THE EMPLOYMENT TRIBUNALS

Claimant: **Mr R Walker**

Respondent: **The Chief Constable of Cleveland Constabulary**

Held at: **Newcastle**
On: **24- 28 April and 2-5, 9, 10, 12 and (in chambers) 15 and 16 May 2023**

Before: **Employment Judge Aspden**
Mr R Greig
Mr S Wykes

Appearances

For the Claimant: In person
For the Respondent: Mr Arnold, counsel

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The complaints referred to in these proceedings as Allegations 26, 27, 28, 29 and 30, made under section 48 of the Employment Rights Act 1996, are struck out because the tribunal does not have jurisdiction to determine them.

2. None of the claimant's remaining complaints are well founded. The complaints are dismissed.

REASONS

NB A Restricted Reporting Order has been made in these proceedings. The Order prohibits the publication in Great Britain, in respect of these proceedings, of identifying matters concerning the individuals referred to in this judgment as Officers A, B, C, D and E.

Introductory matters

1. By a claim form received on 4 May 2020 the claimant made a number of complaints against the respondent.
2. The claimant set out the details of his complaints in a document that he submitted with his claim form. We refer to that document as the grounds of claim. The grounds of claim were in narrative form spanning 168 paragraphs over 28 pages. It was not clear from that document precisely what the claimant was saying the respondent (or those for whose actions the respondent was responsible) had done that was unlawful and that he was asking the Tribunal to rule on.
3. The respondent's representatives subsequently set out the claims they thought the claimant may be seeking to make. The parties then cooperated to agree a draft list of issues that set out the alleged acts complained about, in what ways they were said to be unlawful and where the matters complained about were referred to in the grounds of claim. One of the complaints in the list did not form part of the grounds of claim but was added by way of amendment by Judge Morris at a preliminary hearing in February 2021.
4. Subsequently certain claims were struck out or dismissed and the claimant withdrew others. The draft list of issues was refined accordingly on several occasions.
5. In November 2022 Employment Judge Aspden prepared a document setting out the complaints being made (as she understood them) and the issues that the Tribunal may have to decide to determine those complaints. EJ Aspden directed the parties to review the list of complaints and issues for accuracy, clarify certain matters and try to limit any areas of dispute as far as they could. This the parties did.

6. The claims that are to be determined by us are complaints that the respondent did a number of acts or omissions between 2012 and the date the claim was presented on 4 May 2020 that constituted:
   6.1. in all cases, detriment contrary to s47B of the Employment Rights Act 1996;
   6.2. in some cases (starting with the claimant's suspension in 2018), victimisation contrary to s39 of the Equality Act 2010 read with section 27; and
   6.3. in some cases (starting in December 2019), direct disability discrimination contrary to s39 of the Equality Act 2010 read with section 13.

7. We have set out below the various acts or omissions (or alleged acts/omissions) that are being complained about.

8. In respect of the complaints of detriment contrary to s47B of the Employment Rights Act 1996, the claimant's case is that the respondent (or someone for whom the respondent is vicariously liable) subjected him to detriment (by acts or deliberate failures to act) because he made one or more protected disclosures as defined in the Employment Rights Act 1996. In respect of the victimisation complaints, the claimant's case is that the respondent (or someone for whom the

respondent is vicariously liable) subjected him to detriment because he did one or more protected acts as defined in section 27 of the Equality Act 2010 or because they believed the claimant had done, or may do, a protected act.

9. The parties agreed a list of the protected acts and protected disclosures (and alleged protected disclosures) which the claimant alleges the respondent subjected him to detriments because of. The respondent accepts that the claimant did protected acts as alleged. So far as protected disclosures are concerned, the respondent accepts that, in each instance relied on, the claimant made qualifying disclosures as defined by section 43B of the Employment Rights Act 1996. The respondent accepts that the majority of those disclosures were protected disclosures but contends that some were not because the claimant did not make them in accordance with any of sections 43C to 43H. In the case of those disputed alleged protected disclosures, the claimant's case is that he made the disclosure in accordance with section 43C.

10. We have referred to the relevant protected acts/disclosures and alleged protected disclosures in our findings of fact below. The numbering of the protected acts/disclosures derives from an early draft list of issues put together by the parties.

11. In respect of the complaints of direct disability discrimination, the claimant contends that the respondent (or someone for whom the respondent is vicariously liable) treated him less favourably than they would have treated others (and in some cases did treat others) in circumstances that are not materially different, and that they did so because of his disability. The claimant contends that he was a disabled person (within the meaning of that term in the Equality Act 2010) by virtue of a mental impairment, diagnosed as PTSD. The respondent agrees that the claimant was disabled in the material period ie December 2019 to 4 May 2020 by virtue of this mental impairment.

12. The claimant had originally also contended that he was treated less favourably because of the disabilities of third parties. However, those complaints of 'associative disability discrimination' were withdrawn ahead of this hearing.

13. The essence of the claimant's case was set out concisely by Judge Shore following an earlier hearing. The claimant is alleging that every act that he is complaining of is connected to every other act because they are all part of an unlawful conspiracy between a large number of individuals within Cleveland Police, the Police Federation for England and Wales and Cleveland Police Federation that had, as its primary purpose, a desire to keep secret a number of unlawful acts. On the claimant's case, the acts that the conspiracy wished to keep secret included, amongst others, a series of allegedly unlawful acts against disabled and BAME Police officers and members of Cleveland Police Federation who sought to uncover the unlawful acts. The claimant says that, as he got closer to uncovering the conspiracy, the conspirators committed further acts, the purpose of which was to remove the claimant from, and keep him out of, his Police Federation role and the

workplace for as long as possible and, latterly, in the hope that he would resign or retire with ill health.

Complaints

14. The complaints made by the claimant are set out below in broadly chronological order. Also set out below are the issues that it was agreed the tribunal may need to decide to determine the complaint (in addition to deciding whether the disputed protected disclosures were made in accordance with sections 43C-H of the Employment Rights Act 1996). The numbering of the allegations derives from an early draft list of issues put together by the parties. It is not sequential because the allegations were not set out in date order in the original draft and some complaints have been struck out, dismissed or withdrawn since the original draft was put together.

Allegation 26 – forcing the Claimant to consent to a financial check with threats in 2012

15. The claimant alleges that in April and May 2012 the Respondent forced the Claimant to consent to a financial check with threats.

16. The claimant complains that this was an act of detriment by the respondent contrary to s47B of the Employment Rights Act 1996.

17. The respondent denies that it forced the Claimant to consent to a financial check with threats as alleged. The respondent accepts that, if the tribunal finds that the Respondent did do what is alleged, it was detrimental to the Claimant.

18. ***Issues for the tribunal to decide***

    18.1. Did the respondent force the Claimant to consent to a financial check with threats as alleged?

    18.2. If so, did the respondent treat the claimant in this way because the claimant made a protected disclosure?

Allegations 27 and 28 –failing to promote the Claimant

19. The parties agree that Supt Irvine declined to support an application the claimant made for promotion in January 2013. The Claimant alleges that the reason Supt Irvine failed to support him was because of the claimant's role in the 'Himsworth Incident' and the claimant's failure to consent to be vetted.

20. The claimant complains that this was an act of detriment by the respondent contrary to s47B of the Employment Rights Act 1996.

21. The respondent contends that Supt Irvine declined to support the Claimant's application for promotion for performance/ conduct reasons. The Respondent does not accept this was detrimental treatment.

22. ***Issues for the tribunal to decide***

22.1. Was this detrimental treatment?

22.2. If so, did the respondent treat the claimant in this way because the claimant made a protected disclosure?

Allegation 29 –redeploying the Claimant and manufacturing poor performance records and accounts to discredit the claimant

23. The claimant alleges that the Respondent (a) redeployed the Claimant to Stockton, causing financial and personal detriment, and (b) in 2014, manufactured poor performance records and accounts to discredit him.

24. The claimant complains that these were acts of detriment by the respondent contrary to s47B of the Employment Rights Act 1996.

25. The respondent accepts that the respondent redeployed the Claimant to Stockton. It contends the Claimant was moved as part of restructure that also affected many other officers. He was moved from Southside to Northside (Stockton) in 2013 or 2014. The Respondent denies that redeploying the Claimant to Stockton is detrimental treatment. The respondent's position is that this is a neutral act and/or police officers are liable to posting in any event.

26. The respondent denies that the Respondent manufactured poor performance records and accounts, or did so to discredit the Claimant. The respondent accepts that, if proven, manufacturing poor performance records and accounts to discredit the Claimant is detrimental treatment.

27. ***Issues for the tribunal to decide***

27.1. Was redeploying the Claimant to Stockton detrimental treatment?

27.2. If so, did the respondent treat the claimant in this way because the claimant made a protected disclosure?

27.3. Did the respondent manufacture poor performance records and accounts to discredit the claimant?

27.4. If so, did the respondent treat the claimant in this way because the claimant made a protected disclosure?

Allegation 30 – in September 2015, failing to provide fair promotion opportunities for the Claimant

28. The claimant alleges that the Respondent failed to provide fair promotion opportunities for the Claimant and used his reporting of this against him in performance records. The claimant was directed to clarify this allegation by identifying what the respondent did or failed to do that is alleged to be unlawful. In response, the claimant said: 'In September 2015 I applied for Chief Inspector promotion however the electronic system did not work properly. I made repeated enquiries to have simple questions answered however they were not. I

subsequently failed the process having been disadvantaged. Paul Young and Denise Curtis Haig of the HR department ruled that I was not disadvantaged despite the evidence I was able to give.' At a case management hearing in February this year the claimant confirmed this complaint concerns only the claimant's application for promotion in September 2015 (and does not include later issues concerning promotion opportunities).

29. The claimant complains that this was an act of detriment by the respondent contrary to s47B of the Employment Rights Act 1996.

30. The Respondent denies it subjected the claimant to detriment as alleged. The respondent accepts that, that if proven, a failure to answer simple questions repeated times, leading to the Claimant unable to apply for Chief Inspector, is a detriment to him.

31. Issues for the tribunal to decide

31.1. Did the respondent deliberately fail to answer the claimant's enquiries as alleged?

31.2. If so, did the respondent treat the claimant in this way because the claimant made a protected disclosure?

Allegation 9 –suspending the Claimant from duty

32. On 5 November 2018, the Respondent suspended the Claimant from police service.

33. The claimant complains that this was:

33.1. An act of detriment by the respondent contrary to s47B of the Employment Rights Act 1996.

33.2. Victimisation contrary to s39 of the Equality Act 2010 read with section 27.

34. The respondent does not accept that the act of suspension is a detrimental act. The respondent's position is that it is a neutral act and/or protects both parties and/or was necessary in order to investigate an allegation of gross misconduct, namely the suspected theft of a safe.

35. Issues for the tribunal to decide

35.1. Was the suspension detrimental treatment?

If so,

35.2. Did the respondent treat the claimant in this way because the claimant made a protected disclosure?

35.3. Did the respondent treat the claimant in this way because the claimant did a protected act?

35.4. Did the respondent treat the claimant in this way because the respondent believed the claimant had done, or may do, a protected act?

Allegation 15 – extending the Claimant's suspension from 1 May 2019 and failing to update the Claimant about his suspension

36. The parties agree that the respondent extended the claimant's suspension for a further 28 days from 1 May 2019. The claimant alleges that the respondent deliberately failed to tell the claimant his suspension had been extended until he attended Guisborough police station for duty on 2 May 2019.

37. The claimant complaints that the extension of his suspension, and the deliberate failure to tell him about the extension, were:

    37.1. Acts of detriment by the respondent contrary to s47B of the Employment Rights Act 1996.
    37.2. Victimisation contrary to s39 of the Equality Act 2010 read with section 27.

38. The respondent does not accept that any extension to the Claimant's suspension for a further 28 days from 1 May 2019 is detrimental treatment. Its position is that this is a neutral act and/or protects both parties and/or was necessary in order to investigate an allegation of gross misconduct, namely the suspected theft of a safe.

39. The Respondent denies it delayed in updating the Claimant about his suspension. The respondent's position is that the Investigating Officer updated the Claimant's Police Federation Representative about the Claimant's suspension but his Federation Representative failed to tell the claimant. In any event, the respondent denies any failure was deliberate. In the event that the Tribunal concludes that the respondent did deliberately fail to tell the Claimant his suspension had been extended as alleged, the respondent accepts that is detrimental treatment.

40. Issues for the tribunal to decide

    40.1. Was the extension of the claimant's suspension detrimental treatment?
    If so,
    40.2. Did the respondent treat the claimant in this way because the claimant made a protected disclosure?
    40.3. Did the respondent treat the claimant in this way because the claimant did a protected act?
    40.4. Did the respondent treat the claimant in this way because the respondent believed the claimant had done, or may do, a protected act?

    40.5. Did the respondent deliberately fail to tell the claimant his suspension had been extended until he attended Guisborough police station for duty on 2 May 2019?
    If so,
    40.6. Did the respondent treat the claimant in this way because the claimant made a protected disclosure?

40.7. Did the respondent treat the claimant in this way because the claimant did a protected act?

40.8. Did the respondent treat the claimant in this way because the respondent believed the claimant had done, or may do, a protected act?

Allegation 16 – extending the Claimant's suspension from 28/29 May 2019 and failing to update the Claimant about his suspension

41. The parties agree that the respondent extended the claimant's suspension for a further 28 days from 28 or 29 May 2019. The claimant alleges that the respondent deliberately failed to tell the claimant his suspension had been extended until he attended the Community Hub for duty on 29 May 2019.

42. The claimant complains that the extension of his suspension, and the deliberate failure to tell him about the extension, were:

42.1. Acts of detriment by the respondent contrary to s47B of the Employment Rights Act 1996.

42.2. Victimisation contrary to s39 of the Equality Act 2010 read with section 27.

43. The respondent does not accept that any extension to the Claimant's suspension for a further 28 days is detrimental treatment. Its position is that this is a neutral act and/or protects both parties and/or was necessary in order to investigate an allegation of gross misconduct, namely the suspected theft of a safe.

44. The Respondent denies it delayed in updating the Claimant about his suspension. In the event that the Tribunal concludes that the respondent did deliberately fail to tell the Claimant his suspension as alleged, the respondent accepts that is detrimental treatment.

45. Issues for the tribunal to decide

45.1. Was the extension of the claimant's suspension detrimental treatment?

If so,

45.2. Did the respondent treat the claimant in this way because the claimant made a protected disclosure?

45.3. Did the respondent treat the claimant in this way because the claimant did a protected act?

45.4. Did the respondent treat the claimant in this way because the respondent believed the claimant had done, or may do, a protected act?

45.5. Did the respondent deliberately fail to tell the claimant his suspension had been extended until he attended Guisborough police station for duty on 2 May 2019?

If so,

45.6. Did the respondent treat the claimant in this way because the claimant made a protected disclosure?

45.7. Did the respondent treat the claimant in this way because the claimant did a protected act?

45.8. Did the respondent treat the claimant in this way because the respondent believed the claimant had done, or may do, a protected act?

Allegation 19 – failing to investigate in timely manner / deliberately delaying the gross misconduct investigation

46. The claimant alleges that the Respondent failed to investigate in a timely and expeditious manner and deliberately delayed a gross misconduct investigation including by changing investigators around 5th November 2019.

47. The claimant complains that this was:

47.1. Detriment by the respondent contrary to s47B of the Employment Rights Act 1996.

47.2. Victimisation contrary to s39 of the Equality Act 2010 read with section 27.

47.3. In so far as this was done in or after December 2019, direct disability discrimination contrary to s39 of the Equality Act 2010 read with section 13.

48. The Respondent accepts that there were delays to the investigation, which the respondent says were caused by multiple factors. The respondent denies this was deliberate. The respondent accepts that the investigator changed but denies this was done to deliberately delay the investigation.

49. The respondent accepts that, if the tribunal finds the respondent did fail to investigate in a timely and expeditious manner and deliberately delay the gross misconduct investigation, including by changing investigators around 5 November 2019, that is detrimental treatment.

50. Issues for the tribunal to decide

50.1. Did the respondent fail to investigate in a timely and expeditious manner and deliberately delay the gross misconduct investigation, including by changing investigators around 5th November 2019?

If so

50.2. Did the respondent treat the claimant in this way because the claimant made a protected disclosure (and insofar as this was a failure to act, was it a deliberate failure to act)?

50.3. Did the respondent treat the claimant in this way because the claimant did a protected act?

50.4. Did the respondent treat the claimant in this way because the respondent believed the claimant had done, or may do, a protected act?

50.5. If this happened in or after December 2019, by treating the claimant in this way, did the respondent treat the claimant less favourably, because of his disability, than the respondent would have treated others in circumstances that were not materially different?

Allegation 33- failing to offer viable options to return to work

51. The Claimant alleges the respondent failed to offer him any viable options to return to work during his absence from work.

52. The claimant complains that this was:
    52.1. Detriment by the respondent contrary to s47B of the Employment Rights Act 1996.
    52.2. Victimisation contrary to s39 of the Equality Act 2010 read with section 27.
    52.3. In so far as this was done in or after December 2019, direct disability discrimination contrary to s39 of the Equality Act 2010 read with section 13.

53. The respondent denies the allegation. If the tribunal finds the respondent did fail to offer the claimant any viable options to return to work during his absence from work, the respondent accepts this amounts to detrimental treatment.

54. Issues for the tribunal to decide

54.1. Did the respondent fail to offer the claimant any viable options to return to work during his absence from work?

If so

54.2. Did the respondent deliberately treat the claimant in this way because the claimant made a protected disclosure?

54.3. Did the respondent treat the claimant in this way because the claimant did a protected act?

54.4. Did the respondent treat the claimant in this way because the respondent believed the claimant had done, or may do, a protected act?

54.5. If this happened in or after December 2019, by treating the claimant in this way, did the respondent treat the claimant less favourably, because of his disability, than the respondent would have treated others in circumstances that were not materially different?

Allegation 44 – sending the Claimant's private and personal data to an address other than his own

55. The claimant alleges that, in or around November 2019, the Respondent deliberately sent a letter containing the Claimant's private and personal data to an address other than his own.

56. The claimant complains that this was:
    56.1. Detriment by the respondent contrary to s47B of the Employment Rights Act 1996.
    56.2. Victimisation contrary to s39 of the Equality Act 2010 read with section 27.
57. The respondent denies the allegation. If the tribunal finds the respondent did deliberately sent a letter containing the Claimant's private and personal data to an address other than his own, the respondent accepts this amounts to detrimental treatment.

58. Issues for the tribunal to decide

58.1. Did the respondent deliberately send a letter containing the Claimant's private and personal data to an address other than his own?
If so

58.2. Did the respondent treat the claimant in this way because the claimant made a protected disclosure?

58.3. Did the respondent treat the claimant in this way because the claimant did a protected act?

58.4. Did the respondent treat the claimant in this way because the respondent believed the claimant had done, or may do, a protected act?

Allegation 21 – failing to follow Police Regulations / delaying completion of the Appropriate Authority's report into the investigation

59. The claimant alleges that the Respondent deliberately failed to follow Police Regulations and delayed the completion of the Appropriate Authority's report into the conduct investigation.

60. The claimant complains that this was:
    60.1. Detriment by the respondent contrary to s47B of the Employment Rights Act 1996.
    60.2. Victimisation contrary to s39 of the Equality Act 2010 read with section 27.
    60.3. Direct disability discrimination contrary to s39 of the Equality Act 2010 read with section 13.

61. The respondent denies the allegation. If the tribunal finds the respondent did deliberately fail to follow Police Regulations and delay the completion of the Appropriate Authority's report into the conduct investigation, the respondent accepts this was detrimental treatment.

62. Issues for the tribunal to decide

62.1. Did the respondent deliberately fail to follow Police Regulations and delay the completion of the Appropriate Authority's report into the investigation?

If so:

62.2. Did the respondent treat the claimant in this way because the claimant made a protected disclosure?

62.3. Did the respondent treat the claimant in this way because the claimant did a protected act?

62.4. Did the respondent treat the claimant in this way because the respondent believed the claimant had done, or may do, a protected act?

62.5. By treating the claimant in this way, did the respondent treat the claimant less favourably, because of his disability, than the respondent would have treated others in circumstances that were not materially different?

Allegation 31 – failing to arrange counselling prescribed by the Force Medical Adviser

63. The claimant alleges that the respondent delayed arranging counselling prescribed by the Force Medical Adviser in December 2019 until May 2020.

64. The claimant complains that this was:

64.1. Detriment by the respondent contrary to s47B of the Employment Rights Act 1996.

64.2. Victimisation contrary to s39 of the Equality Act 2010 read with section 27.

64.3. Direct disability discrimination contrary to s39 of the Equality Act 2010 read with section 13.

65. The respondent denies the allegation. If the tribunal finds the respondent did delay arranging counselling as alleged, the respondent accepts this was detrimental treatment.

66. Issues for the tribunal to decide

66.1. Did the respondent delay arranging counselling prescribed by the Force Medical Adviser in December 2019?

If so:

66.2. Did the respondent treat the claimant in this way because the claimant did a protected act?

66.3. Did the respondent treat the claimant in this way because the respondent believed the claimant had done, or may do, a protected act?

66.4. Did the respondent deliberately delay arranging counselling because the claimant made a protected disclosure?

66.5. By treating the claimant in this way, did the respondent treat the claimant less favourably, because of his disability, than the respondent treated Jon Green and/or Warren Shepheard or than the respondent would have treated others in circumstances that were not materially different?

Allegation 25 – failing to confirm destruction of biometric samples

67. The claimant alleges that the respondent failed to confirm the destruction of the Claimant's biometric samples, photograph and fingerprints for a recorded 'crime' that they know does not exist.

68. The claimant complains that this was:
    68.1. Detriment by the respondent contrary to s47B of the Employment Rights Act 1996.
    68.2. Victimisation contrary to s39 of the Equality Act 2010 read with section 27.
    68.3. In so far as this was done in or after December 2019, direct disability discrimination contrary to s39 of the Equality Act 2010 read with section 13.

69. The respondent denies it subjected the claimant to the detriment alleged. Its position is that the relevant materials were under the control of a different force and it could not confirm destruction because it did not know that the materials had been destroyed. In any event, the respondent contends that the complaint falls outside the scope of the Employment Rights Act 1996 and part 5 of the Equality Act 2010 because, if the respondent did subject the claimant to the detriment alleged, this is an act (or failure to act) by the police force qua police service, not as the claimant's employer.

70. Issues for the tribunal to decide

70.1. Did the respondent fail to confirm the destruction of the Claimant's biometric samples, photograph and fingerprints for a recorded 'crime' that they know does not exist?

If so:

70.2. Did the claimant suffer the detriment as an employee?
70.3. Did the respondent treat the claimant in this way because the claimant did a protected act?
70.4. Did the respondent treat the claimant in this way because the respondent believed the claimant had done, or may do, a protected act?

70.5. Did the respondent deliberately fail to confirm the destruction of the Claimant's biometric samples, photograph and fingerprints because the claimant made a protected disclosure?

70.6. If this happened in or after December 2019, by treating the claimant in this way, did the respondent treat the claimant less favourably, because of his disability, than the respondent would have treated others in circumstances that were not materially different?

Time issues

71. Many of the claimant's complaints have been made more than three months after the alleged act or omission. Therefore, the tribunal must consider whether it lacks jurisdiction to deal with any of the complaints on the ground that the claim is out of time. The claim form was presented on 4 May 2020.

72. For the purposes of sections 48 and 207B of the Employment Rights Act 1996 and section 123 of the Equality Act 2010, the parties agree that Day A and Day B are both 30 April 2020.

73. The parties agreed at an earlier stage of proceedings that complaints about acts/omissions that happened before 31 January 2020 are potentially out of time. However, an error appears to have been introduced by Judge Aspden in the draft list of complaints and issues prepared in November 2022 suggesting the cut off date was 3 February 2020.

74. The issues for the tribunal to decide in this regard are as follows.

<u>Claims of detriment contrary to section 47B of the Employment Rights Act 1996</u>

75. What was the date of the act or failure to act that contravened ERA section 47B? ie:
    75.1. In the case of an act, when was it done?
    75.2. In the case of a failure to act, when was it decided upon (or when is it to be treated as having been decided upon applying ERA s48(3)(b))?

76. Was the date after 30 January 2020?

77. If not, was the act or failure to act that contravened ERA section 47B part of a series of similar acts or failures to act that contravened ERA section 47B and the last of which was after 30 January 2020?

78. If not, has the claimant shown that it was not reasonably practicable for him to present the complaint within the relevant three month time limit?

79. If so, did the claimant present the claim within such further period as was reasonable?

<u>Claims under the Equality Act 2010</u>

80. What was the date of the act or failure to act that contravened the Equality Act 2010? ie:
    80.1. In the case of an act, when was it done?
    80.2. In the case of a failure to act, when was it decided upon (or when is it to be treated as having been decided upon applying Equality Act s123(4))?
    80.3. Was the date after 30 January 2020?
    80.4. If not, was the act or failure to act that contravened the Equality Act 2010 part of a series of similar acts or failures to act that contravened the Equality Act 2010 and the last of which was after 30 January 2020?
    80.5. If not, did the claimant present the claim within such further period as the Tribunal considers just and equitable?

Legal framework

Equality Act 2010

81. It is unlawful for an employer to discriminate against or to victimise an employee as to their terms of employment; in the way the employer affords them access, or by not affording them access, to opportunities for transfer or training or for receiving any other benefit, facility or service; by dismissing them; or by subjecting them to any other detriment: section 39(2) and (4) Equality Act 2010.

82. Section 13 of the Equality Act 2010 provides that it is direct discrimination to treat an employee less favourably because of a disability than the employer treats or would treat others. In determining whether there is direct discrimination it is necessary to compare like with like. This is provided for by section 23 of the Act, which says that in a comparison for the purposes of section 13 there must be no material difference between the circumstances relating to each case.

83. Section 27 of the Equality Act 2010 defines victimisation. It provides as follows:

> *"(1) A person (A) victimises another person (B) if A subjects B to a detriment because—*
> *(a) B does a protected act, or*
> *(b) A believes that B has done, or may do, a protected act.*
> *(2) Each of the following is a protected act—*
> *(a) bringing proceedings under this Act;*
> *(b) giving evidence or information in connection with proceedings under this Act;*
> *(c) doing any other thing for the purposes of or in connection with this Act;*
> *(d) making an allegation (whether or not express) that A or another person has contravened this Act.*
> *(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.…"*

84. For these purposes, section 109 of the Equality Act 2010 provides that the acts of the employer's other employees are treated as acts of the employer provided they are done in the course of employment; similarly, an employer is responsible for acts that are done for them, with their authority, by an agent. This is the case even if the employer neither knows nor approves of the acts in question.

85. For the purposes of sections 27 and 39, a detriment exists if a reasonable worker (in the position of the claimant) would or might take the view that the treatment accorded to them had, in all the circumstances, been to their detriment: Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337. As May LJ put it in De Souza v Automobile Association [1986] ICR 514, 522G, the tribunal must find that, by reason of the act or acts complained of, a reasonable worker would or might take the view that they had thereby been disadvantaged in the circumstances in which they had thereafter to work. An alleged victim cannot establish 'detriment' merely by showing that they had suffered mental distress: before they could succeed it would have to be objectively reasonable in all the circumstances: St Helen's Metropolitan Borough Council v Derbyshire [2007] IRLR 540, [2007] UKHL 16.

86. The detriment in question must have arisen in an employment context, meaning the individual must have suffered the detriment 'as an employee': Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11, [2003] IRLR 285; London Borough of Waltham Forest v Martin UKEAT/0069/11 (23 June 2011, unreported); Tiplady v City of Bradford MDC [2019] EWCA Civ 2180, [2020] IRLR 230.

87. For a claim of direct discrimination to be made out, the conduct complained of must be because of the protected characteristic (the claimant's disability in this case). Similarly, for a claim of victimisation to be made out, the conduct complained of must be because of the protected act (or because the respondent believed the claimant had done or may do a protected act). In both cases, the protected characteristic or protected act need not be the only reason for the detrimental treatment, provided it had a 'significant influence' on the outcome.

88. There are some forms of direct discrimination in which the discrimination is inherent in the treatment. However, in the majority of cases the employment tribunal must consider the mental processes of a decision-maker or decision-makers: Nagarajan v London Regional Transport [1999] IRLR 572, HL; Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] IRLR 830. The test is: what was the reason why the alleged discriminator acted as they did; what, consciously or unconsciously, was their reason? The subject of the inquiry is the ground of, or reason for, the putative discriminator's action, not his or her motive: Amnesty International v Ahmed [2009] IRLR 884, EAT.

89. That causation must relate to the motivation or reason of the final decision-taker, rather than of others who might have played an earlier part in the process leading

to that decision: CLFIS (UK) Ltd v Reynolds [2015] EWCA Civ 439, [2015] IRLR 562.

90. In Reynolds the Court of Appeal analysed a situation where an act which is detrimental to a claimant is done by an employee who is innocent of any discriminatory motivation but who has been influenced by information supplied, or views expressed, by another employee whose motivation is, or is said to have been, discriminatory. Giving the judgment of the Court of Appeal, Underhill LJ described such cases as ones of 'tainted information' (treating 'information' widely so as to cover also the expression of views) and distinguished them from cases involving joint decision-making by more than person. Underhill LJ held that the correct approach in a tainted information case is to treat the conduct of the person supplying the information as a separate act from that of the person who acts on it. Liability will only be established where the protected characteristic formed the motivation for the individual performing the act complained of; unwittingly acting on the basis of someone else's tainted decision will not be sufficient.

91. Underhill LJ gave the example of a manager (X) who decides to dismiss an employee (C) on the basis of an adverse report about her from another employee (Y) who is motivated by C's age. In such a case, the dismissal would not itself be an act of discrimination because Y's motivation could not be attributed to X. C could bring a complaint about Y's treatment in making an adverse report. However, if C does not specifically complain of that act by Y, the claim will fail.

92. The ratio of Reynolds was summarised by Kerr J in Commissioner of Police of the Metropolis v Denby UKEAT/0314/16 at paragraph 52:

> *'52. The ratio of CLFIS is simple: where the case is not one of inherently discriminatory treatment or of joint decision making by more than one person acting with discriminatory motivation, only a participant in the decision acting with discriminatory motivation is liable; an innocent agent acting without discriminatory motivation is not. Thus, where the innocent agent acts on 'tainted information' (per Underhill LJ at paragraph 34), ie 'information supplied, or views expressed, by another employee whose motivation is, or is said to have been, discriminatory', the discrimination is the supplying of the tainted information, not the acting upon it by its innocent recipient.'*

93. A somewhat different approach was taken in the whistleblowing dismissal case Royal Mail Group Ltd v Jhuti [2019] UKSC 55, [2020] IRLR 129. Lord Wilson (giving the only judgment) held that:

> *'if a person in the hierarchy of responsibility above the employee determines that she (or he) should be dismissed for a reason but hides it behind an invented reason which the decision-maker adopts, the reason for the dismissal is the hidden reason rather than the invented reason.'*

94. The editors of Harvey on Industrial Relations and Employment Law suggest that 'the same logic may be accepted by the courts in direct discrimination cases, but

for the time being Reynolds has not been expressly overruled' and query whether Reynolds should now be considered impliedly overruled by Jhuti or whether it could be argued that there should still be a difference between discrimination law and employment law on this point. It appears to us that Reynolds remains binding on us. The claimant did not argue otherwise in his closing submissions. In any event, the EAT has recently confirmed, in a decision by which we are bound, that Reynolds continues to apply in discrimination cases: Alcedo Orange Limited v Ferridge-Gunn [2023] EAT 78.

95. The burden of proof in relation to allegations of discrimination and victimisation is dealt with in section 136 of the 2010 Act, which sets out a two-stage process.

    95.1. Firstly, the tribunal must consider whether there are facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed the alleged unlawful act against the claimant. If the tribunal could not reach such a conclusion on the facts as found, the claim must fail.

    95.2. Where the tribunal could conclude that the respondent has committed the alleged unlawful act against the claimant, it is then for the respondent to prove that it did not commit or, as the case may be, is not to be treated as having committed, that act.

96. The Court of Appeal in Madarassy v Nomura International plc [2007] IRLR 246 held that 'could conclude' must mean 'a reasonable tribunal could properly conclude' from all the evidence before it.

97. The Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142, [2005] IRLR 258 made the following points in relation to the application of the burden of proof:

    97.1. 'It is important to bear in mind in deciding whether the claimant has proved facts from which the tribunal could conclude that there has been discrimination that it is unusual to find direct evidence of … discrimination: few employers would be prepared to admit such discrimination, even to themselves and in some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in.'

    97.2. In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

    97.3. It is important to note the word 'could' in the legislation. At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

    97.4. In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

97.5. Where the claimant has proved facts from which the tribunal could conclude that the respondent has treated the claimant less favourably because of disability, it is then for the respondent to prove that it did not commit that act or, as the case may be, is not to be treated as having committed that act. To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of the protected characteristic.

98. In Efobi v Royal Mail Group Ltd [2021] UKSC 33, [2021] IRLR 811. The Supreme Court confirmed that the approach set out in Igen is correct and made the following additional points:
    98.1. A tribunal cannot conclude that, in the words of s 136(2), 'there are facts from which the court could decide…' unless on the balance of probability from the evidence it is more likely than not that those facts are true.
    98.2. All the evidence as to the facts before the tribunal must be considered, not just evidence adduced by the claimant.
    98.3. However, facts and explanations should be carefully distinguished from each other since s 136(2) requires that any explanation provided by the employer should not be taken into account at this first burden-shifting stage.

99. If the burden of proof shifts to the respondent, then the respondent is required only to show a non-discriminatory reason for the treatment in question. It is unnecessary for the respondent to show that they acted reasonably or fairly in relying on such a reason.

Time limit

100. Section 123 of the Equality Act 2010 provides as follows:

Time limits

(1) Subject to section 140B, proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

101. In the case of conduct extending over a period, section 123(3)(a) applies. In cases involving numerous discriminatory acts or omissions, it is not necessary for

the claimant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather, what he or she has to prove, in order to establish a continuing act, is that (a) the incidents are linked to each other, and (b) that they are evidence of a 'continuing discriminatory state of affairs': Hendricks v Metropolitan Police Comr [2002] EWCA Civ 1686, [2003] IRLR 96.

102. In South Western Ambulance Service NHS Foundation Trust v King [2020] IRLR 168, the EAT considered the authorities on this issue and held that the only acts that can be considered as part of a continuing course of conduct are those that are upheld as acts of discrimination or some other contravention of the Equality Act 2010.

103. The three month primary time limit is calculated taking into account section 140B, which provides as follows:

140B Extension of time limits to facilitate conciliation before institution of proceedings

This section applies where a time limit is set by section 123(1)(a) or 129(3) or (4).

In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when the time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If the time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) The power conferred on the employment tribunal by subsection (1)(b) of section 123 to extend the time limit set by subsection (1)(a) of that section is exercisable in relation to that time limit as extended by this section.

104. In this case Day A was 30 April 2020; Day B was also 30 April 2020. The ET1 claim form was filed on 4 May 2020. Mr Arnold submits that any complaint about an act done, or treated as having been done, before 3 February 2020 is outside the primary three-month limitation period. As noted above, however, this date appears to have been introduced by mistake. At an earlier stage of proceedings the parties noted that the cut-off date is 31 January 2020 and not 3 February. That

appears to us to be correct. If the act was done (or is to be treated as having been done) on or after that date, the complaint is in time. Otherwise, it can only be considered if we, in effect, extend time for claiming.

105. Section 123(1) gives the Tribunal a broad discretion to extend time for claiming beyond the three-month time limit.

106. In Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23, Lord Justice Underhill said 'the best approach for a tribunal in considering the exercise of the discretion under section 123 (1) (b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) "the length of, and the reasons for, the delay".'

107. There is no presumption that the ET should exercise its discretion to extend time. The burden is on the claimant to persuade the tribunal to exercise its discretion in their favour. In Robertson v Bexley Community Centre [2003] IRLR 434, where Auld LJ held that 'the exercise of discretion is the exception rather than the rule'. One of the factors relevant to considering whether to exercise our discretion to consider a claim brought outside the time limit is the public interest in the enforcement of time limits. We note, however, that the Court of Appeal has held that there is no requirement that the Tribunal be satisfied that there was a good reason for any delay in claiming and time may even be extended in the absence of an explanation of the delay from the claimant: Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640, [2018] IRLR 1050. 24.

Detriment for making a protected disclosure

108. The Employment Rights Act 1996 gives workers the right not to be subjected to detriment for making a 'protected disclosure'. The right is set out at section 47B, which says this:

> *47B Protected disclosures.*
>
> *(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.*
>
> *(1A) A worker ('W') has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—by another worker of W's employer in the course of that other worker's employment, or by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.*
>
> *(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.*

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

109. In order for a disclosure to be considered as a protected disclosure, three requirements need to be satisfied (ERA 1996 s 43A). Firstly, there needs to be a 'disclosure of information' by the worker. Secondly, that disclosure must be a 'qualifying disclosure', as defined in section 43B. Thirdly it must be made by the worker in accordance with any of sections 43C to 43H.

110. Section 43C provides as follows:

43C Disclosure to employer or other responsible person.
(1)A qualifying disclosure is made in accordance with this section if the worker makes the disclosure ...—
(a)to his employer, or
(b)where the worker reasonably believes that the relevant failure relates solely or mainly to—
(i)the conduct of a person other than his employer, or
(ii)any other matter for which a person other than his employer has legal responsibility, to that other person.

(2)A worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer.

111. The reference in Section 43C(1)(b) to the ‘relevant failure’ is a reference to the matter falling within paragraphs (a) to (f) of section 43B(1): ERA section 43B(5).

112. In order to bring a claim under section 47B, the worker must have been subjected to a detriment by an act or a deliberate failure to act.

113. Where the complaint is that there has been an omission or failure to act, it will need to be a deliberate failure in order to attract the protection of this section.

114. The concept of detriment has the same meaning as in discrimination cases. As with discrimination cases, the detriment in question must have arisen in an employment context, meaning the individual must have suffered the detriment 'as an employee': Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11, [2003] IRLR 285.

115. Section 47B requires that the act, or deliberate failure to act, is ‘on the ground that’ the worker has made the protected disclosure. That requires the tribunal to ask itself why the alleged perpetrator of unlawful detriment acted as they did. This requires an analysis of the mental processes (conscious or unconscious) which caused the employer so to act and the test is not satisfied by the simple application

of a 'but for' test (Harrow London Borough v Knight [2003] IRLR 140, EAT). In Manchester NHS Trust v Fecitt [2011] EWCA 1190; [2012] ICR 372, the Court of Appeal held that the test for detriments is whether 'the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistle-blower.'

116. It is not enough to find that the decision-maker welcomed the opportunity to subject the worker to some detriment for because the worker was a whistleblower. Such a finding is not the same as a finding that that was their reason for the detrimental treatment. The correct approach was explained by the EAT, Elias J presiding, in ASLEF v Brady [2006] IRLR 576, at paras. 78-79 (p. 584). Although that case concerned a dismissal, it applies equally to other kinds of detrimental treatment. Elias J held:

> *'78. We would agree that in principle there is indeed a difference between a reason for the dismissal and the enthusiasm with which the employer adopts that reason. ([Counsel for the employer] in fact drew a distinction between reason and motive, but we do not think that the analysis in this case is assisted by referring to the elusive concept of motive.) An employer may have a good reason for dismissing whilst welcoming the opportunity to dismiss which that reason affords. For example, it may be that someone perceived by management to be a difficult union official is perfectly properly dismissed for drunkenness. The fact that the employers are glad to see the back of him does not render the dismissal unfair. What causes the dismissal is still the misconduct; but for that, the employee would not have been dismissed.*
>
> *79. It does not follow, however, that whenever there is misconduct which could justify the dismissal a tribunal is bound to find that this is indeed the operative reason. The Thomson case [Times Corporation v Thomson [1981] IRLR 522] shows that even a potentially fair reason may be the pretext for a dismissal for other reasons. To take an obvious example, if the employer makes the misconduct an excuse to dismiss an employee in circumstances where he would not have treated others in a similar way, then in our view the reason for dismissal – the operative cause – will not be the misconduct at all. On this analysis, that is not what has brought about the dismissal. The reason why the employer then dismisses is not the misconduct itself. Even if that in fact merited dismissal, if the employee is treated differently to the way others would have been treated, being dismissed when they would not have been, then in our judgment a tribunal would be fully entitled to conclude that the misconduct is not the true reason or cause of the dismissal. The true reason is then the antipathy which the employer displays towards the employee.'*

117. As with claims of direct discrimination, the 'reason' for detrimental treatment connotes the factors operating on the minds of the person or persons who did the act or deliberate omission that is said to be unlawful.

118. In University Hospital North Tees & Hartlepool NHS Foundation Trust v Fairhall, UKEAT/0150/20, 30 June 2021 the EAT (HHJ James Tayler) observed, at [36] – [37] that, in a case where there is an overall plan to remove a whistle-blower from a large organisation, a number of managers may be in the know, and the overall circumstantial evidence may be found to support the conclusion that the decision-maker was acting in accordance with that plan.

119. The case of Jhuti, referred to above, concerned a different kind of scenario. In that case the Supreme Court held as follows:

> *'If a person in the hierarchy of responsibility above the employee (here … Ms Jhuti's line manager) determines that, for reason A (here the making of protected disclosures), the employee should be dismissed but that reason A should be hidden behind an invented reason B which the decision-maker adopts (here inadequate performance), it is the court's duty to penetrate through the invention rather than to allow it also to infect its own determination. If limited to a person placed by the employer in the hierarchy of responsibility above the employee, there is no conceptual difficulty about attributing to the employer that person's state of mind rather than that of the deceived decision-maker.'*

120. That decision concerned the question of dismissal under section 103A of the Employment Rights Act 1996. In this case we are concerned not with dismissal but with detriment said to contravene section 47B. A question arises as to whether the reasoning in Jhuti applies equally to detriment cases such as this. In his closing submissions Mr Arnold argued that it does not.

121. The suggestion that the inadmissible motivation of one person in an organisation might be attributed to the employing respondent when the ultimate decision maker was innocent of that motivation was first made by Underhill LJ, in obiter dicta, in Baddeley v The Co-Operative Group Ltd [2014] EWCA Civ 658. The point was made in the context of a discussion about identifying the 'reason' for a dismissal in a claim of unfair dismissal. As Underhill LJ noted, the 'reason' for dismissal means the 'set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee'. The 'essential point' as Underhill LJ put it is that the 'reason' for a dismissal connotes the factors operating on the minds of the person or persons who made the decision to dismiss. Having set that out, Underhill LJ went on to consider the situation where the actual decision-maker acts for an admissible reason but the decision is unfair because the facts known to the decision maker, or beliefs held by that person, have been manipulated by some other person involved in the disciplinary process who has an inadmissible motivation. Underhill LJ opined that, in such a case, 'the motivation of the manipulator could in principle be attributed to the employer, at least where he was a manager with some responsibility for the investigation..' Although, as noted above, those comments appeared in a part of the judgment dealing with a complaint of unfair dismissal, Underhill LJ did not suggest the approach should be

different in cases of detriment short of dismissal. Indeed, in the preceding paragraph he noted that the same approach to identifying the reason for the treatment in question applies to the 'ground' for a putative detriment contrary to section 47B. However, as Underhill LJ subsequently noted when Jhuti was in the Court of Appeal, none of this part of his judgment was based on any detailed analysis.

122. Ultimately, it is unnecessary for us to reach a concluded view on whether the kind of scenario envisaged in Jhuti extends to detriment cases. That is because, as will become apparent from our conclusions below, this was not a Jhuti type case.

123. The burden of showing the reason for the act or deliberate failure to act is on the employer: section ERA 1996 s 48(2). However, the claimant must still establish a prima facie case that the acts or deliberate failures to act were done on the ground that the claimant made a protected disclosure: Serco Ltd v Dahou [2015] IRLR 30, EAT and [2017] IRLR 81, CA. If the prima facie case is made out, then it is for the employer to show the reason for the act, and therefore to prove what were the factors operating on the mind of the decision-maker. The effect of these provisions was explained in Dahou as follows: 'If a tribunal rejects the employer's purported reason for [the act or deliberate failure to act], it may conclude that this gives credence to the reason advanced by the employee, and it may find that the reason was the one asserted by the employee. However, it is not obliged to do so. The identification of the reason will depend on the findings of fact and inferences drawn from those facts. Depending on those findings, it remains open to it to conclude that the real reason was not one advanced by either side.'

Time limit

124. The time limit for complaints about detrimental treatment contrary to section 47B is set out in section 48 of the Employment Rights Act 1996. Section 48 says this.

> *Complaints to employment tribunals*
> *(3)An employment tribunal shall not consider a complaint under this section unless it is presented—*
> *(a)before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or*
> *(b)within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.*
> *(4)For the purposes of subsection (3)—*
> *(a)where an act extends over a period, the "date of the act" means the last day of that period, and*
> *(b)a deliberate failure to act shall be treated as done when it was decided on; and,*

in the absence of evidence establishing the contrary, an employer… shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.
(4A)Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (3)(a).

125. The three month primary time limit is calculated taking into account section 207B, which provides as follows:

207BExtension of time limits to facilitate conciliation before institution of proceedings
(1)This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a "relevant provision").
(2)In this section—
(a)Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and
(b)Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.
(3)In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.
(4)If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.
(5)Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.

126. In this case any complaint about an act done, or treated as having been done, on or after 31 January 2020 is in time. Complaints about other matters are only within the tribunal's jurisdiction if the claimant shows it was not reasonably practicable for him to make the claim within the three month primary time limit and we are satisfied that the claim was made within such further period as is reasonable. The onus is on the claimant to prove that presentation in time was not reasonably practicable: 'That imposes a duty upon him to show precisely why it was that he did not present his complaint': Porter v Bandridge Ltd 1978 ICR 943, CA.

Police regulations

127. At the time of the matters with which we are concerned, the conduct of a police officer in police service was regulated by the Police (Conduct) Regulations 2012.

128. Regulation 5 provides that the regulations apply 'where an allegation comes to the attention of an appropriate authority which indicates that the conduct of a police officer may amount to misconduct or gross misconduct.' Misconduct is defined in the regulations as a breach of the standards of professional behaviour set out in schedule 2 to the regulations. Those standards include the following:

> '***Honesty & Integrity***
> *Police officers are honest, act with integrity and do not compromise or abuse their position.*
> *…*
> ***Confidentiality***
> *Police officers treat information with respect and access or disclose it only in the proper course of police duties.*
> *…*
> ***Discreditable Conduct***
> *Police officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty.'*

129. Regulation 9 addresses the situation where possible misconduct may also lead to criminal proceedings. It says this:

> ***Outstanding or possible criminal proceedings***
> *9.—(1) Subject to the provisions of this regulation, proceedings under these Regulations shall proceed without delay.*
> *(2) Before referring a case to misconduct proceedings or a special case hearing, the appropriate authority shall decide whether misconduct proceedings or special case proceedings would prejudice any criminal proceedings.*
> *(3) For any period during which the appropriate authority considers any misconduct proceedings or special case proceedings would prejudice any criminal proceedings, no such misconduct or special case proceedings shall take place.*
> *…*

130. Regulation 10 deals with suspension. It says this:

> ***Suspension***
> *10.—(1) The appropriate authority may, subject to the provisions of this regulation, suspend the officer concerned from his office as constable and (in the case of a member of a police force) from membership of the force.*
> *…*
> *(4) The appropriate authority shall not suspend a police officer under this regulation unless the following conditions ("the suspension conditions") are satisfied—*

(a) having considered temporary redeployment to alternative duties or an alternative location as an alternative to suspension, the appropriate authority has determined that such redeployment is not appropriate in all the circumstances of the case; and
(b) it appears to the appropriate authority that either—
(i) the effective investigation of the case may be prejudiced unless the officer concerned is so suspended; or
(ii) having regard to the nature of the allegation and any other relevant considerations, the public interest requires that he should be so suspended.
…
(6) The appropriate authority may suspend the officer concerned with effect from the date and time of notification which shall be given either—
(a) in writing with a summary of the reasons; or
(b) orally, in which case the appropriate authority shall confirm the suspension in writing with a summary of the reasons before the end of 3 working days beginning with the first working day after the suspension.
(7) The officer concerned (or his police friend) may make representations against his suspension to the appropriate authority—
(a) before the end of 7 working days beginning with the first working day after his being suspended;
(b) at any time during the suspension if he reasonably believes that circumstances relevant to the suspension conditions have changed.
(8) The appropriate authority shall review the suspension conditions—
(a) on receipt of any representations under paragraph (7)(a);
(b) if there has been no previous review, before the end of 4 weeks beginning with the first working day after the suspension;
(c) in any other case—
(i) on being notified that circumstances relevant to the suspension conditions may have changed (whether by means of representations made under paragraph (7)(b) or otherwise); or
(ii) before the end of 4 weeks beginning with the day after the previous review.
(9) Where, following a review under paragraph (8), the suspension conditions remain satisfied and the appropriate authority decides the suspension should continue, it shall, before the end of 3 working days beginning with the day after the review, so notify the officer concerned in writing with a summary of the reasons.
(10) Subject to paragraph (12), where the officer concerned is suspended under this regulation, he shall remain so suspended until whichever of the following occurs first—
(a) the suspension conditions are no longer satisfied;
(b) either of the events mentioned in paragraph (5)(a) and, subject to paragraph (11), (5)(b).

131. Regulation 12 provides for the Appropriate Authority to carry out an assessment of the officer's conduct and decide whether or not it is necessary for the matter to be investigated. If there is to be an investigation, regulation 13 provides for the appointment of an investigator. The purpose of the investigation, as set out at regulation 14, is to '(a) gather evidence to establish the facts and circumstances of the alleged misconduct or gross misconduct; and (b) assist the appropriate authority to establish whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.'

132. Regulation 18 requires the investigator to submit a report to the appropriate authority on completion of the investigation. It says this:

> ***Report of investigation***
> *18.—(1) On completion of his investigation the investigator shall as soon as practicable submit a written report on his investigation to the appropriate authority.*
> *…*

133. Regulation 19 sets out what must happen next. It says this:

> ***Referral of case to misconduct proceedings***
> *19.—(1) Subject to regulation 41 and paragraph (6)—*
> *(a) on receipt of the investigator's written report; …*
> *…*
> *the appropriate authority shall, as soon as practicable, determine whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.*
> *…*
> *(3) Where the appropriate authority determines there is no case to answer, it may—*
> *(a) take no further disciplinary action against the officer concerned;*
> *(b) take management action against the officer concerned; or*
> *(c) refer the matter to be dealt with under the Performance Regulations.*
> *…*
> *(7) Where the appropriate authority fails to—*
> *(a) make the determination referred to in paragraph (1); …*
> *before the end of 15 working days beginning with the first working day after receipt of the investigator's written report, it shall notify the officer concerned of the reason for this.*

134. In the regulations, 'working day' means any day other than a Saturday or Sunday or a day which is a bank holiday or a public holiday in England and Wales.

Evidence and Findings of Fact

135. We heard evidence from the claimant and, in support of his case:

135.1. Mr D Darby, who, at the material time, was a police sergeant and police federation representative until he retired from the police service on 4 July 2019.

135.2. PC G Teeley who, at the material time, was Chair of the Cleveland Police Federation.

136. For the respondent we heard evidence from the following witnesses:

136.1. Ms K Lindberg who, at the material time, was a human resources manager with Cleveland Police.

136.2. Mr C Irvine who was a superintendent in Cleveland Police, then chief superintendent from 2013, and undertook duties as temporary assistant chief constable between 2015 and 2017. He then undertook a secondment as temporary assistant chief constable in a different force in 2018 to 2019 before returning to Cleveland Police in late 2019. Mr Irvine is no longer with the respondent's force.

136.3. Ms S Cooney who joined the respondent police force on 16 September 1991 and became temporary chief inspector North Side Response, based at Stockton police station following a force restructure on 1 January 2014. Ms Cooney is no longer with the force, having retired.

136.4. Mr P Young who, at the material times was employed as an HR business partner with Sopra Steria, a private company which provided administration and clerical support to Cleveland Police on human resources matters.

136.5. Miss H McMillan, who joined Cleveland Police in October 2018 on secondment from Northumbria Police as temporary deputy chief constable.

136.6. Mr R Whiteley, who joined Cleveland Police in December 2003 and took up the position of detective inspector in the Counter Corruption Unit (CCU) in September 2018. The CCU is a sub-division of Force's Department of Standards & Ethics (DSE). The department is responsible for the investigation of all public complaints, whether they are made about Police Officers, Police Staff or Special Constables. In addition, they investigate the more serious allegations of misconduct involving police officers and special constables.

136.7. Mr D Cook who joined Cleveland Police Force in March 2004 and became detective constable in the CCU in 2016.

136.8. Mr M Murphy-King who joined Cleveland Police in January 2002. He joined the CCU in September 2019.

137. We took into account the content of written statements from two other individuals: Mr S Bell who, at the relevant time in 2020, was working as a police sergeant in the CCU; and Mr C Pringle who was working as a temporary detective inspector in the complaints and discipline unit within the DSE in 2022. The claimant agreed the contents of their witness statements and confirmed he did not wish to ask them any questions on cross-examination.

138. We took into account numerous documents to which we were referred.

139. Elements of this case were dependent on evidence based on people's recollection of events that happened many months (and in some respects, several years) ago. In assessing that evidence we bear in mind the guidance given in the case of **Gestmin SGPS v Credits Suiss (UK) Limited** [2013] EWHC 360. In that

case, Mr Justice Leggatt (as he was then) observed that it is well established, through a century of psychological research, that human memories are fallible. They are not always a perfectly accurate record of what happened, no matter how strongly somebody may think they remember something clearly. Most of us are not aware of the extent to which our own and other people's memories are unreliable, and believe our memories to be more faithful than they are. Mr Justice Leggatt described how memories are fluid and changeable: they are constantly re-written. Memories can change over the passage of time. Furthermore, external information can intrude into a witnesses' memory as can their own thoughts and beliefs. People's perceptions of events differ. That means people can sometimes recall things as memories which did not actually happen at all. In addition, the process of going through Tribunal proceedings itself can create biases in memories. Witnesses may have a stake in a particular version of events, especially parties or those with ties of loyalty to parties. It was said in Gestmin: 'above all it is important to avoid the fallacy of supposing that because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth'. In light of those matters, inferences drawn from the documentary evidence and known or probable facts tend to be a more reliable guide to what happened than witnesses' recollections.

140. The claimant joined Cleveland Police in 1996. By 2010 he had been promoted to a permanent position as inspector.

Protected Act 16 and Protected Disclosure 15

141. In 2011 the claimant spoke with Supt Swinson and told him of certain concerns he had that a particular officer was being targeted by an officer in the respondent's complaints department, DS Preston. The claimant also spoke to Chief Inspector Bush at the time about this matter. The respondent accepts that in doing these things the claimant made protected disclosures and did protected acts. They were referred to in these proceedings as Protected Act 16 and Protected Disclosure 15.

Re-vetting in 2012 and Protected Disclosure 14

142. In early 2012 all officers in Cleveland Police were required to undergo re-vetting which included a financial check. This was a blanket request for all police officers. It was made because the force, at that time, had not kept up with re-vetting requirements. The claimant accepted in cross-examination that financial checks on police officers are vitally important given that members of the police service are in a privileged position with regard to access to information, they could be considered potentially vulnerable to corruption and those in financial difficulty may be more vulnerable to corruption.

143. The claimant initially declined to consent to the financial check. Consequently, the matter was referred to the force's Professional Standard Department (PSD) (later to be re-named the Department of Standards and Ethics (DSE)).

144. The head of the PSD at the time was Supt Campbell. Supt Campbell emailed the claimant on 26 April 2012. He told the claimant that he did not believe the force could legitimately allow an officer access to certain computer systems unless a financial check was carried out. He went on to say

'if the vetting officer is unable to pass your vetting then I think I would be left with no option other than remove your access. I do not know what the implications of this course of action would be for you as an individual, but I would have to let your district management team know and it would be their responsibility to manage this aspect. I have consulted with the Federation Chair on the issue of vetting many times and whilst I recognise it is a sensitive matter I believe non-compliance leaves me with no other option than that set out above. I would ask you to reconsider your position and let me know your intentions within the next few days. By all means seek advice from the Federation Chair before responding.'

145. The claimant replied saying the Federation had told him to refuse to be re-vetted. A couple of weeks later Supt Campbell asked the claimant if it was his intention to consent to the financial check. The claimant replied that he was awaiting an update from the Federation about some legal issue they had raised. Supt Cambell then sent a memo to the claimant on 11 May 2012 saying that he could not authorise the claimant's access to certain systems containing information of a restricted or confidential nature 'without the necessary level of vetting'. He told the claimant that his access to certain systems would be terminated on 1 June and that the claimant's Service Unit Head would assess the impact of that and 'take any action they deem necessary'. Supt Campbell told the claimant he could make representations to the Chief Constable if he wished to appeal. Supt Irvine then sent a memo to the claimant asking him to consider how he would continue to perform his full duties without access to the systems referred to by Supt Campbell.

146. The parties agree that, in April 2012, the claimant made a protected disclosure. This is referred to as Protected Disclosure 14 in these proceedings. It is described by the claimant as follows: 'In April 2012, the Claimant reported a breach of the law by the Respondent to them by means of a written memo. An unregistered file was created by Supt. Martin Campbell head of the complaints department for the Respondent which was passed back and forth for comment between the Claimant, Campbell and Supt. Ciaron Irvine.'

147. On 26th May 2012, the Claimant wrote to Supt Irvine. He said 'I believe that the Police are breaking the law in areas of Article 8 of the Human rights act and areas of the data protection act.' The parties agree this is a further Protected Disclosure forming part of Protected Disclosure 14. The claimant asked for any decision to be delayed as he was due to go on leave until 18 June.

148. At the end of May 2012 Supt Campbell emailed Supt Irvine with an update. He told Supt Irvine that the Police Federation were under the mistaken impression that two other forces in England did not do financial checks. Supt Campbell said in that email 'in regards the question of the implications should access be removed, I know PC Brown has submitted a report to yourself. I will consider this as part of my decision making. My initial view is that it is the information contained within the system that is restricted/confidential rather than the system itself, in which case both officers would not be allowed routine access to the information.'

149. A few days later Supt Irvine emailed the claimant saying that Supt Campbell wished to review his file and consider options prior to any final decision being taken and that he had agreed, in the meantime, that the claimant would continue to have access to systems until the decision was made.

150. On 19 June Supt Campbell emailed Supt Irvine saying he had carried out some checks and he understood that no force had derogated out of the vetting policy.

151. On 26 June 2012 Supt Irvine spoke with the claimant about this issue. Supt Irvine said something to the effect that the claimant was not behaving like an inspector. The claimant argued that the force was acting illegally. Supt Irvine said that as an inspector and senior leader in the force it was important the claimant was seen to promote and abide by the standards the organisation set. The claimant then consented to financial checks.

152. Supt Irvine was of the opinion that the claimant had demonstrated poor judgement in relation to the vetting issue. He believed that as an inspector and senior leader in the force the claimant should have consented to the financial vetting.

PC Himsworth and Protected Disclosure 16

153. In August 2012 an officer spoke to the claimant expressing concerns about an incident the officer said she had witnessed involving PC Himsworth. The officer also spoke to Inspector Jones. Inspector Jones, in turn, spoke to Supt Irvine. Supt Irvine was the duty officer and referred the matter to the force's DSE. A criminal investigation followed and PC Himsworth was ultimately prosecuted for and convicted of disorderly conduct, which led to him leaving the force.

154. Supt Irvine was concerned that the claimant had not referred the matter to him when the officer had told the claimant what had happened. In 2013 Supt Irvine provided the claimant with formal words of advice regarding this matter. He believed the claimant had underplayed the severity of PC Himsworth's actions, shown a lack of judgement and failed to uphold the force's standards of professional behaviour.

155. The claimant told numerous people within the force that he felt the investigation against PC Himsworth was unfair, biased and lacking in integrity. Following PC Himsworth's conviction and dismissal from the force, the claimant repeatedly alleged there had been a miscarriage of justice. The individuals to whom the claimant made these allegations included Supt Irvine, Chief Inspector Bush, Supt Swinson, Supt Gill, Acting Chief Inspector Cooney, Chief Supt Gudgeon, Chief Inspector Barker, Supt Carter, Chief Inspector Jones, a Mr Armstrong (who was conducting a review of PSD), and Supt Coates. The respondent accepts that the claimant, in doing so, made protected disclosures, referred to in these proceedings as Protected Disclosure 16.

2013 chief inspector promotion process

156. In January 2013 the claimant applied for promotion to the rank of chief inspector. His line manager, CI Bush, supported his application. However, Supt Irvine did not.

157. Supt's Irvine's explanation for not supporting the claimant's application was that he believed the claimant had demonstrated poor judgement by failing to consent to financial vetting and by failing to report to the DSE the allegation made by about Mr Himsworth's conduct.

Posting to Stockton and Protected Disclosure 17

158. On 31 August 2013 the claimant reported an incident to CI Jones that involved PCSO Coaker. The claimant suggested in his report that PCSO Coaker may have used excessive force. The respondent accepts that the claimant, in doing this, made a protected disclosure, referred to in these proceedings as Protected Disclosure 17.

159. In September 2013 there was a force restructure which required numerous inspector moves. Inspectors were invited to fill in a form setting out their top three choices. The claimant spoke with Supt Kielty and explained he was happy with his current role but he did not know what to do about the form as he was advised he should do a different role for career development purposes. Supt Kielty advised the claimant that if he ticked his current role as his third choice that would secure it. The claimant subsequently learned that he was being posted to Stockton, which had not been one of his preferred options.

160. There were numerous people involved in the selection process for deciding which inspectors would be posted where in the restructure. They included the four heads of command, the then head of HR (Mrs Curtis-Haigh), the deputy head of HR, a member of the BTU team, the head of PSD (Supt Green). The principal criteria applied included that the incident response team (IRT) was not to be stripped of skilled and experienced individuals. The claimant was an experienced IRT inspector. The decision taken by the group was to retain the claimant in IRT but move him north to Stockton rather than keeping him in the south (Redcar and Cleveland). Before the restructure, there was an imbalance of substantive inspectors as between north and south. Stockton and Hartlepool (north side) had one substantive inspector and four temporary inspectors whereas Redcar and Cleveland had one temporary inspector and four temporary inspectors. In cross-examination the claimant accepted that he was aware there was a real possibility that he would be moved.

161. The claimant took up his new post in North Side Response in November 2013. Two other inspectors who had also worked in the south immediately before the restructure had also been posted to cover Stockton and Hartlepool as part of the restructure.

162. In November 2013 the claimant became aware that PCSO Coaker had filed a grievance against him in relation to the incident in August 2013 that the claimant had reported to Chief Inspector Jones. As part of an investigation into that grievance Supt Coates interviewed the claimant. During that meeting Supt Coates made the claimant aware that Supt Green had suggested the claimant had made more of the incident than was required and that his judgment had been clouded by his perception that PC Himsworth had been treated badly by various people, including PCSO Coaker.

163. During this meeting the claimant said he believed Supt Green had fabricated matters against him to discredit him and turn the attention from PCSO Coaker and to protect the officers involved in what the claimant refers to as the 'Himsworth miscarriage of justice'. The claimant made the same point on a number of occasions to others in 2014 including Supt Carter, Chief Inspector Bush, Supt Irvine and Chief Inspector Cooney, Supt Gill and Chief Supt Laing. The respondent accepts that these discussions formed part of Protected Disclosure 17.

164. PCSO Coaker's grievance proceedings ran on for several months. The grievance was not initially resolved to PCSO Coaker's satisfaction. Therefore, it went to Stage 2 of the force's grievance procedure. Chief Supt Laing dealt with the matter at that stage. In attempting to resolve PCSO Cooney's grievance an agreement was reached that she would not work near the claimant.

165. On 1 January 2014 Ms Cooney became temporary Chief Inspector North Side Response based at Stockton police station. Before then she had had very little interaction with the claimant and had never worked with him. The claimant made it clear to her soon after she arrived that he was unhappy about his move north side and asked her if she would look into a move south side.

166. In February 2014 CI Cooney completed a monthly performance review for th eclaimant. The review was predominantly positive, as was subsequently confirmed by CI Cooney in a grievance process initiated by the claimant.

167. From her discussions with the claimant over the weeks since she took up her post, Chief Inspector Cooney formed the view that the claimant was deeply upset by the events with PCSO Coaker and was aggrieved about the PC Himsworth case, which PCSO Coaker had been involved in. Chief Inspector Cooney believed that the claimant seemed fixated with the events and with the individuals involved in the events and seemed unable to objectively reflect on his role in the situation or accept that others involved may have held equally valid or alternative perspectives about what had happened.

168. Because the claimant was so unhappy having been moved north side, Chief Inspector Cooney spoke with Supt Kielty and Chef Supt Gudgeon about a possible move. However, she learnt later in 2014 that part of the resolution of PCSO Coaker's grievance was that Chief Supt Laing had recommended that the claimant not work in proximity to PCSO Coaker, at least at that time. The neighbourhood team in which PCSO Coaker operated was part of the Redcar and Cleveland local policing area. The role that the claimant sought would have responsibility for response staff across the Middlesbrough and Redcar and Cleveland policing areas. That would have meant the claimant needing to attend and be based from Redcar from time to time and may have meant him coming into contact with PCSO Coaker.

169. At some point before May 2014 concerns were raised confidentially to Chief Inspector Cooney that the claimant was involved in a relationship with a female PC on his team, that he demonstrated favouritism towards her, offering her acting up opportunities ahead of others, and that he frequently double crewed with and disappeared with her on shift. Chief Inspector Cooney spoke to the claimant about

this and discussed the impact the situation could have on his professional reputation and the rest of his team. The claimant denied he and the PC were in a relationship when Chief Inspector Cooney raised the issue and said his private life was nobody else's business. Chief Inspector Cooney agreed with him that he was entitled to his privacy but said that such a relationship should be declared in line with the College of Policing Code of Ethics. She pointed out to the claimant that he was inspector and the female PC was a junior member of the team and that if he allowed her to act up as sergeant he became her direct line manager.

170. In May 2014 the claimant spoke with Chief Inspector Clooney and told her he was now in a relationship with the female PC.

171. The claimant was absent on sick leave between 27 March and 12 April 2014 and between 29 May and 4 August 2014. The claimant acknowledged in evidence that Chief Inspector Cooney had managed his sickness absence and return to work professionally and properly.

2014 PDR

172. As part of her management duties, C/I Cooney was responsible for completing the claimant's annual PDR for the year ending 31 March 2014.

173. Chief Inspector Cooney completed the claimant's annual appraisal in June 2014. In doing so she 'overwrote' an appraisal completed by the claimant's previous line manager C/I Bush (who had not managed the claimant since the start of the year). We accept C/I Cooney's evidence that she did not realise she had overwritten a previous appraisal.

174. In the appraisal Chief Inspector Cooney gave the claimant an overall rating of '3 – just below satisfactory.' This was lower than the last rating the claimant's previous line manager, C/I Bush, had given him. In the appraisal C/I Cooney referred to the claimant's recent performance having been affected by personal and welfare issues and said she thought he would be ready for career progression in a year or so via a lateral move. In contrast C/I Bush, had been prepared to support the claimant's application for promotion to inspector when he was the claimant's line manager. In a subsequent grievance process C/I Cooney gave the following explanation for her rating: 'I assessed Rob as just below satisfactory because while he is operationally competent he struggles to accept any feedback that he finds negative. This was evidenced over time by his refusal to seek his interview feedback, his refusal to consider feedback from his inspector colleagues and friends and his refusal to consider that he and Paula working on the same team might cause conflict. He has clearly articulated in this document his refusal to accept some of the feedback recorded on his MPR. He makes no comment on the positive feedback contained within it. This assessment is designed to help him develop not to undermine him.'

175. The claimant suggests that C/I Cooney 'manufactured' poor performance records and accounts to discredit him. The claimant claims C/I Cooney had 'cited numerous issues that were biased, and incorrect' to make him look bad. In a grievance process following this appraisal process C/I Cooney acknowledged that she had referred to matters that arose after April 2014 and that it would have been

more appropriate for those comments to be on a performance review in the 2014/15 period. Beyond that, however, it was difficult to discern from the claimant's case which issues he considered to be 'incorrect'.

176. The claimant suggests that the fact that the PDR was not completed until June supports this allegation. However, we accept the evidence of Ms Cooney that it was not unusual for PDRs to be updated late and that she was on annual leave and training abstractions in May 2014. Furthermore, the claimant had had sickness absence and the contents of the PDR and comments made by C/I Cooney in a subsequent grievance process suggest that C/I Cooney had held off submitting the PDR for a period in the hope that he would return to work.

177. Looking at the evidence in the round, we are satisfied that what C/I Cooney said about the claimant in the appraisal reflected her genuine opinion of the claimant's performance at the time she completed it. It differed from her opinion in February because that opinion had been given at a time when she had not worked with the claimant for very long. Her opinion of the claimant had been affected by the way he had dealt with the matter concerning a relationship with a colleague in May 2014.

178. Viewing the evidence and facts in the round we conclude that the claimant has not proved that it is more likely than not that C/I Cooney manufactured poor performance records and accounts to discredit the claimant.

179. In mid-2014 Chief Inspector Cooney had to deal with a number of disruptive issues amongst sergeants and inspectors on her teams. A chief superintendent instructed her to sort the issues out. In doing so Chief Inspector Cooney moved a number of people around with a view to achieving a cross-section of skills, ability and supervisory cohesion on the teams. The people moved included the claimant, who was re-posted to a post on Z relief.

180. At some point in 2014 the claimant raised a grievance about his move south side and about PCSO Coaker. The grievance was investigated by Supt Carter. The claimant was unhappy with the outcome and therefore it went to stage 2. At that stage the grievance was allocated to Mr Irvine. During the grievance process the claimant repeated the allegations that form part of Protected Disclosure 17.

2015 chief inspector promotion process

181. In 2015 an opportunity arose for the claimant to apply for promotion to chief inspector as part of a promotion process. Sopra Steria administered the promotion process on behalf of Cleveland Police.

182. On previous occasions when the claimant had applied for promotion, the promotion pack had specified that candidates could only rely on evidence from the previous two years in support of their application. The claimant assumed that it might be the same in this promotion process.

183. On 25 July 2015 the claimant sent an email to the 'SSC Shared Business Centre' saying 'the instruction page on the chief inspector promotion process does not work – states unfound page. Please can you tell me what the instructions are.' The claimant sent his email at 7.47pm. On the morning of 27 July 2015 a people

services administrator employed by Sopra Steria replied to the claimant's email. The administrator said 'apologies the link does not work. System admin are looking into why the direct link does not work, however, the link is correct – please try http://www.college.police.uk'.

184. Three days later, on 30 July 2015, the claimant emailed the administrator back saying the link did not help and 'I need to know what the instructions are for applying for chief inspector … the closing date is looming and I am unable to access the instructions of what to do. Also – when I access my account from an external computer my application is not even there! Please can these technical issues be resolved as a matter of urgency.' The administrator at Sopra Steria replied early the following morning saying 'I'm sorry you're having issues. I'm going to speak to system admin as to why you are seeing page not found. In the meantime, please see below screenshot of the advert and the attachments. The reason why you cannot see your application from an external computer is because you will have started your application on the internal website link … if you use the link below and log in from your external computer, it will allow you to view the internal site and your application … I will be in until 5pm today if you would like to call me and discuss this.' The claimant did not contact the administrator. His evidence was that he was working.

185. At no point in the interactions referred to above did the claimant say he was trying to find out if candidates could only rely on evidence from the previous two years in support of their application or specifically ask whether that was the case.

186. The following day the claimant emailed the administrator at 7.06pm. That was a Saturday. The claimant also sent his email to 'SSC Shared Business Centre'. He said 'unfortunately I am weekend of nights and then A/L away on holiday until the closing date so I only have tonight and tomorrow to do this. What I need to know are the instructions, I already have the guide – ie is there a time limit against the evidence you provide? Does the line manager have an input? etc etc'. We accept Miss Lindberg's evidence, and find as a fact, that because this email was sent on a weekend it would not have been picked up by anyone until the following Monday. On Sunday 2 August 2015 at 8pm the claimant emailed the administrator to say that he had submitted his application form. In completing his application form he decided to restrict his evidence to the last two years of service.

187. The facts outlined above do not support an inference that anyone was deliberately failing to answer the claimant's questions. We find that that was not the case.

188. Furthermore, there is no evidence from which we could properly infer that anyone in the administrative team at Sopra Steria was aware that the claimant had made the protected disclosures we have referred to in our findings above.

189. The claimant was not shortlisted. Subsequently, the claimant complained to Mr Young about the online recruitment system, saying that it had adversely affected his application. Mr Young told Mrs Curtis-Haigh that the claimant had submitted a complaint. Mrs Curtis-Haigh asked Mr Young to investigate. Mr Young looked into the matter and on 21 September 2015 emailed the claimant

apologising for any technical difficulties the claimant had encountered but saying that he was satisfied that 'the level of information available and provided to you, in order to prepare your response for the role did not place you at a disadvantage in comparison to other applicants.'

190. The claimant was dissatisfied with that response and replied by email the following day saying he wished to lodge an official complaint that the promotion process was unfair. Mr Young offered to make enquiries to see if it would be possible for any feedback to be provided and why he had not been shortlisted. Mr Walker said he would like to receive feedback.

191. Mr Young referred the claimant's email to Mrs Curtis-Haigh that day. The claimant emailed Mrs Curtis-Haigh on 11 November 2015 chasing for a response. She responded by email of 26 November. With regard to the recruitment process, Mrs Curtis-Haigh apologised and said she would 'use this information to make improvements to the system moving forward.' She went on to say that she did not agree that the claimant 'received an unfair advantage in respect of the process'. That was clearly a typographical error: Mrs Curtis-Haigh obviously intended to say she did not agree that the claimant received an unfair disadvantage. The reason she gave was that all candidates, internal and external, were provided with identical information during the recruitment process and at no point in that process was there indication that the evidence to be provided was time limited. Mrs Curtis-Haigh also told the claimant that he would be provided with feedback by Assistant Chief Constable Nickless and the claimant should contact his PA to organise an appointment to meet with him for that purpose.

192. On 2 January 2016 the claimant raised a formal grievance about the chief inspector promotion process. He said in his written grievance 'the chief inspectors promotion was advertised on a system where the instructions link was faulty and did not give any instructions. As a consequence I did not know if there were any restrictions on the evidence I could use. I repeatedly attempted to establish answers prior to submitting my form but then due to being away on holiday had to submit my form blind and took the gamble that there would be a two year limit on evidence as there had been on previous processes (there was not)'. The claimant went on to say that Mr Young and Mrs Curtis-Haigh had failed to appreciate that he may have gained 'vital points' in the shortlisting process if he had been 'given the opportunity to use older than two year evidence.' He also complained about delay by Mrs Curtis-Haigh in responding to his complaint.

193. By this time, Mr Irvine had begun a period of acting up as assistant chief constable. T/ACC Irvine had been dealing with the claimant's earlier grievance about his assignment to Stockton. He was made aware of the grievance about the promotion process. He had not been involved in the promotion process. T/ACC Irvine said that he would speak with Mrs Curtis-Haigh about it.

194. On 29 February 2016 Miss Smith in HR allocated the promotion process grievance to Supt Lyons to investigate. Supt Lyons met with the claimant to discuss his grievance on 18 March 2016. In that meeting the claimant said he would have used a couple of good examples from more than two years ago if he

had known he could, but that in light of feedback he had received he was not convinced that that would have been enough for him to gain the promotion. As part of his investigation Supt Lyons met with Mrs Curtis-Haigh and Mr Young. He also examined the system in question with an HR advisor who was not related to the grievance but who was familiar with how the system operated.

195. Supt Lyons met with the claimant to deliver the outcome of the grievance on 6 June 2016. Supt Lyons was of the view that some organisational failing had taken place and that more support could have been provided to the claimant before and after the recruitment process. He believed the system operating at the time could lead to some applicants to believe that there was more information that could not be accessed or seen, that HR were not clear in their responses to queries raised by the claimant, and effectively failed to answer his questions and that this resulted in the claimant making an assumption on the criteria which, was incorrect. Supt Lyons said that clear information would have negated the need for the claimant to make such an assumption. Supt Lyons also concluded that the claimant had not received responses/updates in a reasonably timely manner to address his concerns effectively. However, Supt Lyons did not agree with the claimant's belief that the process was inherently unfair. He believed that the factors that impacted upon the claimant could and may have affected others involved in the process. The claimant accepted at the time if he had used evidence dating beyond two years that was unlikely to have affected the outcome of the process and that it was, in any event, not practicable to re-run the promotion process.

196. Supt Lyons agreed with the claimant that Mrs Curtis-Haigh would provide the claimant with a formal letter of acknowledgement and apology for the failings of the system. Supt Lyons wrote to the claimant confirming his conclusions. He stated '… whilst the process was not unfair in my view, there was the potential for you have been disadvantaged, by being unable to secure an answer to your query in respect of whether any time limits may have existed in completing your evidence before the promotion application process.' Supt Lyons also concluded that there was an unreasonable delay between the claimant wishing to formalise a complaint about the process and Mrs Curtis-Haigh's response to him in November. Mrs Curtis-Haigh subsequently sent a formal letter of acknowledgement and apology to the claimant dated 14 June 2016. In that letter she apologised for the 'breakdown in communication in respect of the enquiry you raised with my colleagues in Sopra Steria, in relation to whether there was any time limit on evidence submitted.' She also acknowledged that there had been a fault with the system which had had an impact on how the claimant had been able to process and submit his promotion application and explained (as had Supt Lyons) that that issue had now been addressed following the complaint the claimant raised. In addition Mrs Curtis-Haigh apologised for the significant delay in her response to the claimant's correspondence.

Protected Act 1 and Protected Disclosure 1

197. In 2015 Mr Brown was removed from his role as Chair of the Cleveland Police Federation branch.

198. Towards the end of 2015 a Judgment was given in an Employment Tribunal claim brought by an officer of Cleveland Police, Mr Saddique. The Tribunal upheld complaints of direct race discrimination and victimisation contrary to the Equality Act 2010, including by Supt Green, then head of PSD.

199. On 1 January 2016 the claimant sent an email to numerous individuals which he described in the subject line as an 'open letter raising JBB concerns to the secretary Mark Richardson from Inspector Walker.' In his email the claimant alleged that the secretary of the Cleveland Police Federation branch had been 'conspiring against Mr Brown for some time' and that he was concerned that the branch board had 'performed a witch hunt to remove [Mr Brown] from office' and suggested that Mr Brown had been 'targeted by elements of the [joint branch board] because of his involvement in discrimination cases and because of his challenge to Cleveland Police in their handling of the Wayne Scott case.'

200. The respondent accepts that, in sending this email, the claimant did a protected act, referred to as Protected Act 1, and made protected disclosures, referred to in these proceedings as Protected Disclosure 1.

201. In December 2016 the claimant read reports in the press that a disciplinary case against another officer, Mr Khan, had collapsed and that there were allegations of misconduct by investigating officers. In January 2017 the claimant read in the press that the force had paid compensation to other officers, including Mr Brown, after they brought an Employment Tribunal claim alleging discrimination.

Disclosures to Mr Armstrong

202. In February 2017 the claimant spoke to and emailed by a Mr Armstrong who had been commissioned by the force to conduct a review of the PSD. The claimant reported various matters to Mr Armstrong, including the matters referred to in Protected Disclosures 15, 14, 16 and 17. The respondent accepts that, in doing so, the claimant made protected disclosures, referred to in these proceedings as being part of Protected Disclosures 15, 14, 16 and 17.

2017 promotion exercise

203. In early 2017 the claimant applied for promotion again. He was not shortlisted for interview. Apart from the correction of a typing error and some changes to punctuation, the contents of his application form were the same as in an application he had made 12 months previously and for which he had been shortlisted for interview (although ultimately unsuccessful at interview). Although the process of shortlisting is, in accordance with the force's policy, meant to be carried out on an anonymous basis, on this occasion Paul Young emailed Mrs Curtis-Haigh and ACC Irvine. Mr Young sent an email to Mrs Curtis-Haigh and ACC Irvine in which he revealed that one of the candidates was the claimant. It appears Mr Young also revealed the identities of other candidates in that email.

204. We accept Mr Young's evidence that he would not have revealed the identity of candidates unless he had been asked to do so by somebody within the force. Mr Young's evidence was that he could not recall, so long after the events in

question, why he sent this email. We find it is more likely than not that Mr Young sent that email in response to a request from somebody within the force.

Further Protected Acts/Disclosures and election as Secretary of Cleveland Police Federation

205. In 2017 and 2018 the claimant made a number of disclosures of information and did a number of things that the respondent accepts constituted protected disclosures and/or protected acts. They included the following:

205.1. On 13 April 2017 the claimant sent an email to the respondent's then head of police complaints, Supt Gaskill, about police conduct and ethics regarding the discrimination cases involving Mr Brown and others. This is referred to as Protected Act 2/Protected Disclosure 2 in these proceedings.

205.2. Between July and November 2017 the claimant made allegations about the conduct of one officer (referred to in these proceedings as Officer E) towards another officer (referred to in these proceedings as Officer D) to Supt. Sutherland, Inspector O'Connor, Inspector Hallas, Chief Inspector Haytack, Supt. Ali, Chief Inspector Barker, acting Chief Inspector Bonner, Chief Inspector Shepheard. The allegations included allegations of coercive and controlling behaviour, abusive conduct and criminal damage. In or around September 2018, in an email to acting Chief Inspector Bonner, the claimant made a disclosure of a similar nature with allegations of similar behaviour towards women by Officer E. Those matters are collectively referred to as Protected Disclosure 18 in these proceedings.

205.3. The claimant discussed the respondent's failures in discrimination cases with Chief Constable Spittal. This is referred to as Protected Act 3/Protected Disclosure 3.

206. In the first half of 2018 elections were held for the Cleveland branch of the Police Federation. Cleveland Police Federation, at that time, had three full time officials (the Secretary, the Chair and the Treasurer) and approximately 20 representatives. The claimant was elected to the position of Secretary of the Joint Branch Board. The role of the Federation Secretary is to run all aspects of staff association business and represent members and other officers. The Secretary is also the statutory authority and data controller. PC Teeley was elected as Chair. The Treasurer was PC Murray. The National Secretary of the Police Federation England and Wales (PFEW) in 2018 was Mr Duncan.

207. Over the months that followed the claimant made a number of disclosures of information that the respondent accepts constituted protected disclosures and/or protected acts. They are as follows:

207.1. In June, July and August 2018 the claimant told an HR manager, Mr Bradley, that a particular officer was intent on bringing a case against Cleveland Police for disability discrimination and that whilst the claimant did not believe he had good grounds for a case he would continue to support him as best he could. Subsequently, in around September 2018, the claimant told Inspector Deluce that the officer was reporting having to work form his car

because no safe working environment had been found for him. He also reported this to Supt Harrison. These are referred to as Protected Act 15/Protected Disclosure 27 in these proceedings.

207.2. Throughout the summer of 2018 the claimant made several representations to Mr Bradley that the case of another officer who was said to be disabled needed to be properly resolved and he should not be suffering detriment. This is said to be Protected Act 17.

207.3. In July 2018 the claimant spoke to DS Henderson of DSE about a disciplinary investigation concerning an officer who is said to be disabled. The claimant told DS Henderson that the investigation was biased and unfair, that key witnesses had not been spoken to, CCTV evidence had been manipulated by a DC Hunt and that the officer's disability had been overlooked. The claimant said the same to Supt Shepheard. This is referred to as Protected Disclosure 31. In his closing submissions the claimant claimed that in making this protected disclosure he had 'directly accused … Ds Henderson and Supt Shepheard of serious failures and criminality.' However, that did not form part of the claimant's evidence to us and there is no basis on which we could find that was the case.

207.4. In the summer of 2018, the claimant made representations to an HR case manager that the pay of a particular officer should not be reduced. The officer is said to be disabled. The claimant also asked Mr Murray to represent the officer at a health group meeting. This is referred to as Protected Act 18.

207.5. In 2018 the claimant was representing an officer (referred to in these proceedings as Officer A) whose spouse (referred to as Officer B) was a senior officer in the force. Officer A had made allegations of assault by Officer B and of rape by serving senior managers. The claimant and Officer A believed the rape complaint was not being investigated properly or at all. Officer A was subsequently the subject of certain complaints, which Officer A and the claimant believed were manufactured and one of which they believed was leaked to the press to discredit Officer A. In October 2018, at a meeting at which Supt. Green, ACC Roberts, an HR representative and the respondent's head of legal were present, the claimant raised matters concerning the allegation of rape. The claimant made it clear to ACC Roberts that if he did not deal with the rape complaint correctly and continued to cause the officer detriment then the claimant would help the officer in taking the matter to the press. This is referred to as Protected Disclosure 21.

208. The respondent accepts that the claimant also raised various other concerns in this period including the following. The respondent accepts that, in doing so, the claimant made qualifying disclosures of information for the purposes of section 43B of the Employment Rights Act 1996 but does not accept these were protected disclosures.

208.1. In September 2018 the claimant raised concerns to PC Murray that he believed an allegation of a serious criminal offence made by an officer (referred to in these proceedings as Officer C) had been improperly investigated and

certain elements of evidence used had been illegally obtained by the investigating officers. This is referred to as (alleged) Protected Disclosure 19 in these proceedings.

208.2. In September 2018 the claimant told PC Murray that an officer had been subjected to an unlawful use of RIPA against his telephone records and had been treated badly by the organisation and that Cleveland Police were using a secret investigation team to hide evidence of illegal RIPA activity from an IOPC led investigation. This is referred to as (alleged) Protected Disclosure 20 in these proceedings.

208.3. In September 2018 the claimant told PC Murray and PC Teeley that the respondent had subjected an officer with dyslexia to detriment during a promotion process because the respondent had failed to allow additional time and had then lied about seeking advice from a specialist. Later, in February 2019, the claimant told PC Teeley that the officer had been blocked from returning and was now subject to a manufactured criminal investigation by the respondent. Subsequently, in July 2019, the claimant mentioned these matters to CI Burnell in the context of a conversation about the claimant returning to work. These matters are referred to as alleged Protected Disclosure 26 in these proceedings. The respondent accepts these matters constituted a protected act: it is referred to as Protected Act 14. PC Teeley did not suggest in evidence that he told anyone else what the claimant had said to him.

208.4. In September 2018 the claimant was visited by an officer who was on sick leave. PC Murray saw the officer in the claimant's office and later asked the claimant what they had been discussing. The claimant told PC Murray little of what the officer had said. The claimant did, however, tell PC Murray that the officer was suffering detriment from the respondent because of his knowledge of 'multiple corruption issues involving the respondent'; that the officer had told him Cleveland Police had paid an informant to lie to 'place someone at a murder scene who was not there'; and the officer had refused to give false evidence in an appeal that had resulted in someone being paid a million pounds by the respondent. The claimant told PC Murray he intended to take legal advice about the matter and subsequently discussed it with a solicitor. This is referred to as alleged Protected Disclosure 22 in these proceedings.

208.5. In September 2018 the claimant spoke to PC Murray, Sergeant Darby and PC Teeley about information he had received suggesting that the respondent had failed to disclose certain information that might have affected a disciplinary sanction against another officer. These matters are referred to as (alleged) Protected Disclosure 23. The claimant also complained to ACC Roberts and the PCC chief executive about there being a lack of legal funding for the officer.

Events leading up to the claimant's arrest

209. In October 2018 the claimant had a meeting with some officers for whom he was federation representative. During the meeting one of the officers alleged that PC Murray had 'fiddled the books' in connection with a payment made to another

officer to settle some Employment Tribunal proceedings. The officer making the allegation claimed that PC Murray had put the payment through the accounts as something else which was not disclosed to the board or the trustees, other than the person who signed it off.

210. The claimant thought the allegation should be looked into. On 12 October the claimant asked PC Murray if the officer who had brought the Tribunal claim had 'got some sort of pay out'. PC Murray said she had and that it was all above board and he would show the claimant in the accounts. However, he said he could not show the claimant the relevant documents there and then as they were in the Federation safe and he said he could not open the safe as he did not have his keys.

211. The following week the claimant spoke PC Murray again and raised the issue of the safe and the payment. PC Murray said he had forgotten his keys previously. The claimant believed PC Murray was trying to avoid showing him the accounts and whatever else was in the safe.

212. The following week PC Teeley spoke with the claimant and told him that certain other federation representatives had also heard the same allegation about PC Murray. PC Teeley insisted that the matter should be referred to the DSE. Therefore, the claimant spoke to DI Bonner in DSE who said to seize the safe and that they would investigate.

213. Later that day the claimant and PC Teeley removed the safe from the cabinet in PC Murray's office. The claimant took the safe to Kirkleatham police station and placed it into crime property. When moving the safe, PC Teeley and the claimant came across a black file. They looked inside it and saw what they thought were copies of emails between Mr Brown and other parties including a solicitor. They put the file back.

214. On 25 October 2018 the claimant spoke with PC Murray about the safe. PC Murray told the claimant he had sought legal advice and federation representation and had been advised to remain silent. He told the claimant the contents of the safe were covered by legal privilege. The claimant also asked PC Murray what the black file contained. PC Murray told the claimant it was something he had hidden from Mr Richardson. He then handed the claimant the black file saying the claimant could have it.

215. The file contained information about the removal of Mr Brown as Chair of the Cleveland branch of the Police Federation as well as other correspondence. The claimant contacted the data privacy manager in the Police Federation for England and Wales. She advised the claimant to contact Mr Brown and ask if he had given the documents to the federation. The claimant did so. While he was going through the documents in the file the claimant saw that they contained details of certain telephone calls between Mr Brown and another officer the claimant represented. The claimant believed the information showed their phones had been tapped. In 2017 the Independent Powers Tribunal had found that Cleveland Police had unlawfully intercepted telephone calls between certain officers, journalists, a solicitor and a former officer. The claimant believed the evidence in the file showed

that the force had continued its unlawful surveillance and that former Chief Constable Spittal, who had by now retired, had misled the Independent Powers Tribunal in 2017 by saying it was no longer continuing. The claimant subsequently used his son's iPad, or an iPad used by his son, to take photographs of the contents of the black file.

216. Later that day DI Bonner told the claimant that DSE were satisfied that there were no offences and they were not investigating. He said the safe could be released but only to PC Murray. DI Bonner told the claimant that he had met with PC Murray and he had told them there was a confidentiality agreement in the safe which they were not entitled to look at and that DSE had taken legal advice and decided they would not look in the safe.

217. The respondent accepts that on this day the claimant did protected acts and made protected disclosures by disclosing to PC Teeley the contents of the file. This is referred to as Protected Act 5 / Protected Disclosure 5.

218. At 13:04 on 25 October 2018 the claimant sent an email to Alex Duncan who was the secretary of the National Police Federation for England and Wales. In that email the claimant described the situation as he saw it and asked for advice as to what he should do. He said 'I am concerned that as data controller and statutory authority I should at least be able to make my own examination of the safe to determine what if anything is legally privileged and also what if anything needs to be cross-referenced against the accounts to negate any false accounting'. The claimant told Mr Duncan that the safe remained in police property.

219. Later that day the claimant spoke with Mr Duncan on the 'phone in a conference call. PC Teeley was also present. In that conversation the claimant made allegations about race discrimination by the respondent. The respondent accepts that this was a protected act for the purposes of the Equality Act (referred to as Protected Act 6). The respondent also accepts that the claimant made qualifying disclosures, for the purposes of The Employment Rights Act 1996, in the telephone conversation and in the email to Mr Duncan (referred to as alleged Protected Disclosure 6). The respondent does not accept, however, that this was a protected disclosure.

220. During this telephone conversation Mr Duncan told the claimant that the safe was the claimant's responsibility. Mr Duncan told the claimant he would contact PC Murray and insist that PC Murray give the claimant access to the safe. Later that day, however, Mr Duncan told the claimant he had spoken to PC Murray and that PC Murray had told him that he had had legal advice to the effect that the settlement agreement in the safe could not be disclosed. Mr Duncan said he had spoken to the legal advisor himself who had confirmed the advice given to PC Murray but had suggested that PC Murray could show the claimant his copy of the settlement agreement and that PC Murray was content to show the claimant the figure in the settlement agreement so that the claimant could see that it matched that shown as having been paid in the accounts. Mr Duncan proposed that PC Murray arrange to show the claimant the relevant part of the document (and show this to PSD as well) together with the entry in the accounts so that the claimant

could check that they matched. Mr Duncan ended his email '[PC Murray] has been put in a difficult position given the legal situation and having spoken to him today he is keen to be able to demonstrate that the accounts are in order. I would stress that given the legal advice he received there is no suggestion that he has in any way tried to be obstructive or evasive regarding the matter'.

221. The claimant replied by email that evening saying 'that does not do at all'. He queried what else might be in the safe and made it clear that he wanted access to the safe to see what else might be in there. He said to Mr Duncan 'I have arranged with PSD that some time next week we will be looking in the safe one way or another. I will likely take a solicitor who can view the contents for legal privilege issues and if there is some of Mark's personal data, give it back to him… On every level, someone and the most obvious person is me – needs to look in that safe. If I encountered this as a cop on the street I undoubtedly would have arrested him by now.'

222. Soon afterwards, Mr Duncan spoke with the claimant over the telephone and they had a disagreement about the matter. Mr Duncan then sent the claimant a further email reiterating his position. Later that night the claimant emailed Mr Duncan saying 'I understand that if I open it I cannot be supported by the PFEW. I still intend to do so but will do so solely in my capacity as police officer and not as federation secretary. Unfortunately I have seen sufficient corruption at Cleveland to know when something is wrong and without doubt it is on this occasion. Wish me luck.'

223. At 23:16 that night Mr Duncan replied to the claimant by email. He said:

'In order to avoid any confusion I will lay out my position. Do not open the safe or read documents which belong to someone else and are subject to legal privilege. You have received a suggestion that your predecessor agreed a settlement with a former member of staff for a higher amount than attributed to it in the accounts. You have spoken to the branch treasurer who confirmed there was a settlement but stated the amount shown in the accounts is the amount paid. You want to see the settlement agreement which is held in a safe and asked the treasurer to show you the agreement. The treasurer obtained legal advice which informed him that he cannot share the document held in the safe. I have since received the same advice. The treasurer is able and willing to show you the copy of the agreement he has which will confirm the amount that was paid and can be checked against the accounts. Once that has been done there is no outstanding criminal matter to be investigated. The safe belongs to PFEW. The contents do not belong to Cleveland Police. Cleveland Police have no legal authority to open the safe or remove content from it. That includes you acting as a police officer. Documents subject of legal privilege should not be read by those who are not entitled to do so. Should that happen in this case then I expect to receive a formal complaint from one of our members. Given the seriousness of knowingly breaching legal privilege aggravated further by having been specifically told not to will trigger the PFE governance procedure. I further anticipate it will lead to a complaint/conduct issue being raised with the force. I am sorry for the blunt tone of this email but

I wanted to make certain that there is no ambiguity in the content because if you go ahead with opening the safe it will undoubtedly lead to ramifications as outlined above.'

224. The claimant sent a group message including to PC Teeley and PC Murray saying he would open the safe. PC Teeley replied advising the claimant not to touch the safe. The claimant replied to PC Teeley saying that he was going to open the safe.

225. The following day, 26 October 2018, the claimant sought out Chief Constable Veale. The claimant told CC Veale that he was concerned about accounting irregularities concerning PC Murray and that DSE had been informed. They did not discuss the allegation in detail. The claimant told CC Veale that he was suspicious of PC Murray's behaviour because he had concerns about the contents of a safe within the federation office. The claimant also told CC Veale about the black file and that it contained some documentation about Mr Brown and another officer. He told CC Veale that it exposed Cleveland Police for lying to the IOPC, Independent Powers Tribunal and others because, he said, it appeared to prove the respondent had continued to target BAME officers by means of unlawful surveillance sometime after the former Chief Constable had given evidence to the IPT to the contrary. The respondent accepts that in this conversation the claimant made protected disclosures and did a protected act. This is referred to as Protected Act 7 and Protected Disclosure 7.

226. CC Veale, who was running late for a flight, said the safe was not his concern as it was a federation issue. He suggested the claimant needed to 'be into the safe' and that he should take the black file to West Midlands Police, who were, at the time, investigating Cleveland Police (an investigation labelled Operation Marne). CC Veale told the claimant he (the claimant) may have committed a data breach himself, that he would inform DSE and the claimant should do so too and that DSE should inform the IOPC and West Midlands Police.

227. Following this conversation the claimant emailed CC Veale referring to their earlier conversation and saying he believed the contents of the black file may be evidence required for Operation Marne led by West Midlands Police. The respondent accepts that the claimant thereby did a protected act and made a protected disclosure. This is referred as Protected Act 8 and Protected Disclosure 8.

228. CC Veale spoke with Supt Shepheard and asked him to speak with the claimant about the file and what he planned to do with it. Supt Shepheard, in turn, asked DS Henderson of DSE to speak to the claimant. DS Henderson telephoned the claimant. He said CC Veale had said the claimant was to hand him the file. The claimant told him he was going to hand the file to West Midlands Police on the instruction of the Chief Constable. The respondent accepts that this was a protected disclosure (Protected Disclosure 9) and Protect Act (Protected Act 9).

229. The claimant had a similar conversation with Supt Shepheard that morning during which Supt Shepheard asked for the file, referring to issues of confidentiality. The respondent accepts that during this conversation the claimant

did a protected act (Protected Act 10) and made a protected disclosure (Protected Disclosure 10). The conversations the claimant had with Supt Shepheard and DS Henderson focused on the file rather than the safe. Although there was mention of the safe the claimant did not make it clear he was intending to hand it over to West Midlands Police.

230. Following their conversation Supt Shepheard sent an email to the claimant. In his email Supt Shepheard said 'if it is your option to liaise directly with West Midlands Police would you please be mindful of the potential of circulating/providing Chief Constable's data (if confirmed) without the requisite checks and balances equally cognisant adhering to principles of GDPR'. We find this was intended to warn the claimant that if he breached data protection rules then he would or could be held personally responsible.

231. On the morning of 29 October the claimant spoke with Mr Carmichael of West Midlands Police over the telephone. Mr Carmichael was the officer in charge for Operation Marne. The claimant referred to discrimination against police officers and those attempting to assist them. The respondent accepts that the claimant did a protected act in informing Mr Carmichael of these matters (Protected Act 11). In closing submissions the respondent accepted that this was also a protected disclosure (Protected Disclosure 11). They discussed the black file and the safe. They agreed to meet the following Friday 2 November 2018.

232. On 29 October the claimant had a pre-arranged meeting at Guisborough with PS Keightley. In the claimant's presence, PS Keightley printed off a 60 page document detailing allegations of corruption within the DSE and then gave the document to the claimant. In relation to this, the respondent has accepted that the Claimant made a protected disclosure (Protected Disclosure 24) by disclosing 'to PS Keightley that he had a copy of a large document detailing corruption in the department of Standards and Ethics prepared by PS Keightley.' We have found it difficult to understand in what way there was a protected disclosure by the claimant when all that appears to have happened is that the claimant acknowledged receipt of the document PS Keightley had just given him. Nevertheless, it was accepted by the respondent. We note that the claimant does not suggest he showed this document to anybody else. In his grounds of claim the claimant says 'I do not know if Cleveland Police were aware that I was in possession of this document but my home was searched under false pretences following my arrest.' In further particulars the claimant said 'The Claimant disclosed to no one other than PS Keightley that he had a copy of a large document detailing corruption in the department of Standards and Ethics prepared by PS Chris Keightley though that does not mean that the Respondent did not know he had it.' There is no evidence that persuades us that anyone who had dealings with the claimant on or after 29 October knew of this document, other than PS Keightley.

233. Whilst at Guisborough on 29 October 2018 the claimant went to the police property store and signed the safe out back into his own possession. The claimant did this because he did not trust PC Murray and thought that he might try to get access to the safe whilst it was in police property. The claimant took the safe home.

Later that day the claimant exchanged messages with PC Teeley and a friend who was a police officer in which the claimant referred to having 'nicked' the safe.

234. At 6:08pm on 29 October the claimant sent an email to Mr Carmichael about the file and the safe. He ended the email saying 'I am currently in possession of the file and the safe and ideally would like you to take both from me. I think they are intrinsically linked.' The respondent accepts that in sending this email the claimant did a protected act (Protected Act 12) and made a protected disclosure (Protected Disclosure 12).

235. Earlier this day, PC Murray had been at the national police federation headquarters for a meeting. PC Murray told Mr Duncan that the claimant had told him that he had the safe and intended to get access to the contents, that he had asked PC Murray whether he was prepared to hand over the key and that if not he would force the safe open.

236. That evening Mr Duncan telephoned the claimant and asked him if he had the safe in his possession. The claimant confirmed that he did but did not tell Mr Duncan that he had taken the safe home with him. Mr Duncan later gave a statement saying the claimant had said he had not decided what he was going to do with the safe but that he intended to gain access to the contents. In his statement Mr Duncan also said the claimant had talked about a conspiracy between Cleveland Police and members of the local federation. Mr Duncan told the claimant that he was suspended from undertaking the role of a police federation representative with immediate effect. That evening Mr Duncan emailed the claimant confirming his suspension. In his email Mr Duncan also formally notified the claimant that he had received a complaint from a member under the PFEW governance procedure regarding his 'continued attempts to gain entry to the content of a safe containing legally privileged documents.' We infer the complainant was PC Murray.

237. The claimant emailed CC Veale to tell him of his suspension as secretary of the Cleveland branch of the Police Federation. The claimant said a solicitor had told him he was duty bound to open the safe but that Mr Duncan had received conflicting legal advice to his. That evening the claimant also texted a police officer friend saying he had been suspended by the Police Federation 'because I've stolen their safe going to give it to the IPCC.'

238. The following day, 30 October, Mr Duncan sent a text message to the claimant asking him to confirm the current location of the safe 'belonging to PFEW' and to confirm that it had not been opened and that the claimant would arrange to return the safe unopened as a matter of urgency. In a statement prepared in relation to the subsequent criminal investigation, Mr Duncan said he sent this text because PC Murray had told him that day that the safe was no longer in the Cleveland Police federation branch as he had believed it to be.

239. The claimant did not reply to Mr Duncan that day. It was the day of his grandfather's funeral.

240. The following day, 31 October, having not received a response from the claimant, Mr Duncan made a formal complaint to Cleveland Police reporting 'the

theft of a police federation safe and contents together with a file of papers that [the claimant] took from behind the safe and which he also has in his possession.'

241. Mr Duncan's complaint was accompanied by a witness statement. In his statement Mr Duncan said '… Robert has been clearly instructed by me not to remove these documents; but he has done so regardless. I'm extremely concerned that the Police Federation has had sensitive personal data subject of legal privilege removed without consent. I'm required to report the data breach given my responsibility as the organisation's data protection officer. I further understand that the content of the file removed has been disclosed by Robert to Paul Brown, who in turn has passed that information to the IOPC … the apparent data breach by Robert Walker in passing the information externally and noticeably not directly to the IOPC but via a member of the public, seems to be clearly inappropriate.'

Criminal investigation and suspension from the force

242. Supt Shepheard carried out a preliminary assessment of conduct based on Mr Duncan's statement. He determined that there should be a criminal and misconduct investigation and appointed DC Clark of DSE as investigating officer and DS Henderson as senior investigating officer for both the criminal and misconduct investigations.

243. In a documented 'conduct assessment' Supt Shepheard said, on the information he currently had before him, that there was 'prima facie evidence' of a breach of the force's standards of professional behaviour and the principles of the code of ethics concerning the alleged theft of the safe and file of papers. He said the matter needed to be 'investigated criminally in line with the current standards for complaints of theft as well as in relation to conduct'. He suggested 'any potential data protection matters' should also be considered as part of a subsequent conduct investigation alongside questions relating to 'honesty and integrity and confidentiality.'

244. In his report Supt Shepheard expressed the opinion that the claimant should be suspended from duty. The report by Supt Shepheard included terms of reference for the investigation addressed to DC Clark which stated that the investigation should 'in particular focus on the nature of the respective allegations of theft and data protection.' He indicated that DC Clark should 'consider the support of a trained Tier 3 Suspect and Witness Interview Advisor to support the investigation.'

245. In his witness statement the claimant said that he was told (on or before 5 November 2018) that ACC Roberts, Chief Supt Green, Supt Shepheard and Ms Hatton (Head of Legal Services) had held a Gold Group meeting about 'what to do about him.' At an earlier stage of these proceedings the claimant was pursuing a complaint that in October 2018 senior managers 'formulated a plan to arrest the claimant and search his property to prevent him assisting various people in their claims against the respondent and to prevent the IOPC led investigation from obtaining detrimental documentation against the respondent.' That complaint no longer forms part of these proceedings. It remains the claimant's position, however, that his suspension from police duties and the investigations of his conduct were

part of a plan to prevent him carrying out his police federation role or otherwise assisting officers with their complaints against the force or assisting operation Marne.

246. We note that the evidence contained in the claimant's witness statement is not entirely consistent with the allegation originally made. The original allegation was that, at a gold group meeting, the individuals named in the claimant's witness statement had formulated a plan to arrest the claimant and search his property to prevent him assisting various people. The claimant's witness statement is less precise. It simply refers to being told the individuals had held a meeting about what to do about him. He did not say in his evidence who had told him that or when they had told him that nor when the meeting was alleged to have taken place or what specifically he was told was said at that meeting and by whom he was told it was said. The claimant's evidence on this matter is vague and imprecise and in any event based on hearsay evidence of an unnamed individual from an unknown date. We do not consider the claimant's evidence about a Gold Group meeting to be reliable. Having considered the evidence as a whole we are not persuaded that those named formulated a plan at such a meeting to arrest the claimant and search for property to prevent him assisting various people in their claims against the respondent and to prevent the IOPC led investigation from obtaining detrimental documentation against the respondent as the claimant has alleged.

247. The following day, 1 November 2018, the claimant attended for duty. He was invited into an office by a Ms Wilson. DS Henderson, DC Clark and DC Crowley of DSE were waiting. DS Henderson told the claimant that Mr Duncan had made an allegation of theft of the federation safe and a file containing documents and that he was to be arrested for theft. The claimant asked DS Henderson if he had spoken to CC Veale, the IOPC and West Midlands Police. DS Henderson said he had spoken to all three. DC Clark arrested the claimant and cautioned him. The claimant was then taken to Peterlee custody suite. He was searched, photographed, finger printed and had DNA taken. He was placed in a cell.

248. While in the cell the claimant made an observation to the DO about something printed on the wall, suggesting it looked like it was alluding to 'hanging'. Consequently, the DO arranged for a nurse to speak to the claimant. The nurse, in turn, arranged for the claimant to have a mental health assessment (and a later follow up call) because she too was concerned about the claimant's mental state.

249. That same day Supt Shepheard produced a report under Regulation 10 of the Police (Conduct) Regulations 2012 in which he recommended the claimant was suspended from duty with immediate effect. His report referred to his initial assessment of conduct document and said the report should be read in conjunction with the information contained in Mr Duncan's witness statement.

250. In his report, Supt Shepheard cited the suspension conditions set out in that the 2012 Regulations. In respect of re-deployment Supt Shepheard said the claimant should not work within a role that would 'place him within the evidential chain'. That, Supt Shepheard said, would not be a viable option. He referred to the serious nature of the allegations and said 'any access to data would pose significant

difficulty to the integrity of the investigation.' He also referred to the claimant's role entailing interaction with members of the public and partner agencies and expressed the view that the public would expect not to have any interaction with a police officer on duty that is under investigation for such serious alleged offences and breaches of standards of professional behaviour. He expressed the opinion that the public may expect the police service to suspend an officer in these circumstances and that a failure to do so 'could likely reduce public confidence'.

251. At some point before 3.30pm CC Veale orally ratified Supt Shepheard's recommendation that the claimant be suspended. By doing so he effectively decided to suspend the claimant.

252. In the meantime, the claimant's home was searched and the safe was recovered. The force also recovered from the claimant's address various electronic items (mobiles, tablets, laptops). The claimant's phone was seized from him whilst he was in custody. They did not find the file that was alleged to have been stolen.

253. DC Clark and DC Crowley interviewed the claimant while he was in custody. The claimant told the interviewers that the safe belonged to him as 'statutory authority' for the Cleveland branch of the police federation. He said he had arranged to hand it over to Mr Carmichael from West Midlands Police and had been honest and open about this throughout. When asked about his powers to keep the safe after he was suspended by the federation the claimant said he seized it as a police officer due to his suspicions of criminality. The claimant told the interviewers that CC Veale had told him he should keep hold of the file and not take his eyes off it until he handed it to West Midlands Police. He also said the chief constable told him he needed to get into the safe. The claimant refused to say what he had done with the black file. The claimant was asked about his mobile phone. He said he was not willing to provide the PIN number, saying he believed Cleveland Police were corrupt and would illegally look at his phone data. He also alleged in his interview that 'The whole arrest has been around Cleveland Police trying to hide evidence from the West Midlands.'

254. Later that day the claimant was released under investigation. Before he left the premises DC Clark told the claimant he was suspended and gave him a 'notice of alleged breach of the standards of professional behaviour' under Regulation 16 of the Police (Complaints and Misconduct) Regulations 2012.

255. The following day, 2 November, a meeting took place between Supt Shepheard, DS Henderson and DC Clark. At the meeting Supt Shepheard identified the actions that needed to be taken. They included identifying a 'T5 co-ordinator'. By this time the investigating officers had identified that CC Veale was a witness and that there was therefore a conflict of interest with him making the suspension decision. A decision had been taken that the role of appropriate authority would be delegated to DCC McMillan. DCC McMillan had joined Cleveland Police as temporary deputy chief constable just four days earlier, on 29 October 2018, on secondment from Northumbria Police.

256. That same day DCC McMillan considered whether the claimant should be suspended from duty. She decided he should be, thereby ratifying Supt Shepheard's recommendation. DCC McMillan prepared a report setting out her rationale.

257. Although DCC McMillan agreed with Supt Shepheard's assessment, we are satisfied that she applied her own mind to the statutory suspension conditions and whether they were satisfied. In doing so, she relied upon Supt Shepheard's account of the allegations. She did not consider it her role to investigate the investigators. She considered whether the claimant could be re-deployed or remain in the workplace in restricted duties. It was her opinion that if the claimant was not suspended that might lead to 'adverse commentary' that the force, and its senior leaders, were failing to take the matter as seriously as one might ordinarily expect and that the public would not expect to have any interaction with a police officer on duty that is under investigation for such serious alleged offences and breaches of Standards of Professional Behaviour. She also believed that if the claimant was not suspended there was too great a risk that the criminal investigation would be compromised. In this regard she referred to Mr Duncan's statement and said it was evident that the claimant 'showed blatant disregard for instruction.'

258. DCC McMillan was new to the force. She did not know the claimant and did not know anything about his history as a police federation representative or whom he represented, although she was aware the claimant had been recently elected as Secretary of the local police federation branch. We accept that, when she made this decision, DCC McMillan was not aware that the claimant had done any of the protected acts or made any of the protected disclosures relied upon in this case. Nor was she aware that CC Veale had previously ratified the claimant's suspension.

259. It was suggested in the course of proceedings that, in making her decision, DCC McMillan was somehow misled by the contents of the reports prepared by Supt Shepheard and on which she relied in making her decision to suspend. We do not accept that was the case. Supt Shepheard made it clear in his conduct assessment that the basis for the assessment was Mr Duncan's statement. It would have been clear to anyone reading that report, including DCC McMillan, that what Supt Shepheard was doing was making an initial assessment of whether there was prima facie evidence of a breach of the standards of professional behaviour and the Code of Ethics. In doing so, it was inevitable that the focus would be on the allegations as made by Mr Duncan because, at that time, Supt Shepheard did not have the benefit of the claimant's response to the allegations. We note that Supt Shepheard did not mention the conversations he had had with the claimant or CC Veale some days earlier, including what the claimant had said about planning to hand the file over to West Midlands police. However, we do not consider that omission was material in the context of an assessment of whether there was prima facie evidence of relevant misconduct. It remained the case that Mr Duncan had made serious allegations against the claimant which warranted investigation. Those allegations included allegations of theft, not only of the file of papers the

claimant had spoken to Supt Shepheard about some days earlier, but also of the safe and its contents as well as allegations of data breaches.

260. The claimant also referred to the fact that DCC McMillan had said in her suspension rationale that the claimant was in custody when he was not. In our view that is not material from which we could infer that DCC McMillan had been misled by others.

261. The claimant was asked to attend a meeting on 5 November 2018 at the community hub with DS Henderson and DC Clark. Sergeant Darby was present as the claimant's federation friend. The purpose of the meeting was to serve the formal notice of suspension on the claimant. DS Henderson gave the claimant the suspension notice and told him he was formally suspended from Cleveland Police. During the meeting the claimant and Sergeant Darby made representations about the investigation.

262. At the meeting with DS Henderson and DS Clark the claimant alleged that his son's iPad had been stolen from his bedroom during the search of his property. The claimant said that DS Clark had not mentioned the iPad as property that had been seized. The claimant also alleged in this meeting that various individuals were guilty of perverting the course of justice and obstructing a police officer in the execution of his duties. The claimant made the allegation against ACC Roberts, Chief Supt Green, Supt Shepheard, Ms Hatton, DS Henderson, DS Clark, DC Crowley, Mr Duncan and PC Murray. In relation to that allegation the claimant said officers had made up a false offence of theft to prevent him from lawfully taking evidence to West Midlands Police and IOPC. He said he also wanted to make a complaint against DS Clark and DS Henderson for unlawful arrest. The respondent accepts that making this allegation was a protected act and a protected disclosure (Protected Act 13 and Protected Disclosure 13 respectively).

263. Following the meeting DS Clark prepared a report and sent it to DI Bonner. In his report DS Clark accepted that, when he had interviewed the claimant on 1 November, he had not referred to the iPad as having been seized during the search. He said this was because it was not on the list he had been given. However, he said records on the system showed that an iPad had been seized but it had simply not been clearly described in the list he had been provided with.

264. Under the relevant regulations the claimant was entitled to make representations to DCC McMillan, as the appropriate authority, opposing the decision to suspend him. Neither he nor Sergeant Darby on his behalf made any such representations to DCC McMillan.

265. The claimant accepts that, where a police officer is the subject of both a criminal investigation and related misconduct investigation, the misconduct investigation gives way to the criminal investigation: it does not progress until the criminal investigation is concluded. That is what happened in this case.

266. On 7 November the claimant attended the community hub and met with DI Bonner and provided a further statement explaining that he had made a copy of the black file on the iPad that had been seized by the police. The claimant handed

the black file to DI Bonner in a sealed evidence bag and told him it contained legally privileged documents.

267. On 8 November 2018 the claimant received a letter at home from DS Henderson containing an inventory of property taken from his home address. The list included the iPad which the claimant had used to photograph the contents of the black file. Later that day the claimant's ex-wife told him that DS Henderson had brought her some of his property, including an iPad and some phones and that she had taken them to the claimant's parents. The claimant's ex-wife told the claimant that later on the same day DS Henderson had called her to ask about retrieving the property.

268. During this time the claimant was contacted at home by some colleagues who told him that a rumour was circulating at work that he had stolen petty cash from the federation. The claimant said in evidence that he was contacted by someone, whose name he did not provide, and told that CC Veale was telling people he had had a nervous breakdown. The claimant did not give evidence as to who told him this, nor when CC Veale was alleged to have said this and to whom he was alleged to have said. We are not persuaded that it is more likely than not that CC Veale did tell anybody that the claimant had had a nervous breakdown. We are not persuaded that this was anything other than gossip and rumour.

269. The claimant also gave evidence that PC Teeley told him that CC Veale had told him that the claimant would be lucky to keep his job. However PC Teeley did not say that in his evidence to us. We are not persuaded that it is more likely than not that CC Veale said this.

270. On the afternoon of 9 November 2018, Sergeant Darby went to the claimant's home with a member of the welfare team who gave the claimant a leaflet with her number on it. The claimant was told that his welfare officer would be Mr Snaith.

271. On that same evening, someone who had in the past been an inspector in DSE approached the claimant after a show they had both been to and said 'they have been after you for a long time because of your association with Paul Brown.' We did not hear evidence from the officer himself and therefore do not know whether that officer had any evidence to support his assertion or whether his assertion was based on anything more than speculation, rumour or gossip.

272. On 14 November Mr Snaith, the claimant's welfare officer, made contact with the claimant.

273. On 19 November DS Clark and DC Crowley went to the claimant's home and asked to speak with the claimant's son, who was not there. Whilst there they asked the claimant about his son's iPad that had initially been seized but which had subsequently been returned, albeit to the claimant's ex-wife. It is apparent that the iPad had either been returned in error or that those investigating were regretting the decision to return it. The claimant told them he did not have it. DC Clark recorded some or all of this conversation on a dictaphone. He did not tell the claimant he was doing so. Later that day, DC Clark returned to the claimant's home with DC Hunt. They told the claimant DC Clark had recorded the earlier

conversation, apologised and offered the claimant a copy of the recording. The claimant declined it.

274. In 2018 DCC McMillan reviewed the claimant's suspension, as was required by the relevant regulations. The normal practice in suspension decisions is for the investigating officer to prepare a report which includes background information and a summary of what has happened since the previous decision on suspension. The investigating officer expresses an opinion as to whether suspension is still necessary. However, the investigating officer does not have authority to make the suspension decision themselves. That decision has to be made by the appropriate authority. In this case the appropriate authority was, at this stage of the investigation, DCC McMillan.

275. As part of the suspension review process DC Clark prepared a report in which he expressed the view that suspension was still necessary. DC Clark's report set out developments in the investigation since the original suspension. They included that:

275.1. DC Mackenzie had provided a statement and copies of social media messages that had been exchanged between herself and the claimant. They included messages in which the claimant said he had 'nicked' the file.

275.2. The claimant had provided two further written statements.

275.3. Electronic devices that had been seized from the claimant had been taken to Northumbria Police to be examined as the claimant had declined to provide PIN codes to unlock the devices. The report noted that the process of trying to unlock devices usually takes three months.

275.4. The claimant had handed the black file to Inspector Bonner on 7 November.

275.5. A decision had been taken to hold interviews by video and accordingly a T5 co-ordinator was appointed. The rationale for that decision was explained by DC Clark in his report as follows: 'a T5 co-ordinator has been appointed. DC Addison from the HIU has been assigned to assist with reviewing the interview and help categorise the named individuals. This will bring a degree of independence and structure to the interviews and given the allegations made by Inspector Walker then this is deemed to be important to the integrity of the investigations.'

276. DCC McMillan decided to continue the suspension.

277. DCC McMillan carried out a further suspension review on 13 December 2018. Again, the IO's report set out an update on the investigation since the last suspension review. The update recorded, amongst other things:

277.1. Northumbria Police had managed to unlock a device recovered from the claimant's home address and were in the process of carrying out an examination of the contents of the device. Two other devices had not yet been unlocked.

277.2. All known witnesses had been identified. With regard to interviewing witnesses, DC Addison had formulated a policy and procedure document and witness strategy and there was a further meeting planned between Supt Shepheard and T/DI Downes the following week. Not all witnesses would be available until the new year and there would be seasonal staffing restrictions.

278. On or around 14 December 2018 DI Whiteley took over from DS Henderson as senior investigating officer. This was because the T5 co-ordinator had taken the view that DS Henderson should no longer be the SIO because the claimant had made allegations about those involved in the early stages of the investigation including DS Henderson. None of the allegations the claimant had made in his protected acts and protected/qualifying disclosures concerned anything that DI Whiteley had done or failed to do.

279. Before DI Whiteley accepted in evidence that the decision to engage with a T5 co-ordinator to develop a witness strategy and the subsequent policy decision to conduct video interviews with all significant witnesses meant the investigation took longer to complete than it would have done if those steps had not been taken. That decision had been taken before DI Whitely became involved. He did not reverse the decision, however.

280. The claimant claimed in his witness statement that Sergeant Darby told him that ACC Roberts had suggested, in a meeting, that the claimant had his 'own agenda to attempt to undermine the PCC …' and that ACC Roberts then went on to say that the claimant had been got rid of so was no longer a problem. However, there was no mention of that matter by Sergeant Darby in his own evidence to the Tribunal. We do not find that ACC Roberts made these comments.

281. In January 2019 CC Veale resigned. The claimant says that Mr Veale is under investigation. The claimant alleged in his evidence that he had been told 'many times that his 'setting me up' forms part of that investigation. The claimant did not, however, identify who had told him this, exactly what they said and when, and the source of that individual's belief.

282. On 19 February 2019 CI Burnell sent a text message to the claimant introducing himself as the claimant's welfare officer. CI Burnell contacted the claimant again by text on 4 April 2019. In a report prepared ahead of a suspension review on 1 May 2019, DI Whiteley recorded that some concerns had been raised mid-March regarding a lack of engagement by Mr Walker with his welfare officer, that DI Whiteley had spoken with Sergeant Darby about this and that Sergeant Darby had not brought any welfare concerns to DI Whiteley's attention at the time that they discussed this.

283. On 26 April 2019 CI Burnell sent a text message to the claimant asking the claimant to let him know when he was free. The claimant suggested four days that week when he was available. CI Burnell did not contact the claimant until 10 May 2019 when he messaged the claimant apologising for not calling and saying 'please call anytime or let me know in good time and we can finally catch up.'

284. Meanwhile, by the end of April 2019, the criminal investigation was still ongoing. ACC McMillan had carried out reviews of the claimant's suspension on 10 January

2019, 7 February 2019, 6 March 2019 and 3 April 2019. On each occasion she decided to continue the suspension. Neither the claimant nor Sergeant Darby on his behalf made any representations to DCC McMillan challenging any of the suspension decisions. We accept that the various reports produced by the investigating officer contain an accurate summary of the steps taken in the investigation up to those points.

285. By the end of April the investigation team were waiting to receive Mr Carmichael's statement from him. Before the last suspension review DI Whiteley had spoken to Mr Carmichael on the telephone in an effort to expedite the investigation. Mr Carmichael had been identified as a key and significant witness and arrangements were made to interview him in April 2019. Mr Duncan's signed statement was also awaited: although Mr Duncan had signed his statement and sent it by post it had not been received by the investigating team. The investigating team also wished to analyse information recovered from an iPhone seized from the claimant. That material had been received from Northumbria Police the previous week.

286. The claimant's suspension was due for review at the start of May 2019. On this occasion the report relating to suspension was completed by DI Whiteley rather than DC Clark. DI Whiteley expressed the view that suspension should continue. The reasons he gave in his report, in a nutshell, were that there was a risk that the claimant could interfere with witnesses and exhibits if he was allowed to return to duty which could lead the investigation being prejudiced and the public interest required that Mr Walker should be suspended.

287. DCC McMillan conducted a suspension review on the morning of 1 May 2019. In doing so she met with DI Whiteley. DCC McMillan had concerns about the amount of time the criminal investigation was taking and expressed them to DI Whiteley and put pressure on him to prioritise this investigation and get it done as soon as possible. DCC McMillan decided to extend the claimant's suspension for a further four weeks. Although DCC McMillan agreed with the reasons for suspension set out by DI Whiteley, we are satisfied that her decision on suspension was not simply a rubber-stamping exercise – endorsing a decision already made by a member of the investigating team. DCC McMillan addressed her own mind to the question of whether suspension was appropriate. We accept her evidence that, in doing so, she asked questions to satisfy herself that the investigation was proceeding expeditiously. However, she did not consider it her responsibility to go beyond that and investigate whether the investigation was being carried out in an appropriate way.

288. On 2 May 2019 the claimant decided to attend Guisborough police station to report for duty. He had not been informed of the outcome of the suspension review at that stage. On previous occasions when the claimant was aware his suspension was due for renewal, he had not attended for duty. Instead he had waited to be informed of the outcome of the suspension. On this occasion, however, the claimant reported for duty on 2 May 2019 early in the morning. The claimant was then told he was still suspended and so left.

289. At 8:25am that day, having been told that the claimant had been in, DI Whiteley telephoned the claimant. DI Whiteley then made a note of the conversation in his police notebook and we accept that note accurately reflects what was discussed. The claimant told DI Whiteley he had tried to speak to Sergeant Darby, his police federation representative, but had been unable to. DI Whiteley told the claimant that he had spoken to Sergeant Darby before the suspension review was to take place and had told Sergeant Darby they had a few final points to look at before any change on the suspension. DI Whiteley told the claimant it would be wrong of him to tell the claimant exactly where the investigation was at. The claimant said he understood that and understood that DI Whiteley was just doing his job. DI Whiteley told the claimant that the suspension had been extended and apologised for the fact that he had not communicated this to the claimant personally. He told the claimant that, having had the conversation with Sergeant Darby, it had not occurred to him to further update the claimant directly.

290. The claimant suggested at this hearing that, notwithstanding what DI Whiteley told the claimant, he had not in fact spoken with Sergeant Darby ahead of the suspension review to update him about the investigation. In his evidence in chief contained in his witness statement, Sergeant Darby said he was out of the country at the time of one of the reviews carried out into suspension. A document at page 1578 of the file of documents shows that Sergeant Darby was believed to be out of the country at the time of the subsequent suspension review at the end of May. When cross-examined, however, Sergeant Darby said he thought he was out of the country at the time or just before the suspension review on 1 May.

291. We find it more likely than not that Sergeant Darby was not out of the country until the time of the second May suspension review and that DI Whiteley's pocketbook gives a reliable account of what happened. We find that, shortly before the 1 May suspension review, DI Whiteley told Sergeant Darby, as the claimant's federation friend, that the investigation was ongoing and that a few things needed looking at before there was any change to the suspension. DI Whiteley expected Sergeant Darby would communicate that to the claimant in his capacity as the claimant's federation representative because that was the usual method of communicating updates to the claimant. That being the case, DI Whiteley had no reason to anticipate that the claimant would attend for duty on 2 May. By 4 May, in line with the relevant regulations, a letter was sent to the claimant confirming the outcome of his suspension review.

292. After the meeting with DCC McMillan on 1 May, DI Whiteley sent an email to DC Clark asking for help to expedite the outstanding actions in the criminal investigation. He said 'at the suspension review this morning I was given a very uncomfortable time by the dep and I really need to get this prioritised as finalised from a criminal perspective hopefully in the next week or two maximum.' By this time DC Clark was due to move to a new role in a different team. As a consequence of that move a decision was taken that DI Whiteley would become the investigating officer as well as senior investigating officer. On 4 May DC Clark emailed DI Whiteley. He referred in his email to only having 8.5 working days left in DSE before he moved to his new role and having been told that Mr Bonner

wanted him to prioritise a couple of his more complex complaints so that he would not have to hand them over to somebody else. Mr Clark explained that this meant he had limited time available to deal with enquiries on the investigation into the claimant.

293. A number of the respondent's witnesses gave evidence to the effect that, at this time and over the months that followed, workload in the DSE was at an unprecedented level. We accept that there had been a significant increase in the department's workload in recent months and they had other complex investigations in train. That increase in work put additional pressure on DI Whiteley and others in the DSE. The fact that DC Clark was moving out of the DSE is likely to have added to that pressure.

294. By 20 May the criminal investigation was still ongoing. We accept DI Whiteley's evidence that he was very keen to avoid a repeat of what had happened at the beginning of the month when the claimant turned up for duty before the extension of the suspension had been communicated to him. So he tried to make arrangements well in advance of the next review date. On 20 May 2019 DI Whiteley contacted Inspector Turnbull, executive staff officer to the deputy chief constable, to arrange for the review to take place no later than 30 May 2019. The following day, 21 May 2019, DI Whiteley telephoned Sergeant Darby with an update on the suspension and to explain the status of the investigation. Sergeant Darby commented that the investigation was taking some time. DI Whiteley explained that the claimant's iPhone was proving problematic to access. Sergeant Darby was very close to retiring so it was agreed that DI Whiteley would contact CI Burnell once the outcome of the suspension review was known and CI Burnell would update the claimant. DI Whiteley told Sergeant Darby he did not expect the criminal investigation to be complete before the next suspension review was due to take place.

295. After he had spoken to Sergeant Darby, DI Whiteley emailed CI Burnell and Ms Clynch (senior HR business partner) to update them and ask CI Burnell to pass the outcome of the suspension review to the claimant immediately after it took place on Wednesday 29 May 2019. CI Burnell replied 'no problem at all'.

296. On 20 May 2019 CI Burnell had emailed DI Whiteley telling him that the claimant considered he had not had appropriate welfare support. DI Whiteley asked Ms Smith (employee relations case manager) to get in touch with the claimant to see if any specific welfare was being sought. Later that day CI Burnell emailed DI Whiteley to say that the claimant did not want anything from CI Burnell in his capacity as welfare officer or from the force in terms of welfare support.

297. In accordance with the relevant regulations, the claimant's suspension was reviewed on 29 May 2019, four weeks after the last review on 1 May 2019. By 29 May the criminal investigation had not yet concluded. On this occasion Deputy Chief Constable Oliver conducted the review. She had taken over as appropriate authority. A suspension report was prepared by DI Whiteley detailing developments since the last suspension review. In his report DI Whiteley recorded that the material downloaded from the claimant's iPhone was still in the process of

being reviewed and that the process had taken significantly longer than anticipated due to a problem with the size of the files downloaded on to the external hard drive and an IT problem in adding the files on to the Cleveland Police network. He noted that that problem had been rectified on 27 May and the review of the material was ongoing. DI Whiteley said 'this is expected to be one of the final key actions required and once this has been completed the SIO will ensure any significant developments in regard to the matters are brought before the appropriate authority at the earliest opportunity for further review'.

298. We find that DI Whiteley's report accurately summarised the steps that had been taken, and problems encountered, since the last report. The review of material downloaded from the claimant's iPhone had been delayed by IT problems that had not been anticipated. The IT problems had only very recently been resolved and the review was now under way.

299. In his report DI Whiteley once again recommended that the suspension continue whilst the criminal investigation was ongoing, for reasons that were essentially the same as before. DCC Oliver agreed with that recommendation and decided to extend the suspension further. At 2pm that day DI Whiteley emailed CI Burnell and told him of the outcome of the suspension review and asked that he pass that on to the claimant. CI Burnell passed on the message to the claimant the following day.

300. On the following day the formal letter confirming the extension of the suspension was issued to the claimant in accordance with the requirements of Regulation 10(9) of the regulations. However, before the claimant received that letter and before CI Burnell contacted the claimant to tell him the outcome of the extension review, the claimant attended Central Police Headquarters and stated that his suspension had lapsed and he was reporting for duty. The claimant spoke to a sergeant who contacted the DSE who confirmed the claimant's suspension remained in place. The sergeant told the claimant. The claimant had not contacted DI Whiteley or anyone else in the DSE to ascertain the position regarding his suspension before attending for duty on 30 May. Nor did he contact CI Burnell as his welfare officer. Subsequently DI Whiteley asked CI Burnell if he could provide him with a mobile number for the claimant so that DI Whiteley could contact the claimant directly in future.

301. On 24 June 2019 DI Whiteley concluded the criminal investigation. He decided that the evidential threshold was not met for any criminal charges.

Lifting suspension from the force; ongoing conduct investigation

302. On 24 June 2019 DI Whiteley prepared a report to submit to DCC Oliver so that she could consider whether the claimant's suspension should continue. DI Whiteley noted in his report that the conduct matters were still under consideration and some further enquiries were being conducted in relation to that, including approaching two non-police witnesses that the claimant had identified. Although the conduct matters were still under investigation, DI Whiteley expressed the opinion that suspension was no longer appropriate because alternative deployment could be undertaken provided 'the conduct investigation is not

compromised and any concerns regarding Inspector Walker's future decision making process can be mitigated.' DCC Oliver conducted her review of suspension and agreed that re-deployment was appropriate. In the circumstances she lifted the suspension. That decision was confirmed by letter to the claimant dated 25 June 2019.

303. On the same day DI Whiteley wrote to Mr Duncan informing him that the criminal case was not being pursued but the conduct matters were still the subject of further enquiries. DI Whiteley expressed the personal view to Mr Duncan that 'whilst the matters are still subjected to conduct and centre around activity relating to his federation role, to protect both Rob, the Federation and our organisation it would not be appropriate for him to return to his role until these matters are finalised.' That same day Mr Duncan emailed the claimant confirming that he remained suspended from his police federation role.

304. Following the decision to lift the claimant's suspension, attention turned to re-deployment. The claimant was offered project type work, which he declined.

305. On 28 June CI Burnell emailed DI Whiteley and Supt Wrintmore. At that time Supt Wrintmore was the appropriate authority in relation to the conduct matters. CI Burnell referred to having had a discussion with the claimant that week and being in contact with him via text. CI Burnell said that the claimant had 'indicated issues with returning to work for the following reasons:-

- He expected to speak to a professional re welfare prior to his return.
- He hoped to return to the fed Monday and has indicated working elsewhere is not an option.'

In his email CI Burnell also said the claimant 'requests his photograph, fingerprints and DNA be destroyed …'

306. We infer from this email that the claimant had told CI Burnell that he only wished to return to work in his police federation role.

307. In cross examination, the claimant gave three reasons why he had declined the project work: firstly, he said it did not seem like a proper job because it did not have a 'title'; secondly he said it involved working out of HQ and he was uncomfortable working there because CC Veale was there; thirdly, it would have involved working with someone whom, he had been told, had called him an 'organisational terrorist'. We note that CC Veale had in fact left the force some 6 months earlier and that the person the claimant would have been working with was, in the claimant's own words, 'brand new'. We find that the real reason the claimant refused the project work was that the only role the claimant wished to return to was his police federation role.

308. On 28 June, Ms Clynch of HR referred the claimant to occupational health. The same day DI Whiteley asked the individual with responsibility for data protection matters at the force what the process was to have details such as fingerprints and DNA expunged from the system. Ms Ladam replied three days later on 1 July.

309. On 1 July the claimant began a period of sickness absence.

310. The claimant had an appointment with somebody from occupational health on 5 July and a report was produced a couple of weeks later on 18 July. The advisor said they anticipated the claimant would be issued with a sick note when he saw his GP, which he was due to do the following day. The advisor said 'I do not anticipate that Inspector Walker will require medication and he is doing everything he can to maintain good psychological health given the current circumstances. It would appear that the main barrier preventing him from returning to work at present is the decision on whether internal disciplinary action will be required. I would recommend that if possible a decision on this is made as soon as possible due to the impact this is having on the arrangements to facilitate a return to work and the potential for this to begin to affect his psychological health.'

311. On 11 July 2019 DI Whiteley sought legal advice in relation to the conduct matters. That advice was received on 8 August 2019.

312. In the meantime, on 24 July 2019, DI Whiteley responded to an email from the claimant requesting an update on the conduct investigation.

313. On 1 August the claimant emailed DI Whiteley again with some queries about the investigation. In addition, the claimant asked advice about getting his biometric data destroyed. The claimant had been told that if he wished his biometric data and fingerprints to be destroyed he would need to fill in a form. He was provided with a link to the form to fill in. In this email the claimant said 'Please can you advise the reasoning I should put on the form as I believe three apply: unlawful arrest, malicious/false allegation; no crime. Whilst I suspect all three fit, the less contentious is the no crime category. Please can you confirm that it has been 'no crimed' and if not, why not?' In his email the claimant also raised an issue regarding his warrant card access and asked questions about damage he said had been caused to his laptop and the iPad that had been seized from his house which he said belonged to his son.

314. DI Whiteley replied to the claimant's email on 14 August 2019. He explained that he had had some difficulties in contacting some witnesses and that his annual leave over the summer had had an impact on his abilities to progress the investigation. He told the claimant that he was aiming to have the investigation report ready for the appropriate authority by the end of August 2019. We accept that DI Whiteley had contacted the two witnesses in question (Mr Brown and Mr Matthews) but neither had responded to his emails. We also accept that he had had a period of annual leave. He told the claimant that he intended to provide them both with one final opportunity to make contact before he would consider that avenue closed. With regard to the biometric data DI Whiteley said 'the rationale and reasons for your request for your biometric data to be destroyed is for you to make. The crime remains recorded at this point but I will seek clarity from the force crime registrar to ensure my understanding of why I believe the case is correct.' Regarding the claimant's warrant card access, DI Whiteley looked into this and responded to the claimant in this email. DI Whiteley asked the claimant for further information about damage he said had been caused to his laptop. With regard to the iPad, DI Whiteley said he understood that was returned to the claimant's ex-wife on 7 November 2018.

315. We find that dealing with the claimant's queries added to the competing demands on DI Whiteley's time.

316. Following this email DI Whiteley decided there were no further avenues left to explore in relation to the conduct investigation. By the end of September, however, he had not written up his final report. DI Whiteley's evidence to us was that progressing the investigation took longer than he had anticipated in the next few weeks and was impacted by competing demands within the department.

317. On 30 September 2019 DI Whiteley emailed Ms Smith copying in Ms Clynch and CI Burnell with an update as to the status of the investigation report. He said in that email that the investigation was taking longer to finalise than he expected due to some competing demands within the department and 'some wider issues (not related to the investigation) which are not for this forum.' He said he was still in the process of finalising the report for the appropriate authority (who at the time was still Mr Wrintmore). Later that day DI Whiteley emailed the claimant and apologised that he had not been in a position to finalise the report. He acknowledged that the claimant would not find his email satisfactory and told the claimant he had been provided some protected time to enable the report to be submitted that week.

318. Later that day DI Whiteley began a period of sickness absence that turned out to be long term. We find that at this point DI Whiteley had started work on his final report but had not completed it due to competing demands on his time. He then was off work on sick leave suddenly and without prior notice. There was no opportunity for DI Whiteley to hand over his work to somebody else.

319. During his cross examination of Mr Whiteley the claimant asked whether anyone in the force had put pressure on Mr Whitely to try to prevent him from concluding his report and whether that was the reason for Mr Whitely's sickness absence. Mr Whitely denied both suggestions. We found Mr Whitely to be a compelling witness and accept his evidence on these matters. We find that no-one in the organisation said anything to DI Whiteley or did anything that DI Whiteley perceived as intended to pressurize him into delaying either the criminal investigation or the misconduct investigation or the completion of his final report.

320. At no time between DI Whiteley's email of 14 August and the end of September did the claimant ask DI Whiteley whether or not his biometric data had been destroyed. The biometric data was in the hands of a different force, as explained later in these findings of fact.

321. By 15 October 2019 it was apparent to the respondent that DI Whiteley would not be returning to work in the short term. Therefore, DC Cook was instructed to take over DI Whiteley's role as investigating officer. DC Cook was told that the enquiries had been completed and that he was required to complete a final report for the investigation. Although DC Cook had been involved in the criminal investigation to some extent at its earlier stages, he had not had extensive involvement in the case and now needed to familiarise himself with developments.

322. DC Cook had two weeks of pre-arranged training which he attended, returning to work on 4 November 2019. Then from 18 November DC Cook had some periods

of time off in lieu and annual leave until 9 December. DC Cook then returned to duty for two weeks before taking a further period of annual leave. DC Cook therefore had limited working time available to complete the work on the claimant's investigation report. In addition, the DSE continued to have a very heavy workload at this time and DI Whiteley's incapacity led to a reduction in resources available to do the work that needed to be done. Therefore, when DC Cook was at work there were competing demands on his time.

323. A very large volume of documentation had been gathered during the investigation. Having had little prior involvement in the investigation, this took DC Cook a significant amount of time to read through and understand.

324. On 30 December Supt Wrintmore sent an email to Mr Cook asking if they could advise when the investigation report would be concluded. He said 'you'll be aware of my time concerns relating to it accepting many factors beyond our control have contributed to it.' Supt Wrintmore copied in Mr Murphy-King, who had joined CCU in September 2019.

325. DC Cook returned to duty in early January following a period of annual leave. He sent a reply to Supt Wrintmore on 3 January saying he had spoken with certain people before Christmas and was now 'wading through the material' and hoped to get it completed by the 17 January. We accept that the workload in the DSE continued to be very heavy.

326. DC Cook continued to work on the investigation report in January. By 24 January he had written up his report, in which he concluded that the claimant had no case to answer. On 24 January 2020 he sent an email to Ms Emsley, then director of DSE. In that email DC Cook said he was enclosing the 'final report in relation to RW'. We infer from that email that DC Cook considered at that time that he had completed his investigation report.

327. Ms Emsley sent an email in reply on 24 January in which she said 'I think there has been some miscommunication: I requested a copy of the report be sent to me to update the Dep, but the AA will be transferred to MMK or Paul. Probably Paul, given Matt's workload and that it is an easy(ish) one for final assessment for Paul (no further disciplinary procedures). Please change and put the AA to Paul. The 'AA' was a reference to the appropriate authority who was to make the final decision on disciplinary action. Up until recently the appropriate authority was Supt Wrintmore. However, he had by now left DSE for a different role. Ms Emsley's email shows that, when she sent the email, a decision had not been made as to who would be the appropriate authority but that it was likely to be Chief Supt Paul Waugh. Mr Murphy-King's evidence to us was that Chief Supt Waugh was indeed appointed as appropriate authority and we find that was the case.

328. After replying to DC Cook, Ms Emsley sent an email to DCC Arundale. She attached DC Cook's investigation report to her email describing it as 'final report on Inspector Rob Walker.' She said in her email there was no case to answer on any of the allegations and noted that DC Cook had pointed out some 'shortcomings in the assessment by the previous AA and investigation strategy (previous AA and

IO).' She said she would 'disseminate this with Paul W and Legal' as she anticipated 'other procedures being launched as a consequence.'

329. That same day DC Cook emailed CI Burnell and a Mr Mosey. DC Cook thought at that time that CI Burnell was still the claimant's welfare officer. Mr Mosey was a federation representative from West Yorkshire Police who was acting as the claimant's federation rep at that time. In his email DC Cook said the final investigation report relating to the inquiry into the conduct of RW was passed today to the AA for their attention.'

330. Two days later DCC Arundale emailed Ms Emsley saying that the report was poorly presented and needed work before it could be circulated. He also said he needed to speak to her about 'a number of aspects regarding this matter.' The following day DCI Murphy-King emailed a Sergeant Heron (DC Cook's sergeant) asking him to review DC Cook's report and 'ensure the quality of content is improved upon prior to re-submission. Please be diplomatic in your approach as I am minded to the fact that Dave picked this work up very late in the day from Roger (which is never ideal), and demand/workloads are very high. There is also a need to expedite the re-work given the age of the investigation. However, it must be completed to an acceptable standard.' Subsequently DC Cook emailed Ms Emsley a timeline of his involvement in which he referred to having been told his report was in an incorrect format and that he had received direction as to the format required.

331. The contents of these emails support evidence given by DCI Murphy-King and DC Cook that the reason the report prepared by DC Cook was being reviewed was to do with concerns about the way the report had been presented rather than any concerns about the conclusions reached. We accept DCI Murphy-King's evidence that DCC Arundale was keen at this time to improve the quality of reports generally and that his intervention was consistent with the approach he took to other reports.

332. Sergeant Heron then emailed DC Cook suggesting that he contact Ms Emsley to establish 'exactly what the issue is with the presentation.' That was the first time DC Cook was made aware there was a perceived problem with his report. DC Cook emailed Chief Supt Waugh saying Ms Emsley had asked him to approach Chief Supt Waugh with a view to Chief Supt Waugh completing an assessment (as appropriate authority). DC Cook offered to go through his report with Chief Supt Waugh and explain his rationale. DC Cook then saw the email from Sergeant Heron and, in turn, sent an email to Chief Supt Waugh asking him to 'hold off on this report till I work out what is going on.'

333. We infer from the contents of the emails referred to above that Chief Supt Waugh had received DC Cook's report in his capacity as appropriate authority by no later than 27 January 2020. That follows from the following:

333.1. The email from Ms Emsley suggested she was going to provide Chief Supt Waugh with the report.

333.2. There is no evidence that in response to DC Cook's email of 27 January Chief Supt Waugh responded to DC Cook asking him which report he was referring to.

333.3. The evidence of DCI Murphy-King is that Chief Supt Waugh was appointed as appropriate authority.

334. Following the emails referred to above, DC Cook re-drafted his report. He emailed the re-drafted final report to Sergeant Heron on 5 February for his 'review/information'. On 10 February Sergeant Heron emailed Chief Supt Waugh attaching the re-drafted report. In his email Sergeant Heron said 'please can you review it and if happy forward it to [Ms Emsley].'

335. On 15 February the claimant emailed DC Cook. He pointed out that it had been 20 days since he had been told his case had been finalised and referred to the appropriate authority. He asked who the appropriate authority was and asked DC Cook to remind them of the Police Conduct Regulations.

336. On 18 February DC Cook and Chief Supt Waugh discussed the report. Chief Supt Waugh told DC Cook that some amendments to the report were needed. DC Cook made amendments that day. DC Cook then sent an email to Sergeant Heron attaching what he described as the 'final report'. In his email DC Cook said Chief Supt Waugh had told him he was not able to act as the appropriate authority in the matter and conduct the final assessment as he had not yet completed his AA training package. DC Cook said he had been told to return the report through Sergeant Heron to Ms Emsley to review/re-allocate. DC Cook also said 'we as a force are now out of step with regulations in respect of [the claimant] being updated re an outcome.'

337. DC Cook's final report was sent to Ms Emsley. She then asked DC Cook to provide her with a timeline of his involvement so that she could assess whether there had been any unreasonable delay. DC Cook did that by email on 19 February 2020.

338. On 20 February Chief Supt Waugh emailed DC Cook a copy of a draft letter for DC Cook to send to the claimant. This was suggested wording for a response to the claimant's recent email referring to the police regulations and the delay in the case being concluded. Chief Supt Waugh suggested DC Cook say 'to clarify the recent delay I submitted my initial report to the AA. However, this was returned to me for some additional comments and amendments. This has now been completed and forwarded on. The AA will review my report and prepare an assessment of conduct and make a determination on the evidence presented. Although I cannot predict what the AA determination will be and the outcome, as a way of reassurance at this time I am confident that this matter will not progress to a misconduct meeting or hearing …' DC Cook sent a letter in those terms to the claimant.

339. On 20 February Chief Supt Waugh emailed Mr Bonner and DCI Murphy-King. Chief Supt Waugh said that Ms Emsley could not 'make an assessment on this' because she was due to go on leave. He said she had approached Mr Wrintmore but he had said he had too much on 'doing the Chief's work'. He said he would 'have a go at the weekend to produce something' but 'as discussed I am not happy putting my name to anything until I have had some training.' He asked if he could discuss the issue the following day and said the appropriate authority's assessment

needed to be done the following week as representations had been made about delay and the claimant's half pay review was due to take place the next week.

340. At some point between Chief Supt Waugh sending that email and 25 February a decision was made that DCI Murphy-King would be the appropriate authority rather than Chief Supt Waugh.

341. In the meantime the claimant emailed DC Cook chasing for a response to his earlier email asking to know who the appropriate authority was and why a decision had not been made. It is clear that the claimant had not received DC Cook's letter by this stage. DC Cook emailed the following day in reply saying the appropriate authority was DCI Murphy-King.

342. By 26 February DCI Murphy-King had reviewed DC Cook's report. He decided that it should be amended to address some matters that had been raised by the claimant in relation to allegations he had made of corruption and false accounting and breach of RIPA. Those were not matters that had a bearing on the conduct issues the claimant was facing. However, Mr Murphy-King felt they should be addressed given that they had been raised with the claimant. He, therefore, asked DC Cook some questions about those matters and DC Cook made some additions to the report. DC Cook then provided DCI Murphy-King with a copy of the amended final report on 27 February 2020.

343. In his report DC Cook set out his conclusions.

343.1. In relation to the question of whether the claimant had breached the Standards of Professional Behaviour in relation to Honesty and Integrity, DC Cook set out his conclusion as follows: 'Despite some level of concern over Inspector WALKER's judgement in this matter, …, in my opinion, I do not find the breach proven, and that there is "no case to answer".'

343.2. The concerns alluded to here about the claimant's judgement were described by DC Cook in paragraphs 57-59 of his report where he addressed the issue of whether the claimant had acted with integrity. DC Cook said the claimant's actions and the way he had conducted himself 'may, to some, seem to not to be in step with a person of his rank and experience.' He referred specifically to the claimant's 'insistence on carrying on, even after being given assurances by Mr Duncan and others that no evidence of any criminality had been identified.' Notwithstanding his concerns, however, DC Cook did not believe the claimant's conduct contravened the standard of professional behaviour. Nor did he believe the claimant's performance had fallen below what was expected of an officer of his rank or in his position.

343.3. In relation to honesty, DC Cook's opinion was that the evidence did not show that, on the balance of probabilities, the claimant had committed theft or data offences. DC Cook referred in this regard to the claimant's 'lack of intent, and an honestly held belief that he was doing the right thing, plus the evidence produced intimating that senior officers were aware of his intentions and to degree sanctioned them.'

343.4. In relation to the question of whether the claimant had breached the Standards of Professional Behaviour in relation to Discreditable Conduct, DC Cook set out his conclusion as follows: 'in my opinion I do not find the breach proven, and believe that there is, "no case to answer".'

343.5. In reaching that conclusion DC Cook believed that the claimant had been mistaken in stating that as Secretary of the Cleveland Branch of the police federation he had 'ownership' of all items belonging to the branch, and as data controller, responsibility for all data held within the branch. He also believed the claimant's actions and decision making were not 'those one would expect of someone of his experience and rank, or indeed someone who was acting rationally at this time.' In this regard DC Cook expressed the opinion that the claimant's 'ability for rational thinking appears to be further hindered by his suspicion surrounding corruption and collusion at the highest levels.' As mitigation, DC Cook considered that the claimant's behaviour may have been affected by the stress and mental strain of dealing with the death and subsequent funeral of his grandfather. DC Cook also acknowledged that the claimant had stated throughout that he believed that he had uncovered evidence of criminal behaviour and that his actions were to secure material relating to the independent IOPC investigation. DC Cook concluded that a member of the public would expect that if a police officer believed that he had discovered evidence of criminal behaviour, he should take all steps to safeguard that evidence.

343.6. In relation to the question of whether the claimant had breached the Standard of Professional Behaviour in relation to Confidentiality, again DC Cook concluded there was no case to answer. In reaching that conclusion DC Cook expressed some scepticism about the claimant's claim not to have shared the contents of the black file with anyone. However, it was his opinion that any data that had been disclosed belonged to the PFEW. He noted that 'Mr Duncan did not consider the matter to be worthy of a Data Breach referral to the ICO.' Taking that into account DC Cook concluded that any disclosure of the data in the file was a matter better dealt with under the PFEW's Governance Procedures if they wished to take it further.

344. DC Cook also included in his report a section entitled 'Lessons to be learnt and Recommendations'. In that section of his report DC Cook commented on the length of time it had taken to reach the point of concluding the investigation, saying the following:

> *'85. This investigation related to an allegation of a simple theft, albeit by a police officer of rank. From its outset to conclusion, the matter has taken some 15 months to reach this point, during which time Inspector Walker has been away from his place of employment. The investigation has suffered from a turnover of investigating officers for varying reasons and upon reflection, this investigation could/should have been concluded some time ago. Consideration should have been given for it to remain with the original IO, despite him moving from the command with him having best knowledge of the case.*

> *86. The decision to engage with a tier 5 co-ordinator to develop a witness strategy, with the subsequent policy decision to conduct video interviews with all significant witnesses (all of whom were experienced police officers added significantly to the process, and does not appear to have added in any way to the quality of evidence achieved. This has to be subject of review and whilst there will be occasion where this approach will be necessary, I would suggest that in this case, this approach was not warranted.*
>
> *87. Further significant delay occurred due to the necessity to conduct examinations of electronic devices owned/operated by Insp. Walker. For reasons of confidentiality, these were submitted through Northumbria DFU. Although the devices were submitted promptly, due to access difficulties, namely Insp. Walker refusing to provide PIN/Pass codes for the device(s), a significant delay was encountered in the completion of this…'*

345. In his report, DC Cook also criticised investigating officers for having returned the iPad that had been seized from the claimant without examining it first and what DC Cook described as '[t]he decision by officers to "covertly" record the approach to Insp Walker and request for access to the iPad'.

346. DCI Murphy-King was conscious of the need to avoid any further delay in concluding the investigation and making the decision as appropriate authority. He asked DC Cook to email the claimant to update him and to tell the claimant that DCI Murphy-King was not considering any action in respect of the conduct investigation. DC Cook sent the claimant an email to that effect on 27 February.

347. DCI Murphy-King gave his final assessment on the claimant's conduct investigation on 12 March 2020. His decision was that there was no case to answer. In his conclusions DCI Murphy-King said:

> *'having considered the preliminary assessment and the investigated report, I am satisfied that an appropriate and proportionate investigation has been undertaken, in line with the terms of reference provided by T/Supt Shepheard, into alleged misconduct by Inspector P1557 Rob Walker. …. I understand that this case was initially investigated as a criminal matter. However was not referred to the Crown Prosecution Service for charging advice as the then investigating officer … did not believe the matter passed the evidential test. I do not disagree with this decision as Inspector Walker clearly did not have the required dishonest intent.'*

348. Elsewhere the report said:

> '*51. Following the initial seizure of the safe Inspector Walker was transparent in his intentions, speaking to PC 1823 Richard Murray and Mr Alex Duncan in clear terms, explaining his concerns to Mr Alex Duncan, and even going to the extent of meeting the (then) chief constable to inform him of the situation. Furthermore, Inspector Walker notified DI John Bonner who at the time was an inspector within the Department of Standards and Ethics, as to the situation and concerns he had.*

52. On this basis there appears to be an absence of dishonesty or bad faith to Inspector Walker's actions. On any view Inspector Walker was acting transparently and with integrity however misguided his actions.

53. Having given the matter careful consideration I do consider Inspector Walker's actions somewhat misguided and ill informed at the point of removing the safe from crime property, particularly so for an officer of Inspector Walker's rank and experience. Having said that it is evident that Inspector Walker held an honest belief that he was doing the right thing. It seems clear that Inspector Walker held genuine concerns about corruption which prompted him to adopt the course of action that he did.

54. In terms of outcome, had this investigation been progressed with due diligence and in a more timely fashion then there may well have been a case for management action, specifically in respect of Inspector Walker's actions from the point he removed the safe from crime property and for having copied the black folder. However, given the passage of time and impact this has had on Inspector Walker and the organisation, I believe management action can no longer be justified. On that basis I find Inspector Walker does not have a case to answer in respect of either gross misconduct or misconduct, and management action can no longer be considered reasonable in the circumstances.'

349. The investigation report was sent to the claimant and Mr Duncan on 16 March 2020. Mr Irvine was also told of the outcome. He was dealing with the claimant's appeal against his reduction in pay.

Biometric data

350. On 23 March the claimant emailed DC Cook asking a number of questions. They included questions about getting his biometrics destroyed, a laptop computer he said had been broken and an iPad he said was missing. The claimant also said in his email that he believed he could prove that some of the police witnesses had 'either been mistaken or deliberately lied'. He also asked for the decision not to investigate the complaint he had made of perverting the course of justice and 'obstruct PC' be reconsidered. DC Cook passed that email to DCI Murphy-King.

351. On 24 March (the day after the claimant had emailed) DCI Murphy-King emailed DC Cook and Sergeant Bell of CCU. He said 'my stance is if Rob has clear evidence, not merely a suspicion or opinion, that people have deliberately lied when tendering statements then this is something that needs to be looked into and is not something we can dismiss outright. In the first instance we need to clarify with Rob what evidence he has to support this strong accusation. With regard to the allegation of perverting the course of justice DCI Murphy-King said 'I'm not sure where Rob is going with this??' In addition he said 'in terms of return of property and destruction of biometrics we should of course support this. The missing iPad is new to me, is this accurate?'

352. DCI Murphy-King asked Sergeant Bell to look into these issues as he believed there was a potential conflict for DC Cook to do so in some respects given that he had been the IO to the misconduct investigation.

353. That same day Sergeant Bell emailed the Claimant asking if they could speak over the 'phone to discuss the issues he was raising. The claimant replied to say that he would not be willing to discuss any matter over the telephone. After making some enquires Sergeant Bell emailed the claimant on 1 April 2020.

354. In relation to the biometrics the claimant had asked whether the criminal matter, which had resulted in no further action being taken, would be 'no crimed' so that his biometrics taken at the time of arrest would be destroyed. Sergeant Bell said 'The OIC will request this is no crimed. Once the custody record has been finalised all bio-metrics will be destroyed, I have confirmed this with Chris Stoddart from custody for you.

355. Because the claimant's arrest had been processed at Durham Constabulary Shared Custody Suite in Peterlee, all of his samples were taken by Durham Constabulary and stored on their systems and not by the respondent.

356. Sergeant Bell asked DC Cook to follow up on the matter with Durham Constabulary. On 9 April 2020 DC Cook emailed Durham Custody Management explaining that that the matter involving the Claimant was subject to 'No Further Action' and relaying the claimant's request for confirmation that the fingerprints, DNA and photo taken at the time had been or would be destroyed. DC Cook said 'Can I ask what you need from our side to enable this to occur and that is requested is achievable.'

357. A Mr Scott of Durham Constabulary replied by email the next day saying he would process the 'No Further Action' that day and would issue a 'NFA Notice' and contact the internal teams and IT 'with regards to the DNA, image and FP removal.' He added 'I will update you when this is completed.'

358. Sergeant Bell did not hear back from Durham Constabulary. By email dated 15 May 2020 he told the claimant he would chase up the biometrics issues. However, he heard nothing further. Durham Constabulary later told the respondent force that the biometric data was destroyed on 11 April 2020.

359. At no time when Sergeant Bell was dealing with this matter was he aware of any of the claimant's protected disclosures or alleged protected disclosures or protected acts. Nor was he aware that the claimant had a disability.

360. During the course of these proceedings, the claimant told the respondent that he had discovered, on 7 June 2021 via a subject access request made to Durham Constabulary, that his custody photo was still held on Durham systems. In July 2022, DI Pringle was asked to find out how the custody photo still featured on Durham Constabulary's systems despite the respondent having asked, at the claimant's request in 2020, that all biometrics, finger prints and his custody photo be destroyed as a result of the 'No Further Action' outcome in the matter. DI Pringle and one of his officers made extensive enquiries that eventually revealed that although the custody photo appeared to have been deleted as requested, a copy had been retained on Durham's legacy IT system due to 'technical issues.'

361. We find that, as at 4 May 2020, the date this claim was made, no one at the respondent force knew that the claimant's biometric data and fingerprints had been

destroyed and that his custody photo had been deleted (albeit that there was still a copy of the photo on Durham Constabulary's systems).

The claimant's dealings with Ms Lindberg and HR/Sopra Steria

362. In September 2019, Ms Lindberg had become the claimant's line manager.

363. Ms Lindberg met the claimant regularly from September 2019. Their meetings were in Saltburn police office where she was based. The claimant was happy to travel to Saltburn but told Ms Lindberg that he did not wish to enter any other police premises because, he said, he did not know how he would react if he bumped into particular individuals. Ms Lindberg thought the claimant was showing signs of stress and anxiety when she met with him and he would often lose his train of thought. He described anger, stomach upsets and recurring nightmares about officers attending his home to arrest him, and intrusive thoughts that his home was being monitored or bugged. He also spoke about having persistent low mood and expressed concern as to whether he would lose his home if he did not return to work.

364. On 4 November 2019 Ms Sudron from Sopra Steria sent an email to Ms Clynch in HR and to Ms Lindberg. She said 'we've sent some important letters to Rob recently but we're getting mail returned to us saying he no longer lives at the address he has provided to us.' Ms Sudron sent an almost identical letter to CI Burnell asking if he was able to advise of the claimant's new address. Ms Sudron sent a similar letter to Mr Agar. On 7 November a further email was sent to DC Cook asking him if he knew of the claimant's address. It is clear from these emails that some mail sent to the claimant by Sopra Steria had been returned undelivered. Sopra Steria had been sending post to the claimant at an address he no longer lived at. DC Cook confirmed the claimant's current address.

365. Because the claimant had been on sick leave for coming up to six months, his pay was due to reduced to half pay. However, the claimant had the opportunity to make submissions arguing that he should not receive half pay but should continue to receive full pay. Sopra Steria had recently sent a letter to the claimant telling him that his pay was due to be reduced and that the claimant had the right to appeal that decision. However, the letter was sent to his old address. A new version of that letter was sent to the claimant at the address provided by DC Cook, with a new, later, appeal date. The claimant received that letter at his home address on 8 November.

366. On 7 November, the claimant's former estate agent had told the claimant that the person who had bought his house had passed on a letter about his police pay that had been sent to his old address. It transpired that that was the earlier version of the letter Sopra Steria had sent about the reduction in pay.

367. The claimant appealed against the reduction of his pay. That appeal was subsequently considered by a panel chaired by Mr Irvine some time later. The panel allowed the claimant's appeal and the claimant continued on full pay.

368. In November 2019 Ms Lindberg became the claimant's welfare officer. CI Burnell had asked to be replaced as the claimant's welfare officer, saying he was

struggling to find time to fulfil his commitments due to a combination of work pressures and family obligations. Ms Lindberg had offered to take over the role as she was already in regular contact with the claimant as his line manager. The claimant agreed to the change.

369. Ms Lindberg carried out a welfare visit with the claimant on 14 November 2019 which lasted four hours. Following that meeting Ms Lindberg sent an email to Sopra Steria asking for the claimant's address on Oracle to be changed to the address on his most recent sick note.

370. Following their meeting on 14 November, Ms Lindberg referred the claimant to the force medical advisor Dr Ndovela. The claimant met the FMA on 13 December 2019 and the FMA prepared a report on that date.

371. In her report Dr Ndovela said:

> *'Mr Walker currently experiences symptoms of anxiety and distress periodically and these appear to be intrusive, repetitive and in a rumination pattern and related to one subject: the Force. He states that his sleep gets interrupted by recurring dreams of events of the last year, which induce heightened emotional states (crying on recollection of some of the experiences, anger, feeling sick in the stomach), physical symptoms (urgency and diarrhoea on mention of Force-related matters during any discussions, gnawing of the teeth) and cognitive changes (mind wanders, easily distractible).'*

372. Dr Ndovela expressed the opinion that the claimant was not fit to return to work and may have possible PTSD symptoms. She advised 'further psychological support with the specialist team.' She said the claimant had 'expressed a great interest to return to work in the near future' and that said it was her view that 'when his symptoms begin to improve and regains the capability to resume work, he will require a structured phased return plan.' She said that this 'might involve him being deployed to a different section or location than previous in view of the extent of the difficulties related to his old role (on a temporary basis maybe as the procedural issues are ongoing)' but that 'a successful return can be difficult where somebody feels that they have been unfairly or unreasonably treated by their employer…' Dr Ndovola went on to say 'I have recommended he is seen by the appropriate team for assessment and advice on suitable therapy, where appropriate… I have recommended that Mr Walker visits for a review consultation in February to assess progress and properly advise on fitness to return.'

373. On 8 January 2019, just before 9.30pm, the claimant emailed Ms Lindberg about the FMA report. He said there were certain areas of the report that required correction or clarification and asked that they be shared with Dr Ndovela. In his email he said 'my understanding was that Dr Ndovela was going to send me to a force chosen psychiatrist to enable comprehensive reports to be drawn prior to a decision to move to SMP. I agreed to this.' The claimant referred to the section headed 'Fitness to Work' in which Dr Ndovela had 'advised further psychological support with the specialist team'. In relation to Dr Ndovela's statement that the claimant had expressed a great interest to return to work in the near future, the claimant said

'what I actually said was that returning to work so that I can hold the corrupt people who did this to me to account has been my main driving force, however whilst I remain determined to return to work as I see this as my best way of achieving justice, I am able to see that it is not possible at the moment from a force point of view because I cannot see where I could be safely deployed both from my own and the force perspective. I discussed with the doctor how a half pay decision may force me to return to work and the obvious difficulties that we would all face as a consequence. The doctor discussed moving to a different section due to difficulties in my own role when in fact returning to my old role is the only realistic role possible to me and even that with large risk to both sides attached currently.'

374. Before 8am the following morning Ms Lindberg asked a colleague to arrange for Dr Ndovela to see the claimant's email and comment and/or amend her original report accordingly.

375. The claimant's comments were sent to Dr Ndovela who then issued a revised report dated 19 January. Dr Ndovela added a postscript which said:

'PS with regards to the item regarding a referral to the specialist and the SMP, there appears to have been a misunderstand on process. The sequence of events leading the referral is for the individual to be attended to by the specialist team first to establish the diagnosis and treatment options. Utilising their clinical input and opinion on response to therapies (where provided) then a referral to the independent psychiatrist for a detailed report of the psychological state, including prognosis, a referral to the SMP is effected, where appropriate.'

376. The respondent had an established procedure which an FMA was expected to follow when recommending that the force engage an independent psychiatrist or fund counselling. Under that procedure the FMA was expected to either make the referral for counselling direct to the provider, or to write to the Wellbeing Manager requesting approval for the associated cost of a psychiatrist referral. Dr Ndovela had done neither of those things. What Dr Ndovela said in both her original report and in her post-script was ambiguous. We accept Ms Lindberg's evidence that, at this time, she did not understand Dr Ndovela to be recommending that the force engage a specialist, as opposed to recommending that the claimant ask his GP to refer him to a specialist.

377. On 13th February 2020 the claimant sent a text message to Ms Lindberg telling her of things that the national police federation had done and alleging they were 'setting [him] up' to remove him from his federation post. He added 'I still haven't heard from Alliance, psychiatrist or anyone …' and then went on to ask a question about annual leave. Ms Lindberg replied saying 'I'd like to say I'm surprised but I'd be lying.' She added that she was at a conference but would get 'on to it next week and get back to you.' We accept Ms Lindberg's evidence that her comment about being unsurprised related to what the claimant had said about the national federation and that it reflected the fact that the claimant had previously told her this is what he believed would happen.

378. On 9 April 2020 the Claimant had a follow up appointment with Dr Ndovela. Dr Ndovela prepared a report that day. In that report Dr Ndovela said she had recommended that the claimant was provided with psychological support but that the claimant had not yet received an appointment. Dr Ndovela said 'It is not clear why this has been the case. He reports he never received any communication on whether these sessions were approved or were intended to be organised.' At the end of the report Dr Ndovela said 'Please help with an indication whether Cleveland Police would support me referring Mr Walker to the specialist as this is likely to incur a fee. It is important to note that it would be difficult for me to support a decision for his return without a thorough, detailed report with specific questions that I need to raise with the consultant being addressed.'

379. The Wellbeing admin team at Sopra Steria sent Ms Lindberg a copy of this report on Wednesday 15 April 2020. We accept Ms Lindberg's evidence that she then realised for the first time that Dr Ndovela appeared to have expected a referral to be made by the respondent. We also accept her evidence that nobody had 'blocked' her from making a referrals (a suggestion the claimant put to Ms Lindberg on cross examination).

380. Ms Lindberg was still confused about the psychological support Dr Ndovela was referring to. Nevertheless, on Monday 20 April, she approved any referral that needed to be made and asked the Wellbeing admin team that it be dealt with as a matter of urgency. We see from Ms Lindberg's email of that date that her working days were Monday to Thursday. Assuming she was at work during week commencing 15 April, Ms Lindberg's response was just two working days after Dr Ndovela's report had been sent to her.

381. Ms Burgin of Sopra Steria made an immediate referral to the third party that the force used for counselling. There was, however, a delay in the claimant being seen by a consultant psychiatrist. The consultant psychiatrist the force had previously referred officers to for assessment had unexpectedly stopped working for the force in February 2020. The replacement consultant psychiatrist did not start working with the respondent until June 2020. To ensure there was no further delay, the respondent arranged for the claimant to be seen by the psychiatrist on a Saturday, a day when service was not normally provided and required the building to be specially opened and facilitated by staff on overtime. The psychiatrist made a recommendation for cognitive behavioural therapy sessions. The force had already made a referral for CBT following Dr Ndovela's last report.

382. One of the allegations made by the claimant is that the respondent deliberately failed to provide viable options for him to return to work. The claimant did not, however, identify in his witness statement any other jobs he could have done (apart from his federation role) and that the respondent did not offer to him. During cross-examination the claimant suggested there was another job working on a project 'Blue on the Loo' that he could have done. The claimant did not mention the Blue on the Loo role to Ms Lindberg during his employment, notwithstanding that they had a good relationship and spoke regularly after she was appointed to be his line manager and welfare contact. The claimant only mentioned it on cross-examination when Mr Arnold put it to him that there were no other jobs that he could have done.

When asked why he had not mentioned this in his witness statement or put the matter to Ms Lindberg on cross examination, the claimant suggested he had only thought about this overnight, after Ms Lindberg had finished giving evidence and been released as a witness (notwithstanding that his case has been going on for two years).

383. Looking at the evidence in the round, including the evidence of Ms Lindberg and what the claimant said in response to the FMA's original medical report, we find that at no time after the claimant's suspension from the force was lifted did the claimant have any genuine inclination to return to any role with the force other than his police federation role and that he made that clear to CI Burnell and subsequently to Ms Lindberg. The police federation role was not open to the claimant because the federation had suspended him.

384. We did not find the claimant's evidence to be reliable on the matter of whether the 'Blue on the Loo' role existed between June 2019 when the claimant's suspension was lifted and 4 May 2020 when the claimant made this claim. We do not find that that role existed at that time (and even if it did, we find that the claimant would not have accepted it if it had been offered to him).

385. We accept Ms Lindberg's evidence on the following matters and find that:

385.1. She had been been willing to work with the claimant to return him to work in an appropriate posting.

385.2. However, based on conversations she had with the claimant she believed the claimant was chronically embittered with the organisation.

385.3. The claimant spoke on more that one occasion of 'not knowing what he would do' if he met certain colleagues and that he was 'afraid that he may tiplady

385.4. between December 2019 and the date these proceedings were begun in May 2020, that the claimant was too unwell to return to work.

385.5. Nobody 'blocked' Ms Lindberg from offering the claimant any alternative roles (a suggestion the claimant put to Ms Lindberg on cross examination).

Conclusions

386. Many of the matters about which the claimant complains happened before 31 January 2020. A question arises as to whether those claims have been brought too late to be considered by a tribunal.

387. For that reason we consider it appropriate to determine the complaints about the more recent events first, beginning with the claimant's suspension in 2018. The claimant claims those acts included suspending the claimant from duty, dragging out and delaying the conclusion of the misconduct investigation, failing to offer him viable options to return to work when his suspension was lifted, sending mail to an incorrect address so that he would miss the deadline for appealing against a reduction in his pay during sickness absence, failing to arrange counselling prescribed by the Force Medical Adviser and failing to confirm the destruction of his biometric samples, fingerprints and custody photograph taken on arrest.

388. Whilst the complaints about some of those events might also be out of time, we need to consider them together because the claimant is alleging that they are all connected, being part of an unlawful conspiracy motivated by a desire to keep secret a number of unlawful acts and to remove the claimant from, and keep him out of, his police federation role and the workplace for as long as possible and, latterly, in the hope that he would resign or retire with ill health.

389. By the time the claimant had made his closing submissions at the end of this hearing, the claimant had identified numerous individuals whom he claimed, or speculated, were involved in the alleged conspiracy. They included: Supt Irvine; Mr Green (head of PSD); Mrs Curtis Haigh; Supt Kielty; Mr Young; Chief Supt Gudgeon; T/CI Cooney; PC Murray; Mr Duncan; CC Veale; Supt Shepheard; DS Henderson; DC Clark; ACC Roberts; DS Preston; DI Whiteley; DCC McMillan; DCC Oliver; C/I Burnell; Ms Lindberg; DC Cook; DCC Arundale; Chief Supt Waugh and Ms Emsley.

390. We have rejected the claimant's contention that there was a Gold Group meeting at which ACC Roberts, Chief Supt Green, Supt Shepheard and Ms Hatton (Head of Legal Services) formulated a plan to arrest the claimant and search his property to prevent him assisting various people in their claims against the respondent and to prevent the IOPC led investigation from obtaining detrimental documentation against the respondent.

391. The first of the respondent's witnesses to give evidence was Ms Lindberg. We heard her evidence before that of the claimant. When the claimant cross examined her he displayed what appeared to be genuine warmth towards her, saying she had been 'amazing' towards him and that he believed she had done her level best for him but had been 'blocked' by others. However, in his closing submissions, the claimant alleges that Ms Lindberg had 'duped' him 'into believing that she had been trying to support him … when in fact it is now clear that she had been tasked to see the claimant out of the organisation.' That is not something the claimant put to Ms Lindberg when he was cross-examining her.

392. The claimant submits that he experienced a 'dawning realisation' of Ms Lindberg's alleged duplicity during the hearing, suggesting this was witnessed by the tribunal. We believe the claimant is here referring to an exchange he had with Mr Arnold when being cross examined about his complaint that the respondent had delayed organising counselling. When Mr Arnold put it to the claimant that he must be alleging that Ms Lindberg was the discriminator, the claimant suggested that it was Mr Arnold, not himself, who had said Ms Lindberg had discriminated against him. When we reminded the claimant that it was his own case that he had been discriminated against, the claimant changed tack. He said that up until the previous day (when he had cross-examined Ms Lindberg) he had felt she was trying to help him but that 'things came to light' the previous day and 'in the last few minutes' that show that Ms Lindberg was the discriminator.

393. What this exchange, and the way the claimant developed his case generally during the hearing, appeared to us to show was not so much that the claimant had belatedly come to believe that Ms Lindberg was deliberately seeking to 'see him

out' of the force, but rather that, as the case progressed, the claimant came to recognize the difficulty his claims faced if he did not assert that the individuals who did the things that he complains about were knowing participants in the conspiracy that he claims was afoot.

Allegation 9 –suspending the Claimant from duty

394. On 5 November 2018, the Respondent suspended the Claimant from police service. The claimant complains that this was: an act of detriment by the respondent contrary to s47B of the Employment Rights Act 1996; and victimisation contrary to s39 of the Equality Act 2010 read with section 27.

395. We have found as a fact that when DCC McMillan made this decision to suspend the claimant on 5 November 2018, she was not aware that the claimant had done any of the protected acts or made any of the protected disclosures or alleged protected disclosures relied upon in this case. Her decision cannot, therefore, have been motivated by any protected disclosure or protected act.

396. Nor are there facts from which we could properly infer that DCC McMillan's decision to suspend the claimant was motivated by a belief that the claimant may do a protected act in the future by, for example, making allegations of discrimination. She had no reason to believe he might do that. DCC McMillan was new to the force. She did not know the claimant and did not know anything about his history as a police federation representative or whom he represented, although she was aware the claimant had been recently elected as Secretary of the local police federation branch. In any event, the decision to suspend is not remotely surprising given the nature of the complaints made by Mr Duncan. A clear rationale was set out by DCC McMillan in her report.

397. The claimant sought to rely on the case of Jhuti, to argue that Supt Shepheard had, before DCC McMillan's involvement, determined that the claimant should be suspended because the claimant had made protected disclosures but, in his reports, hid that reason behind an invented reason which DCC McMillan adopted. However, the evidence does not support an inference that Supt Shepheard's recommendation of suspension was motivated by the fact that the claimant had made protected disclosures, as opposed to being because a third party had made an allegation of theft and data breaches that needed to be investigated. Even if he had been so motivated, there is no scope for attributing his state of mind to DCC McMillan because we have rejected the claimant's suggestion that DCC McMillan was misled into suspending the claimant by Supt Shepheard's reports.

398. Although the complaint before us concerns the claimant's suspension on 5 November, we have found as a fact that, prior to DCC McMillan's decision CC Veale had orally ratified Supt Shepheard's recommendation that the claimant be suspended. By doing so he effectively decided to suspend the claimant, as the claimant was told on the day of his arrest. However, given the nature of the complaint by Mr Duncan, suspension was an uncontroversial and unsurprising course of action. DCC McMillan reached exactly the same conclusion when she

applied her mind to the matter independently of CC Veale. What is more, neither the claimant nor his federation friend exercised their statutory right to make any representations to ACC McMillan challenging the initial decision to suspend nor after any of the subsequent extensions of the suspension. That suggests that even the claimant and his federation friend acknowledged that there were appropriate grounds for suspension. The facts do not support an inference that, in deciding suspension was appropriate, CC Veale was motivated by the fact that the claimant had made protected disclosures or done protected acts or a belief that he may do so in the future.

399. Allegation 9 is not well founded and is dismissed.

Allegation 15 – extending the Claimant's suspension from 1 May 2019 and failing to update the Claimant about his suspension

400. The parties agree that the respondent extended the claimant's suspension for a further 28 days from 1 May 2019, having already extended the suspension on previous occasions. The claimant alleges that the respondent deliberately failed to tell the claimant his suspension had been extended until he attended Guisborough police station for duty on 2 May 2019. The claimant complains that the extension of his suspension, and the deliberate failure to tell him about the extension, were:

400.1. Acts of detriment by the respondent contrary to s47B of the Employment Rights Act 1996.

400.2. Victimisation contrary to s39 of the Equality Act 2010 read with section 27.

401. The decision to continue the suspension was made by DCC McMillan. At this time the criminal investigation was still ongoing. Again, there is nothing inherently surprising in the decision that suspension should continue. And although DCC McMillan was by this time aware of some of the protected acts done by and protected disclosures/alleged protected disclosures made by the claimant, we could not properly infer from the facts that DCC McMillan's decision was motivated by the fact that the claimant had done any of those protected acts or made any of those disclosures in the past or a belief that the claimant may do protected acts in the future.

402. In respect of the claim of victimisation the claimant has not discharged the burden of proof.

403. In relation to the claim of protected disclosure detriment, the claimant has not established a prima facie case that DCC McMillan suspended him because he made any of the protected disclosures or alleged protected disclosures.

404. In any event we are satisfied that the reason DCC McMillan decided to continue the claimant's suspension was that she still believed there was a risk that the claimant could interfere with witnesses and exhibits if he was allowed to return to duty, which could lead the investigation being prejudiced; and the public interest required that Mr Walker should be suspended. That decision was not materially influenced by the fact that the claimant had made any of the protected disclosures

or alleged protected disclosures and or by the fact that the claimant had done any of the protected acts or a belief that he may do protected acts in the future.

405. The complaints that the extension of the claimant's suspension contravened ERA section 47B and the Equality Act are not well founded.

406. As for the complaint that the respondent deliberately failed to tell the claimant his suspension had been extended, we have made the following findings of fact:

406.1. DI Whiteley told Sergeant Darby, as the claimant's federation friend, that the investigation was ongoing and that a few things needed looking at before there was any change to the suspension.

406.2. DI Whiteley expected Sergeant Darby would communicate that to the claimant in his capacity as the claimant's federation representative because that was the usual method of communicating updates to the claimant.

406.3. That being the case, DI Whiteley had no reason to anticipate that the claimant would attend for duty on 2 May.

407. The facts show that DI Whitely had no reason to think he needed to communicate the suspension decision to the claimant, or to Sergeant Darby, immediately after it was made on 1 May. Those facts do not support an inference that DI Whiteley deliberately failed to tell the claimant that his suspension had been extended and that he did so, as the claimant alleged, to humiliate the claimant because the claimant had made a protected disclosure in the past or had done protected acts or because of a belief that the claimant may do protected acts in the future. The complaint is not well founded.

408. Allegation 15 is not well founded and is dismissed.

Allegation 16 – extending the Claimant's suspension from 28/29 May 2019 and failing to update the Claimant about his suspension

409. The parties agree that the respondent extended the claimant's suspension for a further 28 days at the end of May 2019. The claimant alleges that the respondent deliberately failed to tell the claimant his suspension had been extended until he attended the Community Hub for duty on 29 May 2019. The claimant complains that the extension of his suspension, and the deliberate failure to tell him about the extension, were: acts of detriment by the respondent contrary to s47B of the Employment Rights Act 1996; and victimisation contrary to s39 of the Equality Act 2010 read with section 27.

410. The decision to continue the suspension was made by DCC Oliver on this occasion. At this time the criminal investigation was nearing its end but was still ongoing. Again, there is nothing inherently surprising in the decision that suspension should continue and it was consistent with earlier decisions made by DCC McMillan. Once the criminal investigation was complete DCC Oliver lifted the suspension.

411. There is no evidence DCC Oliver was aware of the protected acts done by and protected disclosures (and alleged protected disclosures) made by the claimant. But even if she was, there is no proper basis for inferring that her decision was

motivated by the fact that the claimant had done the protected acts relied upon or the fact that the claimant had made the protected disclosures and alleged protected disclosures in the past or a belief that the claimant may do protected acts in the future.

412. The claimant refers in his written submissions to the fact that DCC Oliver was not called as a witness. We understand him to be suggesting that we should draw an adverse inference from that fact. We do not agree that it is appropriate to do so. There is no evidence before us as to whether she would have been available to give evidence. In any event there is other evidence available relating to the reason for the continued suspension. We attach no significance to the fact that DCC Oliver has not given evidence.

413. In respect of the claim of victimisation the claimant has not discharged the burden of proof.

414. In relation to the claim of protected disclosure detriment, the claimant has not established a prima facie case that DCC Oliver suspended him because he made any of the protected disclosures or alleged protected disclosures.

415. In any event we are satisfied that the reason DCC Oliver decided to continue the claimant's suspension was that she, like DCC McMillan and DI Whiteley, believed there was a risk that the claimant could interfere with witnesses and exhibits if he was allowed to return to duty, which could lead the investigation being prejudiced; and the public interest required that Mr Walker should be suspended. That decision was not materially influenced by the fact that the claimant had made any of the protected disclosures or alleged protected disclosures and or by the fact that the claimant had done any of the protected acts or a belief that he may do protected acts in the future.

416. The complaint that the extension of the claimant's suspension contravened ERA section 47B and the Equality Act is not well founded.

417. As for the complaint that the respondent deliberately failed to tell the claimant his suspension had been extended, we have found that DI Whiteley made every effort to ensure the claimant was told of the decision on suspension as soon as possible. Those steps included: fixing the review date well in advance; telling Sergeant Darby that he did not expect the criminal investigation to be completed by the next review date; agreeing with him the arrangements for the claimant to be updated on suspension by CI Burnell; obtaining CI Burnell's agreement that he would tell the claimant the outcome of the suspension review immediately after it took place; updating HR; and, on the day the suspension was extended, emailing CI Burnell asking him to tell the claimant his suspension had been extended.

418. The claimant suggested that DI Whitely deliberately relied on CI Burnell to tell the claimant of his suspension decision because DI Whitely knew him to be, in the claimant's words 'at best incompetent and more likely dishonest' and therefore knew he was likely to fail to tell the claimant the decision on suspension. It would be generous to the claimant to say the submission is far-fetched.

419. We find that DI Whiteley did not deliberately fail to tell the claimant his suspension had been extended.

420. The claimant also suggested in his written submissions that the reason CI Burnell did not immediately tell the claimant about the suspension decision was that the claimant had made protected disclosures or done protected acts in the past or that CI Burnell believed he may do protected acts in the future. The claimant points to the fact that CI Burnell was not called to give evidence. We understand him to be suggesting that we should draw an adverse inference from that fact. We do not agree that it is appropriate to do so. The claimant's case comprised numerous allegations of unlawful conduct but, in the most part, without the claimant having named the individuals he alleges acted with unlawful motivations. The claimant's suggestion that CI Burnell's failure to notify him of his extended suspension within a few hours of DI Whiteley's email had some unlawful motivation has come far too late in the day. In any event, the respondent already had numerous witnesses and was entitled to, indeed the parties are expected to, take a proportionate approach when making decisions about how they present their case. We attach no significance to the fact that CI Burnell has not given evidence.

421. The facts do not support an inference that CI Burnell deliberately failed to tell the claimant his suspension had been extended.

422. Allegation 16 is not well founded and is dismissed.

Allegation 19 – failing to investigate in timely manner / deliberately delaying the gross misconduct investigation

Allegation 19 – failing to investigate in timely manner / deliberately delaying the gross misconduct investigation

423. The claimant alleges that the Respondent failed to investigate in a timely and expeditious manner and deliberately delayed a gross misconduct investigation including by changing investigators around 5th November 2019. The claimant complains that this was:

423.1. Detriment by the respondent contrary to s47B of the Employment Rights Act 1996.

423.2. Victimisation contrary to s39 of the Equality Act 2010 read with section 27.

423.3. In so far as this was done in or after December 2019, direct disability discrimination contrary to s39 of the Equality Act 2010 read with section 13.

424. It is not in dispute that the respondent changed the investigator dealing with the misconduct allegations in the Autumn of 2019. Before then DI Whiteley had been the investigator; afterwards it was DC Cook. The claimant alleges this change was made by the respondent in order to delay the investigation. We have found that was not the case. The respondent changed the investigator because DI Whiteley began a period of sickness absence on 30 September 2019 and by 15 October 2019 it had become apparent to the respondent that DI Whiteley would not be returning to work in the short term. As DI Whiteley could not conclude the investigation, someone else needed to do it. That is why DC Cook was given the task.

425. This was not a situation that was engineered by the respondent. No-one in the organisation said anything to DI Whitely or did anything that DI Whitely perceived as intended to pressurize him into delaying either the criminal investigation or the misconduct investigation or the completion of his final report. There has been no suggestion that DC Cook was not an appropriate person to take over the investigation. The change in investigators had nothing at all to do with the fact that the claimant had made protected and qualifying disclosures or done protected acts in the past or any belief that he may do protected acts in the future.

426. The fact that DI Whiteley became too unwell to conclude the misconduct investigation did mean that the investigation took longer to conclude than it would otherwise have done. DC Cook was allocated the task in the middle of October 2019; he completed his investigation on 24 January 2020, when he prepared his report setting out his conclusion that the claimant had no case to answer. We find the reason the investigation took longer to conclude than it would otherwise have done if DI Whiteley had not been unwell was a combination of the following factors:

426.1. Although DC Cook had been involved in the criminal investigation to some extent at its earlier stages, he had not had extensive involvement in the case and now needed time to familiarise himself with developments.

426.2. Due to pre-arranged training, time off in lieu and annual leave DC Cook had limited working time available to complete the work on the claimant's investigation report.

426.3. When DC Cook was at work there were competing demands on his time due to the department's very heavy workload at this time.

426.4. A very large volume of documentation had been gathered during the investigation. Having had little prior involvement in the investigation, this took DC Cook a significant amount of time to read through and understand.

427. DC Cook was subsequently asked to make changes to the way the report was presented, as described in our findings of fact. We address this below when dealing with Allegation 21. At this juncture it is sufficient to say that, given the competing demands on his time DC Cook made changes to his report promptly.

428. We are satisfied that DC Cook did not deliberately delay the misconduct investigation.

429. We are also satisfied that the fact that it took him just over three months to conclude his investigation and produce his report on 24 January 2020 had nothing to do with the fact that the claimant had made protected disclosures or done protected acts in the past or any belief that he may do protected acts in the future and nor did it have anything to do with the claimant's disability. Rather it was for the reasons set out in the preceding two paragraphs.

430. For those reasons, in so far as the claimant's complaint concerns any delay or failure after DI Whiteley was replaced as investigating officer, the complaint is not well founded.

431. The claimant's case is that the misconduct investigation was deliberately delayed even before DI Whiteley was replaced as investigating officer.

432. As recorded above, the claimant accepts that, where a police officer is the subject of both a criminal investigation and related misconduct investigation, the misconduct investigation gives way to the criminal investigation: it does not progress until the criminal investigation is concluded. That is what happened in this case. That is the reason why the allegations of misconduct were not considered until after 24 June 2019. That had nothing to do with the fact that the claimant had made protected disclosures or done protected acts in the past or any belief that he may do protected acts in the future.

433. Between then and mid-October 2019 DI Whiteley was the officer with responsibility for conducting and progressing the misconduct investigation. On 30 September 2019 DI Whitely began a period of sickness absence. That is clearly the reason for the lack of progress in concluding the investigation between then and the investigation being allocated to DC Cook. Again, that had nothing to do with the fact that the claimant had made protected disclosures or done protected acts in the past or any belief that he may do protected acts in the future.

434. That leaves the period between 25 June 2019 and 30 September 2019, a period of just over three months. We must consider (a) whether DI Whiteley deliberately delayed the misconduct investigation; (b) whether he failed to investigate the misconduct matters in a timely and expeditious manner and, in respect of the claim under section 48 of the Employment Rights Act 1996, whether that failure was deliberate; (c) if so, what was the reason for that detrimental treatment ie what were the factors operating on DI Whiteley's mind.

435. It is important to note that the complaint we are considering concerns alleged delay in investigating the allegations of misconduct. It does not concern the decision to conduct a misconduct investigation and nor does it concern the decision to continue such an investigation after the criminal investigation was concluded. One of the complaints originally pursued by the claimant in these proceedings was that the respondent victimised him and subjected him to detriment by continuing the misconduct investigation after 24 June 2019 notwithstanding that no criminal charges were to be brought against the claimant. He alleged that, in doing so, the respondent 'deliberately manufactured a fake Gross Misconduct investigation against me to ensure that I was unable to perform my role in supporting the BAME officers and others involved in operations Marne, France and Forbes.' That complaint was dismissed because the claimant failed to pay a deposit ordered by Judge Shore. Having been dismissed, that complaint cannot be revived.

436. The claimant's case is that the alleged delay in investigating the misconduct allegations was part of the conspiracy that he claims existed to remove him from, and keep him out of, his Police Federation role and the workplace for as long as possible. The claimant's position is that the respondent also prolonged the criminal investigation, for the same reason. The prolongation of the criminal investigation

is not the subject of any complaint in these tribunal proceedings. Nor could it be: the Employment Tribunals only have jurisdiction over complaints about detriment arising in an employment context: Tiplady v City of Bradford MDC [2019] EWCA Civ 2180, [2020] IRLR 230. Nevertheless, evidence as to how the criminal investigation was conducted may shed light on whether the misconduct investigation was deliberately delayed and, if so, the motivation for that delay.

437. We consider that the following facts lend some support to the claimant's case that there was deliberate delay:

437.1. By the time the criminal investigation had been completed, the evidence that was relevant to the misconduct investigation had been gathered, albeit that DI Whiteley wished to speak with two other possible witnesses.

437.2. By mid-August DI Whiteley had decided there was nothing else to investigate. He told the claimant in mid-August that he expected to complete his report by the end of that month, he still had not done so by the end of the following month.

437.3. When DCI Murphy-King gave his final assessment on the claimant's conduct investigation on 12 March 2020 he implied that it was his belief that the investigation had not 'been progressed with due diligence'. In his evidence to us DCI Murphy-King confirmed that that was his belief at the time he prepared his report. When asked what had led him to that conclusion he said one of the main issues was the length of time it took DI Whiteley to prepare his report.

437.4. In the suspension review in early May 2019, DCC McMillan had also criticised the length of time it was taking to conclude the criminal investigation. DI Whiteley was the Senior Investigating Officer with overall responsibility for that investigation.

437.5. DI Whiteley accepted that the decision taken in the criminal investigation to engage with a tier 5 co-ordinator to develop a witness strategy, and the subsequent policy decision to conduct video interviews with all significant witnesses, slowed down the criminal investigation. DC Cook expressed the opinion in his report that this 'does not appear to have added in any way to the quality of evidence achieved' and 'in this case, this approach was not warranted.' Although those decisions were taken before DI Whiteley was involved in the criminal investigation, he did not countermand them after he became the SIO.

437.6. DI Whiteley wrote to Mr Duncan and expressed the opinion that it would not be appropriate for the claimant to return to his federation role whilst the conduct investigation was ongoing.

438. However, there are a number of factors that tend to undermine the claimant's case that there was deliberate delay. They include the following.

438.1. DI Whiteley had wanted to speak to two witnesses as part of the conduct investigation. He contacted them but neither had responded by 14 August. In addition he sought legal advice and it was four weeks before he received that

advice. Those things are likely to have delayed DI Whiteley's ability to conclude his investigation. There is no evidence that either of those matters are connected with any protected or qualifying disclosures or any protected act.

438.2. At the time DI Whiteley was responsible for this investigation there had been a significant increase in the department's workload and they had other complex investigations in train. That increase in work put additional pressure of work on DI Whiteley and others in the DSE. The fact that DC Clark had moved out of the DSE added to that pressure. We accept that there were competing demands on DI Whiteley's time throughout this period. Dealing with the claimant's queries added to the competing demands on DI Whiteley's time. Those competing demands will have affected the time DI Whiteley had available to conduct and conclude the misconduct investigation.

438.3. DI Whiteley had a period of annual leave. That too will have affected the time DI Whiteley had available to conduct and conclude the misconduct investigation.

438.4. We have rejected the claimant's contention that there was a Gold Group meeting at which ACC Roberts, Chief Supt Green, Supt Shepheard and Ms Hatton (Head of Legal Services) formulated a plan to arrest the claimant and search his property to prevent him assisting various people in their claims against the respondent and to prevent the IOPC led investigation from obtaining detrimental documentation against the respondent.

438.5. Nobody in the force said anything to DI Whiteley or did anything that DI Whiteley perceived as intended to pressurize him into delaying either the criminal investigation or the misconduct investigation or the completion of his final report.

438.6. None of the allegations the claimant had made in his protected acts and protected/qualifying disclosures concerned anything that DI Whiteley had done or failed to do. The evidence does not suggest DI Whiteley had any personal incentive to delay the claimant's return to his role or that doing so would benefit DI Whiteley in any way.

438.7. The claimant's suspension was lifted immediately after the criminal investigation was concluded, on DI Whiteley's recommendation. The fact that DI Whiteley recommended the suspension suggests he was not seeking to prevent the claimant from returning to work.

438.8. When, on 1 May 2019, DCC McMillan spoke to DI Whiteley about the length of time the criminal investigation was taking he immediately sought help from DC Clark to expedite the outstanding actions in the criminal investigation and get it 'prioritised as finalised from a criminal perspective hopefully in the next week or two maximum.' Similarly, just before his sickness absence began, DI Whiteley obtained some 'protected time' to enable him to complete the report. Those do not appear to be the actions of someone intent on stalling the investigation.

438.9. A significant factor in the time it took to complete the criminal investigation was the time it took to gain access to the claimant's electronic devices. That was a matter outside the control of the respondent. The claimant had refused to provide pin numbers (as was his right) and the task of accessing the data was being handled by a different force.

438.10. The updates provided in the reports prepared for suspension reviews throughout the period of the criminal investigation do not reveal any significant lulls in activity by those investigating.

438.11. In so far as the claimant submits that it would have been obvious to those investigating from the outset that he had not committed any criminal offence, we do not accept that submission. The respondent had received a complaint from a third party, Mr Duncan, which included allegations of theft and data protection breaches. A number of matters required investigation, including the ownership of the safe and file, the timeline of events, including what the claimant had done with the file and safe after his suspension from his federation role, who, if anyone, the claimant had disclosed the contents of the file to, what authority he had to do that, and the claimant's state of mind (including his intentions and knowledge) over the relevant period.

439. DI Whiteley's evidence to us was that he did not deliberately delay the misconduct investigation (or the criminal investigation). In relation to the use of the tier 5 coordinator and taking video evidence he explained that there was a legitimate reason for doing this in this case, namely to preserve the integrity of the investigation, particularly given that allegations had been made about corruption. Whilst one consequence of taking this course was to slow down the investigation, we are satisfied that was not its purpose.

440. Looking at all of the facts in the round we are satisfied that those indicating that there was no deliberate delay far outweigh those that might support the claimant's case on this matter. We find that DI Whiteley did not deliberately delay the misconduct investigation or deliberately fail to investigate the misconduct matters in a timely and expeditious manner between 25 June and 30 September 2019. For the avoidance of doubt, nor do we find that he, or anyone else, delayed the misconduct investigation before 25 June by deliberately delaying the criminal investigation.

441. It follows that the claim under section 48 of the Employment Rights Act 1996 is not made out.

442. For the same reason, the claimant's complaint that the respondent victimised him by deliberately delaying the misconduct investigation is not made out.

443. In principle, a claim of victimisation under the Equality Act 2010 can be based on a failure to act that is not deliberate (unlike a claim under ERA section 48, which requires a failure to act to be deliberate). On the face of it, the claimant's complaint that the respondent 'failed to investigate the misconduct matters in a timely and expeditious manner' does not depend upon a finding that the failure was deliberate. However, the claimant's entire case is predicated on his hypothesis that the acts he complains about were done deliberately in order to keep him out of the

workplace for as long as possible. We have found that that was not the case: any failure by DI Whiteley to investigate the conduct matters in a timely and expeditious way was not done deliberately, whether for that reason or any other reason. For that reason, the claimant's complaint that the respondent victimised him by failing to investigate the misconduct matters in a timely and expeditious manner must also fail.

444. In any event, we are satisfied that if and to the extent that there were delays in DI Whiteley's investigation of the misconduct matters, the respondent has proved they had nothing to do with any protected disclosures or qualifying disclosures made by the claimant or any protected acts or any belief that the claimant may do protected acts in the future. Rather, they occurred for the following reasons:

444.1. The fact that the two witnesses DI Whiteley had wanted to speak to did not respond to him.

444.2. His decision to take legal advice.

444.3. His time off on holiday.

444.4. His workload.

445. For those reasons, the claimant's complaint that the respondent victimised him by failing to investigate the misconduct matters in a timely and expeditious manner is not made out.

446. Allegation 19 is not well founded and is dismissed.

Allegation 33- failing to offer viable options to return to work

447. The Claimant alleges the respondent failed to offer him any viable options to return to work during his absence from work. This concerns the period after the claimant's suspension was lifted in June 2019 up to him making his claim in these proceedings in May 2020.

448. The respondent did, in fact, offer the claimant project work upon lifting his suspension. The claimant's position appears to be that this was not 'viable' because it was not a 'proper job' or because someone had told him that the individual with who he would be working, who was new to the post, had called him an 'organisational terrorist.'

449. It is correct to say that the respondent did not offer the claimant any other positions. However, we have rejected the claimant's evidence that there was another role (Blue on the Loo) that could have been offered to him. The claimant did not identify any other role that he believes could and should have been offered to him.

450. The facts as we have found them are as follows:

450.1. The respondent offered the claimant project work but he refused to do it. We reject the claimant's suggestion that this was not a 'viable' option.

450.2. The claimant made it clear to both CI Burnell and subsequently to Ms Lindberg that he had no inclination to return to any role with the force other than his police federation role. That was the real reason the claimant refused the project work.

450.3. The police federation role was not open to the claimant because the federation had suspended him and that suspension remained extant. The respondent force could not override that decision of the national police federation to maintain the claimant's suspension from his federation role.

450.4. Before receiving the FMA's report, Ms Lindberg had been willing to work with the claimant to return him to work in an appropriate posting. However, based on conversations she had with the claimant, she believed the claimant was chronically embittered with the organisation. For example, the claimant spoke on more than one occasion of 'not knowing what he would do' if he met certain colleagues and that he was 'afraid that he may punch someone' as he was so angry about the way he had been treated.

450.5. In light of the content of the FMA reports, between December 2019 and the date these proceedings were begun in May 2020 Ms Lindberg believed that the claimant was too unwell to return to work.

450.6. The claimant said himself on 8 January that although he was determined to return to work '… I am able to see that it is not possible at the moment because from a force point of view I cannot see where I could be safely deployed both from my own and the force perspective…'

450.7. Nobody 'blocked' Ms Lindberg from offering the claimant any alternative roles.

451. The allegation that the respondent failed to offer the claimant <u>any</u> viable options to return to work during his absence from work fails on the facts. The respondent did offer the claimant viable work in the form of project work. The claimant declined the offer.

452. Even if we had agreed with the claimant that the project work was not a 'viable option' for returning him to work, we are of the view that the respondent's failure to offer the claimant any other specific roles was not detrimental to the claimant because we find that the claimant simply would not have accepted any offers of redeployment (whether temporary or not). The only work the claimant was willing to do was his federation role.

453. Furthermore, there is no basis on which we could properly conclude that the respondent's failure to offer the claimant any specific roles (other than the project work offered when the claimant's suspension was lifted) was done because the claimant had done protected acts and made protected disclosures and alleged protected disclosures, over a year earlier, and in the years prior to that, about matters that did not concern or implicate Ms Lindberg or because of a belief that the claimant may do protected acts in the future.

454. In respect of the claim of victimisation the claimant has not discharged the burden of proof.

455. In relation to the claim of protected disclosure detriment, the claimant has not established a prima facie case that the respondent not offering any specific roles was done because he made any of the protected disclosures or alleged protected disclosures.

456. In any event we are satisfied that the reasons Ms Lindberg did not offer the claimant any specific roles were because the claimant had made it clear to her that he had no inclination to return to any role with the force other than his police federation role, that she believed the claimant was chronically embittered with the organisation and, once the FMA report was received, she believed the claimant was too unwell to return to work. Those beliefs were based on what the claimant told her himself from September 2019 and were not materially influenced by the fact that the claimant had made any of the protected disclosures or alleged protected disclosures or by the fact that the claimant had done any of the protected acts or a belief that he may do protected acts in the future.

457. Nor is there any basis on which we could conclude that any such failure after the FMA report was done because of the claimant's disability and that Ms Lindberg would have acted differently if she had been dealing with someone who did not have a disability but who, like the claimant, had made it clear that the only role they wished to return to was one that it was not in the force's power to offer and in respect of whom the FMA had given the same advice about return to work as was contained in the various medical reports. Therefore, the claim of direct disability discrimination is not made out.

458. For those reasons, Allegation 33 is not made out and is dismissed.

Allegation 44 – sending the Claimant's private and personal data to an address other than his own

459. The claimant alleges that, in or around November 2019, the Respondent deliberately sent a letter containing the Claimant's private and personal data to an address other than his own.

460. The letter in question is the original letter about his imminent reduction in pay that was sent to an address the claimant no longer lived at. The claimant learned via his estate agent that this letter had been sent (originally) to his old address.

461. The claimant's case is that the respondent sent this letter initially to his wrong address, knowing he no longer lived there, so that he would miss the date for appealing against the reduction in his pay. In support of this the claimant said that he remembered changing his address on the system when he moved house.

462. The evidence simply does not support the claimant's case. The emails of 4 November 2019 demonstrate that Sopra Steria had identified that the address on their system to which they had sent some post was out of date and they were trying to establish and correct the claimant's address. When they ascertained the claimant's correct address they re-sent the original letter about the claimant's imminent drop in pay to his correct address and extended the date by which the claimant could appeal. As Mr Arnold said in his submissions, this is at odds with deliberately sending a letter to the wrong address.

463. During the hearing, when cross examining Ms Lindberg, the claimant speculated that a senior person may have 'stood over the shoulder of a junior person' and got them to amend the claimant's address on the system to ensure the letter was sent to the wrong address. When, during the hearing, the claimant first raised the possibility of the existence of this shadowy figure, he speculated that it might have been Ms Clynch from HR or CI Burnell. Reading between the lines of his closing written submissions it appears the claimant has now settled on Ms Lindberg as his perpetrator, something which Ms Lindberg denied when asked on cross examination.

464. The claimant's hypothesis that Ms Lindberg or some other senior person stood over the shoulder of a junior person and got them to amend the claimant's address on the system to ensure the letter was sent to the wrong address is baseless. Even if someone in a senior position harboured an animus towards the claimant (and there was certainly no evidence that Ms Lindberg or Ms Clynch did), it is fanciful to imagine that they would embark on, and enlist someone else in, a plan that could be so easily and predictably thwarted, success being dependent on post not being returned to the force undelivered or forwarded to the claimant, and either the claimant not complaining about the lack of opportunity to appeal the reduction in pay or, when he did complain, nobody noticing that the letter had been sent to the incorrect address. Another obvious flaw in such a plan is the risk that a reduction in pay might drive the claimant back into work (as the claimant suggested to Ms Lindberg at the time), which is the opposite of what the claimant claims the conspirators wanted.

465. We find that Sopra Steria simply had the claimant's old address on their system and used that address when they originally sent the letter to the claimant. The reason for the claimant's old address being on the respondent's system, more likely than not, is that the claimant did not in fact change his address on the system and his recollection of doing so is flawed. We find that the respondent did not deliberately send the letter to the wrong address.

466. Allegation 44 is not made out and is dismissed.

Allegation 21 – failing to follow Police Regulations / delaying completion of the Appropriate Authority's report into the investigation

467. The claimant alleges that the Respondent deliberately failed to follow Police Regulations and delayed the completion of the Appropriate Authority's report into the conduct investigation. The claimant complains that this was:

467.1. Detriment by the respondent contrary to s47B of the Employment Rights Act 1996.

467.2. Victimisation contrary to s39 of the Equality Act 2010 read with section 27.

467.3. Direct disability discrimination contrary to s39 of the Equality Act 2010 read with section 13.

468. The chronology, as we have found it, between DC Cook finalising his investigation into the claimant's conduct and the completion of the appropriate authority's report is as follows:

468.1. On 24 January 2020 DC Cook completed his investigation report and sent it to Ms Emsley.

468.2. DCC Arundale reviewed the report and asked for changes to be made.

468.3. No later than 27 January 2020, Chief Supt Waugh was appointed as appropriate authority and received DC Cook's report in that capacity.

468.4. DC Cook re-drafted his report by 5 February. This was no more than 9 days after he had been asked to re-draft the report.

468.5. On 10 February Sergeant Heron emailed the redrafted report to Chief Supt Waugh.

468.6. Eight days later, on 18 February, DC Cook and Chief Supt Waugh discussed the report. Chief Supt Waugh told DC Cook that some amendments to the report were needed. DC Cook made the amendments that day. He then sent an email to Sergeant Heron attaching his amended report.

468.7. Chief Supt Waugh expressed concerns about being the appropriate authority, referring to not having completed his training.

468.8. On 20 February DC Cook sent a letter to the claimant at Chief Supt Waugh's request in which the reason for the delay in the case being concluded was said to be that the report had been returned to DC Cook for some additional comments and amendments. That was not inaccurate, as far as it went.

468.9. Between 20 and 25 February a decision was made that DCI Murphy-King would be the appropriate authority rather than Chief Supt Waugh.

468.10. DCI Murphy-King reviewed DC Cook's report by 26 February. He asked DC Cook to amend it to address some matters that had been raised by the claimant.

468.11. DC Cook made the amendments promptly then provided DCI Murphy-King with a copy of the amended final report on 27 February 2020.

468.12. That day, at DCI Murphy-King's request, DC Cook emailed the claimant to update him and to tell the claimant that DCI Murphy-King was not considering any action in respect of the conduct investigation.

468.13. Two weeks later, on 12 March 2020, DCI Murphy-King gave his final assessment on the claimant's conduct investigation, his decision being that there was no case to answer.

469. One of the claimant's allegations forming this complaint is that the respondent deliberately failed to follow Police Regulations. In this regard we find as follows:

469.1. DC Cook completed his investigation on or before 24 January 2020.

469.2. Regulation 18 of the Police Conduct Regulations required DC Cook to submit a written report on his investigation to the appropriate authority 'as soon as practicable' on or after 24 January 2020.

469.3. The appropriate authority was identified as Chief Supt Waugh. We have not accepted the respondent's submission that Supt Waugh was never the appropriate authority (and if we had, that would have meant DC Cook was in breach of Regulation18 by failing to submit his report to the correct appropriate authority – the Chief Constable, in the absence of a delegate – as soon as was reasonably practicable).

469.4. DC Cook submitted his report to Chief Supt Waugh as appropriate authority no later than 27 January. We find that, for the purpose of the Regulations, it is immaterial whether DC Cook emailed his report directly to Chief Supt Waugh or whether it was forwarded to him by someone else.

469.5. If the report was sent to Chief Supt Waugh on Monday 27 January, the 15th working day after receipt was Monday 17 February 2020.

469.6. By this date, Chief Supt Waugh had not determined whether the claimant had a case to answer in respect of misconduct or gross misconduct or whether there was no case to answer.

469.7. 17 February 2020 is the latest date by which, under Regulation 19 of the Police Conduct Regulations, Chief Supt Waugh should have notified the claimant of the reason for not yet having made a determination. Chief Supt Waugh did not do that. It follows that he was in breach of Regulation 19.

469.8. We do not accept that the fact that the appropriate authority was subsequently changed nullifies that breach of the Regulations and nor does the fact that DC Cook was asked to make changes to his report.

469.9. Although Chief Supt Waugh breached Regulation 19, he did effectively notify the claimant of the reason he had not yet made a determination via DC Cook by letter of 20 February 2020. The fact that was only three days later than he should have done. That indicates to us that the breach was not deliberate, as alleged by the claimant.

469.10. We cannot properly infer from the evidence that this breach was deliberate rather than careless.

469.11. In any event, there is no proper basis for inferring from the facts that Supt Waugh's breach of Regulation 19 was in any way motivated by the fact that the claimant had done protected acts or made protected disclosures or the alleged protected disclosures in the past or a belief that the claimant may do protected acts in the future or by the claimant's disability.

470. The claimant makes a broader allegation that the final assessment by the appropriate authority was deliberately delayed. This, the claimant says, was part of the plan he says existed to keep him out of the workplace for as long as possible because of the protected disclosures or alleged protected disclosures he had made and protected acts he had done.

471. In this regard:

471.1. The claimant questions the need for the appropriate authority to change from Mr Wrintmore. We note that by this time Mr Wrintmore was no longer in

DSE. A new appropriate authority had been identified within three days of DC Cook completing his report.

471.2. The claimant points to the fact that DCC Arundale asked for changes to be made to the report. This, we find, led to a 'delay' of no more than 17 days in Chief Supt Waugh receiving a final report.

471.3. The claimant refers to the fact that Chief Supt Waugh asked for further changes. However, the changes were made by DC Cook the same day. They did not delay matters.

471.4. The claimant directs us to the fact that the appropriate authority was then changed from Chief Supt Waugh to DCI Murphy-King. It appears to us that that change added no more 16 days to the period before which work started on the appropriate authority's assessment.

472. Overall, these changes appear to have added no more than 36 days to the period between the DC Cook's completion of his investigation and the date a determination was made by an appropriate authority. Although we do not doubt that, to the claimant, that must have felt like an inordinately long time, looked at in the context of a department that was experiencing a very high workload, that 'delay' does not appear suspiciously long.

473. What is more, there has been no suggestion that DCI Murphy-King, Chief Supt Waugh or DCC Arundale were personally implicated by any of the allegations the claimant made in his protected disclosures, alleged protected disclosures and protected acts and would themselves have any personal incentive to deliberately delay the claimant's return to work. Moreover, in selecting Chief Supt Waugh to be AA rather than DCI Murphy-King, it is apparent from her email of 24 January that Ms Emsley had regard to the fact that DCI Murphy-King's workload was higher. That militates against an inference that those involved were trying to delay the completion of the AA report. The fact that DCI Murphy-King decided to take no further action against the claimant in respect of the conduct matter also undermines the claimant's case that there was a plan to keep him out of the workplace for as long as possible.

474. In any event, the respondent has given explanations for the changes that point away from the idea that there was a deliberate plan to delay the AA's report.

474.1. In the case of the change of AA from Mr Wrintmore, he had left the department.

474.2. With regard to the change from Chief Supt Waugh to ACC Murphy-King, contemporaneous emails suggest that Chief Supt Waugh believed he was inadequately trained for the task; that is certainly what he was telling people. Ms Emsley appears to have thought otherwise when she first allocated the role of AA to him. However, the reference in her email of 24 January this being an 'easy(ish) one' supports the respondent's case that Chief Supt Waugh was new to this kind of task.

474.3. With regard to the changes to the report requested by DCC Arundale, the contemporaneous evidence in emails and the evidence of the respondent's

witnesses points to the changes being related to format and presentation. We have found as a fact that DCC Arundale had been keen at the time to improve the quality of reports generally and that his intervention was consistent with the approach he had taken to other reports.

475. Looking at the facts as a whole, we could not properly conclude that the respondent deliberately delayed the completion of the AA report as alleged.

476. Allegation 21 is not made out and is dismissed.

Allegation 31 – failing to arrange counselling prescribed by the Force Medical Adviser

477. The claimant alleges that the respondent delayed arranging counselling prescribed by the Force Medical Adviser (FMA) in December 2019. The claimant complains that this was: detriment by the respondent contrary to s47B of the Employment Rights Act 1996; victimisation contrary to s39 of the Equality Act 2010 read with section 27; direct disability discrimination contrary to s39 of the Equality Act 2010 read with section 13.

478. We have made the following findings of fact:

478.1. On 13 December 2019 the FMA wrote a report in which she recommended that the claimant have 'further psychological support with the specialist team' and said 'I have recommended he is seen by the appropriate team for assessment and advice on suitable therapy, where appropriate…' The FMA did not say in that report that she was advising that the force (as opposed to the claimant's GP or other medical advisers) arrange the psychological support or assessment she was alluding to.

478.2. When the claimant said on 8 January 2019 that he understood the FMA was going to send him to a force chosen psychiatrist, Ms Lindberg immediately arranged for this query to be referred on to the FMA for comment.

478.3. The FMA's revised report dated 19 January referred to the need for the claimant to be 'attended to by the specialist team first.' The FMA did not say which 'specialist team' she was referring to.

478.4. If the FMA was recommending that the force engage an independent psychiatrist or fund counselling, the FMA should have followed an established procedure that the force had in place and either made the referral for counselling direct to the provider, or to written to the Wellbeing Manager requesting approval for the associated cost of a psychiatrist referral. The FMA did neither of those things.

478.5. Ms Lindberg did not understand, either from the original report or the addendum to it, that the FMA to be recommending that the force engage a specialist, as opposed to recommending that the claimant ask his GP to refer him to a specialist.

478.6. It was only on receipt of the FMA's subsequent report that Ms Lindberg realised for the first time that the FMA appeared to have expected a referral to be made by the respondent. Notwithstanding some lingering confusion as to

what the FMA was recommending, within no more than two working days Ms Lindberg had approved any referral that needed to be made and asked the Wellbeing admin team that it be dealt with as a matter of urgency.

478.7. Sopra Steria made an immediate referral to the third party that the force used for counselling.

478.8. Arrangements were also made for the claimant to see a consultant psychiatrist. However, the consultant psychiatrist the force had previously referred officers to for assessment had unexpectedly stopped working for the force in February 2020 and the replacement consultant psychiatrist did not start working with the respondent until June 2020.

479. The claimant's complaint alleges that the respondent 'delayed' arranging counselling. That implies there was a deliberate decision to put off or avoid arranging a referral that the respondent knew (or believed) the FMA was recommending.

480. The complaint is not made out on the facts. We cannot properly infer from the facts we have found that there was any deliberate decision, by Ms Lindberg or anyone else, to delay, put off or avoid arranging a referral that the respondent knew (or believed) the FMA was recommending, still less that Ms Lindberg had been 'tasked to see the claimant out of the organisation' as he now claims. The reason the referral was not made sooner was, we find, because Ms Lindberg did not know that that was what the FMA was recommending (because the FMA had not been clear and had not followed the force's established procedures).

481. The claimant has not suggested that his allegation is concerned with something less than deliberate delay, for example, a lack of diligence in obtaining clarification from the FMA as to what was meant by her report (or the January amendment). In any event, even when looked at from that perspective, we do not find there was any lack of diligence. Furthermore, there is no basis on which we could properly conclude that any failure by Ms Lindberg to make further enquiries of the FMA in January 2019 was done because the claimant had done protected acts and made protected disclosures, over a year earlier, and in the years prior to that, about matters that did not concern or implicate Ms Lindberg, or because of a belief that the claimant may do protected acts in the future. Nor is there any basis on which we could conclude that any such failure was done because of the claimant's disability and that Ms Lindberg would have acted differently if she had received an equally ambiguous report in respect of an employee without a disability.

482. Allegation 31 is not made out and is dismissed.

Allegation 25 – failing to confirm destruction of biometric samples

483. The claimant alleges that the respondent failed to confirm the destruction of the Claimant's biometric samples, photograph and fingerprints for a recorded 'crime' that they know does not exist.

484. This complaint was made on 4 May 2020. It is a complaint about acts or omissions that happened on or before that date.

485. The claimant's biometric data, fingerprints and custody photo were held by a different force: Durham Constabulary. The respondent could not provide the claimant with confirmation they had been destroyed until the Durham force told the respondent that had happened.

486. In the summer of 2019 the claimant had asked DI Whiteley how to go about getting these materials destroyed. DI Whiteley directed the claimant to a particular form the claimant would need to complete and submit setting out his representations as to why they should be destroyed. The claimant did not at any time thereafter ask DI Whiteley whether or not his biometric data had been destroyed by Durham Constabulary. The claimant did, however, ask DC Cook about getting his biometric data destroyed on 23 March 2020. DC Cook immediately referred the claimant's query on to DI Murphy-King who, in turn, asked Sergeant Bell to look into it the same day. Sergeant Bell, along with DC Cook, dealt with the matter promptly. Sergeant Bell obtained confirmation from Durham that the relevant data would be destroyed, which information he passed on to the claimant promptly by email of 1 April. DC Cook then obtained a further assurance from Durham that this would be done on 10 April and that they would confirm in writing when it had been.

487. Although Durham later said they had indeed destroyed the data in April 2020 (albeit with a photograph retained on an old system), nobody at Durham told the respondent that this had happened at the time. That was still the case as at 4 May 2020, when the claimant made his complaint to the Tribunal. Therefore, no one at the respondent force knew that this had occurred. That is plainly the reason why the respondent did not provide the claimant with confirmation that the materials had been destroyed. The respondent not confirming the destruction of the materials on or before 4 May 2020 plainly had nothing at all to do with the claimant's protected acts or protected disclosures or alleged protected disclosures or because of the claimant's disability, none of which Sergeant Bell was aware of. Nor is there any evidence that it was because of any belief that the claimant may do protected acts in the future.

488. At an earlier hearing to consider whether some of the claimant's complaints should be struck out or whether their pursuit should be conditional upon the payment of a deposit, Judge Shore appears to have understood the claimant's complaint to be that the respondent itself failed to destroy the Claimant's biometric samples, photograph and fingerprints. That is not how the claim was actually framed in the list of claims and issues or at this hearing, however. The claimant had, by the time of this hearing, accepted the evidence of Sergeant Bell that all of his samples and custody photographs were taken by Durham Constabulary and stored on their systems and not by the respondent. It is obvious, therefore, that

the reason the respondent did not destroy these materials is because it could not do so: they were not in the respondent's possession.

489. In his claim form the claimant made a complaint that the respondent had deliberately failed to confirm to the claimant that the criminal investigation file into his alleged theft of the safe had not been marked as 'No Crime.' That complaint was subsequently dismissed after the claimant failed to pay a deposit ordered by Judge Shore. In his closing submissions the claimant appears to be attempting to reargue that complaint. That is impermissible. The complaint was dismissed; it cannot now be revived.

490. The claimant also appears, in his closing submissions, to be seeking to reframe his case by arguing that Sergeant Bell should have done more to ensure Durham Constabulary destroyed his data. However, that is not the complaint actually made by the claimant and it is not open to him to change it in this way. Furthermore, the claimant did not put this allegation to Sergeant Bell; the claimant told the tribunal he accepted Sergeant Bell's evidence in his witness statement as accurate and when we asked if he wanted to ask Sergeant Bell any questions the claimant said he did not. It is improper for the claimant now to level accusations against Sergeant Bell that he did not give Sergeant Bell an opportunity to answer. In any event, the allegation of 'negligence' is unsupported by the facts. Moreover, we have found that Sergeant Bell was unaware of the claimant's protected acts, protected disclosures, alleged protected disclosures and the claimant's disability and therefore his actions cannot have been influenced by any of those matters.

491. Allegation 25 is not well founded and is dismissed.

The remaining complaints

492. The claimant's other complaints are all complains that the respondent subjected him to detriments contrary to s47B of the Employment Rights Act 1996. They all concern matters that occurred years before the claim was made on 4 May 2020. They are the following:

492.1. Allegation 26: forcing the Claimant to consent to a financial check with threats in 2012.

492.2. Allegations 27 and 28: Supt Irvine declining to support an application the claimant made for promotion in January 2013.

492.3. Allegation 29: redeploying the Claimant in 2013/14 and manufacturing poor performance records and accounts to discredit the claimant in 2014.

492.4. Allegation 30: in 2015, failing to 'provide fair promotion opportunities' for the Claimant.

493. ERA Section 48 sets out a three-month primary time limit for making a claim. Ascertaining the precise date on which this time limit expired for each of the claims would entail determining the claims themselves. That is because the claimant's position is that these acts (or alleged acts) were part of a series of similar acts or failures to act that contravened ERA section 47B. If that were to be made out then time would not start to run until the last of the unlawful acts. What is now clear,

however, is that, putting the claimant's claim at its very highest, the latest date on which the time limit could have expired for these claims is in late 2015. That follows from our conclusion that the complaints the claimant has made about matters that occurred after these events are not well founded.

494. In his witness statement the claimant did not explain why he did not make a claim to the tribunal at the time of these matters complained of. On cross-examination, the claimant said he had consulted the police federation and sought legal advice but had 'tried to keep it away from bringing a tribunal claim.' He was unable to tell us when he had sought this help and advice. The claimant said he had 'tried to deal with it through the grievance process' and had been 'confident the investigation would get me the justice I deserved'.

495. None of this indicates that it was not reasonably practicable for the claimant to bring a claim within the primary limitation period for these claims, whenever that time limit expired. The claimant was not under a disability at any time during this period. Although he had had periods of sickness, he did not suggest his ill health, or anything else, stood in his way of making a claim. He did not suggest that he did not know about the right to bring a complaint or the time limit for making it.

496. The claimant has not identified any obstacle that reasonably prevented the claims being made in time and we find that no such obstacles existed. The claimant has not persuaded us that it was not reasonably practicable to present a claim about these matters within the prescribed time limit.

497. In any event, whatever the precise date on which time for making a claim might have expired, it is clear that the claimant did not bring a claim within such further period as was reasonable. The last of these events happened more than four years before the claimant presented his claim, the first almost 8 years before the claimant made his claim. Insofar as the complaints were the subject of grievances made under the respondent's internal procedures, those processes were completed by 2017. Many of the facts on which the claims are made are disputed. There is a strong public interest in claims being brought promptly and within a primary limitation period of three months. Even if the claimant had persuaded us that it was not reasonably practicable for him to bring a claim within the primary limitation period for these claims, there is no basis for saying that the claimant should reasonably be allowed until 4 May 2020 for proceedings to be instituted.

498. For those reasons, the claimant has not persuaded us that his claims were made within the time permitted by section 48 of the Employment Rights Act.

499. It follows that the tribunal does not have jurisdiction to determine these remaining complaints. The claims are therefore dismissed.

EMPLOYMENT JUDGE ASPDEN

Case Number: 2500890/2020

23 August 2023