Adverse Treatment 1(ii)**). I note the reference to this behaviour in a meeting, minuted at page 647, in which the claimant described this behaviour by RKS.

143. Further, the claimant alleges that RKS, on being challenged by the claimant, stated "we are all managers here" in order to justify why managers had access to information they should not have (**Adverse Treatment 1(iii)**).

144. RKS stated in her evidence to me that she did not remember rolling her eyes deliberately. However, had she done this it was in reaction to the claimant's behaviour towards her at various meetings - [RKS/WS/19]. RKS told me that, if she rolled her eyes, it was because the claimant made her feel that whatever she did in relation to his concerns was not good enough. She also said it was due to his "constant bullying" of her.

145. In relation to the allegation that she said "we are all managers here", RKS's evidence is that she was not a manager, and therefore it would be odd thing for her to have said. She has no recollection of saying these words. At that stage RKS did not manage anyone.

146. In light of the fact that tutting and eye rolling is explicitly mentioned by the claimant and recorded in a later meeting, I find that it is more likely than not that RKS did tut, sigh, and/or roll her eyes at the claimant. As to the reason for this behaviour, I will address this in my conclusions below.

147. In terms of the comment "we are all managers here", I find it is more likely than not that this comment was not said. This is because, on balance, it would be an odd thing to say given that RKS was not managing anyone at that point in time.

148. The claimant also alleges that he was made to feel that his concerns were not listened to (**Adverse Treatment 1(i)**). No specific date is attached to it, however I will deal with it here, as I have dealt with **Adverse Treatment 1(ii) and (iii).**

149. In general, looking at RKS' treatment of the claimant's concerns, I consider that she did listen to what he had to say. For example, she escalated his concerns raised with her in April 2018 to PS – [135]. Furthermore, regardless of RKS' personal feelings towards the claimant, she maintained a professional exterior in relation to him, and was professional and supportive during his sickness absence – for example, on 11 September 2019 on [206]:

> "I do have concerns around [the claimant] and would recommend you speaking to Bobbi [BR] around contact/medical certificates going forward. I know she was going to ask Dave Turton to make contact, but due to the last contact being in August and his medical certificate being out of date, this really does need to be addressed".

150. These are not the actions of someone who has not listened. I accept that there was a breakdown in the working relationship between RKS and the claimant, however I find that RKS did listen to the claimant's concerns.

Protected Disclosure 6 (around September 2018) - the claimant raised data protection issues verbally at a meeting with NB, TS and RF – GOC 14, 33(f)

151. Paragraph 14 of the GOC: “The claimant laid out in detail his Concerns and minutes were taken by TS”.

152. Paragraph 33(f) of the GOC: “In or around late March early April 2019, the claimant...once again raised his Concerns.”

153. The claimant attended a meeting with RF, TS and NB in September 2018 – [647-649]. From the notes it is clear that the claimant did raise matters relating to data protection, for example:

> “no appreciation data protection...”;
>
> “don’t protect staff information...”;
>
> “concern about data protection...”.

154. I note that the respondent accepts that there was some disclosure that related to the claimant’s Concerns in this meeting. Given this concession, and the contemporaneous notes, I accept that the claimant made a disclosure of information as alleged at PID 6.

Protected disclosure 7 (around September 2018) – the claimant followed up his data protection concerns raised at the meeting with NB, TS, and RF (PID 6) verbally the following day with RF - GOC para 15, 33(g)

155. Paragraph 15 of the GOC: “… The claimant followed up with RF and explained why he was so passionate about how the Force treated personal data, and the importance of this; he also reiterated his concerns”.

156. Paragraph 33(g) of the GOC: “…the claimant met with RF and explain why he was so passionate about how the Force treated personal data and reiterated his concerns”.

157. The claimant’s evidence on this point at [C/WS/41] is that he “reiterated his concerns” as well as stating why these issues of data protection mattered, in terms of trust within the Force.

158. On the claimant’s evidence, it is the “reiteration of concerns” that would equate to a disclosure of information. Setting out the reasoning behind the need to get data protection right is not a disclosure of information, in my findings.

159. RF’s evidence is that he has no recollection of this follow up discussion with the claimant. He also told me that, looking back, he can see no requirement for such a follow-up discussion as the claimant had made his concerns perfectly clear in the meeting the day before.

160. On balance, I consider it more likely that RF has, in the course of time, forgotten this discussion. This is completely understandable, given the time that has passed, and that there was no reason at the time for RF to attach

any particular significance to the conversation. I find that the claimant is more likely to remember this discussion that RF as evidently, at the time and subsequently, these data protection matters were hugely important to him. He would therefore automatically attach more weight to any conversations on this subject than the people on the receiving end of his concerns. I find it more likely that RF has forgotten, than that the claimant has made up this conversation.

161. I therefore accept that the claimant disclosed information as set out in PID 7.

September 2018

162. On 10 September 2018, TS sent to the claimant and Peuleve Marion (Head of Information Management) ("PM") an email stating that "[the claimant] has raised some very valid concerns specifically relating to attendance management" - [149]. On the same day, TS asked the claimant if he may be available to speak regarding Attendance Management - [150].

Protected disclosure 8 (on 1 October 2018) - the claimant raised data protection issues verbally at a meeting with NB – GOC paragraphs 16 and 33h

163. Paragraph 16 (repeated at 33h) of the GOC: "In or around later April 2019, the claimant had a subsequent meeting with NB to discuss his concerns".

164. The claimant sets out in [C/WS/53] that he:

> "laid out again that [he] felt that the processes and recording of sensitive health data was not in line with GDPR and the Code of Ethics."

165. Turning to NB's statement, at NB/WS/20, she states:

> "There was some discussion as to the concern(s) that [the claimant] had with LHRG meetings and what could be improved. More particularly [the claimant] questioned the purpose of the recuperative duties form and whether it should be sent to Deputy LPA Commanders, the content and volume of information on a [SRP] and the overall purpose of the Force's Unsatisfactory Performance and Attendance procedures".

166. The respondent concedes that some disclosure of information was made in this discussion. On the basis of the evidence of both the claimant and NB, I accept that a disclosure of information was made in relation to the LHRGs, SRPs and RDFs.

Adverse treatment 2 (since September 2017 to October 2018 (when the claimant reverted to rank of inspector)) - not being listened to/placed in a position where he felt he had to elect for voluntary demotion from Chief Inspector to Inspector – alleged perpetrators RKS, NB, RF, JC

167. On 14 October 2018, RF sent the claimant an email ([151-152]) , setting out that the LPA Commander and Deputy relationship between the two of them was not working "as effectively as it could do which is disappointing". RF went on to raise concerns about the lack of communication he

experienced from the claimant via telephone and email. He gave no sign of understanding what, if anything, had triggered this lack of communication – [151].

168. The following day, on 15 October 2018, the claimant and RF had a meeting, at which the claimant informed RF that he would be stepping down to Inspector rank.

169. The claimant alleges that he felt forced to demote due to not being listened to and being placed in a position where he had no other option. Looking at the contemporaneous evidence as to the reason for the claimant decided to demote, I have seen the following documents within the bundle:

169.1. 1 November 2018, email from the claimant to KL, RF, and Nicola Ross – "I have performed the role of chief inspector for just over a year and after careful consideration I have concluded that at this time in my career it is not the royal rank for me" - [160];

169.2. 15 November 2018, email from the claimant to TS – "I would like to make it clear that one of the principal drivers for taking the decision to return to the rank of inspector was as a direct result of the way that you, RK's and NB have conducted yourselves. You have all made it very clear that diversity of thought is very unwelcome within TVP I hope that any other newly promoted chief inspectors do not encounter the same treatment if they dare to take an alternative view to you" - [163];

169.3. 12 August 2021, a letter from Pankhurst psychiatry – "Robert stated that he has changed his role in the police force and was demoted at his request as he was struggling to cope with a more senior role and could not cope in the administrative tasks such as constantly checking emails" - [443];

169.4. 17 October 2022, letter from Psymplicity (psychology services) - "he works as a program manager or a charity having stepped down from a more senior role in the police force due to struggling to cope with administrative tasks… He worked for over 17 years in the police force and achieved the senior role of chief inspector. Mr Murray requested a demotion following issues with focus, organisational skills and completion of administrative tasks." - [736].

170. I accept the claimant's evidence that, some time after the reduction in rank, he chose not to disclose to medical experts that the reason for doing so was connected in any way to his concerns. However, looking at the more contemporaneous evidence from November 2018, I note that the claimant believed that it was his difference in opinion from RKS, TS and NB that was the cause of their behaviour towards him. Notably he does not say that it is because he raised specific disclosures about data protection.

171. I have to consider the claimant's reasoning for stepping down. I find that his reason for stepping down was partly the requirements of the job, and partly the fact that he felt that it was his lack of agreement with RKS, TS and NB.

October 2018

172. On 25 October 2018, Chief Inspector Mark Spencer ("MS"), Deputy LPA Commander for Surrey at the time, raised a concern about the RDFs' compliance with GDPR, stating at [157]:

> "if identifying individuals and personal data re: causes for recup and capacity (or lack of) then I think it should be restricted to viewing by only the relevant people/manager - not all...currently I think I can see all details on all forms – not sure this complies!"

173. On 31 October 2018, the claimant emailed RF, sending him a draft of the email he intended to sent to KL, regarding his decision to step down. The claimant did not mention any data protection concerns, or any difficulties he was having in the LPA as a result of those concerns - [158]. On 1 November 2018, the claimant sent his email to KL to inform her of the decision to step down - [160-161].

Protected disclosure 3 (end of October 2018) – the claimant complained verbally to JC at the end of October 2018. The complaint covered data protection concerns – GOC paragraph 11, 33c

174. Paragraph 11 of the GOC: "the claimant detailed why he had taken the decision to reduce his rank including the bullying behaviour with [RF] together with his Concerns and the impact of the treatment he had received as a result of raising these".

175. Paragraph 33c of the GOC: "at the end of October 2019 [sic] the claimant reported his concerns to DCC Campbell".

176. In [C/WS/58], t claimant's evidence is that he told JC of "specific examples of officers' data that was either shared of misused".

177. It appears to be the respondent's case that any data protection issues discussed were only a small fraction of the subjects discussed between JC and the claimant at this meeting. The proportion of the meeting that the claimant's concerns took up, I find, is irrelevant: the question is what he said in relation to those concerns. The claimant's evidence to me in cross-examination was that he gave JC specific examples of cases of alleged data breaches.

178. JC's evidence to me on this point was that there was such a meeting after a Service Improvement Review, and that the claimant did raise concerns about the Force's handling of data. However, JC's memory of this meeting is that this was very much a minor part of their conversation on this day, and even then the emphasis was that the claimant was disgruntled that he had raised an issue and those in People Directorate did not agree with him. JC's memory is that the information from the claimant was not presented to him in a way that was focused on data protection: had it been, he (JC) would have taken this point forward.

179. This is mainly consistent with what JC says in JC/WS/7. Although there, he does give slightly more detail, stating that the claimant "said he had raised issues … about how they stored sickness information. He talked in general

terms about how sickness information is confidential and should not be shared". JC does not remember any specific examples of officers being given to him by the claimant. I note that a lack of memory is not the same as someone positively denying that something occurred.

180. I find that the claimant is more likely to remember the detail of this conversation than JC. I also find that JC went into this meeting intending the focus to be on why the claimant self-demoted. Therefore, JC is more likely to remember those aspects of the conversation that fit with his understanding of the purpose of the meeting.

181. I find that the claimant did give specific examples of officers and data protection issues. I find that, as accepted by JC, the claimant also raised that sickness information should not be shared. With those two aspects of this conversation placed together, I accept that the claimant did make a disclosure of information as alleged in PID 3.

Winter 2018

182. On 15 November 2018 at [163], the claimant sent an email to TS explaining that:

> "one of the principal drivers for taking the decision to return to the rank of Inspector was as a direct result of the way that [TS], [RKS] and [NB] have conducted yourselves. You have all made it very clear that diversity of thought is very unwelcome within TVP"

183. On 27 November 2018, the claimant took up his post as Inspector on Team 5 at Reading from this date – [162/613]. RF had no dealing with the claimant from this time onwards.

January 2019

184. In January 2019, DH started to line manage the claimant. The two gentlemen had however come across each other in late 2018, when DH had sought the claimant's advice regarding choosing an LPA for his next posting. His choice was between South and Vale and Reading. The claimant told him that RF had been impossible to work with, questioning his integrity- - [DH/WS/2].

185. It is DH's evidence that the relationship between himself and the claimant, although it started well, began to become more strained. DH put this down to the fact that he was unable to address the issues the claimant was raising in relation to data protection – [DH/WS/3].

Protected disclosure 5 (28 March 2019) - the claimant raised data protection issues by email with his line manager, DH, and copied in a member of the Employment and Wellbeing Team – GOC paragraphs 13, 33(e)

186. On 26 March 2019, DH emailed the claimant to ask him to review the sickness for his team members and do any updates that are required - [173].

187. On 28 March 2019, the claimant replied to DH, stating amongst other things that he was concerned that he had access to sensitive data (in the form of SRPs) for officers for whom he did not have line management responsibility - [172]. He made it clear in this email that he considered this to be a breach of GDPR, and that consideration may need to be given to self-reporting to the Information Commissioner's Office. The claimant stated that he would not place sensitive health information of his team onto the respondent's system until he was satisfied that the breach was rectified.

188. This is said to be PID 5. The respondent concedes that this email is a disclosure of information: I find that it is such a disclosure.

189. DH responded to this email at [654], and escalated it to TS and Detective Superintendent Stan Gilmour, Head of Protecting Vulnerable People ("SG") at [174] on 29 March 2019. In that email, DH stated that he was "really disappointed". DH stated:

> "My concern is that [the claimant] has already been very vocal on his opinion and should others take his stance or become sympathetic to it then we are going to be in a difficult and potentially indefensible position when it comes to the recording of sickness visits, recoup planning and RTW's etc".

190. This is consistent with DH's evidence to the Tribunal, and in his witness statement ([DH/WS/4]) that his concern was what he referred to as a "boycott" on the recording of sickness information, instigated by the claimant.

191. DH received a response from TS on the same day [175]. She explained that, when a line manager/supervisor access Team View on SSAMI, there is a link to click if the information shown on that page is inaccurate in terms of line management responsibilities. TS placed the responsibility on the supervisor to raise any issue either by following the above-mentioned link, or by reporting the issue to a People Services Resourcing Advisor or others. Evidently, this was in fact exactly what the claimant was doing; he was raising the issue with People Directorate and others.

192. TS recorded that she acknowledged that:

> "this will need to be considered as a data breach but would suggest that the LPA takes responsibility for this as the action".

193. So, TS's view was that this was a matter to be dealt with at a local level.

Protected disclosure 4 (between January and May 2019) - the claimant made verbal complaints during monthly management team meetings about his data protection concerns – GOC paragraphs 12 and 33(d)

194. The claimant covers this PID 4 at [C/WS/62-63]. The only specifics given relate to the Leadership meeting on 4 April 2019. In relation to any other Leadership meeting(s) in the period January and May 2019, I am not satisfied I have sufficient evidence to determine that any disclosures of information took place at any other meeting.

195. Focusing then on 4 April 2019 meeting, the notes are at [176], and state:

"[the claimant] expressed concern about data protection particularly with regard to health data".

196. It is conceded by the respondent, and I find, that at this meeting, the claimant made a disclosure of information relating to his Concerns, as alleged at PID 4.

Adverse treatment 3 (4 April 2019) - DH saying that the claimant was "just trying to scare people/was making trouble"

197. The Leadership meeting on 4 April 2019 was chaired by PJ, with the claimant and DH, amongst others, in attendance. At that meeting, the claimant raised his concerns around GDPR, as noted at [179]. DH advised that it was recognised that the current computer system had its flaws, and that there was a plan to replace it with a system that was fit for purpose. I note from [SW/WS/14], it appears that this new system was not put in place prior to the claimant's departure from the Force.

198. On the same day (4 April 2019), it is alleged by the claimant that DH said that the claimant was "just trying to scare people" and that he was "making trouble".

199. DH's evidence on this point is that he did not remember saying such things, but that it is possible he did. The reason he gave for making those statements (if he did) was that he was frustrated by the claimant's move to "boycott" Peoplesoft, whilst also encouraging others to do the same (DH/WS/9).

200. I find that DH did make these comments. As to the reason why they were said, I will deal with this in my conclusions.

Summer 2019

201. The claimant went off sick as of 15 May 2019 - [182]. On the same day, RKS emailed DH to ask him what the reason was for the claimant's absence, as nothing had been recorded on the system - [182]. DH confirmed that the claimant was on sickness absence due to stress, although he was not able to clarify whether this was work related. DH understood that the claimant had been correctly signposted – [182/183]. It transpired from DH's evidence to the Tribunal that this information came to DH by informal discussions he had had with people close to the claimant.

202. Following this exchange, RKS offered to create an SRP for the claimant, which she duly did – [181]. The SRP is at [439], and shows that it was created on 15 May 2019.

203. On 24 July 2019, the claimant asked PJ if she would be able to take over DH's role as his contact whilst off on sick leave - [194]. PJ agreed to this, stating that it was DH's understanding that he may be a *"contributing factor"*, hence why he had made little contact - [195].

204. From the time at which PJ took over management of the claimant's sickness absence, communication appears to have been fairly regular and demonstrated concern for the claimant's wellbeing – see texts at [184-186].

In those texts, I note that PJ expressed surprise that no OH referral had been done before her involvement, and that this should have happened.

Protected disclosure 11 (7 August 2019) - the claimant raised data protection issues in writing by emailing JH, attaching a document setting out his concerns – GOC paragraphs 20 and 33(k)

205. The email and attachment relied upon as being PID 11 are at [197] and [198-200] respectively. It is conceded by the respondent that the document at [198-200] amounts to a disclosure of information.

206. On 9 August 2019 JH returned to work, having had a two-week period of annual leave. He was on the gold commander duties from 9 to 18 August 2019.

Protected disclosure 12 (20 August 2019) - the claimant raised data protection issues in writing by email to JH, attaching a document setting out his concerns – GOC 20, 33(l)

207. On 20 August 2019, having received n response to his email attaching [198-200] on 7 August, the claimant chased JH for a reply – [196]. Again, this is accepted to be a disclosure of information by the respondent.

Protected disclosure 13 (23 August 2019) – claimant raised data protection concerns verbally with TDM – GOC para 21, 33(m)

208. Paragraph 21 of the GOC: "between August 2019 and October 2019 the claimant also had a number of calls with TDM to discuss his concerns".

209. Paragraph 33(m) – "on 23 August 2019, the claimant met with TDM and reiterated the concerns he had laid out in his email of seventh August and 20 August 2020 to JH"

210. In [C/WS/82], the claimant sets out that he told TDM in a meeting about how he could see all the RDFs and how the meeting structure of the LPAs was not in line with GDPR, and that fines and reputational damage could follow.

211. I have contemporaneous evidence regarding this conversation at [203], which is an email from the claimant to TDM on 23 August 2019 (and the subject matter of PID 14 below), following this meeting, in which he (the claimant) forwarded the document he had already sent to JH.

212. Cross-examination of the claimant on this point focused more on TDM's reaction to this verbal discussion, as opposed to what in fact the claimant said. It was also suggested to the claimant that the focus of this conversation was around his return to Chief Inspector status, rather than any data protection concerns.

213. Looking at TDM's evidence, he sets out his recollection of this discussion at [TDM/WS/5-6]. TDM states there that the claimant gave him a copy of a document, confirmed in his evidence to me to be that at [198] onwards. In his witness statement, TDM says that he read this document during their meeting. In cross-examination, he moved slightly from this position, stating

that, given they were meeting in the canteen, that was the context and therefore he did not read it thoroughly at that time. TDM's evidence to me was that, out of the points discussed in this meeting, the time spent on the document at [198] was limited; he only "glanced" at it.

214. I accept that the claimant made disclosures of information in this conversation. He handed TDM the document at [198], which in itself is conceded by the respondent as being a disclosure of information.

215. The fact that TDM only glanced at it may well go to the issue of causation between any action by TDM and any disclosure. However, I am currently dealing with the fact of a disclosure. On giving TDM the document at p198], the claimant made a disclosure of information as alleged in PID 13.

Protected disclosure 14 (23 August 2019) - the claimant followed up raising data protection concerns verbally with TDM (PID 13) in writing by sending an email to TDM – GOC paragraphs 21 and 33n

216. As stated above, the respondent has conceded that PID 14 was a disclosure of information. The relevant document containing that information is at [198-200].

217. On 28 August 2018, JH replied to the claimant's emails on 7 and 20 August 2019 - [196]:

> "Apologies for the delay in getting back to you. I understand you have recently met with [TDM] to discuss your concerns. [CW] is currently away on AL but when he is back, he will lead on ensuring that you have the support you need to get you back to work at the earliest opportunity. I am happy to meet with you if there [sic] issues you feel I can assist with which you have been unable to address with [TDM]".

Protected disclosure 10 (between August 2019 and September 2019) – the claimant raised data protection issues verbally on the phone with TDM – GOC paragraphs 21, 33j

218. Paragraph 21 of the GOC (repeated at para 33j): "Between August 2019 and October 2019 the claimant also had a number of calls with TDM to discuss his concerns".

219. The telephone calls in this time frame are covered at [C/WS/81]. There is nothing in that paragraph that relates to what the claimant actually said in terms of any disclosure of information; it focuses instead on TDM's words. No specific words of the claimant were set out in his evidence to the Tribunal.

220. I cannot therefore be satisfied that there were words spoken which amount to a disclosure of information. As such, I find that there was no disclosure of information, and therefore no protected disclosure made, as alleged at PID 10.

Adverse Treatment 6 (15 May 2019 to 22 November 2019) - DH telling colleagues not to contact the claimant whilst off sick – GOC paragraphs 19, 37(f)

221. DH's evidence on this issue is that he did no such thing – [DH/WS/13]. He gave evidence that he was aware that colleagues were visiting the claimant and were in regular contact with him.

222. The claimant's evidence is that Sgt Melanie Todd ("MT") told him that she, along with other sergeants, had been briefed by DH not to contact the claimant – [C/WS/74]. This is second-hand evidence, or hearsay evidence. MT has not been called as a witness.

223. The only first-hand evidence I have as to whether this conversation took place or not is from DH himself. He is adamant that he did not brief the sergeants as alleged. I accept this evidence and find that DH did not tell the claimant's team not to contact him.

Adverse Treatment 7 (between May 2019 and the date of his return to work on 25 November 2019) - DH's failure to manage the claimant's absence in accordance with the respondent's absence procedure - GOC paragraphs 19, 37(g)

224. As mentioned above, the claimant's SRP is at [439]. It sets out the following details:

224.1. The first entry is dated 5 August 2019 as follows *"Management of Insp Murray has passed to A/DCI Penny Jones on his request";*
224.2. No Occupational Health ("OH") referral was done when the claimant initially went off on sick leave;
224.3. The claimant returned to work on 25 November 2019 on recuperative duties, office bound and working on a project for Reading LPA;
224.4. On 29 November 2019, an urgent referral was made to OH;
224.5. On 6 January 2020, the claimant met with PJ to discuss his health and recuperative duties. The claimant initially felt he would be able to do the ICT Inspector role on Team 5 and no longer be marked on the system as recuperative. However, that position changed swiftly, and the claimant asked if he could stay on in his current role until the end of March 2020, due to his anxiety. PJ agreed that the claimant would do full hours, but on recuperative duties;
224.6. On 24 January 2020, the claimant was recorded as doing really well and being positive. He had handed to PJ his Mind wellbeing plan, and was planning to undertake some counselling;
224.7. On 14 February 2020, the claimant is recorded as still being on recuperative duties, but back on full time hours. PJ referred the claimant to OH to ascertain whether he was fit to return to the ICR Inspector role on Team 5, and to manage staff again. The SRP records that "it is nice to see him back at work smiling, working hard and enjoying work";
224.8. On 27 February 2020, the claimant had a conversation with OH in which they confirmed that he was fully deployable and no longer needs to be on recuperative duties. The claimant agreed to return to the Team 5 role as of 3 March 2020. The SRP was closed after this discussion.

225. DH sent the claimant a few WhatsApp messages regarding his sick leave – [187-188], stating as follows:

    225.1. Undated, but later clarified as being 21 May 2019 - "Hi Rob, I hope you don't mind but Tilly gave me your number. Let me know when you're ready for me to contact you. No rush, or pressure. I hope you are beginning to recover. Anything I can do for you just ask but I promise I won't be pestering you for contact. All in your own time! Take care. Darran";

    225.2. 23 July 2019 at 1438 – "Hi Rob, how are things? It would be great if we could meet up in the next week or so. I need to get an up to date medical certificate off you as yours has expired, and also to discuss your recovery (which I hope is going well) and eventual return to work. Happy to buy the coffee if you want to meet away from home. Darran";

    225.3. 23 July 2019 time unknown – "Thanks Rob. I have your sick note. Let me know when is good to catch up over next few weeks".

226. The sick note mentioned above was the one sent by email by the claimant on 23 July 2019 at 1521 - [190].

227. That is the extent of evidence we have in the bundle that demonstrates communication from DH to the claimant. It was RKS's evidence to me that, if this was the sum total of the correspondence from DH to the claimant, this would not be compatible with the respondent's AMP.

228. DH's evidence is that he believed that he had tried to reach the claimant by telephone, but had been unable to do so.

229. Looking at the SRP for the claimant, there is no reference to any attempt made by DH to contact the claimant by any means.

230. It was accepted by DH that he had not made a reference to Welfare, as is required under the AMP. Further, no referral was made to OH by DH during his line management of the claimant. This is again a breach of the AMP.

231. On 16 August 2019, DH placed a note on the system, stating that the claimant had had contact with PJ, who had met with him and exchanged some WhatsApp messages – [202]. DH recorded that it appeared that the claimant did not wish to be in contact with him, and that therefore DH was content for PJ to continue to be the claimant's contact whilst he remained off sick.

232. That note also states "I am aware that part of Rob's concern is that I did not contact him in the early days of his sickness. This is unfortunate as I had acted on advice from a number of colleagues who knew him well that contact from me would raise his anxiety, I acted on that advice and this has appeared to have backfired" - [202].

233. This therefore appears to be an admission that there was a lack of communication at the beginning of the claimant's sickness absence. It also gives a contemporaneous explanation for that lack of communication.

234. I note also the record of Sickness Absence Contact Log for the claimant at [446-450]. The log at [450] shows the earliest contact with the claimant as

being 11 July 2019. From the record at [446], it appears that substantive contact was only made from July 2019 onwards.

235. I find that DH did fail to manage the claimant's absence in accordance with the AMP, at least initially. I will return to consider the reason for this failure in my conclusions.

Autumn/Winter 2019

236. On 11 September 2019, the claimant's management was passed onto Dave Turton ("DT") - [206].

237. On 4 October 2919, RKS emailed TS to say she did not want to be involved anymore with the claimant's recuperative duties - [213]. Instead, TS became temporary "Case Worker" for the claimant - [216]. TS was swiftly replaced by Fiona Billings ("FB"), Business Partner Employment and Well Being in October 2019 - [219].

238. Prior to the claimant's return to work, on 4 November 2019, BR met with the claimant - [450]. This meeting was called by BR, to introduce herself as the claimant's second line manager.

Protected disclosure 15 (prior to returning to work, in October 2019) - the claimant raised data protected issues verbally in a meeting with BR – GOC paragraph 33(o)

239. Paragraph 33(o) of the GOC: "in this meeting [the claimant] set out his Concerns around the Force's breach of GDPR".

240. It transpired, on inspection of documents within the bundle, that this meeting in fact occurred on 4 November 2019 – [450].

241. It is conceded by the respondent that there was a disclosure of information made during this meeting.

242. BR's evidence is that this meeting was held to discuss what the claimant's return to work would look like. In relation to any disclosure of information, BR stated at BR/WS/11 that:

> "[the claimant] stated that his mental health and worries about returning were in relation to how the Force handled sickness and recuperative data, and in particular he references his experience at the South and Vale LPA".

243. The claimant's evidence as to what he told BR at this meeting is at [C/WS/85]:

> "The majority of our meeting was me detailing how I had been trying to get the Force and in particular the HR teams to understand their responsibility around protected health data. I gave specific examples of how I had access to sensitive data online that I should not have in the form of recuperative duties forms. I talked about how the culture and structure of LHRG meetings meant that sensitive and detailed information relating to health were discussed in the presence of people who had no legitimate reason to access it including the Police Federation and Unison representatives. I talked about historical and recent cases where on her own LPA the details on an Inspector's MS diagnosis were placed

> on the overhead protector while she was in the room and she was forced to disclose the details of her health condition to her peers in the room. …"

244. The claimant was cross-examined as to the content of this conversation. The claimant remained clear that he:

> "sat down and outlined why I felt we weren't complying with our responsibility...".

245. In BR's cross-examination, her main contention was that any discussion of the claimant's Concerns had been a small part of their discussions at this meeting. She told me that:

> "[the claimant] had absolutely said that he had concerns around how Thames Valley Police uses access to data in different meetings".

246. In relation to the other parts of the claimant's alleged disclosure, BR did not remember. As mentioned above, I note the difference between a witness not remembering, and that witness positively asserting something did not happen.

247. Again, I find it more likely than not that the claimant's recollection of this conversation is more accurate than BR's. BR's understanding as to the purpose of the meeting was to discuss getting the claimant back to work, and so she would not have been expecting the claimant to make such disclosures to her. I also find that she would have had no reason to commit the detail of that conversation to memory at that time. In contrast, the importance of data protection to the claimant, I find, means that he would have a better memory of this discussion that BR.

248. I therefore conclude that the claimant did make a disclosure of information as alleged in PID 15.

249. On 15 November 2019, the claimant met with AS, who had recently taken up the role of Acting Deputy LPA Commander for Reading LPA. AS explained to the claimant that he was to take over the role of his first line manager. AS remained the claimant's first line manager for the rest of the claimant's service with the Force.

Adverse treatment 8(i) (25 November 2019) - the claimant was made to sit in a "goldfish bowl" type of office on his return to work - GOC 23, 24, 37(h) - alleged perpetrators AS, NJ, RKS

250. The claimant returned to work on 25 November 2019.

251. On his return to work, he was positioned to work at a desk in the "goldfish bowl". This room is so called as it is a large open plan office, which has many windows, meaning that officers and staff can see through into the room. It is used by inspectors.

Protected disclosure 16 (19 December 2019) - the claimant raised data protection issues in writing in the course of raising a formal grievance – GOC paragraphs 22 and 33(p)

252. On 14 December 2019, the claimant raised a formal grievance around sensitive personal data not being processed in line with GDPR, and the detriments he alleged he had suffered. He sent it to FB, AS and BR - [255-258]. This was later copied and pasted into the respondent's grievance form - [265]. The claimant summarised his grievance in three bullet points:

> "Sensitive data is not processed in line with GDPR;
>
> Lack of any understanding by the Employment and Well Being Teams;
>
> As a whistleblower I was treated differently from other staff."

253. It is conceded by the respondent, and I accept, that this grievance constituted a disclosure of information.

254. On 19 December 2019, FB emailed the claimant to inform him that CK would be the grievance officer on his case; she also explained that a member of the JIMU would be asked for their expert knowledge to be shared with CK in dealing with the GDPR issues that the claimant had raised - [263].

255. AM emailed SW to inform her that CK had been tasked as being grievance officer for the claimant's grievance, and warned her that someone from her team may be required for their "support and knowledge" - [271].

January 2020

256. On 6 January 2020, AS and the claimant had a discussion at which it was established that the claimant was now back to full time hours. There was discussion around the claimant returning to the ICR Inspector role on Team 5, and that this would not be shown as recuperative. Initially the claimant confirmed that he would be happy to perform those PACE duties - [278/281]. However, after some reflection, he clarified that in fact he wanted to continue to do his current role on recuperative duties until the end of March. He explained that he was still experiencing symptoms of anxiety - [278].

Protected disclosure 18 (10 January 2020) - the claimant raised data protection issues verbally with CK at his grievance meeting – GOC paragraphs 26 and 33(r)

257. The claimant attended a grievance meeting with Christine Kirby on 10 January 2020; the minutes are at - [282]. It is conceded by the respondent, and I accept that the claimant made a disclosure of information within this meeting.

258. The action points from that meeting were as follows:

258.1. AM to contact JIMU to set up a meeting to discuss claimant's concerns regarding the forces handling and storing sensitive data;
258.2. AM to check what formal communication was sent to the claimant about his promotion to inspector;
258.3. AM to find out who the claimant's current casework is from TS;
258.4. AM to look in half pay incident and why no notification was received by the claimant.

Protected disclosure 19 (10 January 2020) - the claimant raised data protection issues verbally with a member of the JIMU – GOC paragraphs 27 and 33(s)

259. On 15 January 2020, the claimant met with Gunwant Badh ("GB"), Information Governance Manager, as a representative of the JIMU – [SW/WS/16]. It is conceded by the respondent, and I accept that, the claimant made a disclosure of information within this meeting.

260. Following this meeting, GB sent to the claimant a copy of the Force's Privacy Notice – [302] & [488].

261. On 17 January 2022, the claimant sent to AS a Wellness Action Plan that he had completed himself - [310]

February 2020

262. On 12 February 2020 a referral was made to OH in relation to the claimant; the referral had been checked with him before being sent in - [319/324].

263. The claimant returned to full duties on 26 February 2020, following receipt of a clean bill of health in a statement of fitness to work from OHU Professional, Lynn Bate ("LB") - [331]. The claimant was marked as fully deployable from this date, and returned to his team 5 duties as of 3 March 2020 - [335].

Adverse treatment 8(ii) (around 27 February 2020) - the claimant believes he was told his decision-making ability would be assessed - GOC paragraph 23, 24, 37(h) - alleged perpetrators AS, NJ, RKS

264. Following his return to full duties, the claimant was the subject of a three-month review period. This was determined by the ORM. No evidence has been given by those attending that ORM, as to the reasons for the three-month review. Correspondence in the bundle demonstrates the following:

264.1. the discussion around this review period took place at the ORM on 13 February 2020 - [336];

264.2. KL's understanding was that the claimant would do inspector duties for three months and beyond that she was not aware of what would happen. In her email of 27 February 2020 she does not set out the reason for the review or indeed how it will be conducted or assessed - [334];

264.3. the email from KL was forwarded to the claimant by AS on 2 March 2020 - [337];

264.4. the claimant sent an email to KL seeking clarification of various points regarding the three-month period - [337];

264.5. in response to that email, KL told the claimant that the three-month period was "for a settling back into full operational duties" - [336].

265. The reason for the implementation of this three-month period is unclear to me, as is the aim of it. It is also unclear how, if at all, the claimant's performance was to be assessed or reviewed, or whether he had any targets to reach during that period. Furthermore, the claimant was given no start and end date for this review.

266. Arguably more importantly, it is unclear to me who made the decision that a review should be implemented at all. It was not AS, NJ, KL or anyone else from whom I have heard evidence.

267. AS was the claimant's line manager who had the job of implementing this review. It was his understanding that, following the three-month period, providing everything went as AS anticipated it would, he would be able to "write [the claimant] up for promotion" as he told me in his evidence. From AS's evidence, he appears to have thought that the claimant would have no problem in the three-month period, and that it was a foregone conclusion that he would be able to be put forward for promotion.

268. I find that the claimant was placed on a three-month review period, in a manner that was inadequate, without any clear remit, aim, or target. As for the reason behind this review, I will return to that in my conclusions.

Adverse treatment 9 (March 2020) - failure to promote the claimant to Chief Inspector and provide reasons – GOC paragraphs 29, 37(i) - alleged perpetrators LU, CW

269. On 10 March 2020 an email was sent round to those eligible inspectors in relation to an expression of interest for an opportunity to work as Deputy LPA Commander on West Berkshire LPA - [348]. Interested parties were told to send letters to KL by 17 March 2020.

270. Following an approach from the Federation, JH had promised that the process of appointing to an acting role would be as fair as possible. This would include where possible giving someone an opportunity to act up who had not had that chance before.

271. There were five expressions of interest for the West Berkshire LPA role as confirmed by KL on 17 March 2020 - [364]. The two officers responsible for the recruitment process were CW and LU. The expressions of interest are in the bundle from [365] onwards. I note the claimant's letter is relatively short, and lacks specific examples as to his suitability for the role. By contrast the other four candidates have all included numerous specific examples of their experience making them suitable for this role.

272. LU communicated to KL on 17 March 2020 that she had chosen two officers to fulfil the role as advertised. Her email sets out a justification for her choice - [375]. KL sought approval from both JH and CW in relation to LU's choice of candidates. CW's response was to say "very happy please. Especially in light of what's happening" - [379]. He was cross-examined as to his meaning of "especially in light of what's happening", the proposition being put that this was a reference to the claimant's raising of a grievance and making his concerns known. CW's evidence was that he was referring to the pandemic. Further, CW's consistent evidence was that he was not aware of any protected disclosures or the claimant's grievance. I accept this evidence from CW.

273. In terms of feedback on the expression of interest, KL specifically requested of CW "can we discuss who notifies [the claimant] please?" - [379].

In an email the next day KL clarified that she had suggested to the claimant that he should contact CW should he wish for feedback - [380].

274. Factually, therefore, there was a failure to promote the claimant to this role of Chief Inspector. However, as to the reason for that decision, I will return to his in my conclusions below.

275. In terms of the alleged failure to provide feedback. There is a dispute between the parties as to whether CW left a voicemail message with the claiamnt, stating that if the claimant wanted feedback, he could ring CW. I note CW's evidence on this point generally, that "in an ideal world I would have made more effort to get hold of [the claimant], but we were in Covid and I was very busy".

276. Regardless of whether a voicemail was left, I note CW's general concession that he could have done more.

277. In any event, the two men arranged to meet in July 2020, however there was a misunderstanding as to what was to be discussed: CW understood he was meeting the claimant to give him feedback, the claimant understood that this was for a general "chat". Regardless of what was intended to be discussed, the meeting did not happen, as CW was out all of the night preceding the meeting, at a firearms incident - [413]. The claimant replied stating "I am in all day today then early turn tomorrow, into lates over the weekend. Then nights Monday and Tuesday".

278. There is no response to this email from CW, and nothing appears to have happened in order to provide the claimant with feedback after this email exchange. CW then retired on 31 July 2020.

279. Therefore, on the facts, I find that there was a failure to provide the claimant with feedback.

Grievance outcome

280. On 11 March 2020 AM mistakenly sent to the claimant a draft of the grievance report, intended for CK - [350]. When the error was raised to her attention by the claimant, AM sent an apology email - [349]. On 13 March, the claimant sent to CK a list of concerns he had in relation to the draft report - [362].

281. The claimant was informed of the grievance outcome by telephone. A letter confirming the outcome was sent dated 25 March 2020 – [385].

282. In the course of the grievance, CK had spoken to AM, RKS, BR, NB, AS, TS, and JIMU - [387]. The findings of the grievance were as follows:

282.1. "Allegation 1 – sensitive data is not processed in line with GDPR". The point is made by CK "the issue of breach only applies if someone accesses a system or data, which they do not have a legitimate purpose for doing so" - [387]. It appears that the answer given to the claimant by JIMU was that it was management's personal responsibility to flag errors, whilst also accepting that Human Resources need to address issues of which they are made aware. The report noted that LHRGs have been

adapted and changed to limit attendance at meetings in recent months. It is also stated that training and advice had been given to LPAs on the use and contents of SRPs. The outcome is that there is still no harmony across the LPAs as to how LHRGs run and the manner in which SRPs are dealt with falls short of what is required - [388].

282.2. "Allegation 2 - lack of understanding by the Employment and Well-Being Teams". It was acknowledged there was still work to be done in relation to the use of SRPs and the conducting of LHRGs. The action point on this was intended to be improved guidance information around how sensitive data should be used in LHRG meetings, and what information was appropriate to be contained within SRPs - [389]. An independent audit was to be commissioned and completed around the specific points raised by the claimant in relation to GDPR compliance. It is recorded in this part of the grievance that the claimant's view was that RKS "is not competent to advise on attendance issues and she conducted herself unprofessionally in an open forum towards him" - [389].

282.3. "Allegation 3 – as a whistleblower I was treated differently from other staff". CK found that, although the supporting contact offered to the claimant by his manager whilst he was off sick was "lacking and insufficient", it was not related to any protected disclosures made - [390].

Protected disclosure 20 (30 March 2020) - the claimant raised data protection issues in writing by emailing CK (also stating that he did not wish to appeal the outcome of his formal grievance – GOC paragraphs 30 and 33(t)

283. The claimant, although dissatisfied, determined not to appeal the grievance outcome – [395]. It is conceded by the respondent, and I find that, the claimant made a disclosure of information within this email.

284. Although an audit was done following the claimant's grievance, none of the senior officers from whom I have heard evidence were aware of the audit recommendations.

Protected disclosure 17 (early 2020) - the claimant raised data protection issues verbally with NJ – GOC paragraphs 25 and 33(q)

285. Although PID 17 is said to be in early 2020, it was in fact agreed during the claimant's cross-examination that this conversation occurred after he had received the outcome of his grievance.

286. In April 2020, NJ commenced at Reading LPA. Shortly after his arrival he and the claimant had a meeting, in relation to which the claimant says - [C/WS/95]:

> "We discussed the details of how sickness was managed locally. [NJ] explained that the format that he had advocated for is [sic] LHRG was that all staff sickness was discussed in an open forum of all Inspectors as there may become a time when people move teams and it was important for all leaders to have an understanding of sickness and health issues for everyone. I set out why this was not a legitimate reason to share sensitive data".

287. The claimant's evidence as to this content of the meeting was not challenged in cross-examination, and the respondent concedes that there

was a disclosure of information in this meeting. I find that there was such a disclosure as alleged in PID 17.

288. NJ made some changes in relation to discussion of sickness absences and personal information at LHRGs - [408]. He was keen to ensure the specifics of individual cases were not explored, but only what was needed to identify any patterns emerging within the LPA: for example, if three officers were off with stress, that may lead to questions as to how that particular team was managed.

June 2020

289. In May/June 2020, the claimant had a heavy workload in that he was dealing with the Reading terror attacks.

290. On 18 June 2020, NJ emailed the claimant in order to ask whether he would be around for a discussion "about your future etc" - [409]. From the email chain, it appears that it was left that on 19 June 2020 the claimant would telephone NJ once he was free. This evidently did not happen, as NJ sent an email to the claimant on 21 June 2020 just querying "you in??" - [411]. The following day, NJ sent an invitation to the claimant for a telephone call between 16:00 hours and 17:00 hours - [412].

July 2020

291. On 12 July, the claimant communicated to NJ, KL and CW "without any ambiguity" that he did not wish to be considered for any promotion now or ever - [415]. This sparked an email chain between NJ and claimant, which ended with NJ requesting a chat. NJ was cross-examined about this requirement for a meeting. It was suggested to him that there was no need for a meeting with the claimant as he had made his decision entirely clear. NJ's evidence on this point was that he asked for a discussion because he was concerned about the claimant's well-being, in light of his email of 12 July 2020. I accept this evidence: the email from the claimant at [415] is stark and gives no reasons for his decision, which is career altering. I accept that this email would cause NJ some alarm, and that he would wish to just check in with the claimant to check on his welfare. There is no evidence to suggest any ulterior motive.

Adverse Treatment 4 (various) - being made to feel worthless in management meetings, when the claimant raised his concerns – GOC paragraphs 8, 9, 10, 12, 13, 14, 15, 17, 18, 25, 27, 37(d) - alleged perpetrators RKS, RF, DH

292. This is, on the face of the allegation is entirely unclear and vague. I have therefore approached my findings of fact by analysing what is said in each of the paragraphs within the GOC that the claimant relies upon (listed above), and made findings as appropriate.

293. GOC paragraph 8: RKS "would often behave in an unprofessional manner sighing and tutting in meetings chaired by the claimant. When challenged about her regarding his concerns she would say "we are all managers here" to try and justify why managers had access to information they should not". This is the same factual allegation as is covered in **Adverse Treatment 1**.

294. GOC paragraph 9: "At several meetings between May 2018 and August 2018 he raised his Concerns. It did not appear that the claimant's peers had any appreciation of the need for data integrity and again the claimant's concerns were simply brushed aside". This allegation adds nothing to the specific factual allegations made at **Adverse Treatments 5 and 10**.

295. GOC paragraph 10: "in addition to feeling bullied by his then line manager [RF], the claimant had got to a point of feeling as though he was not being taken seriously and not being listened to he decided to demote himself to the rank of inspector". This is a repeat of **Adverse Treatment 2**, dealt with above.

296. GOC paragraph 12: the claimant "was made to feel worthless and stupid for raising his concerns particularly by HR adviser, RKS". This is a repeat of **Adverse Treatment 1** above.

297. GOC paragraph 12: "DH on 15 January 2019 saying that the claimant was "making trouble" and "just trying to scare people". This is a repetition of **Adverse Treatment 3**.

298. GOC paragraph 13: "the claimant believes his relationship with DH deteriorated from" the time the claimant emailed DH on 28 March 2019 raising his concerns. I find that there was a souring of the relationship between DH and the claimant following his email of 28 March 2019. As to the reason for this souring, I will deal with this in my conclusions below.

299. GOC paragraph 14: there is no allegation of adverse treatment contained within this paragraph.

300. GOC paragraph 15: there is no allegation of adverse treatment contained within this paragraph.

301. GOC paragraph 17: there is no allegation of adverse treatment contained within this paragraph.

302. GOC paragraph 18: the claimant's mental health "became exacerbated by the challenges he was facing at work by constantly not being listened to and made to feel like he was a troublemaker because of raising his concerns". This allegation adds nothing to the specific factual allegations made at **Adverse Treatments 5 and 10**.

303. GOC paragraph 25: there is no allegation of adverse treatment contained within this paragraph.

304. GOC paragraph 27: there is no allegation of adverse treatment contained within this paragraph.

305. GOC paragraph 37(d): "being made to feel worthless in management meetings, when the claimant raised his concerns". This allegation adds nothing to the specific factual allegations made at **Adverse Treatments 5 and 10**.

Adverse Treatment 5 (various) - failure to deal with the claimant's concerns around data protection in an adequate or timely manner – GOC paragraph 37(e) - alleged perpetrator RK, NB, RF, BR, JC, JH, CW, CK

Adverse Treatment 10 (various) – respondent's failure to take its legal obligations towards data protection seriously – GOC paragraphs 4, 5, 6, 37(j) - alleged perpetrators RKS, NB, RF, BR, JC, JH, CW, CK

306. I have taken Adverse Treatment 5 and 10 together, as in reality they cover the same issue.

307. Again, given the sweeping nature of these allegations within the List of Issues, I have taken each reference to the GOC set out in the List of Issues, and analysed them in turn below.

308. GOC paragraph 4: there is no allegation of adverse treatment contained within this paragraph.

309. GOC paragraph 5: there is no allegation of adverse treatment contained within this paragraph.

310. GOC paragraph 6: there is no allegation of adverse treatment contained within this paragraph.

311. GOC paragraph 37(j): "the force's failure to take their legal obligations surrounding data protection seriously to deal with such matters efficiently and expeditiously".

312. GOC paragraph 37(e): "the force's failure to deal with the concerns/disclosures in an adequate or timely manner".

313. These complaints are again very vague and wide-ranging. I have therefore taken the approach of addressing each alleged perpetrator, and considering the criticisms made of them by the claimant.

314. On the issue of alleged perpetrators, as mentioned above CK was named as an alleged perpetrator during the claimant's submissions. CK attended and was cross-examined on the relevant points: the respondent is therefore not prejudiced by CK's inclusion as a named perpetrator. I also note that individual perpetrators were not named in the Grounds of Complaint in any event. I have therefore dealt with allegations against CK under this Adverse Treatment.

Rory Freeman

315. There are three specific allegations made against RF, and then the general allegation that he did nothing with the claimant's Concerns.

316. The first specific allegation against RF is that at the AMT meeting in Spring 2018, RF allegedly put his hand up and stopped the meeting to tell claimant not to discuss this any further – [C/WS/23c].

317. RF's evidence on this point was that this did not happen. None of the other witnesses that attended the Tribunal remember this happening either.

318. A senior colleague putting their hand up to stop someone talking is something that I find would stick in the memory of the individuals present, as it is a fairly abrupt and rude gesture.

319. RF accepted that he may have said something along the lines of "this matter is ongoing so there is no need to discuss it here". RF explained that, if he said something of this nature, it would be in order to move the meeting on, as he was already aware of the issues the claimant was seeking to raise. He also explained in evidence that "there is a time and place" for raising matters "with the right people": the inference being that this meeting was not the right time or place.

320. I find that RF did not hold his hand up to the claimant, however he did make a comment along the lines that there was "no need to discuss it here". As to the reason for this comment, I will address this in my conclusions.

321. The second specific allegation is that RF told him that Acting Chief Constable Nicola Ross ("NR") had said to RF to "get your deputy back in line" and that she had said that she had heard from TS that the claimant was causing trouble in LHRGs. It was not put to TS that she had said this to NR.

322. RF flatly denied that these statements were relayed to the claimant by him (RF). The claimant stood firm in cross examination that this conversation had occurred. I am therefore left with this being a case of one person's word against another. In that scenario, I consider the documentary evidence on this point. There is no mention of these specific phrases being used by RF in the claimant's grievance, or in the longer email sent to JH on 7 August 2019 - [198]. This latter document contains detailed reference to RF's conduct, going back to 2017. Yet there is no mention of these specific matters. Furthermore, this document mentions both TS and NR by name, and still nothing is said about these specific phrases.

323. On balance, I find it more likely than not that this conversation did not take place. There is no corroborative evidence that this occurred, or that the claimant complained about this specific behaviour.

324. The third specific allegation is that RF had called the claimant early one morning, saying "stop raising issues, I don't want any negative attention from NR" - [C/WS/34]. RF flatly denied this allegation. He said there may be times when RF needed to ring the claimant in the early hours, but he did not say this phrase to him at any point. When it was put to the claimant that this call did not happen, the claimant disagreed.

325. Although I accept that there would have been occasions on which RF called the claimant at unsociable early hours, for the same reasons as set out directly above (in relation to the second specific allegation), I find that it is more likely than not that this conversation did not take place. Again, there is no corroborative evidence of this telephone call having occurred.

326. In terms of the general allegation that RF failed to deal with the claimant's Concerns, once the claimant had raised with him his Concerns, RF took the matter to NB and TS. They were arguably in a better position than him to take those concerns forward.

327. RF gave evidence that the "business owner" of the AMP and LHRG process was Stephen Chase, or NB. RF therefore approached NB as, in his words, "the senior person who was responsible for that policy".

328. Regarding TS's involvement, the claimant had indicated that he wished to speak to TS regarding his concerns about RKS. TS was RKS's line manager; it therefore made sense for TS to be involved at this stage.

329. It was put to RF that, as the claimant's line manager at the time (in 2018), RF should have escalated the claimant's Concerns about data protection. RF stated that he considered escalating these Concerns at the time, but determined to leave the matter to the claimant initially, and then RF could escalate if necessary.

330. In September 2018, RF held a meeting with the claimant, TS and NB in which the main topic for discussion was the claimant's relationship with RKS, as well as the claimant's concerns about data protection – see notes at [647-649].

331. The relationship between the two gentlemen broke down, and was raised by RF in an email of 14 October 2018 - [151]. RF ceased to be the claimant's line manager in November 2018.

332. I find that RF escalated, or triaged the claimant's concerns in the right direction, by pointing the claimant towards NB and TS during his time as the claimant's line manager. He held a meeting with the claimant, NB and TS, being the two people who RF had approached to help deal with the claimant's concerns both about RKS and about data protection. That meeting was in September, and RF ceased to be the claimant's line manager in November 2018.

Norma Brown

333. NB initially became aware of the claimant's concerns in early 2018, due to RKS and TS reporting those concerns to her. She was told that the claimant had "expressed strong views and opinions" - [NB/WS/2].

334. NB invited the claimant to be part of her review regarding the Force's AMP. There is a dispute in fact about whether NB did anything to chase the claimant as to whether he planned to attend the review meetings.

335. The claimant was invited to review meetings once by email of 10 April 2018, although that one email did include the dates for all meetings - [136/138]. RKS told me that calendar invitations were sent out for those meetings. I have nothing in the bundle to show that there was any repeat of this initial invitation. I therefore find that there was one email inviting the claimant to be part of the review, and one sending out calendar invitations that went out at the same time.

336. The scope of this review did not encompass data protection matters in any event; it solely related to review and revision of the AMP. Therefore, I find this was not an attempt by NB to escalate matters, by involving the claimant in the

review. It is in fact a bit of a “red herring”, as this was not related to the claimant’s concerns at all.

337. On 19 April 2018, RKS sent the email at [130-131] to the claimant, copying in TS, regarding the claimant’s concerns about RDFs. That e-mail ended with RKS informing the claimant that “Gini has flagged up your concerns with Ali Murphy and Kate Saunderson and will discuss this further”. NB was not aware of this email.

338. There was then the meeting between the claimant, RF, NB and TS in September 2018, which arose in relation to the difficult relationship between the claimant and RKS, but in which data protection concerns were also discussed.

339. Following this meeting, NB raised the claimant’s Concerns in a Business Partners’ meeting, and asked the Business Partners to explore how LHRGs in their areas ran, to ensure that what was discussed was “relevant and appropriate” (in NB’s words in evidence).

340. Following that meeting, NB and the claimant had another meeting in October 2018, in which the claimant’s Concerns were discussed again. The outcome of that meeting was an agreement that the review of the AMP should also include ensuring confidentiality – [NB/WS/20].

341. The claimant alleges that, in that meeting, NB stated “Thames Valley Police doesn’t' want people to be innovative” and “the first time, we will laugh at you, the second time we will ridicule you”. NB denied these express phrases. However, she accepted that they did have a conversation in which innovation was discussed, and she shared her stories of frustration. Her evidence was that she said something like “the police service wouldn’t know innovation if it came up and punched them in the face”. NB accepted that she may have used the words “laugh” and “ridicule”, as both these things had happened to her in the past, within the Force, when she had made suggestions about changing the way people worked.

342. I find that it is more likely than not that the claimant and NB were having an amicable conversation in which NB was empathising with the claimant’s frustrations. I do not accept that any reference to laughing and ridiculing was NB saying that she/the Force would laugh/ridicule the claimant.

343. It was also alleged that NB said to the claimant that he was “a man with a bit of knowledge and that makes you dangerous”. NB denied this, saying instead that her words were “he had a bit of knowledge but I don’t think he had the full picture in its entirety, which could be dangerous”. I find it more likely than not, in the context of what was an amicable meeting, that NB said something along the lines as she reports. This, however, was misconstrued by the claimant to be an insult towards him, when that was not what in fact was conveyed.

344. NB stated that, at the time of this meeting, there was an ongoing project in place to update PeopleSoft, which was not fit for purpose. That project has, as I understand it, still not been completed. NB was unable to tell me of any changes that she was aware of that were made to the RDF/SRP process, in light of the claimant’s complaints.

345. I conclude that, in terms of NB's individual involvement, she played her part in the claimant's complaints, and was aware that there was already a review of PeopleSoft underway: there was nothing she could do in relation to effecting change with the system (as confirmed in cross-examination), as she was not part of the relevant department dealing with computer systems. She had disseminated a message to other Business Partners to alter the way in which LHRGs were operated. In her role as Head of the Employment and Wellbeing Team, I am not satisfied that there was anything more that NB could have reasonably done to take the claimant's concerns more seriously, or to deal with them more promptly.

Regella Kaemena-Stokes

346. It is specifically alleged that RKS said to the claimant that he should have a meeting with TS but that "you will lose".

347. In terms of the claimant's concerns, RKS was involved from around April 2018. On 9 April 2018, RKS emailed the claimant asking for a screenshot to be sent to her and PS, regarding the SRPs the claimant had access to - [133/134]. RKS then chased this email, having had no response, on 17 April 2018 - [134]. She remained involved in that email conversation, and proactively responded at [130/131]. At this stage, she is engaged, and accepts that change is necessary:

> [131] "Just following up on the series of emails with regards to the Automated [RDF]...I will discuss with the Resource Managers to clarify whether they have seen any sensitive medical information on any of the forms, and if so to flag this up if that is the case, so I can provide guidance to the LPA. … Gini has flagged up your concerns with Ali Murphy and Kate Saunderson and will discuss this further. As you are aware, we are awaiting further clarification around GDPR and further implications going forward. … should you have any concerns in the interim, it may be worth highlighting with Marion (Peuleve) or considering inviting her to one of the Leadership Meetings"

348. I find that RKS did not fail at this point to act on the claimant's Concerns. She was proactive, and took his concerns forward some way at least.

Bhupinder Rai

349. I note that BR was Superintendent at the Reading LPA at the relevant time. The criticism of her as I understand it is that she should have done more to progress matters.

350. BR first became aware of the claimant's Concerns at their first meeting in October 2019. The claimant did not ask BR to take any action in relation to those concerns. BR did not discuss the claimant's concerns with anyone following this meeting.

351. It is the claimant's case that, at this meeting, he told BR that he had escalated his Concerns to TS, RF, NB and JC when he was Deputy Chief Constable. BR did nothing regarding the claimant's concerns following this meeting.

352. In relation to the claimant's grievance, BR was sent the grievance on 14 December 2019 - [255]. BR did nothing with this grievance. I note that the email from the claimant is directed to Fiona Billings ("FB"), not BR. Further BR was aware that the grievance process was running its course in relation to the claimant's grievance.

353. From the evidence, it does not appear that the claimant expressly asked BR to take his concerns any further. Moreover, within a month of the claimant's return to work, the claimant had followed the correct channels in bringing a grievance.

354. I am not satisfied that BR had a responsibility, and then failed, to progress the claimant's Concerns any further.

<u>Jason Hogg</u>

355. The complaint against JH is that he should have acted sooner in relation to the claimant's email correspondence.

356. The claimant emailed JH on 7 August 2019 - [196]. In that email the claimant says "I am reaching out to you feeling I have exhausted all other options"; the claimant attached the document at [198], setting out his concerns about data protection and other matters. Having heard nothing back, the claimant chased by email of 20 August 2019 - [196].

357. On 28 August 2019, JH replied. In that email JH stated:

> "I understand you have recently met with Tim De Meyer to discuss your concerns. T/ACC Chris Ward is currently away on AL but when he is back, he will lead on ensuring that you have the support you need to get you back to work at the earliest opportunity. I am happy to meet with you if there [sic] issues you feel I can assist with which you have been unable to address with Tim".

358. JH gave the claimant in this email his PA's contact details and name – [196].

359. I am not satisfied that it was JH's responsibility to take this matter any further. In any event he left his door open to the claimant in his email of 28 August 2019, in saying "I'm happy to meet with you if there are issues you feel I can assist with which you have been unable to address with Tim". This opportunity was not taken by the claimant.

<u>John Campbell</u>

360. JC was Deputy Chief Constable from May 2015 to April 2019, then became Chief Constable until his retirement in April 2023.

361. In terms of the chronology relevant to this case, JC became involved on 26 November 2018, when both he and the claimant had been at a Service Improvement Review at Abingdon Police Station. JC took the opportunity to have a conversation with the claimant about his decision to demote back to Inspector.

362. Following their discussion, JC did act upon aspects of its content. At [166-167] JC sent an email to NR on the same day, asking her to speak to him about "his concerns and his views and why he was taking such a drastic step and also to get a sense of his welfare needs if any going forward" - [166].
363. NR confirmed that she planned to talk to the claimant again once he commenced back at Reading - [166].

364. I accept that the claimant and JH did not have a meeting of minds as to the main thrust of the conversation on 26 November 2018. The claimant thought he was telling JC about his data protection concerns; JC took from the conversation concerns about the claimant regarding his decision to demote, and his welfare generally. Neither man is wrong, it is just a different take on the principal purpose of that conversation.

365. JC did escalate the action points that he took away from this discussion with the claimant; namely concerns about his decision to demote and his welfare.

366. I find that it was reasonable for JC to understand that this conversation did not require him to escalate any data protection concerns. The claimant did not ask him to do so, and was more complaining about the lack of progress he had made with the People Directorate. There was no express request for JC to escalate matters.

Chris Ward

367. The only allegation put to CW in cross-examination was his failure to provide feedback. I have dealt with this in relation to Adverse Treatment 9 above. To summarise, I have found that there was a failure to provide reasons or feedback to the claimant for his not being successful in obtaining the West Berkshire role.

Christine Kirby

368. The criticisms made of CK are as follows:

368.1. She did not have a meeting with JIMU during the course of the grievance process. Instead she left the claimant to have that meeting, but took no feedback from the meeting into her grievance outcome;
368.2. CK reached the conclusion that other officers did not have the same issues around accessing sickness records outside of the direct line management responsibility. She reached that conclusion on the back of her own knowledge, as opposed to any investigation interviews she held;
368.3. The grievance took too long to conclude. The claimant entered his grievance in December 2019, met with CK on 10 January 2020, and was provided with the outcome by telephone on 19 March 2020. The final report was sent on 25 March 2020. The whole process therefore took three months;
368.4. Following the grievance process CK commissioned an audit to be undertaken, in April 2020. This audit dealt only with the way in which LHRGs were managed, not the general issue of data protection, and the handling sensitive personal data.

369. The result of the grievance was that aspects of it were upheld- [386]:

369.1. It was found that more guidance and information is required at a local level regarding personal responsibility for data protection, instruction on the use of Team View making sure data inaccuracies are rectified in a timely manner, best practice for running LHRG's and internal signposting to the privacy notice and GDPR guidance - [391];

369.2. CK accepted that there was evidence to show an inconsistency across LHRGs as to how they deal with sensitive data. She also found that there is a lack of understanding by the Employment and Wellbeing Team in relation to GDPR guidance and their role within the AMP - [391/392];

369.3. CK found that the claimant did not receive adequate support whilst he was on sick leave - [392].

370. I find that there is more that CK could have done to investigate the claimant's Concerns fully, such as investigate what access different hierarchies of officers had to SRPs and RDFs. The grievance also could have been dealt with faster. I note CK offered the claimant an apology at [386], stating "I acknowledge that the grievance has taken longer than I would have wished and fully appreciate the impact this has had on [the claimant] personally, for which I have apologised".

<u>Conclusion on Adverse Treatment 5 and 10</u>

371. To summarise my findings in relation to the factual allegations set out under the umbrella of Adverse Treatment 5 and 10, I have found that they are factually upheld to the following extent:

371.1. At the AMT meeting in Spring 2018, RF said to the claimant something along the lines of "there is no need to discuss [the Concerns] here";

371.2. CW failed to provide the claimant with feedback or reasons for his failure to get the West Berkshire role (same as part of Adverse Treatment 9);

371.3. CK should have done more to investigate the claimant's concerns during the grievance process. Further, the grievance process took too long.

Protected disclosure 21 (15 July 2020) - the claimant raised data protection issues in writing within his resignation letter – GOC paragraphs 32 and 33(u)

372. On 15 July 2020, the claimant tendered his resignation by completion of the form Gen 46 – [416-417]. In that resignation, the claimant set out that the reason for his reduction in rank was the deterioration of his mental health, as well as his understanding that he was labelled a troublemaker regarding his concerns about GDPR. He also cited the purported bullying behaviour by RF as being the reason for his reduction in rank. The claimant explained in his resignation that he considered it his public duty to work his twenty-day notice period. This meant his last day of service with the Force was 13 August 2020.

373. It is conceded by the respondent, and I find, that the claimant's resignation letter contained a disclosure of information as alleged within PID 21.

374. The claimant attended an exit interview on 30 July 2020 with FB - [422]. He was asked the question "what is the main reason for leaving TVP?". His answer was "refer to the Gen 46". The claimant was cross examined on the basis that there were other reasons for his departure from the Force as set out in the exit interview notes. Although there may have been other reasons, I note the claimant's answer to the question I have cited above as to his main reason for leaving the force and his reference back to his resignation letter.

375. The claimant commenced the ACAS early conciliation process on 10 October 2020.

Conclusions

Protected disclosures

376. The claimant alleges that he made 21 disclosures during the course of his service with the respondent. Those disclosures are listed in Schedule 1 of the List of Issues.

377. At the close of the case, Mr Rathmell conceded on the part of the respondent that various of the alleged disclosures were disclosures of information which the claimant may reasonably have believed tended to show that a person had failed, was failing or was likely to fail to comply with the legal obligation to which he is subject. This concession was made in relation to **disclosures 1, 4, 5, 6, 8, 11, 12 and 14, 15, 16, 17, 18, 19, 20 and 21**.

378. However, the respondent raised one caveat to that concession. The respondent submitted that the reasonable belief required in relation to legal obligation, although present initially, would have faded over time in light of the respondent's responses to the claimant's various concerns raised.

379. The respondent also denied that:

379.1. any of the disclosures, in the reasonable belief of the claimant, tended to show that a criminal offence had been committed, was being committed or was likely to be committed;

379.2. the disclosures were, in the reasonable belief of the claimant, made in the public interest.

380. More specifically, the respondent denied that disclosures 2, 3, 7, 9, 10 and 13 amounted to protected disclosures at all.

<u>Disclosures of information</u>

381. I have found above that disclosures 2, 3, 7, 9 and 13 did amount to disclosures of information. In other words, all PIDs, other than PID 10, were disclosures of information.

<u>Failure to comply with legal obligation</u>

382. I will address the issue of a reasonable belief that the protected disclosures tended to show the breach of legal obligation. I find that the

claimant did hold that reasonable belief in relation to all disclosures. He is an intelligent man who had done some research into data protection, however he is not a trained expert in such fields. Furthermore, I note that other people during the course of the chronology with which I am dealing also had concerns relating to the way in which the Force handled data:

382.1. RKS - [131] email 19 April 2018 "As Gini Simonet highlighted, the form should not contain sensitive medical information" (in relation to the RDF);

382.2. PS - [132] email 17 April 2018 "I am a bit concerned about the level of understanding about what should and should not be recorded especially with the upcoming GDPR legislation and would suggest this is reviewed as a matter of urgency or if that is not possible the application should be withdrawn until it is reviewed?";

382.3. MS - [157] email 25 October 2018 demonstrates that there were concerns raised by others in senior roles: he was the Deputy LPA Commander for Surrey at the time;

382.4. TS - [175] email 29 March 2019 - "I acknowledge that this will need to be considered as a data breach...".

383. I find that, at this stage of the chronology, the claimant did have a reasonable belief that what he was saying tended to show that there had been a breach of legal obligation, namely breach of data protection legislation. It is clear from the content of the protected disclosures, that he was thinking of data protection legislation and the legal obligations owed by the Force, at the time he made the statements.

384. What about after March 2019? Was that reasonable belief ongoing? Several of the respondent's witnesses accepted that applying a policy whereby data is only accessed on a need-to-know basis, and relying upon officers to self-monitor, does not absolve the Force of its responsibilities under data protection legislation. This was conceded by RKS and NB.

385. Further, although there was some adaption to the way in which LHRGs were conducted, no other changes were made by the time of the claimant's resignation to any of the respondent's policies.

386. I therefore conclude that the claimant did have the requisite reasonable belief that his disclosures tended to show a breach of legal obligation throughout the chronology and up to the point of his resignation.

Commission of criminal offence

387. I note that this part of s43B ERA was not pleaded within the claimant's GOC (see specifically paragraph 34, in which the "failure to comply with a legal obligation" is raised. There is no mention of "commission of a criminal offence". Neither was the issue in the List of Issues (see issue A1b and A2a&b). The matter was raised in the claimant's closing submissions. There was no application to amend to include this aspect of s43B ERA.

388. Furthermore, I have found that all disclosures of information tended to show, in the claimant's reasonable belief, a failure to comply with a legal obligation. The claimant has not set out any reason why, in that scenario, the addition of the "criminal offence" limb of s43B adds anything to his claim.

389. I therefore will not deal with whether the disclosures of information tended to show, in the claimant's reasonable belief, that a criminal offence had been committed, was being committed, or was likely to be committed under s43B(1)(a). It is not a live issue before me, and adds nothing to the claim in any event.

Public interest

390. I find that, in the claimant's reasonable belief, his disclosures were made in the public interest. This is a low bar, and, looking at what the claimant said, his concerns were wider than simply his own data being shared. this was not solely about the claimant's own situation.

391. Although in cross examination he conceded that he was not making disclosures about victims of crime or criminals, his disclosures did relate to data held across (at least) his LPA in relation to his fellow police officers.

392. Considering the factors set out in **Chesterton**, I find that:

392.1. The claimant's disclosures served (at least) all the officers within the Reading LPA;
392.2. The nature of public interest here is about the right to privacy regarding health information. The right to privacy is a very closely guarded right generally: the purpose of the GDPR is to protect individuals' personal information (within certain contexts);
392.3. In terms of the extent the interest is affected by the wrongdoing disclosed, the claimant, during the course of his disclosures, did give some specific examples, although generally his disclosures were more around the risk of wrongdoing. In other words, the claimant was generally stating that he had access to sensitive health/medical data, as did others. There was also the protection afforded by the Code of Ethics, which discouraged officers from accessing information which they had no need to access.
392.4. The nature of the wrongdoing disclosed related to a few specific examples of sensitive information being shared, and then a general concern that information was accessible to those who should arguably not have access rights. Again, I make the point that the general concern was around the risk of sensitive information being seen by those who are not authorised to see it; as opposed to copious examples of specific occasions on which sensitive data had been shared.
392.5. The identity of the wrongdoer here is, in effect, the Force.

393. I note also that, it was conceded by NB and CW that data protection in the Force is a matter of public interest.

394. Balancing those **Chesterton** factors, I am satisfied that the claimant had a belief that his disclosures were in the public interest, and that his belief was reasonable. I find that, as a public body, and one whose duty it is to protect society and uphold the law, the actions of the police are generally within the public interest. Further, any breaches of the law, even possible/potential breaches, are of interest, given the Force's role of law enforcement.

Conclusion on protected disclosures

395. All alleged protected disclosures, save for PID 10, are qualifying disclosures.

Allegations of adverse treatment

396. I remind myself that, factually, I have upheld the following allegations of Adverse Treatment (at least in part):

396.1. Adverse Treatment 1(ii);
396.2. Adverse Treatment 2;
396.3. Adverse Treatment 3;
396.4. Adverse Treatment 4;
396.5. Adverse Treatment 5 & 10 (to an extent);
396.6. Adverse Treatment 7;
396.7. Adverse Treatment 8(i) & (ii);
396.8. Adverse Treatment 9.

397. I have dealt with these allegations in the following way. I asked Mr Banham to provide me with a list of the alleged perpetrators for each Adverse Treatment: I am grateful to him for having done so. This list is called "Claimant - Adverse Treatment Table" ("Table").

398. I have then referred back to the Agreed List of Issues provided at the commencement of this hearing where, in Schedule 2, the relevant paragraphs of the ET1 containing each Adverse Treatment are listed.

399. I have then gone back to the Grounds of Complaint ("GOC") and picked out the specific allegations within those paragraphs, and addressed each of those in turn, in relation to each alleged perpetrator named in the Table.

400. I address each allegation of adverse treatment below, in relation to each alleged perpetrator.

Adverse Treatment 1 (since September 2017) - (i) the claimant's feeling that his concerns were not listened to; (ii) RKS would behave in an unprofessional manner, sighing and tutting in meetings chaired by the claimant; (iii) when challenged, RKS would say "we are all managers here" to try to justify why managers had access to information they should not – GOC 8, 12, 37(a) - alleged perpetrator RKS

401. GOC paragraph 8: RKS "would often behave in an unprofessional manner sighing and tutting in meetings chaired by the claimant. When challenged about her regarding his concerns she would say "we are all managers here" to try and justify why managers had access to information they should not."

402. GOC paragraph 12: the claimant "was made to feel worthless and stupid for raising his concerns particularly by HR adviser, RKS".

403. GOC paragraph 37(a): "the behaviour displayed by RKS towards the claimant when he raised his concerns e.g. she would sigh when the claimant brought up the concerns"

404. I have already found that RKS did sigh, tut and roll her eyes at the claimant. I rejected the other allegations.

405. I turn then to consider the reason why RKS tutted, sighed and rolled her eyes.

406. RKS's evidence on this point was that, she would have acted this way, as the claimant gave the impression that, in relation to his disclosures to her, nothing she did was good enough.

407. I accept this explanation for the following reasons:

407.1. I have to consider the motivation of RKS: she is the only person who can tell me her state of mind at the time of the action of which is complained;
407.2. I take into account that these actions are said to have occurred at the 30 August 2018 meeting, which ended with RKS leaving in response to the claimant's treatment of her, or at least her perception of the claimant's treatment of her. I accept that RKS left that meeting upset, based on the evidence of both her and NB;
407.3. I conclude that it is more likely than not that such a visceral reaction would arise in response to a perceived personal attack, as opposed to raising data protection issues:
407.4. RKS told me that, in terms of the claimant's Concerns, "it was the way it was approached that was difficult for me";
407.5. The claimant told me that some of his mental health symptoms included a shorter temper than usual. I find that this did creep into the workplace slightly, and that his communication with RKS was somewhat clipped and brusque, leading to RKS becoming upset in the August 2018 meeting.

408. Referring to the case of Kong set out above, I conclude that it was the claimant's manner of talking to RKS about his Concerns that led to her reacting as she did on 30 August 2018. It was not the content of the protected disclosures themselves.

409. I therefore find that Adverse Treatment 1(ii) was not done because of any protected disclosures

410. I have dealt with Adverse Treatment 2 last, for reasons that will become apparent.

Adverse Treatment 3 ((4 April 2019) - DH saying that the claimant was "just trying to scare people/making trouble" - GOC paragraphs 12, 37(c))

411. GOC paragraph 12 (repeated at paragraph 37(c): DH on 15 January 2019 saying that the claimant was "making trouble" and "just trying to scare people".

412. I have found that DH did make these comments at the 4 April 2019 meeting (not on 15 January 2019).

413. The question now is the reason why he made these comments.

414. I find that it was the claimant's statement (in his email of 28 March 2019) that he would not be recording sickness information on the PeopleSoft system that caused DH concern. I accept that it would be difficult for DH to ensure that sickness management, resourcing, and resilience were dealt with effectively if he did not have his officers' sickness information available to him. Regardless of the rights and wrongs of the PeopleSoft system, I accept that DH perceived that the claimant's actions led to an obstruction of his ability to manage his LPA effectively. I find that this was the reason for his comments for the following reasons:

414.1. DH's evidence in his witness statement was consistent with his evidence to me under cross examination. He stated "I am concerned that the system is up to date – my role as Chief Inspector is to ensure we have the resilience to put out minimum numbers. If I don't have that data available to me, I fail at the first hurdle". This is a sentiment he repeated several times during the course of his cross-examination;

414.2. The claimant wrote in his email of 28 March 2019 that "until I am satisfied that my team's sensitive data is treated with the protection afforded by GDPR… I will not be putting it on a system that is evidently insecure". As a fact therefore, DH would not have available to him information he needed in order to deal with resilience and resource effectively;

414.3. In DH's response to the claimant at [654], DH ended his email by stating "in the meantime please ensure that relevant updates are recorded against the sickness and recuperative staff". This shows me that DH's main concern was the claimant's assertion that he would not keep the PeopleSoft system up-to-date;

414.4. At [174], I have a contemporaneous email from DH to TS on 29 March 2019. That email begins "I have to say I was really disappointed to receive this email yesterday and it is something that I will address locally. However with regard to the issues raised below would it be possible to have a prompt response from you addressing our position on this". The fact that the "disappointment" is written as a separate issue from the "issues raised" supports DH's evidence on this: his disappointment related to the claimant's statement that he would not record sickness information on the PeopleSoft system;

415. I therefore conclude that the reason for DH's comments was his frustration at the claimant's (in his words) "boycotting" of the computer system. Therefore, DH's comments were not because of any protected disclosures.

Adverse Treatment 4 (various) - being made to feel worthless in management meetings, when the claimant raised his concerns – GOC paragraphs 8, 9, 10, 12, 13, 14, 15, 17, 18, 25, 27, 37(d) - alleged perpetrators RKS, RF, DH

416. I have found in my findings of fact that the only paragraph under Adverse Treatment 4 that requires exploration is GOC paragraph 13: "the claimant believes his relationship with DH deteriorated from" time the claimant emailed DH on 28 March 2019 raising his concerns.

417. As set out above, I have found that there was a souring of the relationship between DH and the claimant following his email of 28 March 2019. However, I consider that the reason for the strain on their relationship was not the fact of

the claimant making protected disclosures regarding data protection. This is for the reasons I have set out above in relation to Adverse Treatment 3 regarding ET1/12.

418. I therefore conclude that any deterioration in the relationship between the claimant and DH did not arise because of any protected disclosures.

419. I find that, to the extent there was any adverse treatment under Adverse Treatment 4, it was not because of any protected disclosures.

Adverse Treatment 5 (various) - failure to deal with the claimant's concerns around data protection in an adequate or timely manner – GOC paragraph 37(e) - alleged perpetrator RK, NB, RF, BR, JC, JH, CW, CK

Adverse Treatment 10 (various) – respondent's failure to take its legal obligations towards data protection seriously – GOC paragraphs 4, 5, 6, 37(j) - alleged perpetrators RKS, NB, RF, BR, JC, JH, CW, CK

420. As within my findings of fact, I have taken Adverse Treatment 5 and 10 together, as in reality they cover the same issue, and have found that the only two paragraphs of the GOC that disclose any adverse treatment are:

420.1. GOC paragraph 37(j) - "the force's failure to take their legal obligations surrounding data protection seriously to deal with such matters efficiently and expeditiously"; and,
420.2. GOC paragraph 37(e) - "the force's failure to deal with the concerns/disclosures in an adequate or timely manner".

421. Within my findings of fact, I have upheld the following allegations of adverse treatment:

421.1. At the AMT meeting in Spring 2018, RF said to the claimant something along the lines of "there is no need to discuss [the Concerns] here";
421.2. CW failed to provide the claimant with feedback or reasons for his failure to get the West Berkshire role (same as part of Adverse Treatment 9);
421.3. CK should have done more to investigate the claimant's concerns during the grievance process. Further, the grievance process took too long.

422. I will address each of these in turn.

<u>Rory Freeman</u>

423. In relation to RF, I found that he was guilty of the adverse treatment of saying to the claimant in an AMT meeting in Spring 2018, that there was "no need to discuss [his Concerns] here".

424. Turning to the reason for that statement, the reason given was that RF was already aware of the data protection issues the claimant was raising, and he (RF) intended to move the meeting along: but for the claimant raising concerns that this meeting, RF would not have made that comment. However, it is not the "but for" test with which I am dealing. I find that RF's motivation for

making the comment was that he was already aware of the matter, and he considered there to be no benefit in taking up time within the meeting rehashing something which he thought was already being dealt with elsewhere.

425. I find that this would have been the same with any concern (whether amounting to a protected disclosure or not) that the claimant raised within this meeting, where that concern had already been raised.

426. It was therefore not the content of the protected disclosure that caused RF to act in this way. I therefore find that the specific behaviour by RF was not because of any protected disclosures.

Chris Ward

427. In relation to CW, his evidence was that he was not aware of any protected disclosures. There is no direct communication within the bundle to show that CW was aware of any of the protected disclosures. Although CW was asked whether he was aware of the protected disclosures, it was not positively put to him (quite reasonably so) that he was in fact aware of them.

428. I therefore conclude that CW was not aware of any protected disclosures, and therefore could not have been motivated to do anything because of those disclosures.

Christine Kirby

429. It was not expressly put to CK that the reason for any failure or delay in her investigation into the grievance was because of protected disclosures.

430. I find that any failure of CK to deal with the grievance stems from her lack of understanding of GDPR issues. For example, at [387] she stated "the issue of breech [sic] only applies if someone accesses a system or data, which they did not have legitimate purpose for doing so".

431. Further, I find that it is unlikely that CK would uphold parts of the grievance relating to data breach, if in fact her failure to investigate properly was because of the protected disclosures. She would be more likely to reject the grievance out of hand, if she was motivated by the content of the protected disclosures themselves.

432. Finally, I find it unlikely that, if CK was motivated to act because of the protected disclosures, she would commission an audit to be done into "the area of LHRGs, attendance management and GDPR compliance in these areas" - [389].

433. I therefore conclude that, to the extent that I have found there was any adverse treatment under Adverse Treatment 5 and 10, this was not because of any protected disclosures.

Adverse Treatment 7 (between May 2019 and the date of his return to work on 25 November 2019) - DH's failure to manage the claimant's absence in accordance with the respondent's absence procedure – GOC paragraphs 19, 37(f)

434. I have found that DH did fail to manage the claimant's absence in accordance with the respondent's absence procedure, and failed to provide any support or make any meaningful contact whilst DH was the claimant's line manager.

435. In terms of the principal reason for that failure, I find that DH acted (however misguidedly so) on the advice of others, and that he was not influenced by the claimant's disclosures.

436. The evidence in front of me regarding DH's motivation is DH's witness statement, his oral evidence, and the evidence in the bundle. The document at [202] supports DH's evidence at [DH/WS/13], and his evidence to me: that DH did not contact the claimant, as he was advised by several colleagues that such contact would exacerbate the claimant's anxiety.

437. [202] is a copy of DH's input onto the claimants SRP:

> "I'm aware that part of Rob's concern is that I did not contact him in the early days of his sickness. This is unfortunate as I had acted on advice from a number of colleagues who knew him well that contact from me would raise his anxiety…"

438. PJ's email at [194] dated 24 July 2019 states:

> "I know that Darren is conscious that he may be a contributing factor to your reasons for being off, and he has said that he does not want to add to that, hence little contact…"

439. All this evidence is contemporaneous evidence of DH's motivation for staying away from the claimant.

440. However misguided or unprofessional his lack of communication may have been, I find that the reason for that lack of communication was DH's understanding that he was part of the problem, and that communication from DH may exacerbate the claimant's anxiety.

441. I therefore conclude that DH's lack of management was not because of any protected disclosures.

Adverse treatment 8(i) (25 November 2019) - the claimant was made to sit in a "goldfish bowl" type of office on his return to work
Adverse treatment 8(ii) (around 27 February 2020) - the claimant believes he was told his decision-making ability would be assessed
GOC paragraphs 23, 24, 37(h) - alleged perpetrators RKS, AS and NJ

442. GOC paragraph 37(h) (this repeats paragraphs 23 and 24): "the manner in which the claimant's return to work was managed, not least to be made to sit in a glass office for all to see and told his performance would need to be assessed to ensure his decision-making was sound".

443. I have found as a fact that the claimant was told that his performance would be reviewed for a three-month period. I find that the words "assessed"

and "reviewed" in this context are interchangeable. There is no point in having a review period, other than to assess someone's performance.

444. It is also factually correct that the claimant was placed to work in the goldfish bowl.

445. Turning then to the reason why these two things occurred and considering first the review period.

446. At [422] I have notes from the exit interview on 30 July 2020. On [425] it is recorded that the claimant said:

> "NJ kept dragging me into meeting (sic) – "I think it's the right decision for you not to be a chief inspector because you're still angry with the organisation. You need to work through that before you can be promoted".

447. NJ's evidence on this point that he told the claimant that - [NJ/WS/6]:

> "if he were going to take on a senior management role he would need to make peace with the respondent organisation as I could see that he still felt aggrieved with the organisation for the reasons explained below… "

448. Although it was not NJ's decision to place the claimant on this review, the reason for him supporting this decision appears to be the fact that the claimant was aggrieved. This again brings me back to the case of Kong, in that it was not the claimant's disclosures that led to NJ supporting the implementation of the review, but the claimant's reaction to the manner in which the respondent had dealt with his concerns. In fact, NJ's evidence was that his reference to making peace related to the claimant's demotion to inspector and the implementation of the three-month review period.

449. NJ was the individual who, on his arrival in Reading, made changes to the health review process, and AMT meetings. These changes, although not Force-wide, were in alignment with the claimant's desire to see a limit on sickness information being discussed at these meetings. On 6 April 2020, NJ sent an email to the Reading team, in which he stated "we do not need to go into the specifics of each person, but more an overview from each team… This will enable us to identify any patterns without going into the specifics of each one." - [408]

450. I find that the review period, however clumsily and carelessly put in place, was not implemented because of any protected disclosures. On the evidence I have heard and seen, the only potential link between the protected disclosures and the decision to implement a three-month review, is as I have set out above; the claimant's feelings of being aggrieved. These feelings are separable from the actual making of protected disclosures.

451. I therefore conclude that the three-month review period was not put in place because of any protected disclosures.

452. I note that, although AS and RKS are named as alleged perpetrators, there is no evidence to suggest that they were involved with the decision-making process on this review period. Further, and quite appropriately, it was not put to them that they were response for that decision-making.

453. In terms of the goldfish bowl, the decision to locate the claimant there was that of AS – [AS/WS/15]. The reason given by AS for his decision was that it would enable the claimant to have other inspectors around who were working on the Serious Violence Strategy Project. Those inspectors included PJ and Inspector Natalie Cox ("NC") - [AS/WS/15]. I note that PJ had been particularly supportive of the claimant during his sickness absence. AS also stated that he did not want the claimant to be on his own on his return to work.

454. It was suggested to AS that this location was part of a deliberate campaign to make the claimant feel unwelcome on his return to work.

455. AS's evidence was that the claimant was not placed in that office in order to deliberately cause him any anxiety or to place him on display for all to see. There was nothing in any occupational health report to suggest a specific location for the claimant to work at.

456. In cross-examination, the claimant's evidence was that he had told AS that all other inspectors had allocated desks apart from him, and that he thought he had been placed there because of his protected disclosures. This detail is not in his witness statement. These matters were not expressly put to AS, and therefore he did not have an opportunity to comment on those allegations.

457. I accept AS's evidence as to the reason for placing the claimant in the goldfish bowl, for the following reasons:

457.1. on the claimant's return to work it was AS who sought an urgent occupational health report. This is a supportive measure, and is corroborative evidence that AS was supportive of the claimant on his return;

457.2. the claimant did not mention anything to occupational health that his appointment on 9 December 2019 in relation to his desk arrangement and any negative effect it may be having on him - [429-431]. The occupational health report did not identify any other adjustments that should be made.

457.3. I do not accept that the claimant raised his location in the goldfish bowl is a problem to AS. This evidence was not in the claimant's witness statement and AS was not challenged on this point;

457.4. Further, I note the claimant's Wellness Action Plan, which he completed on 17 January 2020, there was no mention of his location in the office being an issue - [310];

458. AS's initial placement of the claimant in the goldfish bowl was not related to any protected disclosure. In terms of the claimant's continued placement in the goldfish bowl, there was no reason for AS to know that this location caused the claimant difficulties. Therefore, there was no reason for him to consider altering that location.

459. I also note BR's evidence on this subject, upon which she was not cross-examined - [BR/WS/17]. This paragraph of her statement explains the benefits of working in the goldfish bowl and states that it was intended as a supportive measure.

460. I therefore find that the claimant's positioning in the goldfish bowl was not because of any protected disclosure.

461. In relation to NJ and RKS – the claimant's return to work in the goldfish bowl matters upon which RKO's was cross examined. I therefore find that they were not involved in his assignment to the goldfish bowl.

Adverse treatment 9 (March 2020) - failure to promote the claimant to Chief Inspector and provide reasons - GOC paragraph 37(i) - alleged perpetrators LU and CW

- ET1/29 repeats ET1/37(i)

462. GOC paragraph 29 (repeated at 37(i)): "the failure to promote the claimant to chief inspector and provide reasons for the same".

463. I have found as facts that both these failures occurred.

464. I note that, in the claimant's exit interview, the claimant actually pointed to his mental health as being the reason why he was refused the opportunity to be promoted in March 2020, not his whistleblowing - [423].

465. As I have already stated, there were five expressions of interest in relation to this particular position. It was LU's evidence that the claimant's application was the weakest, as it was the least detailed and had no examples. This conclusion by LU is supported by the documentary evidence in the bundle, namely those five expressions of interest. I therefore find that her evidence on this point was credible.

466. I also accept LU's evidence as to the further reasons why she chose two individuals who were successful. LU told me that she did not need someone with the same experience as her, but needed someone to fill the gaps in her own skill set. For her, her weakness was performance management, so she needed someone who could cover that area. I find that there is nothing in front of me that undermines this evidence from LU.

467. In terms of LU's knowledge of any protected disclosures, her evidence was that she had been involved in one meeting in March 2018, in which the claimant had raised concerns that the Force was not doing enough to prepare for the implementation of GDPR. I have seen no evidence within the bundle to suggest that the claimant directly involved LU in any of his other protected disclosures. I therefore accept that the meeting in March 2018 was the only time in which LU was aware that the claimant had raised his concerns about data protection.

468. The failure to promote in March 2020 is therefore two years after LU's involvement in one of the protected disclosures.

469. On balance, I find it unlikely that LU would be motivated in her decision-making by something that happened in a meeting two years earlier.

470. I am satisfied that LU's reasons for not choosing the claimant were not because of protected disclosures, but for the reasons she stated in her evidence.

471. As I have set out above, I find that CW was not aware of any of the claimant's protected disclosures. He therefore cannot have been motivated by those disclosures, in any of his actions towards the claimant.

472. He did not speak to LU about her rationale for her decision-making.

473. It was suggested by the claimant that there was something odd in the claimant being highlighted as needing feedback from a specific individual - see emails at [379/380], in which LU appointed CW as a point of feedback for the claimant. CW's evidence on this point was that this was not unusual, that feedback is split up between the team dealing with the appointment process.

474. I therefore find that Adverse Treatment 9 was not because of any protected disclosures.

Adverse treatment 2 (since September 2017 to October 2018 (when the claimant reverted to rank of inspector)) - not being listened to/placed in a position where he felt he had to elect for voluntary demotion from Chief Inspector to Inspector – GOC paragraphs 8, 9, 10, 11, 37(b) - alleged perpetrators RKS, NB, RF, JC

475. GOC paragraph 8: "The claimant felt his Concerns were not listened to, [RKS] would often behave in an unprofessional manner sighing and tutting in meetings chaired by the claimant. When challenged about her regarding his Concerns she would say "we are all managers here" to try and justify why managers had access to information they should not". This is a repetition of **Adverse Treatment 1**, which I have already dealt with, above.

476. GOC paragraph 9: "the claimant's Concerns were simply brushed aside". This allegation adds nothing to the specific factual allegations made at **Adverse Treatments 5 and 10**, dealt with above.

477. GOC paragraph 10: "in addition to feeling bullied by his then line manager [RF], the claimant had got to a point of feeling as though he was not being taken seriously and not being listened to he decided to devote himself to the rank of inspector"

478. I have found above that the reason for the Claimant's self-demotion was partly the requirements of the job, and partly the fact that he felt that it was his lack of agreement with RKS, TS and NB.

479. The reason was not because of treatment he was receiving specifically because of protected disclosures.

480. In any event, I have found that none of the alleged Adverse Treatment by members of the Force was because of any protected disclosures. Therefore, the protected disclosures could not in any event be the cause of the claimant's decision to demote himself, even if the Adverse Treatments were the reason for his decision.

481. GOC paragraph 11: there is no allegation of adverse treatment within this paragraph.

482. GOC paragraph 37(b): this is a repeat of the allegation at GOC paragraph 10.

I therefore conclude that, to the extent I have found Adverse Treatment 2 factually upheld, it was not because of protected disclosures.

Conclusion on the automatic constructive unfair dismissal claim

483. I have upheld all protected disclosures other than PID 10.

484. I have upheld aspects of Adverse Treatments 1, 2, 3, 4, 5, 7, 8, 9, 10.

485. However, I have found that any protected disclosures were not the reason or principal reason for that Adverse Treatment. I have set out why this is the case for each Adverse Treatment above. However, as a general point, I note that in internal emails (excluding the claimant), there is not one disparaging word mentioned about the claimant. This is exactly where one may expect the respondent's staff to let their masks slip, if they were finding the claimant a troublemaker, as suggested by the claimant. There is nothing to suggest that there was any sniping about the claimant behind his back in any of the documentary evidence I have seen.

486. Therefore the claimant's claim must fail, as any Adverse Treatment that led to his resignation was not because of the protected disclosures.

487. In the event that I am wrong, and the requisite causative link between the Protected Disclosures and Adverse Treatments is made out, I conclude that the Adverse Treatments, individually or taken as a whole, do not reach the threshold to lead to a breach of the implied term of trust and confidence. None of the conduct under Adverse Treatment 1-10, on the facts as I have found them, is sufficient to be calculated or likely to destroy or seriously damage the relationship of confidence and trust between the parties. I therefore conclude that the claimant's claim would have failed at this stage, even if the requisite link between his Protected Disclosures and Adverse Treatments had been made out.

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Employment Judge **Shastri-Hurst**

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Date 21 August 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON
21 August 2023

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FOR THE TRIBUNAL OFFICE