EMPLOYMENT TRIBUNALS

Claimant: Mr A J Akajioyi

Respondent: Commissioner of the Police of the Metropolis

Heard at: London Central Employment Tribunal (in person and video)

On: 17, 18, 21, 22, 23, 24, 25, 28, 29 and 30 November 2022 and 3, 4, 5, 6, 9, 10 and 11 January, 9 June, 26, 27, 28 July and 7 August 2023

Before: Employment Judge E Burns
Mr P Alleyne
Ms L Moreton

Representation

For the Claimant: In person
For the Respondent: Imogen Egan, Counsel

JUDGMENT

The unanimous judgment of the Employment Tribunal is as follows:

(1) The Claimant's complaint of race-related harassment under section 26 of the Equality Act 2010 (on 9 September 2020 CK saying the C was aggressive due to his menacing look (the C maintains this was based on racial stereotypes) (list of issue xxiv, page 7) succeeds.

(2) The Claimant's complaints of victimisation under section 27 of the Equality Act 2010 as follows, succeed:

(a) On 19 August 2020, imposing restrictions on the C without formal processes and checks and safeguards (list of issues, iii, page 4)

(b) Move to VCTF Tasking and Operations (list of issues v, page 13) (on 19 August 2021)

(c) On or around 19 August 2020, PC and/or MR stating and/or making it clear to the C: (list of issues xxx, page 9)
- that they could not now accommodate his flexible working request;
- that he was under restrictions not to work in control and command (without presenting the restrictions or any safeguards); and
- that they were struggling to find a place for him in the VCTF.

(d) On 9 September 2020, transferring the Claimant to Bow (list of issue, xxiii, page 7)

(3) The Claimant's complaint of discrimination arising from disability under section 15 of the Equality Act 2010 succeeds in relation to 22(b) failing to serve the C with a section 163 notice or follow any reasonable procedure regarding restrictions and/or allegations of misconduct between 26 February 2021 and 20 December 2022.

All of his other complaints fail and are dismissed.

REASONS

THE CLAIM AND ISSUES

1. This judgment is in respect of two claims presented by a police constable currently employed in the Metropolitan Police Service. His claims are essentially that he was mistreated by his superiors from late 2018 through to May 2021.

2. According to the Claimant, initially the mistreatment arose because his superiors made stereotypical assumptions about him because he is black and of Nigerian heritage. As matters developed, however, the treatment included victimisation and detriments because of complaints he made about his treatment. He says he became unwell as a result of the mistreatment, thereby qualifying for protection as a disabled person under the Equality Act 2010. This led to further discrimination against him.

3. The issues to be determined had been agreed prior to the final hearing following a case management hearing held on 26 January 2022.. This was at a time when the Claimant was represented by solicitors. There were a large number of individual complaints.

4. In order to ensure that we considered each of the numerous separate factual allegations pursued by the Claimant they are shown in bold and italics in the conclusions section and we have included the number and page from the list of issues for ease of cross referencing. We have used bullet points to separate them rather than create an additional set of numbering.

5. For ease of reference, we have used the following terminology:

- when we refer to an "allegation" we mean a set of factual circumstances;

- when we refer to a "complaint" we mean a legal complaint arising out of a set of factual circumstances, in recognition that more than one complaint is made arising out of the same factual circumstances;
- when we refer to a claim, we mean the entire claim, comprising all the complaints.

6. As mentioned above, the Claimant submitted two claim forms. He presented the first one (which was given the number 2204881/20) as an unrepresented litigant on 12 August 2020, following a period of early conciliation from 15 July to 10 August 2020. There was a significant delay serving it until 14 June 2021(1). His solicitors made an application to amend that claim and also presented a new claim (2203723/2021) on 17 June 2021, following a second period of early conciliation that started and finished on 3 June 2021. In light of the new claim, no decision was made about the application to amend that resulted in any decisions about whether the claims were in time or not having been made previously.

THE HEARING

7. The Claimant gave evidence. On his behalf we also heard evidence from:

   - Inspector Lance Lamnea
   - Sergeant Leon Coltress
   - Gillian Mills, Claimant's Federation Representative

   He also provided a written witness statement from Carl Prendergast, Met Academy Coach.

8. For the Respondent we heard evidence from:

   - Detective Sergeant Nick Doherty
   - Sergeant Rob Perry
   - Inspector Adam Cook
   - Sergeant Dan Nelson
   - Sergeant Rob Grey
   - Former Inspector Doug Young
   - Sergeant Chris Kerr (via CVP)
   - Sergeant Sue Scudder (via CVP)
   - Chief Inspector Paul Trice
   - Acting Inspector Ben Mullender
   - Mr Paul Callanan
   - Ms Sharon Corbett
   - Mr Tom Burman
   - Police Constable Simon King
   - Ms Annmarie O'Meara

9. There was an agreed hearing bundle which grew to 4282 pages when some additional documents were admitted into evidence during the course of the hearing either with the agreement of the parties, or as a result of a decision

by the Tribunal. We refer to the page numbers of the key documents that we relied upon when reaching our decision below.

10. We explained our reasons for various case management decisions carefully as we went along and also our commitment to ensure that the Claimant was not legally disadvantaged because he was unrepresented at the hearing. Ms Mills provided him with support and assistance throughout the hearing, but he was his own advocate throughout. We regularly explained the process, visited the issues and explained the law when discussing the relevance of the evidence.

11. Both parties provided written closing submissions which they supplemented by way or oral submissions.

12. We apologise for the length of time it has taken us to finalise this judgment. We have had to spend several days in chambers going through the material and have been limited to dates when all members of the panel were available.

FINDINGS OF FACT

13. Having considered all the evidence, we find the following facts on a balance of probabilities.

14. The parties will note that not all the matters that they told us about are recorded in our findings of fact. That is because we have limited them to points that are relevant to the legal issues.

15. We have done our best to include the correct rank of all police officers at the relevant time as we considered this to be relevant information showing the hierarchies of the people involved. Several of the key protagonists had changes in rank and so we may not have captured this information perfectly. We apologise for any errors we may have made.

Background

16. The Claimant is a black man of Nigerian heritage.

17. The Claimant joined the Metropolitan Police Service (“MPS) in May 2015. He held the rank of Police Constable.

18. In early 2018, the Claimant moved to become a member of a team working on the co-ordination desk (known as the “POD”) of a relatively new Operational Command Unit (OCU) called the Violent Crime Task Force (VCTF).

19. The VCTF was established as a response to an increase in violent crimes, particularly knife crime, from funding from the Mayor’s office under an agreement with the Mayor’s Office for Policing and Crime.

20. The Chief Superintendent in charge of the VCTF command unit at the time the Claimant joined was Chief Superintendent Ade Adelekan, a black Nigerian man. This later changed to Chief Superintendent Lee Hill in around January 2020.

21. The Claimant's role was an administrative role based in Lambeth HQ. There was an expectation, however, that all officers employed in the POD would be deployable to front line roles when required. At the time he applied for the role, the Claimant was informed that there was an expectation that officers selected for work on the co-ordination desk would rotate onto operational work as the operational need arose (205). The front line operational teams in the VCTF were known as syndicate teams.

22. As a new OCU, VCTF was in the process of being set up and lacked layers of middle management. In more established OCUs in the MPS, police constables ("PC") are generally line managed by someone at the rank of sergeant ("PS"), who in turn are line managed by someone at the rank of Inspector (Insp). The inspector acts as the police constable's second line manager. In the VCTF at this time, however, the lack of middle management meant that the usual structure was not in place. Because everyone in the MPS needs to have first and second line managers allocated to them on the MPS HR System, this was done in the VCTF. This meant, however, that in many cases some of the line management arrangements were in name only.

23. Another consequence of the VCTF being such a new OCU was that unlike in more established OCUs, policies and procedures were in the process of being developed. This meant that there was greater informality at the beginning. However, as the OCU became more established and, as it grew in size, the need arose for more defined and robust policies and procedures to be put in place.

24. From March/April 2018, Paul Callanan, a member of police staff, was seconded to the role of Head of the HQ & Support Function for the VCTF. In this role, he was responsible for all of the support functions at Lambeth HQ. This included being the HR lead and chairing the VCTF monthly Local Resource & Planning Meeting (LRPM) which dealt with staffing of the VCTF teams. He was a member of the senior leadership team for the VCTF and worked alongside other members of the senior management team at a rank equivalent to superintendent.

25. One of the units for which Mr Callanan was responsible was the VCTF Professional Standards Unit (PSU). Each command unit in the MPS has its own local PSU. There is also a central Directorate of Professional Standards (DPS) which deals with more serious matters. The PSUs and DPS follow procedures that are contained in various statutes collectively known as the Police Misconduct Regulations. The Regulations require each PSU to have designated an Appropriate Authority (AA). Mr Callanan held this role for the VCTF.

26. For the purposes of this claim, the first of the Claimant's line managers with whom we are concerned was Detective Sergeant ("DS") Nick Doherty. He joined the POD and became the Claimant's line manager in 2018. ND's line manager was Mr Callanan. This was because of the lack of middle management structure. This meant that Mr Callanan was the Claimant's second line manager, but we find that the Claimant was not aware of this at the time.

27. Although not formally assigned to the VCTF, at this time Inspector Lance Lamnea was assigned to work at Lambeth HQ and was also involved in working on the POD. In light of his rank, he was recognised as a senior member of staff. Although he had no official line management responsibilities for anyone at the time, several of the PCs including the Claimant and PC Modi assumed that he was their second line manager because he was an Inspector.

28. At around the same time that DS Doherty joined the POD, others joined including PC Brad Pace. All of the officers working in the POD at that time were white apart from the Claimant and one other black officer named PC Myke Nyoke. PC Diesel Modi, who we were told was Asian, joined the POD in January 2019.

29. The POD was operational between 7 am and midnight. The teams working on it usually worked one of two core shifts: an early shift from 7 am to 5 pm or a later shift from 2 pm to midnight. There was also a mid-shift from 10 am to 8 pm (629). The team were initially able to swap shifts amongst each other.

30. There were a limited number of specially equipped desks in the POD. This meant that when the officers on the late shift arrived, the early shift officers needed to vacate the desks for them. The early shift officers were able to work on other work on laptops from other desks and were expected to do so. The reality was however, that there was limited other work to be done and once the handover was completed from the early shift to the late shift, the early shift officers were able to leave before the official end of their shifts.

31. There was a dispute between the parties as to exactly how early the early shift were allowed to leave. The Claimant suggested that, with the exception of the person doing the handover, the early shift could leave a full three hours early. This was not corroborated by the more senior ranked officers who said that there were things that the early shift officers could do away from the specially equipped desks. They suggested that notwithstanding his, permission was often given to leave a little bit early. Our finding is there was a regular practice of the early shift leaving an hour or so early.

Allegation about Being Left Alone on the POD

32. One of the first allegations that the Claimant makes in the list of issues chronologically, was that "up to March 2019" he was often left to work in the POD alone, whereas his white colleagues were not. His evidence was that

the only other person in the POD team that was similarly left to work alone was his black colleague PC Nyoke.

33. The minimum cover requirement for the Claimant's role was two PCs. Therefore, he was not expected to work alone. In contrast, PC Nyoke's job was different and did involve lone working.

34. The Respondent accepted that the minimum cover requirement was not always fulfilled for the POD in the early days however, and there were occasions when the Claimant did work on his own. We were told that the same issue arose for everyone in the same role and that the Claimant was not left to work to work on the POD alone any more than anyone else.

35. The Claimant presented no documentary evidence to corroborate his assertion. He was not able to tell us the dates and times when he was left alone on the POD or given us comparative statistics for himself or his colleagues. He kept no records from this period. He made no complaints at the time about being left alone on the POD.

36. We considered there was insufficient evidence to find that the Claimant was treated differently to his colleagues.

Overtime Allegations

37. The Claimant had a young family and was saving to buy a house. He was therefore keen to earn extra money by doing overtime.

38. In the MPS, the general rule is that police officers are able to do overtime anywhere in the force, subject to authorisation. However, because the VCTF was funded from the Mayor's Office, there were restrictions on VCTF officers doing 'less than 15 (-15)' overtime, both in the VCTF and in other OCUs. This was, in part, because of the enhanced rate payable and also because the MPS did not want to charge the Mayor's Office for officer time spent elsewhere. It was necessary to develop an internal mechanism to avoid this which was not in place until June 2020 (4279).

39. There were no restrictions on overtime initially at the time the VCTF was set up. We find that they were not introduced at until at least the latter half of 2019. The restriction that was introduced was that officers could only work -15 overtime at the VCTF or overtime at other commands with the permission of SLT. It is clear from an email sent by Mr Callanan in May 2020, however that not all teams understood and were following the rules by that time as he needed to remind everyone of them (4277).

40. The Claimant claims that although he had no problems getting assigned overtime before DS Doherty arrived at the POD, his arrival led to a change. He told us that although he regularly asked DS Doherty about overtime opportunities, he was told that they were no longer available or had been filled. He alleged that DS Doherty gave preference to white or non-black officers. The Claimant said that therefore he began to seek overtime

opportunities elsewhere. He also began to ask Insp Lamnea to authorise his overtime requests rather ask DS Doherty.

41. The Claimant produced no corroborating evidence to support this allegation, which was denied by DS Doherty. The analysis of overtime spend by officer working on the VCTF POD from the period from 1 January to end of March 2019 (388 – 389) points to the Claimant working significantly more overtime than any other officers. We therefore find that there is no factual basis to this allegation.

42. The Claimant also told us that at some point C/Supt Adelekan spoke to him about the fact that he was working overtime in different OCU's and told him to do it in VCTF. According to an email the Claimant sent to DS Doherty in March 2019, in response to a query about this, the conversation must have taken place in or around February 2019. In the email, the Claimant says:

"Most of my OT as you can see is on the POD and authorised by Insp Lamnea and moving further up the chain from C/Supt Adelekan. Mr A overheard a conversation a while ago, that I was doing OT in custody and he was adamant I do my OT with the VCTF hence the sudden swap from custody to VCTF for the month of March." (347)

43. The Claimant told us he believed that Mr Callanan was responsible for asking C/Supt Adelekan to speak to him about his overtime and DS Doherty complained to him. This was denied by both Mr Callanan and DS Doherty and we were not presented with any documentary evidence to refute this.

44. Our finding is that there was a conversation between C/Supt Adelekan and the Claimant about overtime, but this was not influenced by Mr Callanan or DS Doherty and, based on the way the Claimant's contemporaneous email describes it, was not said in criticism of him.

Proposed Move (Jan 2019)

45. In 2018, the Claimant and another of his colleagues, PC Jessica Gallagher, a white woman, applied unsuccessfully to be accepted onto a fast track programme for promotion. When the applications came to the attention of C/Supt Adelekan, he was unhappy because both officers had alluded in their applications to having his support, but neither had asked him directly about this.

46. The reason the applications were not successful was because it was deemed that both officers lacked operational experience. This led to members of the SLT in VCTF discussing what steps could be taken in relation to the officers. It was decided that both officers should be moved to a front line operational role.

47. On 16 November 2018, Mr Callanan emailed DS Doherty to ask him to tell the Claimant that:

"*Following his unsuccessful application for the PC-Insp fast track process, please can you advise A.J Akajioyi that at the next LRPM he is to be posted to a pro-active team under Paul Trice. This will give him the opportunity to develop his operational skills going forward and will also meet the business needs. This is likely to take effect in early January and he will receive 28 days' notice of the move. But out of fairness if you could let him know now so that he can start to plan. He will be going onto the team that Maxine is leaving.*

There is no appeal process for this move but if he has any issues he can come and speak to me and I will discuss with him." (298)

48. Notwithstanding Mr Callanan's email, no-one spoke to the Claimant about the proposed move until 25 January 2019. On this date, DS Doherty informed the Claimant that he was to be rotated out of the POD in the first week of March. He also told him that if he was unhappy with this decision, the Claimant could discuss it with Mr Callanan. The Claimant therefore emailed Mr Callanan to ask him if he could discuss the proposed move with him (305).

49. In his email to Mr Callanan, the Claimant explained that he felt it was not a good time for him to move to a front-line role because he had a young family. He explained that his partner was due to return to work at the end of maternity leave in April which would present difficulties for them in terms of childcare as neither he nor his wife had family close enough to assist them. The Claimant had also made Ds Doherty aware that this was the reason he did not want to move to a syndicate team.

50. In fact, the Claimant was not only hoping to remain working on the POD, but was also hoping to move to a flexi shift pattern when his wife returned to work. This led to the Claimant speaking to his senior officers about his ability to work the shifts required in a frontline role.

51. In view of the Claimant's difficulties to work the front line shift patterns, it was agreed that his move should be paused. Instead, it was felt that there was value in keeping him there because a number of new posts were soon to be advertised on the POD and as an experienced member of staff the Claimant would be able to assist with training the new members of staff. The move was therefore not progressed and the Claimant was made aware of this after around a week (306).

52. PC Gallagher was also not moved, although we were not told any detail about her circumstances.

February 2019 – Flexible Working Request

53. On 22 February 2019, the Claimant emailed Mr Callanan and DS Doherty with a flexible working request to take Thursdays off from the beginning of April 2019 due to his partner returning to work from maternity leave.

54. The Claimant discussed his proposed working pattern with DS Doherty who confirmed by email dated 4 March 2019 to Mr Callanan and Insp Trice that he approved the Claimant's proposed working pattern. Mr Callanan replied to express concerns about the proposal because it would leave just one officer working on the POD at certain times. His concern was echoed by Insp Trice (323). The Claimant was unhappy when he later learned that DS Doherty had been aware of these concerns but did not tell him about them.

55. The unchanged proposal went to an LRPM meeting on 20 March 2019. The formal proposal was rejected.

56. A white officer, PC Jess Gallagher put a flexible request in at the same time. She had already been working on a flexible basis informally for some time before this. JG's request was approved.

57. DS Doherty emailed the Claimant on 20 March 2019 to inform him that his request could not be agreed at that time due to the concerns raised by Mr Callanan. In his email, DS Doherty explained that ten posts were being advertised for positions in the POD and once the new staff arrived (they were expected in May 2019) it would be possible to revisit the issue then (332)

58. Because DS Doherty's email referred to Mr Callanan, the Claimant then spoke to Mr Callanan who told him that although formal approval could not be given to his request at that time, it may be possible to agree a local workaround with his colleagues. DS Doherty also agreed to this, although the Claimant was unhappy that he had not offered him this informal solution immediately.

59. Because the arrangement was informal the Claimant was responsible for organising it. The Claimant had to arrange various shift swaps which meant explaining his personal circumstances to colleagues. It also meant using his rest and annual leave days to ensure he had Thursdays off.

Initiation of First Misconduct Investigation

60. Just prior to the flexible working proposal being submitted to LRPM, on 18 March 2018, DS Doherty had emailed Mr Callanan to raise concerns about the Claimant's honesty around working overtime (329). DS Doherty did not speak to the Claimant about his concerns in the email before he sent it. He told us that this was because of the potential seriousness of the allegations and the fact that they may amount to criminal behaviour.

61. DS Doherty began his email to Mr Callanan saying that, as a result of concerns raised by other officers with him on four occasions, he had undertaken some initial fact finding into the Claimant's working pattern. That had led him to believe that the Claimant may have been falsely claiming for overtime he was not working. He then listed several occasions when the Claimant had worked overtime which he had not approved.

62. The MPS use an on-line HR system called the Computer Aided Resource Management System (CARMS). Police officers receive details of their shift patterns through it and are required to log their start and ends times of work using it. They are expected to this within 15 minutes of starting and finishing a shift, although the system allows others to do this for them.

63. In his email to Mr Callanan, DS Doherty also expressed concern that the Claimant was not correctly booking his work finish times on CARMS and was therefore receiving pay, including enhanced overtime pay, for periods when he was not working. He highlighted the 16 and 17 March 2019 as being dates of particular concern.

64. DS Doherty told the tribunal hearing that on Sunday 17 March 2019, PC Brad Pace had rung him while he was off duty to tell him that the Claimant had not been in work for most of that weekend, despite being on enhanced overtime rates. DS Doherty denied that he had asked PC Pace to secretly monitor the Claimant. The evidence before us was that the call was made on PC Pace's own initiative.

65. PC Pace told DS Doherty that he had arrived to start his shift at 2:30 pm on Saturday 16 March and there was no sign of the Claimant, despite the fact that he was meant to be working a 7am to 5pm shift that day as overtime cover. When he had asked around, someone told him that the Claimant had left at 11 am and so PC Pace had booked the Claimant out on CARMS at 11 am. He did this at around 9 pm on Saturday 16 March 2019 (617). On the Sunday, when PC Pace had arrived at work in the afternoon, the Claimant was not present at work despite showing on CARMS as due to be there on overtime from 7am to 5pm. This was what prompted PC Pace to call DS Doherty and report his concerns.

66. The Claimant told us that he was present in work on Saturday 16 March 2019 until about 2pm. He says that he left at 2pm that day with the permission of DI Harris. He could not account for why PC Pace was told he had left around 11 am. He was also in work the following morning. When he saw that he had been booked out on CARMS at 11 am for the Saturday, he corrected the booking out time on the system. He accepted that he had showed himself as having done a full shift finishing at 5 pm. He also told us he left early (at about 2pm) on the Sunday because one of his family members was unwell which would explain why he was not there when PC Pace arrived. He left that day without booking himself off from CARMS and without informing a supervisor, but he later booked himself off using CARMS remotely, again as if he had completed a full shift at 5pm. The CARMS records in the bundle at pages 617 and 619 confirm what time the Claimant did these bookings.

67. The Claimant told us that although he understood that officers were required to book themselves in and out using the CARMS system within 15 minutes, this practice was not universally followed. He said officers often booked themselves in and out much later than this and occasionally not at all. We accepted his evidence on this point as it was confirmed by the information

Trice produced when undertaking the initial investigation into the Claimant's alleged misconduct.

68. In addition, the Claimant told us that when officers were released early from shifts it was common practice to book off at the intended shift end time rather than the actual end time. He said this was the case whether or not the shift was a normal shift or overtime. The Respondent told us, however, that if officers were released early from a normal shift, they could expect to be paid for the whole shift, but this was not true for overtime and particularly not -15 overtime.

69. When he received the email from DS Doherty, Mr Callanan forwarded it to one of the local PSU staff to follow up, A/Inspector Peter Luciano (335). This was his standard practice. It was not unusual for him to be sent emails raising concerns about officers. A/Insp Luciano had many years of experience in the MPS including in the PSU. Mr Callanan had recruited him when he wanted to set up a local PSU in VCTF.

70. Under the Police Misconduct Regulations, when a misconduct allegation is made against a police officer the matter is investigated. The police officer is given a notice of the investigation (known as a section 163 notice) and has a welfare officer assigned to them. The investigation is carried out either by the local PSU or, in more serious cases, by the DPS. Some cases also necessitate the involvement of the Independent Office for Police Conduct (IOPC). The officer under investigation is accorded various protections, including the entitlement to be accompanied by a Police Federation Representative to meetings.

71. Prior to the start of any misconduct investigation, the AA for the relevant command has to undertake a preliminary assessment of the case using a form called an MM1. The preliminary assessment requires the AA to consider whether the matter is misconduct or gross misconduct under the Police Misconduct Regulations. If the matter is not a misconduct case, the AA can recommend other performance management action be taken. For alleged misconduct, a local investigation is usually undertaken. For alleged gross misconduct, the central DPS becomes involved.

72. Having received the email with the concerns outlined in it about the Claimant, A/Insp Luciano replied to DS Doherty on 19 March 2019 (334-335). He also sent it to Insp Trice, explaining that his reason for doing so was because he needed to involve an impartial member of the senior leadership team in the investigation who was a skilled user of the CARMS system and he had identified Trice for this purpose. Mr Callanan was copied in.

73. A/Insp Luciano said in his reply that, in his view, the matter raised in the email appeared to him to be a misconduct matter rather than a performance issue, but he was not at that stage clear as to the seriousness of the misconduct and whether it was misconduct or gross misconduct. He noted that a fact finding assignment was needed and then identified that some

additional information was required before an AA assessment could be performed.

74. A/Insp Luciano asked Trice and DS Doherty to undertake some specific investigations. Trice was asked to consider if there was a wider issue with CARMS booking off and on for the team in which the Claimant worked while DS Doherty was to follow up with regard to speaking to the Claimant about the specific dates of concern. A/Insp Luciano's recommendation was that DS Doherty should "*Ask [the Claimant] direct and then take it from there*". He added at the end of his email, "*This is to be dealt with in confidence and be mindful that the officer is not subject to any complaint or investigation. This does mean however that you can ask the above and they do not have to seek Federation Advice prior to giving you an answer*." (334 - 335)

75. Insp Trice responded on 21 March 2019 with detailed information about the amount of overtime each officer working in the VCTF Pod had undertaken and specific information about the overtime worked by the Claimant and who had authorised it. His report also provided information about the team's compliance with CARMS booking on and off generally (333 – 334).

76. We note that the findings of Insp Trice's initial investigation show that the Claimant was earning significantly more by way of overtime that his colleagues. He had earned £3,500 plus whereas most of his colleagues had earned less than £1,000. In addition, his overtime entries were almost exclusively authorised by C/Insp Lamnea rather than DS Doherty. His CARMS booking on and off times did not comply with the standard rule, but this was not unique to him. The initial investigation revealed widespread non-compliance for the entire POD team. Trice describes this as "*appalling.*"

77. DS Doherty also replied on the same day to say that he had not had the opportunity to speak directly with the Claimant yet. He said that he intended to do this via email so that the information and responses are recorded (333).

78. On 23 March 2019, DS Doherty emailed the POD team to tell them that there had been a recent independent review of the VCTF Pod and he was emailing them with regard to some important changes. The changes were that all annual leave requests should be made on a Form 410 to himself; with no swaps, covers, replacements or overtime to be authorised unless approved by a member of SLT via himself and that all overtime requests be they in the POD or elsewhere needed his approval (345). We find that this was sent in response to the initial investigation undertaken by Insp Trice which had revealed that DS Doherty's management of the working patterns of the POD team had been somewhat lax. None of the other members of the team were accused of misconduct over the CARMS non-compliance.

79. DS Doherty emailed the Claimant on 26 March 2019 and requested the Claimant account for his overtime on specified dates and confirm who had approved it. He did not tell him why he was seeking this information. The Claimant replied the following day and explained that most of his overtime

had been authorised by C/Insp Lamnea. He added that he researched CARMS and made a note when there was little or no POD staff available and then offered to fill in as needed (347). In his reply, the Claimant provided details of the shifts he worked rather than the actual hours. He did not note in his reply for example that he had left early on 17 March 2019. DS Doherty did not reply to the Claimant's email.

80. Having completed the fact finding requested by A/Insp Luciano, an MM1 form was completed. The first version of the form was completed by Insp Trice on 29 March 2019) (386 – 398). He included on the form the entirety of DS Doherty's original email and his own report as well as some additional commentary. In the section asking him to set out his initial views he said:

"*Basis for initial views on procedure to be followed - I have conducted a fact finding investigation, all attached to this document and the respective email. Mindful that this could be categorised as "Gross Misconduct", both first line manager and myself have not gone into greater depth as this may have an impact on any further investigation.*

There appears to be two breaches of code of conduct:
Orders and Instructions
Duties and Responsibilities
Also integrity concerns along with potential criminal offences.

Public interest factors - this case is around the apparent false claiming of hours worked and fraudulent claim of taxpayers money in respect of unworked/questionable overtime.

The allegation(s) do not contain any protected characteristics.

As discussed mindful of the severity of the allegation, I would suggest it is progressed by either the DPS or another command for transparency/fairness."

He acknowledged that the officer had not been spoken to directly. (394)

81. On 10 April 2019, a version of the MM1 form was sent by Mr Callanan to the DPS mailbox with his assessment as AA included (415 -416). We have not been provided with a copy of this version but we find it to be the same as the version at pages 417 – 426 of the bundle which indicates it was completed by Mr Callanan on 9 April 2019 and subsequently reviewed by a member of DPS staff on 12 April 2019.

82. In this version, the detailed report prepared by Trice, which provided details of the more widespread CARMS non-compliance had been deleted. When giving evidence to the tribunal, Insp Trice said he had not made this change. Mr Callanan also said that he was not responsible for the change. He speculated that it had been made by A/Insp Luciano and we find this is the most likely explanation based on the evdience we heard about the creation of MM1s generally and who takes responsibility for this. We also find that

the most likely reason for the deletions were to ensure that the form focussed on the allegations against the Claimant. The original form was subsequently provided by Trice to the person assigned to investigate the Claimant's alleged misconduct.

83. Both versions of the completed MM1 show that Mr Callanan assessed the Claimant's alleged misconduct as "serious corruption" and "a relevant offence" as defined by the Independent Office for Police Conduct (IOPC) Statutory Guidance. He then assessed it as "Gross Misconduct". He set out his rationale in the cover email saying:

"In my assessment, there appears to be evidence that the officer has fraudulently claimed O/T for periods of time that he had not worked. There is also apparent evidence that the officer made efforts to hide his claims from his reporting line mgt chain by using an officer from outside his mgt to both approve and "process for payment" his claims at the same time. Therefore indicating a breach of honesty & integrity at best, and criminal activity at worst." (416)

84. The DPS reviewer who received the form escalated the matter to seek advice with regard to the correct classification. On 23 April 2019, Stephen Tate, Chief Inspector of the DPS assessed the matter as gross misconduct and meeting the criteria for a mandatory referral to the IOPC. He said:

"*The officer has allegedly made a number of overtime claims when they have either not been on duty or have failed to perform the full duties claimed for and as such there are potential criminal offences of fraud as well as calling into question the integrity of the officer and as such, I believe this to be GM albeit the investigator will undertake their own [severity assessment]* ." (430)

85. The DPS therefore referred the matter to the IOPC on 25 April 2019. The IOPC's response, sent on 29 April 2019, was to refer the matter back to MPS to conduct an investigation at DPS level. Sergeant Robert Grey was assigned as the DPS investigating officer and on 2 May 2019 conducted his own severity assessment. He agreed with the severity assessment of gross misconduct (509). He completed a section 163 Notice to be served on the Claimant.

86. On 17 May 2019, the Claimant was called to a meeting with Mr Callanan, DS Doherty and DI Maria Harris where he was served with the section 163 Notice and was informed that he was being investigated for fraud and gross misconduct in relation to his overtime requests. He was also informed that the allegations may amount to criminal offences. At this stage, the Claimant was not informed that he was being placed on any restrictions (575).

87. DI Harris, whom we note is a black woman, was present because she had agreed to act in the capacity of welfare officer for the Claimant. One of the things that DI Harris did in this capacity was to ensure that the Claimant did not have to organise getting Thursdays off himself. She arranged for DS

Doherty to be responsible for this and also that the Claimant should have the rest days and annual leave used for this purpose to be returned to him. This was sorted out by 22 May 2019. DI Harris also asked DS Doherty to arrange an Occupational Health referral for the Claimant.

88. Having been served with the section 163 Notice, the Claimant became entitled to be accompanied to investigation meetings by a Police Federation Representative. As a matter of custom and practice, the Respondent allows officers up to 4 hours during work time to meet with their Federation Representatives.

PC Gallagher's MM1

89. At around the same time as the MM1 was being completed for the Claimant, DS Doherty completed an MM1 for PC Gallagher. She appeared to have been involved in a road accident at a time when she was meant to be at work, which she had then not reported. Despite this being on the face of it, a very serious matter, in contrast to the Claimant's position, PC Gallagher was not served with a section 163 notice and there was no formal investigation undertaken.

90. Mr Callanan told us that as AA he completed the MM1 and referred the matter to the DPS, but that quite quickly mitigating circumstances came to light that led the DPS to decide not to progress the matter. We were not provided with any of the documentation. We were told that this was in order to protect PC Gallagher's privacy in light of the circumstances involved.

Other Relevant Events in May 2019

91. On 13 May 2019, prior to being informed of the investigation, the Claimant had requested a day off on 2 June 2019 which was refused by DS Doherty. He explained that the reason he was refusing the request was because someone else had a rest day that day (634).

92. On 22 May 2019 one of the Claimant's colleagues, PC Kat Pearson, informed him that she was not able to work her late shift on the bank holiday on 27 May 2019. By now the Claimant had been informed about the investigation. Because the investigation concerned overtime, the Claimant contacted DS Doherty and Mr Callanan to ask them if he could cover PC Pearson's shift (596). DS Doherty was away on leave and did not see the email that day.

93. DS Doherty returned to work the following day. He told us that the Claimant had initially agreed to cover the Friday shift (24 May 2019) for PC Diesel Modi, but had told PC Modi earlier in the week that he had issues with childcare for that Friday and so had to swap back. PC Modi had asked DS Doherty for leave on the Friday, but DS Doherty had had to refuse because of a lack of cover. When he found out that PC Pearson wanted time off as a result of the Claimant's email, he proposed a simple swap between PC Modi and PC Pearson so both could get what they wanted.

94. Having not had a response to his email, the Claimant chased on 24 May 2019 (627). DS Doherty replied to him saying:

"I asked Kat to contract you yesterday. The BH Monday has been covered. Thanks for offering to work though" (631).

The Claimant replied asking "*just out of curiosity*" who would be covering the shift (632). DS Doherty did not reply to this email.

95. On 27 May 2019 the Claimant emailed DS Doherty again saying (637)

"When Kat offered me the Overtime shift for today, and I asked yourself and Paul Callanan whether or not I could this shift, I did this out of courtesy due to my current situation. The courtesy was not reciprocated as I got no response until I emailed again and was told you asked Kat to tell me it is now covered with no explanation as to why.

It feels like I have to go above and beyond to get leave or overtime but when it suits yourself and the department you request I cover with little to no communication between us. Do you have a problem communicating with me? As recent events have highlighted, if so can we sit down and have a conversation to this regard please. Let me know a time and place and I'll be there to discuss this."

96. DS Doherty sent a lengthy reply to the Claimant explaining exactly what had happened with the shifts as explained above. He added: "*I do not have a problem communicating with you and I am more than happy to sit down and discuss, why you think that I do. I am in Tuesday the 28th, but then off for the rest of the week. I am more than happy to discuss this with you anytime on Tuesday if you are in*." (639)

97. DS Doherty forwarded the email exchange to Mr Callanan saying: (638)

"*Sorry to bring this to you, but I am beyond annoyed …*"

98. Part of the reason for DS Doherty being annoyed was because he had spent a considerable amount of time sorting out the Claimant having Thursdays off the previous week and therefore, he felt that he was being supportive of the Claimant. He also felt the Claimant was accusing him unfairly, given that the Claimant had himself created a difficult situation for a colleague that DS Doherty had had to resolve.

99. In addition, without him knowing about it, there had been a gap in cover on the POD because of the shift swaps. It arose because PC Pearson covering the Friday shift had meant she could not start work until late morning on the Saturday. DI Harris had given DS Doherty a "dressing down" over this and blamed him for it.

100. Mr Callanan responded the following morning saying "*Leave this with me. I will deal robustly*." (644) He then called the Claimant in for a meeting with him without any prior notice and without his welfare officer being informed. No contemporaneous note was taken of what was said at the meeting and there were no follow up emails.

101. The Claimant claims that at the meeting he was reprimanded by Mr Callanan for challenging DS Doherty and was told that his line management would be changed because it was unfair for DS Doherty to have to manage him when clearly the Claimant thought he had something to do with the investigation into him.

102. When giving his oral evidence to the tribunal, Mr Callanan could not recall the meeting. He had said in his written witness statement, however, that when saying he would deal with the matter robustly in his email to DS Doherty, he had in mind "*that [he] would make it clear to [the Claimant] that his line managers not only have a right but have a duty to ensure that policy is being followed*," and added: *"I advised [the Claimant] that it was not acceptable that he send emails such as the one he sent to his line managers when he is frustrated with not getting what he wants."*

103. Although there was no immediate change in the Claimant's line management arrangements following the meeting, this did change from mid-June onwards. We find that there was a link to that and what was said at the meeting and that therefore Mr Callanan did tell the Claimant a change would be made. We also found that he told the Claimant that it was not acceptable for him to send the emails he had sent because of its tone, but that he was not told that he was never permitted to challenge his superiors.

May OH Referral

104. Following MH's request, DS Doherty had completed an OH referral for the Claimant on 23 May 2019. He reported back to her that he was having a technical difficulty with the submission of the form (666) This was resolved in early June and he contacted the Claimant on 4 June 2019 to tell him to expect contact from the OH team (669). He also forwarded the Claimant an email he had received from OH which contained contact details of the counselling service available to him (682). Although OH made contact with the Claimant, he was not available to speak to them (703). For this reason, no OH appointment was arranged.

Restrictions

105. Having been assigned the investigation PS prepared a Form 728 requesting restrictions be put in place on the Claimant. The form confirmed that neither the Local PSU nor Local OCU Commander had sought any restrictions at that time. An email exchange between Mr Callanan and PS Grey dated 17 May 2019 also confirmed that no local restrictions had been requested (575)

106. The form prepared by PS Grey requested that the DPS NPCC Commander place the Claimant on three restrictions being:

- To work within the confines of a police building as per authorised smarter working arrangements.
- To book himself on when he starts his shift and to book himself off CARMs when he finishes.
- If he wishes to work overtime he is to have written authority from the authorising officer and to submit claims through the authorising officer (457)

107. The NPCC Commander's decision was made on 10 June 2019 with a decision that only one restriction be put in place. That restriction was: "All overtime duties and subsequent claims are to be subject to line management authorisation and supervision prior to submission on to CARMS. This is to be supported by an email from the line manager." (864)

108. PS Grey forwarded his original request form and the decision made by the NPCC Commander to the VCTF PSU mailbox on 11 June 2019 (707). This was picked up by a member of the PSU staff who forwarded it to Mr Callanan (706). He emailed LL on 12 June 2019 to ask him to serve the restrictions on the Claimant when he was next in. In his email Mr Callanan summarised the restrictions saying:

"In summary AJ must comply with the following:

- *Only work from the confines of a police building. This includes prohibited from travelling between police buildings whilst on duty.*
- *Cannot do overtime, unless it is pre-authorised in writing by his line manager and must be on carms prior to the tour of duty taking place*
- *Must book on and off at the beginning and end of each tour of duty. This basically means that AJ no longer has the grace period that all officers have, he must book on and off at his specified duty times. He is also prohibited from having another officer book him on or off."* (713)

This was not the correct position. However, it was based on the fact that Mr Callanan read the recommendation and not the decision in error.

109. On 13 June 2019, C/Insp Lamnea rang the Claimant and informed him that he would be serving restrictions on him. As they were not able to meet in person, he sent him a scanned copy of the restrictions and provided him with a hard copy via a colleague the following day (721). He subsequently emailed PC on 13 June 2019 to saying, "*Restrictions fully explained to [the Claimant] and served*." (724) We find the reference to 'restrictions' in the plural does not mean C/Insp Lamnea told the Claimant about the three restrictions. It simply reflects how restrictions are discussed in the MPS. Our finding is that C/Insp Lamnea gave the Claimant the NPCC decision form which showed only one restriction and did not mention the other unapproved restrictions to him.

110. Understandably, having mistakenly understood there to be three restrictions, Mr Callanan believed that those three restrictions had been placed on the Claimant.

Mid-June - August 2019

111. DS Doherty ceased to be responsible for the Claimant's line management at some point in around mid-June 2019. Sergeant Ryan Perry and Sergeant Adam Cook took over the supervision of the day to day running of the POD. PS Perry became the Claimant's line manager. His second line manager at this time was Inspector Pete Moxham.

112. Although PS Perry was the Claimant's official line manager, PS Cook dealt with the Claimant's formal flexible working request made in June. The request went to the June LRPM meeting and was approved. Mr Callanan confirmed in an email to PS Cook that, provided he was content that the proposal met business needs, he was happy to sign it off (735). The arrangement came into force from 1 July 2019.

113. PS Perry met with the Claimant on 5 July 2019 as his new line manager. He summarised the discussion in a subsequent email which he sent to the Claimant and copied to PS Cook and Insp Moxham. (749). The tone of the meeting and the email was supportive and the Claimant thanked him for the support.

114. At the meeting PS Perry said that when the Claimant was meeting with his Federation Representative, he required an email from her in advance so that he could record this on CARMS. He also asked the Claimant to inform his colleagues if he left the POD for a break and to inform his supervisors if he was leaving to attend a meeting.

115. The Claimant emailed PS Perry on 15 July 2019 to say he had spoken to his Federation Representative, Gillian Mills about this and had been told that she was not willing to send emails about their meetings. She had informed the Claimant that he would have to tell PS Perry the times of the meetings. He added that Ms Mills had offered to speak to PS Perry over the phone if required and provided him with her telephone number (749). PS Perry did not contact GM.

116. PS Perry also picked up the issue of the Claimant's OH referral at this time. The Claimant had tried to rebook the OH appointment, but had not been able to do so (743). This could only be resolved by PS Perry submitting a fresh referral which he did. The reason for the referral was: *"for job counselling– reason being he is feeling angry and slightly down/anxious regarding his complaint and the ongoing investigation into it. He stresses that he is not depressed, but just wants to talk out his feelings of anger and anxiety in that setting and would like the provision of counselling." (757)*

117. The referral led to a OH Report being prepared dated 31 July 2019 (766). It recommended that the Claimant be temporarily put on 'recuperative hours'

which meant only working 75% of his normal hours without any penalty regarding pay. He was also referred for counselling. The opinion of the OH adviser was that the Claimant's issues were not medical, but that the Claimant was suffering from an "*acute stress reaction to events at work*" (767). The Claimant moved onto the new hours with effect from 2 August 2019 for six weeks (775).

118. We note that there is no record of the Claimant seeking assistance from his GP at any point in 2019 in connection with his mental health (3340 – 3341).

119. A consequence of the Claimant moving to recuperative hours was that he could no longer do overtime (873).

August 2019 – Restrictions and Fed Rep and Solicitor Meetings

120. By the month of August 2019, the Claimant had already had several meetings with Ms Mills about his case. The Police Federation had also instructed a solicitor on his behalf to represent him in connection with the investigation.

121. Between 16 August and 2 September 2019, PS Perry was on annual leave, except for 20 and 21 August 2019. PS Cook was covering for him and copied him into some of his correspondence with the Claimant.

122. On 23 August 2019, the Claimant emailed PS Cook at 08:24 to inform him he had a meeting with his Federation Representative at midday. He added that he believed there was sufficient resilience on the POD to enable him to attend the meeting as there were three members of staff on the early shift that day (791). The Claimant had emailed PS Cook with an annual leave request a few minutes prior to this. That email had the subject heading "A/L Req". He sent the email about his meeting as part of the same email chain and so it also had the same heading.

123. PS Cook was particularly busy that morning as the Notting Hill Carnival was that weekend and he had a key role preparing for it. He was combining this with supervision of the POD. Although PS Cook responded very quickly to an email from one of the Claimant's colleagues (who was white) about a work-related matter (792 -793), he did not consider the emails from the Claimant with the subject heading "A/L Req" to require an urgent response. He did not therefore open the Claimant's email about his meeting until 11:57. At that time he responded to ask where the meeting was taking place, or took place if the Claimant had already left (794).

124. PS Cook told us that the reason he asked about this was because he had been informed by Mr Callanan that the Claimant was subject to three restrictions, one of which restricted him from working other than in a police building. PS Cook believed this restriction included a prohibition from travelling between police buildings whilst on duty.

125. The Claimant, who had left Lambeth HQ to meet with Ms Mills, responded at 12:33 saying that he was with her and she did not want the meeting location divulged. The Claimant cc'd Ms Mills into the email for reference (795).

126. At 13:11, PS Cook forwarded the email exchange to Mr Callanan asking for his guidance and explaining that he had concerns first that the Claimant, had not sought permission to leave during duty time to attend the meeting, but had simply 'notified' him of the meeting and that he would be attending. He also expressed concern when he asked him where he was, the Claimant had refused to disclose this information. PS Cook added that he believed that this was contrary to the Claimant's restrictions (796-797).

127. Mr Callanan replied at 14:06 as follows:

"This behaviour is completely unacceptable and frankly worrying as it is not too dissimilar to the behaviour that he has allegedly been engaged in that led to the complaint in the first place. I will make the IO at the DPS aware of this latest incident and seek a view from them as to whether they wish further sanctions to be placed on [the Claimant] as he has breached the Commander's restrictions.

[The Claimant's] restrictions as served upon him by C/I Lance Lamnea on 13th June 2019 and acknowledged by him as fully understanding what he can and cannot do are as follows:

- *Only work from the confines of a police building. This includes prohibited from travelling between police buildings whilst on duty.*
- *Cannot do overtime, unless it is pre-authorised in writing by his line manager and must be on carms prior to the tour of duty taking place*
- *Must book on and off at the beginning and end of each tour of duty. He is also prohibited from having another officer book him on or off.*

[The Claimant] is allowed to arrange meetings whilst on duty with his Fed Rep; however, he must inform you of when and where they are to be held. If he wishes those meetings to be confidential and the location to be kept secret, then he must arrange them for a time when he is off duty.

When he is on duty, he is required to ensure that his supervisor knows where he is at all times.

I will leave it to you to speak with [the Claimant] but can I ask that you inform him that I will be reporting him for breaching his commander's restrictions." (796)

128. PS Cook met with the Claimant the following day (24 August 2019), at around 9.30 am in order to follow up as requested by Mr Callanan. It is not in dispute that it was a short meeting during which PS Cook told the Claimant that he was subject to three restrictions, two of these being additional to the single restriction the Claimant believed had been applied to him. It is also

not in dispute that the PS Cook informed the Claimant that he was in breach of the restrictions and would be reported to the DPS.

129. There is a dispute between the parties as to where the meeting took place and the manner in which it was conducted.

130. The Claimant told us that the meeting took place in an open plan operational area within earshot of numerous colleagues and that PS Cook "berated" him. He said that following the meeting he was approached by a colleague PC Daniel Davidson who had heard everything from across the room to see if he was OK.

131. PS Cook told us that the meeting was conducted in a booth on the other side of the room to the POD. He acknowledged this was not in a private room away from the open plan area, but he had wanted to speak to Claimant at the first opportunity and at that time, due to his key role for the Notting Hill carnival he was unable to leave the operational area. He said the meeting was conducted in a constructive and polite manner and that the Claimant shook his hand at the end of it.

132. Neither PS Cook nor the Claimant took notes at the meeting, but they did send each other follow up emails so some contemporaneous evidence was available to us when considering this dispute.

133. In addition, when the Claimant later complained internally about the conduct of the meeting, PC Davidson recalled the meeting in a written witness statement effectively made under oath. We note that the version of the statement provided to us was unsigned, but it is written in the first person. It is relevant to note that it was made on 4 May 2022 which was nearly two years after the meeting. PC Davidson did not recall hearing what was said during the meeting or it being loud. He did recall the Claimant being agitated on his return the POD after the meeting.

134. Around 45 minutes after the meeting, at 10:16, the Claimant emailed PS Cook saying:

"Following our conversation when you stated you have a copy of my restrictions and it states I need to be in a police building, not to travel between buildings, and book on/off CARMS etc. On the copy I have I cannot find where this is stated could you please send me a copy of what you have for my records and to omit any misunderstanding/misconceptions next time. As you stated I need prior permission before going to my fed rep meetings and if I didn't speak to any supervisor I should not be going. Yesterday I sent the email at 08:24 stating I had a meeting at 12 and there were sufficient number of staff in to cover resilience as there were 3 of us and the minimum strength on the Pod as you are aware is 2. I also tried to call yourself and Mr Moxham 2-3 times but to no avail.

I just want to make sure I know what my restrictions should there be anything else I am missing or non-the wiser to." (839)

135. Based on the way the Claimant describes the meeting in this email, as a conversation, and the evidence of PC Davidson, we find that the meeting was conducted in a moderate tone and did not constitute a public reprimand.

136. It is relevant to note that when emailing PS Cook about his restrictions at 10:16, the Claimant did not attach the copy of the restrictions which he had been given.

137. PS Cook also emailed the Claimant (at 11:51) to summarise what had been discussed (806). This was not a reply to the Claimant's email. PS Cook recorded what he believed had taken place the previous day, his expectations going forward if the Claimant wanted to attend meetings with his Federation Representative and provided a "reiteration" of the Claimant's restrictions. PS Cook copied Insp Moxham, PS Perry and Mr Callanan into the email.

138. The expectations going forward were:

- *"Email me the following details: Where the meeting on 23/08/2019 was held precisely (i.e.. room number & station), when, and with who.*

- *If you require a meeting with your federation rep, or any other meeting/abstraction, during duty time not at Lambeth HQ – This must be explicitly authorised prior to this by PS Perry, PS Cook or Inspector Moxham. The exact location and time must be part of that request, as well as details of who you are meeting with.*

- *If that is not agreeable or prior approved, then you are not to attend the meeting, and the meeting must take place in your own time while off duty."* (806)

139. The Claimant replied to PS Cook's email 20 minutes after receiving it to say that the contents had been "*duly noted*" and he would pass it to his Federation Representative and Solicitor and respond once he heard back from them. He added that the response might come from him or them (807). The Claimant forwarded the email exchange to Ms Mills.

140. PS Cook prepared an MM1 form in relation to the breach of restrictions that same day and forwarded it to Mr Callanan. PC forwarded the form to DPS copying in PS Grey on 25 August 2019 at 13:49 (820). In his cover email Mr Callanan explained that:

"It is being reported on the attached that [the Claimant] has deliberately and wilfully breached his NPCC restrictions and has refused to co-operate with line mgt when they have attempted to ensure he remains in compliance. Of further concern, the behaviour of the officer is not too dissimilar to the behaviour that led to the GM charge in the first place."

141. On 27 August 2019, the Claimant emailed PS Cook at 13:03 attaching a copy of the restriction served upon him by the NPCC Commander (834). PS Cook forwarded the email to Mr Callanan at 13:10 saying:

"AJ is stating that of the 3 restrictions I listed to him, only one he was informed of (re overtime on CARM), and sent me the attached scan which does indeed show this. I just wanted to confirm if he was subsequently put on any further conditions that were indeed conveyed to him?"

142. The Claimant emailed PS Cook again at 14:24. In this email he said:

"*Further to our conversation and my email where I attached a copy of my restrictions from the NPCC commander earlier today. Please send me the official document you have with regards to my restrictions as you mentioned you received one from our professional standards department. Its so I can have it on my records and to avoid any misunderstanding."* (838)

143. In the meantime, on 27 August 2019, Ms Mills separately emailed PS Grey to raise her concerns that the Claimant was being obstructed from attending meetings with her when he was under investigation. She forwarded the email she been forwarded by the Claimant to him (850). PS Grey replied to her on 28 August 2019 sending her a copy of the restrictions granted by the NPCC Commander and saying he was aware of the alleged breach. He added:

"I am in agreement with you however, that [the Claimant] should always be afforded his rights to legal and federation advice in Job time." (850).

144. On 28 August 2019, at 08:12, PS Cook replied to the Claimant's email stating that he had checked with professional standards (meaning Mr Callanan) and his restrictions "*were a combination of mandated NPCC restrictions and local OCU restrictions*". He set out which was which and added that A/Chief Inspector Lamnea had confirmed via email on 13 June 2019 that he had made the Claimant aware of all those restrictions (838). This response was provided to PS Cook by Mr Callanan PS Cook was not aware that it was incorrect.

145. We find that the response was not only incorrect, but it was an attempt to rewrite history and cover up the mistake that Mr Callanan had made with the restrictions.

146. Mr Callanan told us that he spoke to Commander Adelekan about this response and was instructed by him to impose the other two restrictions as local restrictions. We found this explanation to be very convenient for Mr Callanan. While we accept that Mr Callanan may well have had a conversation with Commander Adelekan about the restrictions, we find that it was him, Mr Callanan that was responsible for proposing the cover up.

147. On 28 August 2019, at 10:12, the Claimant emailed PS Perry, PS Grey, PS Cook and Mr Callanan making them aware he needed to attend a meeting

with his solicitor and Ms Mills on 30 August 2019 at 11:30 outside of police premises. He said that he would need to leave Lambeth HQ at 10:30 am to attend the meeting (870). The meeting had been arranged because the Claimant was due to be interviewed by PS Grey on 9 September 2019 and his solicitor wanted to meet him beforehand.

148. PS Cook forwarded the email to Mr Callanan (copying in Insp Moxham) at 10:52 to ask if he could discuss the request with him (842). In his email, PS Cook said that the Claimant had only asked him that very morning to swap a shift on 30 August for childcare reasons (L/T to E/T) meaning, if he attended the meeting with his solicitor on 30 August 2019 he would only be in work for 3.5 hours on that day.

149. He added that he intended to tell the Claimant that he could not attend the meeting, unless Mr Callanan directed otherwise, because:

- The Claimant's meetings were too frequent
- The Claimant had not complied with the direction to provide the meeting location
- The Claimant could not be at non-Met premises in duty time (because of his restrictions)
- He had only just changed his shift to an E/T due to childcare, then put a meeting in the middle of it. Had the Claimant not changed his shift, the meeting would have been in his own time
- As before, the Claimant had not expressly requested permission to attend the meeting, but had adopted the same manner as before of simply telling them about the meeting (842)

150. The information about the shift swap provided in PS Cook's email was not fully accurate. The Claimant was asked by PS Perry to swap to the late shift on 30 August 2019, because the late shift was short and there were extra people on the early shift. He agreed, but before he had checked with his partner. As he had to pick his children up from nursery that day, he had to ask to revert to his original shift. (831 and 837). When he asked, PS Cook had replied to suggest the Claimant ask if any of the four other officers on the early shift would agree to swap and let him know (833). One of the Claimant's colleagues had agreed to swap with him and PS Cook had that morning approved swap and updated CARMS accordingly (831 and 840).

151. Insp Moxham sent an additional email (at 11:10) privately to Mr Callanan, not copying Ps Cook saying:

"*Myself & Adam have discussed this today and I have real concerns about how AJ is manipulating this situation.*

DS Doherty has fallen victim to this as his previous Line Manager.

I honestly believe that AJ's position on the VCTF (Coordination Centre) has become untenable."

152. Following guidance from Mr Callanan, PS Cook responded to the Claimant, at 11:36 requesting:

"*1. Where have you arranged for this meeting to take place? (i.e.. address / room number)*
2. What are the names of the solicitor and Fed Rep?
3. How long is the meeting for?"

153. The Claimant forwarded this email to his solicitor, Ms Povey, who informed him that she would respond to it on his behalf. She did so at 12:06. She sent her email to PS Cook, copying in the Claimant and Ms Mills. She confirmed the appointment was at 11:30 am but she did not know how long it would last. She said that she did not believe the Claimant was obliged to disclose who would be in attendance or where the meeting was, but confirmed it was with her at her offices in Charing Cross. The email included her full address. She also confirmed that it was common practice to allow officers time to meet with Solicitors and Fed Reps, but did not say this was a legal entitlement. Finally, she suggested that PS Cook could speak to PS Grey if he had any further queries and explained that an investigation interview date had been agreed with him (847).

154. PS Cook forwarded the email to Mr Callanan who responded to Ms Povey at 16:24 (845). He sent a lengthy reply written in very robust terms. In his evidence, Mr Callanan told us that the tone was deliberate because he perceived that legal threats were being made. We do not agree that there was anything threatening or even impolite about Ms Povey's email. Our interpretation of her email was that her intention was to confirm to PS Cook the legitimacy of the meeting and provide the details he was seeking about it.

155. Mr Callanan incorrectly stated that the Claimant was subject to two local restrictions and one NPCC restriction.

156. He said that as the Claimant was a serving member of the MPS, Sgt Cook "*is not only entitled, but has an absolute duty, to ensure he knows [the Claimant's] whereabouts when on duty and who he is with. This is not only a matter of compliance but also a Health & Safety matter, this is particularly the case when considering the nature of policing and the risk associated with serving officers*."

He added:

"*PC Akajioyi is obliged to comply with any lawful instruction given by a higher ranking officer. By failing to comply, he is in breach of acceptable Standards & Behaviour, namely failing to comply with Orders & Instructions. I should advise you that such a breach is considered a matter of Gross Misconduct*."

157. Although Ms Povey had provided the exact location of the meeting, its start time and who would be in attendance, he said:

"If [the Claimant] wishes the location and attendees of any meeting he is attending to be kept confidential, he should arrange them for when he is off duty. In the meantime, for any meeting that I agree to facilitate when he is on duty, he will be expected to supply the location, time and those in attendance in advance and in good time for cover to be arranged. It goes without saying that the discussion itself will be privileged and not something he will be expected to reveal."

158. In response to Ms Povey's comments, about it being common practice to facilitate meetings, Ms Callanan said:

"Whilst this is common practice, it is not an entitlement and any facilitation must not be at the detriment of operational requirements, with each request being assessed on its individual merits and its potential impact the ability to maintain operational service delivery. As it stands we are not able to facilitate the meeting due to the fact that …. we have already changed his duties for that date to facilitate child care needs which has taken us to minimum strength for that shift. If we were to facilitate [the Claimant] meeting at the time and date arranged we would be compromising operational delivery.

My expectation going forward of [the Claimant] is that if he wishes to change his duties, or to attend a meeting outside of his normal place of work, that he seeks permission of his supervisors prior to confirming any arrangements. Permission will not be granted if PC Akajioyi fails to provide location, expected duration and other attendees of the meeting. It will also be declined if the meeting impacts upon our ability to maintain operational service delivery."

159. He concluded his email saying:

"*Supervising Officers have a right to manage their staff and as long as they are doing so fairly and proportionately, they will receive my full support. My expectation is that [the Claimant] abides by the MPS rank structure and complies with instructions and requests from Supervising Officers as per his terms of employment. It is not acceptable, nor will it be tolerated, for him to refer all communications from his supervisors via a solicitor. Failure to comply going forward will result in further disciplinary action.*

This is my final word on the matter and I will not be entering into any further correspondence with you regarding what is an internal staff matter." (846)

160. Separately, PS Cook emailed the Claimant at around the same time (16:24) (copying in PS Perry, Inspector Moxham and Mr Callanan) to say that he could not facilitate the meeting because of the earlier shift swap for childcare reasons. He gave the Claimant the choice of either switching to the late shift and attending the meeting in his own time or rearranging it. In the latter case he reiterated that he would need to request approval in advance, provide exact details of the location (room/address), who the meeting was with and

the date and times. He added that the Claimant would be expected to return to the POD on completion of the meeting to book off (869).

161. Rather than accepting this decision, the Claimant replied to PS Cook the following day, 29 August 2019 at 12:07. In addition to copying in the people who were on the original circulation list, he added C/I Lamnea, D/I Harris (in her capacity as his welfare officer) C/I Shaun White, Ch/Supt Adelekan, Ms Mills, Ms Povey and PS Grey. He explained his reasons for copying in C/I Lamnea and Ch/Supt Adelekan was because they were being said to have knowledge of the local restrictions to which he was said to be subject.

162. In his lengthy email the Claimant clarified the position regarding the childcare shift swap (as set out above) and said that he did not accept that there was insufficient cover on the POD on 30 August 2019 so as to prevent him from attending the meeting. He said he believed that even if he was not present for part of his shift, the POD would be above minimum strength. This is borne out by the email correspondence between PS Perry and PS Cook (873). It is clear from the email that the Claimant arranged the meeting in work time once the shift swap had been approved, believing that there was ample cover on the POD on the morning of 30 August 2019.

163. He said that he believed that PS Cook and Mr Callanan were denying him the opportunity to meet with his Federation Representative and solicitor in work time despite this being an entitlement. He stated he considered this to be "unfair, cruel and unusual". He expanded on this saying that he believed that the basis of the denial was incorrect as he was not subject to three restrictions, but only to one restriction. He ended his email by noting that PS Cook had wrongly accused him of breaching his restrictions and had told him he had reported this to PS Grey.

164. Mr Callanan responded to the email at 14:16, essentially closing down any further discussion. He said:

"I am putting an end to the back and forth email chains as they are not helpful to anybody concerned in this matter.

Just to reiterate, my expectation going forward is that you comply with the directions of your supervisors. If there is an issue that cannot be resolved by first line supervisors, then you should escalate via your Inspector in the normal way. This is no different to the processes that apply to every other officer in the command." (866)

165. The Claimant did not attend the meeting with Ms Povey and Ms Mills on 30 August 2019. The meeting was rearranged. PS Grey also rearranged the investigation interview. The Claimant emailed PS Perry on 2 September 2019 about the new meeting which had been rearranged for 9 September 2019. He did not expressly request permission to attend the meeting or provide a location. PS Perry saw no need to escalate this matter and simply updated CARMS accordingly (882).

166. In the meantime, separately the DPS was reviewing the new MM1 prepared by PS Cook. In an email exchange between PS Dutton and PS Grey, PS Lesley Dutton notes that the Claimant was subject to only one restriction and he had not breached that restriction. PS Grey replied to PS Dutton saying; "*That is correct. They were informed of this fact. I have a case conference with them next week. I'll speak to them and update you…"* (857). PS Grey met with A/Insp Luciano on 4 September 2019 and reported back to his colleague PS Dutton that he had explained that the Claimant could not be reported for a breach of the non NPCC restrictions as the NPCC Commander's restrictions superseded any local restrictions (900). PS Grey later emailed A/Insp Luciano to confirm the discussion they had had at the meeting. We consider that it is clear from the contents of that email that A/Insp Luciano and PS Grey had discussed whether the Claimant could be made subject to the additional two 'local' restrictions (896). Although there was a mechanism for this, via the OCU commander issuing a direction, this was never formally followed up.

167. Neither of PS Cook nor Mr Callanan apologised to the Claimant for incorrectly accusing him of breaching his restriction, nor did they admit that they had made a mistake about his restrictions.

Charlie Harrison – Restrictions

168. PC Charlie Harrison was a white officer who was put on restrictions whilst under investigation for assaulting a member of the public. He was later (April 2021) convicted of the charge and received a prison sentence. This was before the date of the hearing, but after the Claimant's investigation had been concluded. The member of the public was black. The victim's race was taken into account when PC Harrison was sentenced, but not in relation to the charge.

169. PC Harrison's restrictions, described by Mr Callanan as the most restrictive he has ever seen, included being unable to access most of MPS systems with the exception of email and the intranet, and not being allowed to leave a police building at any time without the permission of his line managers.

170. PC Harrison was able to see his Federation Representative and solicitor, without issue during work hours, however. We were told that he always sought permission in good time in advance of such meetings.

171. PS Perry was appointed as his welfare officer and attended his court hearing in this capacity.

OH Referral September 2019

172. The Claimant requested a further OH referral at the end of August 2019 and this was done by PS Perry on 3 September 2019 (884). The OH report that resulted is dated 17 September 2019 (930 – 932).

173. The OH clinician recommended that the Claimant continue working on recuperative hours. In addition, she said that the Claimant would benefit from completing his late shifts by 10 pm to assist him with sleeping. The Claimant had told her that the ongoing investigations were causing him significant stress and he had reported "*low mood and poor sleeping patterns as a result*." (931). She also noted that she did not consider the Claimant to be disabled for the purposes of the Equality Act 2010 because "*no regular treatment is required and there is no significant impact on [his] ability to carry out normal daily activities*." (931).

174. On receipt of the report PS Perry considered whether the additional adjustment, to finish late shifts at 10 pm rather than midnight (in addition to being on recuperative hours) could be accommodated on the POD. His view was that it could not, because it would leave just one person working on the POD between 10 pm and midnight at a particularly busy time. He informed the Claimant of this. He also told the Claimant that while that was his personal view, he would speak to the SLT team about it. He did this via an email to Mr Callanan on 21 September 2022 (933).

175. Mr Callanan replied agreeing with PS Perry's assessment. He advised PS Perry that *"if what you have put in place for him is something that is going to cause him undue hardship, we can look at alternative roles*". The alternative roles available at that time were an admin role based at Southall or a move to Met CC in Lambeth. In both roles, the Claimant would be able to work the hours recommended by OH (933). The Claimant declined the option to take up either role (935).

176. The Claimant alleges that PS Perry told him that he was not happy that the Claimant was on recuperative hours and informed him, at around this time, that his role would be made part time if he continued to need to work part time. PS Perry denies the former, but acknowledged in his evidence to the tribunal that he did speak to the Claimant about the longer term consequences for him if he remained on recuperative hours, but could not recall when this was.

177. We note that the Respondent's policy says:

"Week 24 Review – If the individual Recuperative Duties has not resumed full duties by the end of 24 weeks you will need to consider whether a permanent workplace adjustment is appropriate and should be considered for the individual. It is important that you consider OH advice to make your decision. For example, this may result in a change to working hours or a change in deployment to a post that is more appropriate to their needs. You should consider ill health retirement or progressing action using UPP with the individual at this stage. It can be considered at any point but it must be considered by the 24 week stage."

178. We do not find that PS Perry told the Claimant that the Respondent was unhappy with him being on recuperative hours. We consider had PS Perry said something of this nature, the Claimant would have challenged it. There

are no emails from the Claimant complaining that he was told this. In addition, PS Perry was careful to document his conversations with the Claimant and so if the Claimant had raised this verbally, we consider there would be a written record of him having done so.

October/November 2019

179. On 19 October 2019, the Claimant emailed PS Perry to ask him if he could be released from some shifts and swap some others to attend a VBOS course on 6-9 November 2019. The purpose of the VBOS course was to receive training in taking 999 and 101 calls (949). The Claimant wanted to undertake this course so that he would be able to do overtime in Met CC.

180. PS Perry replied on 21 October 2019 to say he could not support the Claimant's enrolment on the course for two reasons. First this was the course was due to be held over the Brexit period. There had been a ban on annual leave in the VCTF during that period due to additional demands being placed on the POD. PS Perry said he did not feel it would be right for him to allow the Claimant to undertake a training course away from their normal duties with such a ban in place, especially when it was unrelated to the VCTF role. The second reason was because the Claimant was on recuperative hours and the course required full days. It is not clear to us why PS Perry believed the course involved working hours that the Claimant could not complete while on recuperative duties as the course ran for four days from 07:30 to 14:30.

181. PS Perry added that he wished to support the Claimant in his plans to develop himself. He advised the Claimant that some training for POD staff on using the comms channel was coming up in the near future. He also suggested that the Claimant should let him or his new line manager know (he was due to leave at the end of January) if a further opportunity came up to do the VBOS course so this could be reconsidered (949).

182. The Claimant requested that he be allowed to attend the next iteration of the course. This took place between 9 – 12 December 2019. PS Perry approved the Claimant's attendance and the Claimant duly attended.

183. We were not provided with any evidence that the decisions made by PS Perry both to refuse approval for the first course and to grant it for the second were made by anyone other than him in isolation.

184. Prior to the second VBOS course, the Claimant was assessed again by OH. The assessment was on 9 November 2019. The OH adviser noted the following:

"PC Akajioyi reports that the protracted investigation is causing him stress, he reports symptoms of poor sleep pattern, fatigue, tiredness and a fear of the unknown as he is worried about his job…PC Ashley Akajioyi's impairment is unlikely to be considered a disability because it has not lasted longer than 12 months nor is it likely to." (3157)

Lateness Incident - January 2020

185. The Claimant moved house in December 2019. He worked on Saturday 11 January 2020 and was due to work the early shift on Sunday 12 January 2020 starting at 7:00 am. At 05:20 on the Saturday evening, after he had finished his shift, the Claimant messaged PS Perry to tell him that his first train to Liverpool Street was at 06:57 the following morning and he would work on the train on his way in to work (1039). The Claimant sent the text after he had left work. Although both he and PS Perry had been on shift together that day, the Claimant had not spoken to him about this problem.

186. We have determined what occurred next based on the text messages disclosed by the Claimant (1039 – 1044) and the log of events kept by PS Perry (1048-1049). PS Perry replied saying that as the Claimant was the only person due to be in at 7:00 am he could not agree to the Claimant being late. In response to getting this answer, the Claimant contacted DI Brownlee, the Silver Commander for that weekend and effectively made the same request of him. He then informed PS Perry that DI Brownlee had given his consent. This led to PS Perry contacting DI Brownlee directly. When he explained the situation to him, DI Brownlee recognised this as an incident of 'arcing' where an officer goes over the head of their line manager to a superior officer to get what they want. He withdrew his consent (1075). The Claimant did not arrive at work until 08:46 on the Sunday (1046).

187. We note that during the course of his communications with the Claimant, PS Perry sought advice from Mr Callanan. Our finding, however, is that he made the decision not to agree to the Claimant coming in late alone.

188. The incident led to an MM1 being prepared by PS Perry which he sent by email to Mr Callanan on 15 January 2020 (1058 – 68). Mr Callanan replied on 17 January 2020 (1058) to say that he had received the MM1 and would review it over the weekend and get back to Mr Perry then. Mr Callanan told the tribunal that he decided, in his capacity as AA, that the MM1 did not meet the threshold for a recordable conduct matter and therefore should not proceed. Although the MM1 form has a section where this can be recorded, he did not record his decision.

189. Mr Callanan told us that he fed his decision back to PS Perry. We have seen no evidence of him doing this. On 28 January 2020, PS Perry sent Mr Callanan some additional documents to support the allegations made in the MM1 (1751). A/PS King told us that when PS Perry conducted a brief handover with him when he took over the line management of the Claimant, PS Perry led him to believe that the matter was live. On 24 August 2020, Insp Trice emailed PS Sue Scudder, who was by then assisting Mr Callanan, to ask the status of the MM1, demonstrating he was also aware of it and believed it to be live (1751).

190. We note, however, that no investigation was ever progressed and that the Claimant was not aware of the existence of the MM1 until it was disclosed to him as part of the tribunal proceedings.

January 2020 - Recruitment Process for Acting Sergeant

191. In January 2020, PS Perry was leaving the POD and PS Cook was to take on the role of Acting Inspector. This created two 3 month vacancies for the position of Acting Sergeants on the POD.

192. On 16 January 2020, at 7 pm PS Cook emailed all VCTF officers, including the Claimant, to explain that the opportunity had arisen and inviting expressions of interest, of 150 words max, that set out (1) experience & skills (2) whether the interested officer had passed their Sergeants exam or had plans to take it in March 2020 and (3) what they could bring to the POD.

193. Because PS Perry and PS Cook's positions changed that day, there was a need to appoint someone to the roles temporarily while the process was followed. Two of the Claimant's colleagues, PC Pam Clarke and PC Simon King were asked to temporarily act up while the expressions of interest process took place. This was between 16 and 25 January 2021. The LRPM Log records three entries for the 16 January 2020 confirming that the expression of interest exercise was to take place and that PC Clarke and PC King were being temporarily appointed to the role in the meantime (3823).

194. The Claimant submitted an expression of interest on 17 January 2020 (1055). Five other officers also did the same, including PC Clarke and PC King. PC Modi did not apply for the opportunity.

195. On 24 January 2020, now A/Insp Cook assessed the expressions of interest. He set out his thoughts in an email to Chief Inspector Jim Corbett saying that his recommendation would be to appoint PC Clarke and PC King. He gave reasons for his recommendation (1076). The LRPM Log of 25 January 2020 records that PC Clarke and PC King were moved to the position of A/PS with immediate effect on that date. The decision was requested by C/I Corbett, who followed A/Insp Cook's recommendation and was shown as approved by Mr Callanan (3817).

196. A/Insp Cook did not recommend the Claimant for the role of Acting Sergeant even though the Claimant was the most experienced member of POD staff at the time and had been involved in training PC Clarke and PC King in relation to the work conducted on the POD. A/ Insp Cook's email recorded that he took into account the following criteria when considering the expressions of interest:

- Whether or not the relevant constable had passed their Sergeant exam or was due to sit it that year
- Previous experience of being an Acting Sergeant
- Level of comms training

- His own subjective assessment of the competence of the relevant constable and their leadership qualities

197. PC Clarke was the only candidate that had passed her Sergeant exam and had previous experience of acting up in the Sergeant role on the POD and on Met Intel and was assessed by AC as the best candidate. PCs King and Mingard both had previous experience of acting up in the Sergeant role and full comms training. A/Insp Cook preferred PC King over PC Mingard, however, because he had "*demonstrated a great work ethic to line management since joining the pod in July 19 and shown leadership potential in suggesting ideas and delivering progress with his team*". PC Davison was in a similar position to PCs King and Mingard, but did not have full comms training, and so was assessed as the next best qualified candidate. The Claimant came next in A/Insp Cook's order of preference. He was accurately recorded as having no previous Acting Sergeant experience and limited comms experience and training. A/Ins Cook also took into account the lateness incident on 11 January 2020, describing it as a "*recent instance of not following lawful orders of line manager resulting in further MM1 only last week*." (1076)

Change of Line Manager

198. Having been promoted to Acting Sergeant, PC King became the Claimant's line manager. A/PS King's line manager was A/Insp Cook meaning he became the Claimant's second line manager.

199. At the time A/PS King took over this role he was aware the Claimant was under investigation. This was because the Claimant had told him this information himself within a short time of A/PS King joining the POD team in July 2019. He was also aware that the Claimant was working recuperative hours, largely because the Claimant's hours on CARMS were less than those of the rest of the team.

200. PS Perry conducted a brief handover with A/PS King to go through issues he needed to be aware of involving his reports. He told him about the recent MM1 and left him with the impression that it was a live ongoing matter.

201. A/PS King did not see the need conduct an introductory meeting with the Claimant because they had been working alongside each other and had got on well since July 2019.

Update re Investigation

202. On 20 January 2020, the Claimant emailed PS Grey to obtain an update into the investigation as he had not heard anything since November 2019. The Claimant was informed that the criminal fraud element had been dropped (1073). The Claimant was surprised not to have been informed of this by anyone in the local PSU or Mr Callanan. We were provided with no evidence that they were informed, however.

February 2020 - Completion of VBOS course and Coming off Recuperative Duties

203. Having undertaken the VBOS training course in December 2019, the Claimant had to complete a short period of coaching in order to became eligible to work as a call handler in the Met CC.

204. On 3 February 2020, Amber Gerrans from the Met CC emailed A/PS King, to tell him that the Claimant had passed the MCC coaching programme and was ready to start booking overtime at Met CC. She asked A/PS King to confirm that he was happy for the Claimant to do this, in which case she would get the Claimant set up on the Met CC system for this purpose (1081-1082).

205. On receipt of the email, A/PS King emailed A/Insp Cook, to check his understanding that because the Claimant was on recuperative hours, he could not do overtime. A/Insp Cook replied to confirm this was correct. A/PS King therefore replied to Ms Gerrans to say that because the Claimant was on recuperative hours, he could not do overtime. He confirmed he would email her if/when this changed (1083). PC King did not check the position with the Claimant before sending this email.

206. In his evidence to the tribunal hearing, the Claimant told us that on 31 January 2020 he had informed A/PS Clarke that he was planning to come off recuperative duties from 7 February 2020 and that therefore A/PS King should have been aware of this. We were not provided with any corroborating evidence confirming that the conversation between the Claimant and A/PS Clarke took place, but assuming it did, we are satisfied that A/PS Clarke did not share this information with A/PS King.

207. The Claimant emailed A/PS King on 4 February 2020 asking why he had refused to give him permission to do overtime at Met CC. A/PS King replied on the same day to explain it was because of the Claimant's recuperative hours (1091). He followed this email up with a face to face meeting with the Claimant the following morning on 5 February 2020.

208. There is a factual dispute between the parties as to the precisely what was said during this conversation. It is not in dispute that the Claimant informed A/PS King that he intended to come off recuperative duties from 7 February 2020 and would therefore be able to do overtime at Met CC. It is also not in dispute that A/PS King apologised to the Claimant and said that he was not aware of that and that he would "sort it". The dispute is in relation to what the Claimant and A/PS King expected to happen next.

209. The Claimant expected A/PS King to immediately email Ms Gerrans to confirm that the Claimant was authorised to do overtime at Met CC. A/PS King's evidence was that he did not say he would do this, and instead, left the face-to-face meeting, intending to find out what he would need to do next. He believed, correctly, that the Claimant would not be able to book

overtime at Met CC prior to 7 February 2020 and so he did not need to do anything urgently before that date.

210. On 6 February 2020, A/PS King attended a training course and so worked an early shift from 7 am to 3pm. The Claimant messaged him at around 10:30 am to ask him whether he had emailed Ms Gerrans. A/PS King replied about two hours later to ask the Claimant whether when he went on to recuperative hours, he had done it through Occupational Health and if so, whether he had spoken to them about returning to full hours. The Claimant replied to confirm that Occupational Health had recommended the recuperative hours, but had told him that he could return to full hours whenever he felt better without needing a further referral. A/PS King replied to say he would "sort it" that afternoon (1094 – 1095).

211. In fact, A/PS King did not email Ms Gerrans that day. Instead, not convinced by the Claimant's assurance he spoke to HR who advised him, incorrectly as it turned out, that a further OH referral was required.

212. At 14:32 that day PS Perry emailed the Claimant, copying in A/Insp Cook and A/PS King, attaching a copy of an OH referral to review the Claimant's working hours and conditions (1096). The referral included the following explanation:

"PC Akajioyi is being investigate by the DPS for gross misconduct. This matter has been ongoing in excess of six months although he is likely to find out the result of the investigation in a matter of weeks.

He has been referred to OH on previous occasions as he states that he is suffering from stress and as a result of these referrals, he has been working only 75% hours for in six months. The SOP states that recuperative hours should not extend beyond six months and now we`ve reached that stage, I am looking for alternative options.

AJ currently works on a rolling four shift pattern where he works 10 hour days, currently 7.5 hours under recuperative hours. He works two shift patterns early turns [0700-1700]and late turns [1400-0000]. Due to operational requirements, AJ needs to be in work at 0700 on his early shift and is required to end his shift at midnight on his late shifts. He has been informed that he may need to consider part time working if he wishes to consider maintaining a reduction in hours.

Towards the end of last year, AJ has been permitted to complete a course over and above his normal duties which will allow him to complete overtime for another department. The training resulted in him working additional days on top of his normal shifts which he was happy to do." (1098)

213. The Claimant replied to PS Perry's email at 14:40 (copying in the same email circulation list) to say that he did not need the referral because he was returning to full duties the next day (1103).

214. At 15:46, the Claimant messaged A/PS King again to ask to let him know when he had sent the email to Ms Gerrans. A/PS King did not reply. The Claimant then messaged him "??" at 16:30. When he did not reply, the Claimant tried to ring him. When A/PS King did not return his call at 16:38, he rang him five times within a minute (1102). The reason A/PS King did not return the Claimant's messages and calls was because his shift had finished at 3.00 pm and he had gone home to be with his wife who was unwell. He did not therefore look at his phone until he was back at work the following morning, 7 February 2020.

215. On that following morning, A/ PS King emailed the Claimant at 7:07 am. This was part of the same email chain which attached the OH Referral. A/PS King said:

"I will try and speak to you in person at some point during the day to clarify any questions that you may have, but essentially, after speaking with Occupation Health yesterday, you can't just take yourself off recoup duties without it first being reviewed and approved by OH. If you see towards the end of PS Perry's OH referral that is attached to this email you will see that the question has been asked of OH regarding your return to full hours and working overtime (Page 3-Question 2) and we are now just awaiting their response. However, until this response is received you will remain on your recoup duties. I understand you are keen to get back to full hours and be able to work overtime but there is a process that must be followed, this is for your own welfare.

On a side note, I don't expect someone to call me 6 times whilst I'm not on duty and I especially don't expect 5 of those calls to be within a 60 second period! I don't expect this to happen again please." (1103)

216. At 07:49, A/PS King emailed Ms Gerrans to tell her that the Claimant's recuperative duties were expected to end imminently and therefore she should progress getting him set up on the Met CC booking system (1108).

217. The Claimant replied to A/PS King's email to him at 07:50, copying in PS Perry, A/I Cook, Ms Gerrans, Ms Mills, C/Insp Lamnea, DI Harris, Insp Moxham and Mr Callanan, saying:

"Good Morning A/PS King,

Thank you for your email. I just want to make a few things clear here.

1.) The deciding factor of coming off recoup is down to me, there is no instance nor is it written down as a stipulation that I would consult OH before returning to full duties (If there is please show me, and could I request a copy of my previous feedback referral that PS Perry received). PS Perry has taken it upon himself to refer me, after a conversation last month I stated I want to come off recoup fairly soon as I felt my investigation should be drawing to a close to which he stated he was going to seek advice if I

remained on recoup. So the referral shouldn't even come up in this email and Page 3 question 2 is a non factor.

2.) After a what's app conversation yesterday when you asked me if I had to go back to OH before resuming full duties I replied as per above. You stated "Ok I'll sort the email this afternoon". This is the second conversation we have had about you sending the email to the relevant person at CC so I can have my VBOS access and be marked as passing the coaching fully.

Covering your side note if I have worked hard for something I would need my just reward, likewise if you say you will be rectifying your action which directly affects me and my family (sending an email to Met CC saying I am not eligible to have full access without consulting me to see what my intensions are with regards to recoup/full duties) and you choose not to without any explanations please understand that I will be calling.

I do not want to keep going back and forth on this matter nor do I want to engage in email combat if there is any evidence contrary to what I have spoken about above i.e. a stipulation stating I have to contact OH before going back to full duties from the feedback of my previous referral, then please send to me but I would imagine you have already looked into it and there is nothing to that effect , so please send the email as requested as I have stated I am off recoup now as far as I am concerned, any issues please don't hesitate to come and see me or call."

218. On receipt of the email, A/PS King spoke to A/Insp Cook to clarify the position with him regard to whether or not an OH referral was required in order for the Claimant to come off recuperative duties. A/PS King advised him that it was not. Immediately following this conversation, A/PS King emailed the Claimant at 08:07 saying:

"*With regards to your recoup hours, unfortunately as I am new to this role I could only go by what I was told. However, having spoken with A/INSP COOK this morning it appears the advice that I was given was wrong and you are indeed entitled to return to full duties when you wish, which as you have stated will be today."* (1112).

219. No action was taken against the Claimant in relation to the tone of this email. All that happened was that A/PS King emailed Ms Gerrans to tell her that the Claimant had, that day, returned to full duties. This was at 08:10 (1115).

220. From that day, 7 February 2020, the Claimant was able to access the Met CC system and book himself in using it for overtime shifts. Based on the evidence of Annmarie O'Meara, who worked in the Met CC, even if he had had access to the system before this date, the Claimant would not have been able to book any overtime shifts while he was still on recuperative duties.

April 2020 Transfer from the POD to Tasking and Operations

221. On 23 April 2020, the Claimant was contacted by A/PS King and informed he was being moved to the VCTF Tasking and Operations team, due to staff shortages in that team, from the following day and that he would report to PS Nelson. A/PS Perry emailed PS Nelson about this the same day. In his email, he noted that the Claimant took the news well and seemed quite pleased (1132). PS Nelson told the tribunal hearing that he was informed of the change by Mr Callanan and that as far as he was aware it was a permanent change.

222. At that time, in addition to his Tasking and Operations role, PS Nelson was leading a front line team of nine officers at Tooting Police Station. Although the main office for Tasking and Operations was at Lambeth HQ, he had already arranged for the other constable assigned to Tasking and Operations, PC Jamie Adams, to be based at Tooting Police Station. He therefore asked the Claimant to do the same. PC Nelson considered that this would enable the Claimant to work alongside the other constable and maximise his opportunity to have contact with him. The Claimant did not raise any concerns with PS Nelson about being required to work from Tooting Police Station.

223. One of the first matters that PS Nelson dealt with as the Claimant's line manager was a request from the Claimant to change his flexible working pattern. The Claimant wanted to change from having every Thursday off to having every Friday off. On 1 May 2020, the Claimant sent PS Nelson an email explaining why he needed the change and attaching a proposed rota to start on 1 June 2020 and last for 12 months. The Claimant's proposed shifts were generally 7 am to 5 pm Monday to Thursday (1153)

224. PS Nelson forwarded the request to the LRPM email in-box on 6 May 2020 with a message confirming the shift pattern has his approval (1152). This was to be discussed at the LRPM meeting on 20 May 2020. By this time, PS Sue Scudder had joined the VCTF and was assisting the SLT with various administrative tasks. She later moved into a role in the VCTF PSU in June 2020.

225. The flexible pattern was duly discussed at the LRPM meeting (4281). However, it required second line manager approval before LRPM could approve it. As Inspector Paul Trice was Dan Nelson's Inspector at that time, PS Scudder emailed him to ask him to review it on 21 May 2020.

226. The Claimant asked PS Nelson if he was aware of the outcome from the LRPM meeting the following day. He was not and advised the Claimant to contact Mr Callanan directly. He did this by email (1155). Mr Callanan did not reply to the email. He told us that the reason was because he did not reply to emails about LRPM matters, but instead expected the SLT members present to ensure that the relevant officers were spoken to about any decisions. We note that this was a change in Mr Callanan's previous practice

because he had previously been happy to offer to speak to the Claimant directly about a decision of the LRPM.

227. On 27 May 2020, Inspector Trice reviewed the proposed working pattern and emailed Mr Callanan and PS Scudder to say that he could not approve it because:

"The command's demands are Thursday, Friday, Saturday and Sunday. I have concerns around supervision, line manager works 8-4 also that an prescient (sic) that the officer is not working any weekends in an annual rosters – we are potentially looking at increasing the coverages on the weekends.

I fully appreciate the officers home life situations, but an amended pattern will need to be considered." (4271)

228. Despite this, no-one spoke to the Claimant about the working pattern. PS Nelson was not told that the pattern was not approved and he allowed the Claimant to work it. Although the outcome was that the Claimant's CARMS was not correct, the Claimant did not raise this with anyone until August 2020. When the matter was picked up again, as a result of other discussions in August 2020, the flexible working pattern was formally uploaded onto CARMS (1698).

May 2020 - Second Misconduct Investigation – Met CC Incident

229. On 23 May 2020, the Claimant was undertaking overtime at the Met CC. taking 999 calls. He took a call from a young woman who said she had been chased by two young men, one of whom appeared to be armed Although the caller was hiding behind some bins, the Claimant did not escalate the call so that police were not sent to assist. Approximately ten minutes later, another call was received about the same male suspect. He had attacked the woman's father by hitting him with a hammer on his head.

230. The call was picked up by the First Contact Duty officer, Annmarie O'Meara. She prepared a critical incident report and forwarded this to the relevant PSU department within Met CC for investigation. She also spoke to the Claimant to explain what she had done. She told him that he would need to await the outcome of the investigation before being allowed to take 999 calls. In her critical incident report, she noted that:

"*The PC concerned finished duty at 1745 so posed no further risk to the organisation today. He is due in on OT at Bow tomorrow 1500-1900. He will be switched to 101's only and be directed to sit as close to a supervisor as possible." (1161).*

231. The email was picked up by Amanda Wixon, Met CC Professional Standards Manager. On 24 May 2020, she emailed Ms O'Meara saying that the Claimant should be removed from the First Contact environment, so that a full review of his previous calls could be completed via a dip sample

process. This was to allow for a decision to be made regarding if any further training and/or coaching would be required. Ms Wixon directed Ms O'Meara to remove the Claimant from the operational floor. She advised that the would be paid for his shift but he would be prevented from booking any further overtime at Met CC in the meantime. This was due to the fact that the call he took fell below the expected standards.

232. Individuals who work in the Met CC as their main role are not immediately removed from the operational floor in the same circumstances pending the outcome of any investigation. This is because working in the Met CC is their only job and to remove them completely would result in them effectively being suspended. For officers that have a base OCU that is not the Met CC, however, it is standard practice to temporarily prevent them from working at the Met CC while investigations are ongoing. The bundle included evidence that confirmed that several officers based in other OCUs had received bans on doing overtime at Met CC (4260).

233. Ms O'Meara followed Ms Wixon's instructions and spoke to the Claimant to tell him he was being suspended from booking any further overtime at the Met CC pending the investigation. She emailed Ms Wixon to confirm this and recorded the details of their conversation in her email (1189). Although the Claimant claims she told him that the investigation would take around two weeks to be completed and that she thought it was just a training matter, this is not reflected in her email and we find she did not say these things.

234. The fact that the Claimant had been doing overtime at Met CC came to Mr Callanan's attention. We know this because on 27 May 2020 he emailed Pete Moxham and Dan Nelson to say that it had come to his attention and asked them if they had authorised it. He reminded them in his email that any overtime outside the VCTF needed to be authorised by a Supt or himself (1205). We find that Mr Callanan must have learned about the Claimant's misconduct allegation at Met CC through contact with Ms Wixon, but that he was not involved, at this stage in influencing how she dealt with it. Our decision is reinforced by what he said in his later email dated 7 August 2020 when he was progressing the matter, discussed further below. It is notable that Mr Callanan took no further action in connection with the Claimant doing overtime outside the VCTF despite him appearing not to have obtained the requisite authority for the overtime.

235. The dip sampling review considered 11 of the Claimant's calls. Of these only two were found to be fully compliant with the Respondent's standard operating procedures. On 8 June 2020, Ms Wixon prepared an MM1 relating to the incident which she sent it to the Respondent's central DPS for review on 9 June 2020 (1381). She assessed the Claimant's conduct as a recordable conduct matter which should be referred to the DPS. She described in in the form as follows:

"From having listened to the call, this call has not been dealt with in line with Met CC SOP's. [The Claimant] comes across as disinterested, and did not take any details in relation to the suspect location at the time of the call. The

call was not passed to CAD, and it was not established whether there was any possible further risk to the victim (as the suspect lived upstairs this should have been considered) The remarks on the [system] do not fully reflect what was said on the call.

[The Claimant] has recently completed VBOS Training, and no issues were flagged during his training. A dip sample of his calls taken shows that his calls have consistently been below the standards expected from staff/officers that work at Met CC (whether permanent or completing voluntary overtime)

There may be public interest in this case, due to there being Serious Injury following a recent call to Police." (1386)

236. The DPS replied the same day (9 June 2020) forwarding the MM1 to the VCTF PSU mail box and copying in Ms Wixon (1419). The DPS required the VCTF AA to complete the relevant section of the MM1 form rather than Ms Wixon because the Claimant was a VCTF officer.

237. Jodie Masters, in the VCTF PSU picked up the email and forwarded it to Mr Callanan on 9 June 2020 (1667). He did not do anything with it.

238. In the meantime, Ms Wixon also picked up the email and forwarded it to a colleague in the Met CC PSU. That colleague had further correspondence with the central DPS which led to the DPS assessing the matter as requiring a local investigation to be conducted by the Met CC. The email confirming this decision appears to have been sent to both the Met CC PSU team email in-box and to the VCTF email in-box on 2 July 2020 (1743 – 1748).

June 2020

239. In the meantime, on 3 June 2020, PS Nelson emailed the Claimant and informed him that he would be working his shifts from Lambeth HQ on the second floor where he would be the "face of Ops" (1315). Although the initial request was for that week, the Claimant worked from Lambeth HQ from that date onwards. He sat in an area of Lambeth HQ where other officers working for the VCTF had desks. This included, for example, Insp Trice and PS Scudder from June onwards and later also included PS Kerr and PC Modi.

240. PS Nelson had been asked by Insp Trice to ensure that Tasking and Operations had a presence in Lambeth HQ. Insp Trice had left it to him to decide how this would be achieved. Although his initial decision for the Claimant to be based at Lambeth HQ was short term, the position effectively continued as the default position. He and PC Adams continued to work primarily from Tooting Police station, although they did also attend at Lambeth HQ from time to time. PS Nelson assumed this was a better location for the Claimant because it was closer to his home.

241. According to several of the Respondent's witnesses, SLT in the VCTF had requested everyone to work from the office or other bases during the COVID

pandemic and there was no direction given that anyone could work from home at that time. The position changed in September 2020 and remote working was introduced.

242. The Respondent's witness accepted that there may have been occasions when others were not in the office, but believed this was due to a combination of annual leave, shift patterns, occasional home working and many of them having additional responsibilities elsewhere. The Claimant did not produce any contemporaneous documentary evidence that demonstrated he was left to work on his own on a regular basis.

243. The Claimant did not, at any point, raise any concerns about having to travel to Lambeth HQ due to his race and concerns about any particular vulnerability to COVID-19 or the fact that his father had a medical condition that made him vulnerable.

244. He did however make two specific requests to work from home on particular occasions in June 2020.

245. On Tuesday 16 June 2020, the Claimant messaged PS Nelson to request that he be permitted to work from home due to a childcare issue on Thursday 18 June 2020. His wife and eldest child needed to visit their GP and he was required to look after his youngest child. This request was denied so the Claimant had to use an annual leave day (1425). PS Nelson told us that the reason for this was because annual leave would be the expected recourse for any officer in the same situation as it was not considered possible to work and look after children at the same time. PS Nelson was happy to grant the Claimant annual leave at very short notice on this occasion to facilitate his childcare requirements.

246. On Sunday 28 June 2020, the Claimant made another request to work from home or take annual leave due to a family emergency. PS Nelson replied to say he could not agree to working from home, but could give the Claimant last minute annual leave. PS Nelson's reason for refusing the Claimant's request to work for home was the same as for 16 June 2020 request.

247. PS Nelson did not speak to anyone about these decisions before he responding to the Claimant's email. His responses were sent very quickly. He was also not briefed by anyone to be deliberately obstructive to any requests made by the Claimant to work from home.

Misconduct Investigations Updates

Initial Misconduct Investigation

248. On 22 June 2020, the Claimant chased PS Grey about the overtime misconduct investigation. PS Grey confirmed to the Claimant that he had found the Claimant had 'no case to answer' and therefore no further action would be taken in relation to the allegation.

249. An email had been sent, on PS Grey's instruction to the VCTF PSU email in-box on 3 June 2020 attaching a letter to be sent to the Claimant to confirm this (1332). None of the members the VCTF PSU team had picked the email up and actioned it.

250. Although Mr Callanan had access to the VCTF PSU email in-box he told us that he did not access it routinely and instead relied on members of the PSU team to forwarded relevant emails to him. He was therefore unaware of the email until much later.

251. The Claimant told us that at around this time he spoke to DCI Shaun White (a senior black officer) and asked him to speak to Mr Callanan on his behalf, because the impact of being not being formally informed of the outcome of the investigation was that he was still subject to restrictions. He was also concerned about the Met CC investigation.

252. There is an entry in the Claimant's diary for 1 July 2020 which records him speaking to DCI White (1524). In the Claimant's diary for 2 July 2020, he records catching up with DCI White. His entry says:

"Mr White told me he had a word with Paul Callanan who stated he was aware of the fact that my matter was deemed 'no case' and eh also stated he was aware of my other restrictions still being upheld and to the fact that I have another matter with Met CC form one call and he wanted to check all my calls.

Mr White stated when he put the questions surrounding my current matters he simply said, "I know". (1526)

253. Mr Callanan told us that he could not recall the conversation with DCI White, but it was possible that it took place. He said he would not have shared any information about the Claimant with DCI White.

254. Our finding is that Mr Callanan was not aware that the investigation had been concluded until later in August 2020 when, at a meeting on 19 August 2020, the Claimant raised it during a meeting with him about another matter. We deal with the meeting in some detail below.

255. We note that despite becoming aware of the investigation outcome and that it had not been formally communicated to the Claimant by the VCTF PSU team members, Mr Callanan did not ensure that this happened. That remained the position up to and including the hearing. This also meant that the Claimant was never formally released from his restrictions.

Met CC Investigation Update

256. The Claimant also chased for an update on the Met CC investigation on 22 June 2020. He emailed Ms O' Meara who informed him the matter had been sent to the DPS for review and the Claimant would be informed when the review was completed (1478). He emailed her back the following morning

to apologise for bothering her, but wondered if she could confirm the relevant contact in the DP. She replied on 29 June 2020 copying in the Met CC Mailbox and asking that someone in the Met CC PSU assist the Claimant. She explained that she had "no further part to play in this matter." (1476)

257. A member of the Met CC PSU staff, Nancy O'Neill emailed the Claimant to ask him for details of the matter. She assumed there must have been a complaint from a member of the public which had triggered the investigation (1476). The Claimant went back to Ms O'Meara by email as he still did not have a contact to follow up with (1487). She replied to reiterate that she was no longer involved in any of the decision making, but in order to assist him explained that she would re-forward the paper to the Met CC PSU so that they could track the matter down for him the Claimant (1505). She did this straight away. Ms O'Neill emailed Ms O'Meara back a little later saying she would speak to Inspector Doug Young, the PSU Lead for the Met CC the following day (1509). She also emailed the Claimant to tell him to leave the matter with her rather than email Ms O'Meara as O'Meara was not the correct person to address his concerns (1513).

258. On 1 July 2021, Insp Young emailed PS Nelson to inform him that an incident had occurred involving the Claimant while he was undertaking overtime at the Met CC. He explained in his email that the DPS had directed that a local investigation should take place but that a formal investigator had not yet been appointed. However, he wanted to give PS Nelson a heads up out of courtesy to ensure that the Claimant's welfare was appropriately managed (1525). PS Nelson replied on 13 July 2020 later to confirm that the Claimant had spoken to him about the incident at the time (1596). PS Nelson took no further action and did not speak to the Claimant about the email from Insp Young.

259. On 6 July 2021, the Claimant emailed the Met CC PSU email in box addressing his email to Ms O'Neill to ask if she had been able to speak to the PSU Inspector about his case. Insp Young replied that afternoon to apologise for not having been in touch sooner. He explained that there had been some developments in recent days. Although Met CC were originally tasked to look into the matter, they were no longer managing the case. He told the Claimant that he should hear from the OIC in due course. The Claimant heard nothing further. The reason for the conclusion appeared to be that the same incident was recorded on the MPS Centurion system under multiple case references and so it was being considered several times by different people with slightly different approaches.

End of June / July 2020

260. Rather than follow up the two investigations further, the Claimant began to become convinced at this point that everyone was conspiring against him. He began to keep a handwritten diary of various incidents and, as explained in the section before, took steps to raise a grievance and issue an

employment tribunal claim. Various incidents occurred that he interpreted as deliberate.

261. At this time, as noted above, the Claimant was working in Tasking and Operations under the line manager of PS Nelson. The Claimant was based in Lambeth HQ, however, and PS Nelson was based at Tooting police station. PS Nelson was then moved into a different operational role and gradually ceased to have any Tasking and Operations responsibilities. He continued to be the Claimant's official line manager, however. This meant that the Claimant was not being directly supervised by anyone although PS Nelson continued to be supportive to him. For example, on 20 July the Claimant texted PS Nelson to ask him for his support regarding taking the sergeant's exams (1606). PS Nelson replied positively.

262. From July 2020 onwards PS Kerr and PC Modi were moved into Tasking and Operations. Prior to this they had been working as part of a front line operational team based in Harrow. PS Kerr retained some of his supervisory responsibilities for the team of officers he had been line managing in Harrow.

263. The move was initiated by CI Jack May Robinson who wanted to expand the Tasking and Operations function. PS Kerr told us that he was informed that the Tasking and Operations Team was made up of PS Nelson and PC Adams. He was told that the Claimant was not part of the team and believed that the Claimant was simply an additional resource available to the team. PS Kerr and PS Nelson split the roles, with PS Nelson dealing with the operations side of the work leaving him to focus on the tasking side. The misunderstanding about the Claimant's assignment to Tasking and Operations seemed to be shared by others, including Insp Trice who later took on more oversight of Tasking and Operations.

264. PS Kerr and PC Modi were at this time teaching themselves to write computer code so that they could create a VCTF Portal. The intention was that this would include an interactive Excel document containing details of the daily activities of VCTF units, VCTF specific automated forms (also created by himself and PC Modi) and would be used to capture real time information on violence across the MPS so that they could analyse season trend data and access gang territory information. This was a complex task and when they were both in the office together working on it, required them to have many discussions. Neither PS Kerr nor PC Modi sought assistance from the Claimant with this task. PS Kerr told the tribunal hearing that he did not think the Claimant would have had the skills to be able to assist.

265. The Claimant alleges that there was a deliberate effort to ostracise him at this time and that everyone was colluding in it. He cites various allegations of this.

266. On 20 July 2020, the Claimant could not locate his uniform where he had left it in the male locker room. He had not left it in a locker. He made a note of this in his diary (1603) and on 21 July 2020, the Claimant emailed Uniform Services to request a new unform (1607). Because the Claimant needed

authorisation from a member of SLT for new uniform, he emailed CI Jack May Robinson about this on 22 July 2020 (1614). CI Jack Robinson replied on the same day to confirm the request was approved (1615).

267. The Claimant later found his uniform on 27 July 2020. His diary entry for 27 July 2020 (1619) records a perception by him that everything has started to change. He mentions PS Kerr giving him something to so and being greeted by CI Jack May Robinson and Insp Trice. He attributes the change to his email to CI May Robinson, but the following day, 28 July 2020, he records that everything is back to how it was (1625).

268. Two allegations arose from when the Claimant was asked by Insp Trice on 21 July 2020 to print off labels for all the desks which had everyone's names on them, except his own. As well as excluding him through the lack of a name label, the Claimant believes that while he was absent undertaking this task a meeting took place and that he had been deliberately excluded from it. The Respondent's witnessed denied holding meetings in the Claimant's absence. They confirmed that team meetings for Tasking and Operations were not taking place at the time. We accepted this evidence as the team was very small and we would not expect it to meet regularly.

269. It was accepted that the Claimant was asked to print off labels for the desks which did not include his name. The reason given for this was because there was hot desking in place that depended on rank. The Respondent's witnesses told us that there only Inspectors and above had named desks but PCs had to hot desk. The only exception to this was PC Modi who needed to use a particular desk due to the computer on that desk having the particular software on it that he was developing with PS Kerr. We note that PC Adams, who was assigned to tasking and operations, was not allocated a desk with a name.

270. The Claimant also claims that he was only asked to undertake trivial and demeaning jobs such as moving furniture and files and fix computers and that his attempts to seek out work were ignored.

271. The Respondent's witnesses accepted that the Claimant was given some trivial jobs to do, such as filing and moving furniture but denied that he was the only person doing such trivial jobs. PS Kerr told us that when he and PC Modi arrived several cupboards needed to be cleared out and everyone was involved in doing this, himself included.

The Claimant's Grievance (July 2020)

272. The Claimant submitted a grievance on 7 July 2020.

273. MPS has a Central Grievance Management Team that is responsible for coordinating grievances across the entire organisation in accordance with its Grievance Procedure (3675 – 3684) and standard operating procedure (3662 – 3674). The Claimant therefore submitted his grievance to it. At that

time, the Grievance Management Team was made up of 12 members of staff.

274. That team of 12 was supplemented by a team of 600 other people from across the MPS who assisted with dealing with grievances alongside their main roles. In addition, each OCU points a single point of contact (SPOC) and a deputy SPOC who is responsible for liaison between the Grievance Management team and the relevant OCU. For the VCTF, the SPOC was Mr Callanan, with the deputy SPOC being Gareth Gilbert.

275. The Grievance Management Team uses a case management system to coordinate grievances. Only members of the grievance Management Team have access to the information contained in the system.

276. When a grievance is first received into the Grievance Management Team, it goes through a triage process to determine how best to deal with it. It is only after a grievance has been through this process, that the Grievance Management Team will inform the SPOC and any people being complained about of the existence of the grievance.

277. Because the Police Conduct Regulations apply to all police officers in the MPS, it has a slightly different approach to grievances than to other employers. Concerns can only be brought as grievances where the aim is to find a resolution and learn for the future. If the matters complained about amount to misconduct, the procedures in the Police Conduct Regulations must be followed instead.

278. The purpose of the triage process is twofold. The person triaging the grievance is aiming to find out as much detail as possible about the concerns being raised. In addition, the purpose is to assess if the concerns should be dealt with under the grievance procedure or a different procedure. Where the concerns should more properly be considered under Police Conduct Regulations, the Grievance Management Team's practice is to sign post the relevant person to the correct procedure and explain how to take the matter forward. The Grievance Management Team can, however, progress a conduct issue directly itself by preparing an MM1 form. The Grievance Team Manager is the AA for the Grievance Team.

279. The Claimant's initial grievance provided very little detail about his concerns and did not specify the names of the people he wanted to complain about. He used a grievance form which he submitted to the Grievance Team by email. In the 'Details of Grievance' section of the form, he said:

"Since working for the Violent Crime Task Force (VCTF), I have been subjected to bullying, and treated less favourably than my colleagues. This has occurred on many occasions by numerous line managers, and this is still ongoing. In short, a malicious allegation was made against me in an attempt to tarnish my good name and character. These unwarranted stress has affected me mentally, physically, psychologically, financially, and most importantly affected my young family. I was cleared of all findings; however,

I have not been advised of this from the OCU's PSU. I have been prevented from progressing within the organisation and have been blocked at each and every opportunity."

In the section asking him what he was seeking by way of an outcome, he said:

"*I would like all parties concerned to be held accountable for their unacceptable behaviour towards me, especially in this current climate*." (3698)

280. The member of the Grievance Team who picked up the form was Grace Macauley. She emailed the Claimant to acknowledge receipt of the grievance and confirm it had been given a case number. She asked the Claimant to provide her with the name of the subject(s) of his grievance, any documentation to substantiate it and state his desired outcome (1645). Although Ms Macauley did not give evidence at the hearing, her correspondence with the Claimant and the other actions she took were captured in the case management system. Her manager, Tom Burman gave evidence about the grievance process instead. It is relevant to note that Ms Macauley is black and at the time of the hearing was still employed by MPS, although in a different team.

281. Over the course of July 2020, Ms Macauley explained in a series of exchanges of emails with the Claimant that he needed to provide further information in order for the Grievance Management Team to be able to take the grievance forward. She sent him a copy of the grievance procedure to assist him.

282. The Claimant initially said that he was not willing to provide the names of the parties involved due to their network and connections, but when told that more information was needed, he described the matter as highly sensitive because the people involved were still managing him. He said, "*the matter itself relates to bullying, unfair treatment, prejudice, and discrimination which is still ongoing*" and listed the following as involved:

- Paul Callanan (HQ HR Lead & VCTF PSU Lead)
- Inspector Paul Trice
- Detective Sergeant Nick Doherty
- Police Constable Brad Pace
- Acting Inspector Adam Cook
- Police Sergeant Ryan Perry
- Acting Police Sergeant Simon King
- Annmarie O'Meara (Duty Officer – D Team Met CC Bow)
- A/Inspector Doug Young (Met CC Professional Standards Unit)

He added that once a grievance manager was appointed, he would provide them with full information. He reiterated that he wanted the people he was

complaining about to be held accountable and dealt with via the discipline process and also via misconduct.

283. Ms Macauley requested further information as to how the Claimant had been bullied, in response to which the Claimant listed up to four brief allegations against each of the names he had provided, but did not include dates or the level of detail that would enable the allegations to be investigated. He described the allegations as just a few incidents and acknowledged this was not all of the detail. He said, "Collectively, the named parties have been deliberately obstructive and institutionally racist towards me." He added that he had been "*ostracised*" and reiterated that the behaviour was ongoing.

284. On 31 July 2020, Ms Macauley, having spoken to a supervisor, emailed the Claimant to tell him that because his desired outcome was for the matter to be assessed as misconduct, his concerns did not fall within the remit of the Grievance Management Team. She informed him that the appropriate authority to review the concerns was the PSU and asked him if he raised it with them. The Claimant replied to say he had made it clear from the start of their correspondence that he could not raise the matter with his local PSU. He concluded his email saying, "*I will have to take the matter elsewhere*."

285. Ms Macauley replied on 4 August 2020. In her email she said:

"*I have read your email and note your withdrawal from the grievance process as the outcome you are seeking is [un]achievable within this process."* (1637)

She recorded that the case as closed on the case management system as of 4 August 2020 (3061)

286. On 5 August 2020, the Claimant emailed Ms Macauley to say that he had not withdrawn his grievance, but that it was her that said she could not assist him any further (1665).

287. When asked about Ms Macauley's actions, Mr Burman told us that because the Claimant was complaining about people in the VCTF PSU she ought to have to referred him back to that PSU. In anticipation of this issue, each PSU has a buddy PSU in a different OCU to address cases where there is a potential conflict of interest. For the VCTF, the buddy OCU was MO7 (2825).

288. Mr Burman also told us that he did not consider the allegations the Claimant had made in his correspondence with Ms Macauley were specific enough to expect her or anyone in the grievance Management team to be able to prepare an MM1 on his behalf and progress it to the DPU. He explained that at the time of the Claimant's grievance this was not a common occurrence but was something that the Grievance Management team had been working on subsequently, in part prompted by the working being undertaken by Baroness Casey.

289. On 15 July 2020 the Claimant had initiated the Acas early conciliation process. When doing so he had named the MPS Grievance Team as the appropriate contact. 15 July 2020 was one of the dates when Ms Macauley had emailed the Claimant asking for more information. She also proactively chased him for more information on 23 July 2020.

290. The Claimant invited us to find that her reason for contacting him was because of the early conciliation process. We do not make that finding. There is nothing in the case report that records that Ms Macauley was prompted to contact the Claimant because of any knowledge about the early conciliation process. Our finding is that having not had a response to her email dated 15 July 2020, she chased him a week later because the grievance was "on hold" and she wanted to establish if he wished to pursue it or not so she could update the system.

291. There is also no record in the case report that Ms Macauley informed Mr Callanan of the grievance. The case report generated from the case management system records his name as the relevant SPOC, but we accept that this was generated automatically and that he was not made aware of the grievance.

292. We were also satisfied that he would not have been made aware of the grievance via the high level anonymised Dashboard data generated by the case management system that would have been shared with Mr Callanan in his role as SPOC and HR lead for VCTF.

293. Acas contacted the Respondent's Employment Tribunal Client Unit which is contained in the DPS. A member of staff in that team informed A/Insp Cook, DS Doherty and [Jim Corbett], a senior officer in the VCTF by email on 4 August 2020 that he had had contact from Acas and that the Claimant had made a complaint of "racial discrimination" (4256 – 4259). DS Doherty confirmed in his evidence that he spoke to A/Insp Cook and Mr Callanan about this at the time. He also provided the Employment Tribunal Client Unit with some background information by email.

294. The Acas process was concluded on 10 August 2020. The Claimant presented his first claim to the employment tribunal on 12 August 2020. He did so as an unrepresented litigant in person. There was a delay in the tribunal processing the claim and it was not served on the Respondent until nearly a year later on 29 June 2021.

295. We find that by early July 2021 all of the people named in the claim, namely Mr Callanan, Insp Trice, DS Doherty, PC Pace, A/Insp Cook, PS Perry, A/PS Perry, Ms O'Meara and Insp Young had been informed about it. This date ties in with the date that the Respondent needed to present its Response. We consider it likely that everyone named in the claim would have been notified of it.

296. Further evidence of this is found in an email exchange between Ps perry and Mr Callanan. In around July 2021, PS Mullender ceased to be the

Claimant's line manager because of a move to become part of Tasking and Operations. PS Perry emailed Mr Callanan on 8 July 2021 saying:

"I have heard a rumour that matters with AJ have escalated further and Ben Mullender is no longer able to manage him. I have recently become embroiled in his accusations and would be willing to take on his line management going forward. It would save anybody else potentially being implicated in any future matters that arise. I'm aware for reasons of fairness it might be more suitable that he is passed to someone that has no/limited knowledge of him." (1605).

Mr Callanan replied on 20 July 2021:

"*Thank you for putting yourself forward for this. However, given the concerns AJ has raised about numerous people on the command I think we need to find a line manager who has had no previous contact with him. I have every confidence in your ability to manage AJ but I need to demonstrate absolute fairness and take into account his concerns when appointing a line manager for him.*

I do appreciate you putting yourself forward though." (1605)

July/August 2020

297. While he was in correspondence with the Grievance Management Team, initiating the Acas early conciliation process, and submitting his claim the Claimant continued to attend work at Lambeth HQ and make a note of any incidents he thought were suspicious. As he was not being provided with a great deal of work, he used his time to study for his sergeant's exams. he sent several emails to PS Kerr asking for work, but PS Kerr had little work to give him because his focus was on the software project he was undertaking.

298. On 29 July 2020, the Claimant recorded in his diary that he considered it was suspicious that PS Scudder was in the office at 7:30 am that day although her shift, according to CARMS was not due to start until 8.00 am. He recorded that he "*Will not be surprised if she was told to watch me intently today*", adding, "*To be honest this is not the first time she has done this so I know it had to do with keeping an eye out for me to see and monitor my movement*" (1628)

299. In a diary entry for 3 August 2020, the Claimant recorded that as PS Scudder was leaving the office, she turned around and said to him, "*Are you bored yet?*" He recorded that he found this as a bizarre comment for her to make saying: "*It is clear that they are deliberately leaving me out and not giving me any work to do*." (1634).

300. PS Scudder told the tribunal hearing that she accepted that she had asked the Claimant if he was bored. Due to the close proximity of her desk to his, she had seen that he was studying for the Sergeants exam. She thought

nothing of this because officers are often allowed time to study for exams during work hours. She recalled that when she was studying for her own sergeants' exam, she found it very boring and was simply making conversation with the Claimant.

301. We find that PS Scudder's behaviour at this time was perfectly innocent and she had not been asked to observe the Claimant at this point in time. She did later, send Mr Callanan and Insp Trice an email recording the Claimant's movements on 24 August 2020 but this followed the meeting that took place on 19 August 2020, which is discussed further below, where concerns about the Claimant's time keeping had arisen (1781). We consider that had PS Scudder been asked to monitor the Claimant throughout the Summer, more emails would exist when she reported on his timekeeping behaviour.

302. On 4 August 2020 the Claimant emailed PS Kerr to tell him that PS Nelson had advised him to forward his annual leave requests to PS Kerr (2430). The Claimant listed various dates in his email and asked permission to book leave on the dates. PS Kerr replied to ask the Claimant to complete a formal holiday booking form (2430). The Claimant did this and the leave was granted and entered onto CARMS by PS Kerr straight away (2429). The Claimant says he found this strange because of PS Kerr's insistence that he completed a formal form rather than rely on the email. We do not agree that this was strange and accept PS Kerr's evidence that he as he was being asked to authorise leave for someone who was not his direct report, he wanted a formal record.

303. There were also some developments in the second misconduct investigation in August. On 7 August 2020, Mr Callanan actioned the email that Jodie Masters (VCTF PSU) had forwarded him on 9 June 2020 about the Claimant's Met CC incident (1667). He told the tribunal that the reason for the delay in attending to this email was most likely because of his annual leave that summer. He understood from the email that the responsibility for the investigation sat with VCTF's PSU. In order to progress it, he identified that he needed someone with Met CC knowledge and experience to conduct the investigation. He had a person in mind and on 7 August 2002 he sought permission to proceed with this plan from that person's head of command. (1667).

304. Mr Callanan notes in his email that the Claimant had been banned from carrying out overtime at Met CC since the incident, a decision made by Ms Wixon which he said he fully supported. This is the evidence referred to earlier that supports our finding that there was some communication between Mr Callanan and Ms Wixon around the time the alleged misconduct occurred. His email did not mention any need for restrictions to be applied to the Claimant's work in the VCTF.

305. The relevant permission to use the investigator was granted on 14 August 2020 (1678). The position at this time was therefore that the VCTF had overall responsibility for the investigation into the Claimant's alleged misconduct but would use one of the Met CC supervisors as the investigator.

SS replied to Inspector Doug Young on 21 August 2020 to confirm this (1742-1743). Our understanding is that this put the onus on the VCTF PSU to ensure a section 163 notice was prepared and served it on the Claimant.

306. Another development at this time was a desire to grow the Tasking and Operations team under the oversight of Insp Trice. On 12 August 2020, SS emailed all officers on the VCTF command, via their team mailboxes, to tell them that opportunities had arisen for PCs to be seconded to the Tasking and Operations Team for a minimum 3 month attachment. The email invited expressions of interest by 21 August 2020 (1674). The Claimant did not receive this email because his team mailbox was the Tasking and Operations mailbox. This had not been included in the circulation list for the obvious reason that it was not thought that anyone already in the Tasking and Operations team would be interested in the opportunity. In any event, a VCTF colleague of the Claimant forwarded the email to him on 19 August 2020 (2426).

307. The Claimant was feeling mentally unwell at this time. On 14 August 2020, he visited his GP who diagnosed him as having depression. He was prescribed a daily dose of 50 mg of sertraline and referred to an organisation called Therapy for You for further assessment (3439). The Claimant did not share this information with anyone at work.

Investigations Role / 19 August Meeting

308. In early to mid-July the Claimant and PC Nyoke (who was at that time working in the POD) had approached T/DCI Steve Brownlee to ask him about a career path in investigations and the possibility of a move into his team. We know this because on 15 July 2020, T/DCI Brownlee emailed Mr Callanan to tell him and noted that the approach had been made to him rather than the other way around (4276) T/DCI Brownlee was keen to recruit additional resources into his team and for this to be discussed at an LRPM meeting.

309. As there was no LRPM meeting held in July, due to annual leave commitments, the matter was not discussed until the August LRPM held on 18 August 2020. The discussion took place despite neither officer having formally applied for a transfer and in the absence of any intervening discussions with them. It is relevant to note that as at 18 August 2020, Mr Callanan was aware that the Claimant had initiated the early conciliation process making a claim of race discrimination against DS Doherty and A/Ins Cook, but not of the fact that he had raised a grievance about him.

310. The LRPM log notes for that meeting that the decision in the case of the Claimant was "*no role for [the Claimant] on Ops & Tasking, investigations team short, to move immediately*." For PC Nyoake, the decision was "*Declined at present until new POD up and running*" (3826) The reference to the new POD was to proposed changes to increase the number of civilian staff working in the POD. We find it surprising that the notes recorded that

the was no role for the Claimant, a PC, in Tasking and Ops at the very same time that an EOI exercise was underway to recruit PCs into that team.

311. Following the LRPM meeting, on the same day 18 August 2020, PS Scudder emailed T/DCI Brownlee to ask him to which investigations team the Claimant should be allocated (1685). She was at this time responsible for administrative tasks arising out of the LRPM meetings. She did not make any changes to CARMS or to the Tasking and Operations Team email, however, as she did not have the access to do this.

312. Also on the same day, C/Insp May-Robinson and T/DCI Brownlee met with the Claimant to tell him that he would be moving into the investigation team. The Claimant was, understandably, surprised to receive the offer. He thanked C/Insp May-Robinson and T/DCI Brownlee for it but told them he wished to decline it saying that his current role's hours suited his current family circumstances. T/DCI Brownlee emailed Mr Callanan to tell him this the following day (4275).

313. On the morning of 19 August 2020, the Claimant recorded a conversation in his diary that he says took place at about 9:45 am when he was asked by PS Scudder and Insp Trice whether he was moving to investigations. He records that he explained that he was not moving as he was happy where he was and was preparing an email to confirm this (1686). His diary entry does not record a conversation with Trice about his flexible working hours, but shortly after this conversation, the Claimant sent Trice his rota saying:

"As per our conversation this morning (regarding the question of my future on VCTF Tasking & Ops) please see the flexi which was approved and su pported by PS Nelson as I was only switching the days from Thursday to a Friday." (1688)

314. Insp Trice told the tribunal that he had no idea why the Claimant sent him the email, but we find that the discussion must have touched upon the Claimant's flexible working arrangements. Insp Trice forwarded the email to PS Scudder. On 20 August 2020, she emailed the person with access to CARMS (copying in Insp Trice) to ask them to update CARMS with the Claimant's flexible working shift pattern. We note that as at this date the Claimant was showing as a member of the team called "Frontline Policing HQ, Violent Crime Task Force, Pan OCU, Support, Resourcing & Co-Ordination". This was the POD and not Tasking and Operations (1698).

315. Returning to 19 August 2020, at around 3:40 pm, the Claimant was called into an unplanned meeting with Mr Callanan and CI Jack May-Robinson. No notes were made of the meeting.

316. When the Claimant got home that evening at 20:45, he emailed Mr Callanan and C/Insp Jack Robinson, copying in Gill Mills with a bullet point summary of the items he recalled being discussed. These were:

- "*Update for my DPS investigation for Fraud and Gross Misconduct (NFA)*
- *Update Re Investigation from Met CC post 999 call*
- *The Restriction from Met CC inevitably affecting my working status in the VCTF POD and where I am currently VCTF Tasking & Ops*
- *3 choices available to me with regards to options to move to from the Tasking & Ops which are: BCU, VCTF Proactive, or VCTF Investigations. As well as a potential move to MO6*
- *Discussion about my break*"

317. He asked that the above points be "*further elaborated on [in] an email*" and for the paperwork for the investigation at the Met CC and restriction. He also requested that any future impromptu meeting be held off until he had his Federation Representative present (1916).

318. The Claimant also separately emailed C/Insp May-Robinson at 21:42. In his email he informed C/Insp May-Robinson that he had raised a grievance against some of his line managers, including Mr Callanan and that he was therefore somewhat surprised to be invited to an unscheduled meeting with him earlier that day. He explained that he felt this put him in an uncomfortable position and "*could be deemed as further bullying*." He added that he was happy to talk to C/Insp May Robinson alone. (1693).

319. C/Insp May Robinson did not respond to the Claimant's email to him personally, but we note that the Claimant did not ask him to respond or take any action. The email was written as a "*for your information*" type email. We find it more likely than not that C/Insp May Robinson shared the information about the Claimant having raised a grievance with Mr Callanan.

320. Mr Callanan replied to the Claimant's first email in a lengthy email sent the following day. Having read both emails and the subsequent correspondence, we have made findings about what was said at the meeting.

321. We find that the misconduct investigation was discussed and that Mr Callanan did not try and deny this in his subsequent email. Instead, he sought, correctly, to say that the meeting was not a misconduct investigation meeting to which the Claimant was entitled to be accompanied by his Federation Representative. He reiterated this later in further correspondence (1913).

322. Mr Callanan had begun his email by explaining that although the Claimant was welcome to consult a Federation Representative on any matter raised, management had the right to speak to him about any issue and would only allow a Fed Rep to be present in a meetings where representation was an entitlement. He added that the purpose of the meeting in question had not been held to discuss the Claimant's misconduct matter, and hence it was not a meeting to where Federation representative applied. He acknowledged, however, that the topic of both misconduct investigations had arisen.

323. We find that Mr Callanan told the Claimant that while the Met CC investigation was ongoing, the Claimant was subject to a restriction on his ability to work in a Command and Control environment, although this was not correct. Even in Mr Callanan's most recent communication about the case, the email he had sent on 7 August 2020 this was not mentioned. When asked in evidence about this restriction, which was not in fact in place, Mr Callanan's response was to say that restricting people working in a Command and Control Environment was a standard restriction for incidents such as that involving the Claimant. However, even in Mr Callanan's most recent communication about the misconduct case, the email he had sent on 7 August 2020 this level of restriction was not mentioned. Our finding is that Mr Callanan decided the restriction would be put in place without any process or justification and went ahead and imposed it himself.

324. Mr Callanan told the Claimant that his substantive role was in the POD and that he had been temporarily assigned to Tasking and Operations because of the incident at Met CC, even though this could not be correct on the timelines. Mr Callanan initially reiterated this when giving evidence, despite it not being possible, although he corrected himself when asked about the timeline by the Respondent's representative. It was correct that the Claimant was still showing as a member of the POD team on CARMS at this time. Our finding is that this was because he had not been moved to Tasking and Operations when his original transfer occurred in April 2021.

325. Mr Callanan told the Claimant that because of the restriction on working in a Command and Control environment, the Claimant was unable to work in the POD. As a result, he said that the Claimant would need to move either to a frontline team or to investigations or leave the OCU.

326. Mr Callanan did not address the reason why the Claimant could not remain in Tasking and Operations in the correspondence, most probably because of his incorrect assumption about why the Claimant was there in the first place. He told the Tribunal Panel that the Claimant could not remain in Tasking and Operations because it was about to undergo changes and become a Command and Control environment.

327. Mr Callanan also told the Claimant that his current flexible working pattern would not be able to be accommodated in the POD when he returned there after the conclusion of the Met CC investigation, assuming that nothing arose that prevented him from returning as a result of the investigation. The Claimant was told that he would need to revert to working a full roster.

328. In relation to the new investigation, Mr Callanan initially said:

"As you know this complaint is being managed by Met CC and I was of the impression that you had been made aware of it, I was surprised to hear that you were not as Amanda Wixon (Met CC head of prof stds) advised me in writing that you had been made aware and had also been informed that because of the complaint you could no longer work overtime at Met CC. I

committed to following this up on your behalf, something which I have done this morning." (1915)

329. In his subsequent correspondence he said:

"As I said in my email, the meeting was to discuss options for where we could find a role that could accommodate your flexible working arrangements and comply with the restrictions as a result of the Met CC complaint. As I said, I was not aware that Met CC had not informed you of the complaint, as I had been advised to the contrary. I cannot account for the actions of another command. As promised, I have enquired on your behalf with Met CC's PSU and they advise me that they have now appointed an I.O to the complaint and they will be making contact with you over the next few days to arrange service of the relevant paperwork. (1913)

330. We find that this was disingenuous. Mr Callanan knew that the VCTF PSU had overall responsibility for the investigation and he himself was responsible for identifying and appointing an investigator. He must also have known that the Claimant was not yet subject to any formal restrictions.

331. The subsequent correspondence also addressed the Claimant's time keeping. Mr Callanan's version of this was:

"It was during the conversation on your proposed flexible roster that you informed myself and Mr May-Robinson that you have been routinely leaving work early. You confirmed that nobody had given you permission to do this and your supervisor was not aware of it. I will take this opportunity to reiterate what I said yesterday, you are required to be at your place of work for the duration of your rosterred hours. Unless specifically authorised by your line management, you are not permitted to leave work early or to work from another location."

332. The Claimant denied that he left work early in his response. His version was:

"*What I explained is that on a few occasions when I had welfare needs, I have chosen to work through my lunch and leave. I have always completed my full working hours for the day. Also, I have never worked from any other location other than Lambeth. Once again you are implying that I am not working to rule and I am doing some form of wrongdoing. I would suggest you refrain from doing this as this can have serious ramifications for all concerned*."

333. In the subsequent email correspondence, Mr Callanan included the paragraph:

"I will not get into a back and forth regarding this with you. The account of the meeting you have provided is not accurate and comes alarmingly close to making allegations around my integrity, something that I will not tolerate.

334. The Claimant replied saying:

"It is apparent that we will have to agree to disagree on this matter. I however, can assure you that my account of the meeting which took place on 19/08/2020 is accurate and I stand by everything I have said.

The Metropolitan Police encourages its staff to challenge improper and inappropriate behaviour regardless of rank/position and this is simply what I have done. I have challenged you. You appear to have taken umbrage to this.

I will not be bullied/victimized nor will I be conversing with you about this matter again.

I have decided to take this matter further." (1912 -1913)

335. In response, Mr Callanan *passed the email correspondence to DCI Gareth Gilbert and the Grievance Team asking that the allegations that the serious allegations the Claimant was making be investigated* (1912). DCI Gilbert did not reply until 29 August 2022. In that reply he said he proposed holding meetings with both the Claimant and Mr Callanan to try to resolve the matter and proposed the date of 7 October 2022. The Claimant replied on 7 September 2020 saying he did not want Mr Gilbert's assistance. (1911)

"*Thank you very much for your email, I don't know why Mr Callanan has forwarded this onto you. As I have previously stated to Mr Callanan the matter is all in hand therefore I don't see a need for us to meet. I however do appreciate you trying to assist*." (1911)

Events in late August and Early September

336. No immediate action was taken by anyone following the meeting on 19 August 2020 and the subsequent exchange of correspondence. The Claimant was not provided with any further information about the Met CC investigation. He was not served with a section 163 notice nor provided with written confirmation of the scope of the restrictions to which he was subject.

337. Several strands of things occurred, however, about which we are required to make findings as the Claimant has made specific allegations about them.

338. One allegation is that the Claimant was not told in advance about a new member of the team arriving. This was PC Connor O'Shea who moved to Tasking and Operations in late August as a result of the EOI exercise. He as the first of several new arrivals into the team that Autumn. The Claimant learned of his arrival when PC O'Shea arrived in the department.

339. The Claimant alleges that PC O'Shea was told that he could not be given permission to work from home because the Claimant had been refused this.

340. PC O'Shea was interviewed as part of the internal investigation into the Claimant's complaints. His written witness statement was contained in the

bundle at pages 2875-2876. He is not asked specifically about the allegation the Claimant makes. However, in it he explains that he joined the Tasking and Operations Team in late August and required to work at Lambeth HQ. When asked about remote working between August to December 2020, PC O'Shea stated that he thought he may have worked remotely from a police satellite station or from home on the "odd occasion" with prior authority (2875 – 2876).

341. This contradicts the Claimant's evidence which was vague and unspecific. The Claimant's version of events is also contradicted by his own diary note from 1 September 2020 (1840). That note simply records PC O'Shea complaining that he had not been given permission to work from home that day and that he did not understand why that was.

342. A further strand concerns the Claimant's application to take the sergeant exams. The Claimant submitted his application to take the sergeant's exam on 25 August 2020. We have seen earlier that he sought permission from PS Nelson in connection this. He also had to provide details of his second line manager, who at that time was Insp Trice.

343. When the application came to Insp Trice's attention for sign off, he was unhappy that the Claimant had named him without first asking for his support. The Claimant believed that he was not required to do so and they exchanged emails on this point (1836-1839). Despite his concern, Insp Trice agreed to support the Claimant subjecting to him forwarded his last two years PDRs to him (1836-1839).

344. The Claimant was unable to do so because he did not have completed PDRs for the requisite period. This prompted the Claimant to follow this issue up and led to emails being exchanged between the Claimant and his various previous managers, initiated by the Claimant.

345. On 27 August 2022, DS Doherty emailed Mr Callanan, C/Insp May Robinson and Insp Trice saying:

"For information only. Due to the ongoing racial discrimination allegation that he has made against me, I have been advised …. to avoid having line management responsibility for him. This would include PDR completion. I have not been AJ's line manager since leaving the POD in 2019. I am not sure who AJ sits under now." (1813)

346. Mr Callanan subsequently forwarded the email to Insp Trice and C/Insp May Robinson saying that in light of the allegation, which he was "*confident [was] completely unfounded"*, he had directed that DS Doherty and A/Insp Cook should not be involved in any matters relating to the Claimant and that any queries regarding their time as his managers should be directed to him to deal with (1821).

347. On 31 August 2020, Insp Trice emailed the Claimant to note that although he did not have the relevant PDRs in place, the Claimant had ticked the box

on the application to say he had them. He suggested a meeting with them to discuss how best to progress matters (1839)

348. The meeting took place on 7 September 2020 with PS Scudder (in her capacity as VCTF promotion SPOC present). The Claimant followed the meeting thanking Insp Trice for his support saying he was very appreciative if it. (1890)

349. The next strand concerns work that the Clamant was given to do. Although the Claimant had been given very little work, on 1 September 2020 he was asked to do two things. PC O'Shea asked him to assist on a piece of work he had been allocated saying he was swamped. PS Kerr also asked him to complete another piece of work. Both pieces of work were urgent. The second piece of work was something PS Kerr would have asked PC O'Shea to do, but aware that PC O'Shea said he was swamped, he asked the Claimant instead. Neither PC O'Shea or PS Kerr were aware that the Claimant had submitted a grievance, initiated the Acas early conciliation process or presented a claim to the employment tribunal.

350. The tasks were not particularly complex. Neither PC O'Shea or PS Kerr went through the tasks with the Claimant, but they provided him with a template and a contact in another team, with whom the Claimant could liaise. The Claimant had performed similar tasks when working at the POD. He simply needed to liaise with one department to obtain information, fill in forms with that information and send them on.

351. The Claimant made contact with Liz Porecha to whom the forms needed to be sent. She had provided a template to PC O'Shea which was forwarded to the Claimant. PS Kerr also provided the claimant with as much of the relevant information as he had in his possession.

352. Ms Porecha told the Claimant that all he needed to do was to complete part of the form and then she would do the rest. This is therefore what the Claimant did. This meant that when he sent the form on, it contained inaccurate information. Although this was in accordance with Ms Porecha's expectation, PS Kerr felt that the Claimant ought to have done a better job and that it reflected badly on the Tasking and Operations Team that he had sent out a document containing inaccurate information.

353. On 7 September 2020, at 18:14 PS Kerr sent the Claimant an email highlighting this point. This email was sent just to the Claimant and copied to Insp Trice (1927).

354. PS Kerr sent a further email at 18:39 with a follow up question relating to the earlier task. The follow up email itself contained no criticism of the Claimant. However, the earlier email could be seen below it. PS Kerr sent the email to Claimant and to the VCTF Tasking and Operations email in-box so that it in effect went to the entire team (1928). PS Kerr realised his mistake and deleted the email very quickly.

355. On 8 September 2020, at 07:57 the Claimant replied to the emails (1927) He 'replied all' so that his email went not only to PS Kerr, but also to the VCTF Tasking and Operations mailbox. In the email he defended his poor work and expressed unhappiness at how he was being treated. His email concluded:

"In future please ensure you are more specific and have all the information before making criticism of my work as this portrays me in a bad light and this is something I will not tolerate. I would also appreciate it if I am trained properly to negate this happening in the future." (1927).

356. On receipt of this email, PS Kerr called the Claimant into a meeting with him. The meeting took place at 9.30 am and lasted around an hour. PS Kerr also asked PS Scudder to attend the meeting. The Claimant recorded some, but not all of the meeting on his phone. A transcript of the recording was provided in the bundle and the Tribunal Panel listened to the audio recording (3729 – 3762). We were satisfied that the Claimant did not deliberately omit any parts of the recording.

357. The meeting was a 'dressing down' from PS Kerr to the Claimant. He did not shout at the Claimant and was not aggressive, but he gave the Claimant very little opportunity to speak to defend himself and was very critical of the Claimant's work. The Claimant found PS Kerr's behaviour very upsetting, but managed to keep his emotions under control. He did not assert himself back to PS Kerr, but was very passive in response.

358. At the start of the meeting, when PS Kerr saw that the Claimant was handling his phone, he used words to the effect of telling him not to be sly about recording the meeting and if he wanted to record it, to be open about it. During the meeting he said:

"I asked you to count some numbers on CARMS. I can get my 11-year-old to do that. I'm not being nasty. All I asked you to do was count how many people were on, on a specific day…If you say you need training on that, I don't know how I can do training on that. That's just counting." **(**3753)

359. As well as focussing on the Claimant's poor work, PS Kerr also highlighted that the Claimant had been observed by numerous colleagues leaving his desk and disappearing for up to 40 minutes at a time without telling anyone where he was going. PS Kerr did not use particularly bad language or any racial slurs, however. He also told the Claimant that if he had welfare needs that he was not prepared to talk to him about, he should seek support for these.

360. PS Scudder did not say anything at the meeting.

361. Later than day, at 16:43, PS Kerr sent a lengthy email to the Claimant to summarise what had been said and providing examples of the concerns he had raised about the Claimant's work. In the email he included a list of training that he suggested the Claimant undertake to assist him in his role

(2010 – 2011). His email also summarised what he had said to the Claimant about taking breaks and instructed him to always seek authorisation from a supervisor before leaving his desk in future. He included the following;

"You stated but would not elaborate that you had personal issues meaning you needed to leave your work and deal with them. Welfare is the primary concern so If you cannot/will not speak with me you need to speak to a Supervisor who can support you. Without understanding any issues you cannot just take yourself off as you please.

I have asked you what you do on a day to day basis when not tasked – you could not answer." (2012)

PS Kerr copied Insp Trice and PS Scudder into the email.

362. The Claimant sent a lengthy reply on 9 September 07:14 (2009 – 2010) to cc'ing Insp trice and Ps Scudder. In that reply he said:

"Thank you for your email regarding the meeting that took place yesterday in the presence of PS Sue Scudder. I believe the meeting that took place was very heated on your part and we have to agree to disagree on many factors.

Unfortunately, due to your mannerism I was unable to speak and express my concerns. My intention was never to offend you; however, your approach was aggressive towards me, which I did not appreciate. After careful consideration it appears that yesterday you were clearly upset by what I had said in an email, which I sent you.

Moving forward can I suggest that any training that you believe would assist me in the role, please let me know and I will be willing to undertake.

What I set off to achieve is that there is a better understanding between you and myself. Rather than name and shame, it is surely better to teach and educate, which means we can work together as a team and create an inclusive and ownership culture. Thank you."

363. PS Kerr replied at 08:07, to defend the allegation that he had been aggressive towards the Claimant at the meeting. He said,

"Your email cannot go unanswered as it is again untrue.

At no point was I aggressive towards you during our meeting. However, the fact you stared menacingly at me when you did not like what you were hearing was indeed aggressive. If you felt the meeting was heated on my part why did you not say. You stated several times to me that if you believe you need to challenge someone you will. This was reinforced when I asked you what you meant in your email by you 'would not tolerate criticism' of your work – you were quite vocal in the fact you would stand up for yourself.

I also asked several times at the end of the meeting if there was anything you wanted to say or bring up – you said 'no'." (2009)

364. The final strand in this section concerns the Claimant's concerns about the restrictions he had been told about by Mr Callanan.

365. On 20 August 2020, Insp Trice had tasked the Claimant with setting up CAD access (a Command and Control function) on a desk top computer that was on the desk at which the Claimant usually sat. Insp Trice told the tribunal hearing that he chose this desk because it was not formally assigned to anyone in particular and was the closest to a large TV screen in the area to which it could be linked. The Claimant believes that Insp Trice chose his desk because he knew the Claimant had been told he was subject to a restriction not to work in a Command and Control Environment and this was part of a plan to remove him from Tasking and Operations, but there is no evidence to support his suspicion.

366. On 26 August 2020, the Claimant emailed Insp Trice to say that he was unable to assist him because he had been verbally informed by Mr Callanan that he was subject to a restriction that prevented him from accessing Command and Control systems, although having not seen the restriction in writing, he was unable to be clear about the details. He said that he therefore could not and would not undertake the task to protect both Insp Trice and himself (1808).

367. Insp Trice emailed Mr Callanan to seek to clarify the restriction. Mr Callanan replied to saying that "*His restriction is not to work in a Command & Control environment* [which] *would only prevent him from accessing a LIVE CAD*. He added that there was nothing to prevent the Claimant from using or accessing the CAD Browse system as it was a view function that did not involve active command and control, "*although best practice would be this should be avoided if possible or if he does have cause to use it, he should be closely supervised*." (1807)

368. Insp Trice replied to the Claimant to say that he had confirmed with Mr Callanan that there was no restriction preventing him from accessing CAD and that the restriction was "*around not working in the Command and Control*". He added for clarification that the task he had given him was to liaise with the IT department to get one of the desktops upgraded to include CAD and that as the Claimant had his own laptop or could log into other desktops he would not need to use the computer with CAD on it (1835). The Claimant nevertheless continued to refuse to assist with the Task.

369. On 7 September 2020, Insp Trice verbally asked the Claimant if he could take the minutes of the daily Violence Team Meeting. This was a role that someone in the POD would normally perform, but they were short on resources during to leave. The Claimant initially agreed to this. He was emailed by A/PS Pam Clarke (cc'ing Insp Trice) who thanked him for offering to help out and then set out what was required of the task (1938).

370. The Claimant replied to say that he would not be able to assist because he had been told verbally by Mr Callanan that he could not work or perform any roles for or from the POD and nor could he work in a Command and Control environment. A/PS Clarke replied copying in Insp Trice saying that she was awaiting direction from him. Insp Trice replied to say that there was no restriction on the Claimant undertaking the task and it could be done from the second floor at Lambeth HQ without having to enter a command and control environment.

371. Notwithstanding this, the Claimant refused to undertake the task. He explained his reasoning in an email saying:

"I believe by undertaking this work will place myself in a compromising position which I would then be reported to DPS for failing to abide by a lawful order. Therefore until my restrictions are clarified in writing by PSU I will not be undertaking the task requested.

Please understand that I am not being obstructive but I'm simply protecting myself with what is already an extremely difficult situation that I find myself in." (1934)

372. There was then an exchange of emails between the Claimant and Insp Trice in which Insp Trice replied to query why the Claimant had not raised this issue with him at the time they first discussed the matter, rather than communicate via an email sent late in the working day. He added that as far as he was aware the Claimant was able to do the task, but if he considered he was not, this would leave Insp Trice in a position where he would have to review what role the Claimant could do within Tasking and Operations. He added that the Claimant's official posting was the POD and not Tasking and Operations (1934).

8/9 September 2020 – Transfer out of Tasking and Operations

373. The email exchanges between Insp Trice and the Claimant and PS Kerr and the Claimant were shared with Mr Callanan and C/I May Robinson. Overnight a decision was made to transfer the Claimant out of Tasking and Operations to a front line operational team based at Bow Police Station.

374. We find that the decision was made by Mr Callanan in consultation with C/I May Robinson. His email dated 8 September 2020 sent at 19:37 that evening summarises the rationale for the decision:

"In view of the ongoing issues and also the concern raised by DS Doherty with regards to [the Claimant] I have tonight discussed the matter with the OCU Commander. [The Claimant] is a fully fit officer and there is no reason why he cannot perform frontline duties. We are currently operating with a 20% vacancy rate on the syndicates. We have therefore taken the decision to transfer [the Claimant] back to Frontline duties with immediate effect.

I believe AJ lives in Essex and regularly (until he was subject to restrictions) worked overtime at Met CC Bow. The location of Met CC Bow is only 5 mins from Grove Hall, so therefore I believe the best place for him to work from would be that base. I will allow him to take Thursday as an admin day to sort out kit etc… and he is then off until Monday. He will be expected to report there then.

He will be informed of this decision tomorrow, until then I would ask that you keep this to yourselves to avoid any unnecessary stress being caused to him." (1978)

375. On the morning of 9 September 2021, the Claimant found that his access to the Tasking and Operations email in-box appeared to have been removed. He emailed PS Kerr to tell him this at 07:51 (1998) PS Kerr was not aware of the decision to transfer the Claimant and replied asking the Claimant to justify why he had not raised this concern until 50 minutes into his shift (1996). The Claimant replied with a timeline of his activities that morning.

376. The Claimant was informed later that day that he was being transferred. The notification was verbal but he was provided with follow up written conformation in an email.

377. The tribunal was told that it was not unusual to transfer officers with immediate effect, but that under MPS rules, their shift patterns were protected for 28 days. This therefore meant that although the Claimant would be expected to report for work at Bow Police Station on 14 September 2020, there would be no change to his shift pattern for 28 days.

September 2020 Communication with PS Grey

378. On 9 September 2020, the Claimant emailed PS Grey to ask if he could speak with him about a sensitive matter because he is a member of DPS staff. PS Grey replied to explain that he had changed roles, but nevertheless encouraged the Claimant to contact him. They spoke on the phone, following which PS Grey, on 10 September 2021, sent the Claimant a follow up email with advice as to the proper channels to pursue his complaint and his options and confirmed that he had given him all the contact details he needed. The email included advice about the three month time limit for employment tribunal claims and recommended that if the Claimant felt an employment tribunal claim was warranted his first point of contract should be the Police Federation and an application for funding (2032).

379. The Claimant sent him a further email imploring him to look at the matter as a matter of urgency. PS Grey replied to say he had provided the Claimant with all the details he needed. He concluded his email encouraging the Claimant to seek every proper avenue to progress the issues he faced and wished him all the best (2031 -2033).

380. On the same day, 10 September 2020, a Federation Representative contacted Insp Young in the Met CC PSU on behalf of the Claimant to ask

for an update into the investigation. Insp Young replied to say that the matter was being managed by the VCTF PSU with assistance from Met CC. His email explained that an investigator had been appointed and he was due to meet him to discuss next steps. He concluded saying he would ask the VCTF PSU to make contact with him. No such contact was made (2013).

The Position following the Claimant's Transfer to Bow Police Station

The Claimant Begins Sickness Absence

381. The Claimant was given a couple of days to relocate to Bow police station. He was due to report there for duty on Monday 14 September 2020 under the line management of Ben Mullender, who was an Acting Inspector at the time.

382. Prior to the transfer, the Claimant confided in T/Detective Superintendent White that he had been diagnosed with depression and given medication. T/Detective Superintendent White verbally shared this conversation with Superintendent Claire Smart on 11 September 2020 and then summarised it in an email to her and copied to the Claimant and Jamie Fowler the following day (2017).

383. The email recorded the following:

"With regard to his wellbeing, I have been making contact daily through telephone conversations and text messages. He is with family and has support."

And

"*We have agreed the following:*

He wishes to self-refer himself to OH to discuss his medical condition and medication he is currently taking.

[The Claimant] agrees that he will speak to A/CI Jamie Fowler at the earliest opportunity, to discuss with him his medication and medical condition. (Jamie can you call [the Claimant] when your next on duty please.)

[The Claimant] is happy to be working at Bow as he now feels that he will be gainfully employed.

With regards to the video recordings of his performance conversation with Chris Kerr and Sue Scudder. Claire he would like to speak to you with regards to how this will be progressed or is happy for me to liaise with you."

384. Although the email refers to the Claimant being happy to be working at Bow, he clarified in his evidence to us that this did not accurately capture how he really felt. He was pleased with the location because Bow police station was closer to his home than he had been at Lambeth. He was very unhappy,

however, about the change to his shift pattern that would take place after the 28 day period of grace was finished. In addition, the reference to him being happy about being gainfully employed, was a reference to his unhappiness at not having been given any work or made to feel a part of the team at Tasking and Operations. He would have preferred to stay in Tasking and Operations and be gainfully employed there rather than be moved.

385. Following the conversation, Sup Smart emailed A/Insp Mullender to ask him to urgently refer the Claimant to Occupational Health (2016). She also appears to have briefed him on the other matters raised in T/Det Supt White's email, or possibly forwarded the email to him.

386. The Claimant commenced work at Bow Police Station on 14 September 2020. A/Insp Mullender was not present that day due to having to isolate because of covid, but arranged to speak to the Claimant to welcome him over the phone. A/Insp Mullender kept a log of all of his interactions with the Claimant, including this first one. The full log was included in the bundle.

387. In his entry for 14 September 2020, A/Insp Mullender recorded that the Claimant told him about the Met CC investigation and that he had been told he was subject to a restriction, but had not had any paperwork. The Claimant also told him that he was self-referring to OH for counselling, but did not tell him that he was on medication. He also noted that the Claimant expressed concerns about some of the shift times and the last train times to Colchester, but said that he was in the process of preparing a flexible working proposal. The entry also notes that the Claimant did not mention any instances of recording equipment being used when speaking with previous supervisors (2019).

388. On 15 September 2020, A/Insp Mullender spoke to the Claimant again and on this occasion told the Claimant that he was aware that had informed T/Det Supt White that he was taking medication. The log records that the Claimant confirmed this and told him what mediation he was taking. When asked, the Claimant explained that the reason he had not mentioned it the previous day was through embarrassment. A/Insp Mullender informed him that he was not deployable on the street pending the OH report (2020)

389. The Claimant took annual leave from 21 September 2020. He visited his GP on 28 September 2022 during his time off. His GP notes confirm that his dose of sertraline was increased to 100 mg and he was still waiting an appointment with IAPT. The Claimant also discussed the possibility of being signed off sick with his GP, but decided against this (3338). However, by the date he was due to return to work, 5 October 2020, he had changed his mind again. The Claimant was signed off sick. This was the start of a prolonged period of sickness absence which lasted a year. His GP notes record that he contacted his GP that day and was signed off sick.

390. The Claimant sent A/Insp Mullender a sicknote dated 5 October 2021 which gave the reason for being absent as "*Depression, work related stress*" (3176). He was signed off for 8 weeks until 29 November 2020.

Early Contact and the First Welfare meeting

391. On receipt of the sick note on 12 October 2021, A/Insp Mullender sent the Claimant a text wishing him well and asking if they could speak by phone. The Claimant replied asking that A/Insp Mullender tell him what he wished to discuss and saying that he would let him know when he could ring him the following day. A/Insp Mullender replied that he needed to speak to the Claimant about his sick leave.

392. The telephone conversation took place the following day. A/Insp Mullender explained that his role was to support the Claimant and asked him if there was anything he could do. The Claimant declined this offer. He then informed the Claimant that, while he was absent on sick leave, he would contact him weekly and prior to the 29th day of absence would conduct a visit with him which could be at his home or a different location. The Claimant said he was unsure what contact he would prefer and would get back to him (2021).

393. A/Insp Mullender noted in his log, in block capital letters that each time he had rung the Claimant he had not answered and had rung A/Insp Mullender back. He commented that he found this "SUSPICIOUS". He explained to the tribunal hearing that he suspected that the Claimant might be recording their telephone calls (2021).

394. A/Insp Mullender contacted the Claimant by text on 21 October 2020 requesting a call. The Claimant failed to respond. (2021).

395. On 30 October 2021, the Claimant saw his GP who increased his sertraline dosage to 150 mg (3337).

396. A/Insp Mullender contacted the Claimant again by text on 1 November 2020. On this occasion the Claimant responded saying that he did not feel able to speak on the phone and asked that A/Insp Mullender text him instead. A/Insp Mullender replied to say that he needed to arrange a home visit. They agreed that due to Covid the visit could not take place at the Claimant's home and a video call was agreed for 9 November 2020. The Claimant asked that his Federation representative be allowed to accompany him, which A/Insp Mullender agreed.

397. During the call, which took place on 9 November 2020 as planned, A/Insp Mullender went through the absence management procedure with the Claimant and Ms Mills. He noted in his log that the Claimant was taking medication and had been receiving support weekly via OH and his GP. The Claimant explained that he had self-referred to OH.

398. A/Insp Mullender also noted that he found the Claimant was unwilling to discuss any return to work or adjustments and that he found the lack of clarity around the Claimant's answers to his questions difficult. At the meeting, Ms Mills told him that the Claimant felt pressured by A/Insp

Mullender contact and requested that he only contact him by text after 10 am, to which he agreed. A/Insp Mullender concluded his log saying, *"[he] gave me the impression that he met this meeting with suspicion"* (2023-2034).

399. A/Insp Mullender's intuitive hunch that the Claimant was suspicious of him was correct. For example, when giving evidence to the tribunal, Ms Mills and the Claimant confirmed this. At the start of the meeting, there had been a delay in A/Insp Mullender's picture appearing on screen. The Claimant and Ms Mills thought this was deliberate so that he could listen to any conversation they were having before revealing himself. In fact, it arose because A/Insp Mullender could not log in properly on the device he was using and had to change to a different device.

Occupational Health Referral and Report – November 2020

400. On 17 November 2020, A/Insp Mullender emailed the Claimant to inform him that he had made a manager's referral to OH for him. He attached a copy of the OH referral. In the cover email, he said that he was asking the following questions:

    1. *Can we adjust your duties / working hours to assist in a prompt return to work?*
    2. *Would a transfer from the VCTF to a BCU compliment a treatment plan and a reduction in absence?*
    3. *What would you consider to be a positive adjustment allowing you to return to work?*

    He added that he would be writing to the Claimant soon to arrange a case conference which was a requirement under the MPS policy when an individual's sickness periods exceeded 40 days (2048).

401. The OH form had a number of standard sections which required completion. One such section asked whether the individual being referred was subject to any investigations. BM replied that the Claimant was, and added that it was a misconduct investigation, the details of which he could provide by telephone (2050). In the summary section, he included the following information, namely that: *"[The Claimant] is subject of a misconduct complaint and has previously been spoken with regarding performance."*

402. A/Insp Mullender explained in his evidence to the tribunal that he included this information because the referral form specifically asked about it, but also because he thought it was relevant for the OH Adviser to be made aware of anything that might be contributing to the Claimant's stress. He offered to speak to the OH adviser about the misconduct matter by telephone and believed there had been a brief factual conversation based on what he knew.

403. He also told us that he asked about the possibility of a transfer from VCTF to a different OCU in case this was something that might be helpful for the

Claimant. It was a standard question that he usually included when doing OH referrals. It was not because he was trying to get the Claimant moved out of the VCTF. We find, as a matter of fact, that the inclusion of this question did not mean A/Insp Mullender was looking for a way to remove the Claimant from the VCTF. We accept that it was a sensible standard question to ask OH in the circumstances.

404. The Claimant saw his GP on 26 November 2020. His GP increased his dosage of sertraline to 200 mg (3337) and issued him with a fit note for a further 8 weeks until 20 January 2021 (2056). The Claimant sent A/Insp Mullender the sick note by email.

405. A/Insp Mullender texted the Claimant to thank him for the sick note and told him to get in touch if there was anything that he could do to help the Claimant. The Claimant replied to thank him (2025).

406. On 3 December 2020, the Claimant was assessed by the Respondent's OH service. The assessment was done by telephone by a Special Community Public Health Nurse. The report records that the OHP contacted A/Insp Mullender to discuss the Claimant's case before speaking to the Claimant. He didn't say anything different to what he had recorded on the form.

407. The report records the Claimant telling the adviser that he thought his symptoms first began in 2019 and that he had been signed off due to depression and anxiety from 5 October 2020 to 20 January 2020. He told the OHP that his GP had referred him for therapy and he was waiting for an appointment.

408. The report also records that the Claimant said he was struggling with sleep as he could not switch off, that he had a low appetite and mood and his concentration was affected. He was having minimal social contact with people and felt fatigued all the time. He was coping by taking walks and visiting the gym, but felt emotionally overwhelmed with persistent anxiety and some suicidal ideation.

409. The report said that it was too early to say when the Claimant would return to work and that no adjustments that could be recommended to facilitate an early return to work. In response to the question as to whether a transfer from the VCTF to a different OCU would assist the Claimant, the OHP recorded that the Claimant did not think it would. The OHP recommended a workplace stress risk assessment be carried out by management.

410. The report concluded saying:

"While ultimately it is for a tribunal to determine whether an individual is considered to be disabled, in my opinion [the Claimant] is unlikely to be covered under the Act as they have a mental health condition which has not lasted longer than 12 months."

No further OH referral was recommended (3186 – 3190).

Case Conference of 4 February 2021

411. On 17 December 2020 A/Insp Mullender sent a friendly text to the Claimant at 10:57 asking him how he was and if there was anything he could to assist him. The Claimant replied at 13:58 to thank him for asking and said there was nothing he could think if at that time (2025).

412. At some point in late December 2020/early January 2021, Ben Mullender reverted to his substantive post of police sergeant.

413. On 19 January 2021, the Claimant sent in his next sick note dated 18 January 2021. It was for a period of 6 weeks until 26 February 2021 and gave as the reason for the Claimant's absence as "Stress at work" (3725). The Claimant's GP notes record that the Claimant was waiting for a course of CBT, but in the meantime, the increased dosage in medication seemed to have helped (3334). The Claimant texted PS Mullender to say he had sent the fit note to him by email (2025).

414. On 26 January 2021, PS Mullender messaged the Claimant to apologise for not being in touch and explaining that this was due to Covid. He also told him that he had sent him some correspondence via post regarding a case conference and sick pay and checked that he had received these. He asked the Claimant to let him know if he needed anything. The Claimant replied to say that he had received the correspondence and didn't need anything (2025-2026). The letter that PS Mullender had sent the Claimant informed him that his pay would be dropping to half pay on 29 March 2021.

415. Sick pay for police officers is governed by the Police Regulations 2003 Regulation 28 (3477 - 3484) This provides for six months full pay followed by six months half pay. The Regulation allows for an extension to the full pay element if certain criteria are met. The criteria are weighted towards where an officer is on sick leave due to an injury caused whilst on operational duty. The Annex guidance to the Regulations plus MPS internal guidance (3685-3688) set out the detail. It expressly states that "*stress related illness (including psychiatric illness) resulting from working conditions generally*" would "*not normally attract favourable discretion*". (3482).

416. The case conference took place on 4 February 2021. The Claimant was accompanied by Ms Mills and PS Mullender was accompanied by Jill Whalin, a human resources representative.

417. PS Mullender told us that he found the Claimant to be vague at the meeting. He said that although he told him his medication dosage had increased, he wasn't able to provide other details. In addition, although he and Ms Whalin tried to discuss ways that the Claimant might be facilitated to return back to work, such as changing hours, location or role, he said that he did not engage with this this, saying feel able to return to work. There was also a

discussion about sick pay and PS agreed to apply for an extension of full pay on the Claimant's behalf.

418. PS Mullender prepared minutes of the meeting (2027). These became the subject of much dispute which we deal with later below.

Initial Application for Sick Pay Extension Leading to Incident on 18 March 2021

419. PS Mullender completed the relevant form to request an extension of sick pay for the Claimant on 9 February 2021 (2073-2074). In the form he set out the current factual position with regard to the Claimant's sickness absence and the meetings that had taken place. He also included the OH's assessment that the Claimant was not fit to return to work.

420. In addition, he stated: "*[The Claimant] has shown no willingness / desire to return to work nor does he wish explore the possibility of reasonable adjustments, changes in job role or location of workplace*." He added: "*He has participated in a number of counselling sessions and he anticipates further counselling will commence in due course. There appears to be no treatment plan in place or a plan to return to work in the near future*." and noted, "[*The Claimant] is under investigation for misconduct - however papers have not been served due to the officer being absent from work and as such the investigation is on hold until his return*" and "*I am unable to complete a work based stress risk assessment for [the Claimant] as there is currently no indication of when the officer will return to work.*"

421. PS Mullender marked the form with his view that "*No discretion available in this case*." (2074). He did not make any reference on the form to the Claimant's belief that his illness had been caused by bullying and victimisation by his colleagues.

422. PS Mullender submitted the form via HR to be put before an Assistant Commissioner in line with MPS procedure. In fact, he should first have sent the form to a Superintendent for review and signature.

423. On 26 February 2021 the Claimant was issued with a further fit note by his GP. It was for a period of absence of 8 weeks until 22 April 2021. The reason for absence was said to be "*Stress at work."* (2076)

424. The lack of a review of the sick pay form by a senior officer did not prevent the form from being considered by Assistant Commissioner Ephgrave. On 16 March 2021 he reached a decision that no extension of full sick pay would be granted to the Claimant (2027). On 17 March 2021 Human Resources emailed PS Mullender to say that the application had rejected because the Claimant's illness did not come within those criteria justifying departure from Regulation 28. As a result, the Claimant's sick pay would reduce to half on 29 March 2021 (2085). The email attached a letter for PS Mullender to send to the Claimant which he duly did (2088).

425. The Claimant had chased PS Mullender for news of the sick pay extension application by text. He also asked for a copy of the minutes. PS Mullender replied by text that telling him the paperwork had been submitted and he would send the minutes as soon as possible (2080).

426. The Clamant then received the outcome letter on 18 March 2021 and rang to speak to PS Mullender. He followed up the telephone conversation with an email sent later that day. During the conversation, the Claimant asked PS Mullender to submit an appeal against the decision. PS Mullender told him that he did not think this was possible. This was his understanding at the time of the conversation. We do not find to be an unreasonable understanding given that there is no mention of an appeal process in the relevant process (36875-3686) and the letter he had been asked to send the Claimant made no reference to an appeal process.

427. The Claimant's follow up email was lengthy and sent at 16:39. In it, he included the paragraph:

"Every time we have had contact via text or over the phone, you ask if there is anything you can do for me? I am now asking you as you are my line and welfare officer who has a duty of care towards me, to put an appeal on my behalf. I do not know what more I can do now other than to be found dead. Then perhaps the Metropolitan Police Service including yourself will then take me seriously." (2089 – 2090).

428. PS Mullender did not see the email until after 8 pm that evening. At the time he first saw it he was in hospital accompany two injured police officers. He considered telephoning the Claimant, but decided not to do so because, being in hospital meant he was not in a position to speak to the Claimant properly and also, he was worried that telephone contact from him, as someone who the Claimant was unhappy with, might have an adverse effect on the Claimant.

429. PS Mullender therefore escalated the matter to C/Insp May Robinson, who was on duty and who in turn delegated it to A/Insp Leon Coltress. It is relevant to note that A/Insp Coltress is black. He kept a log of the activities that occurred that night which was included in the bundle (2091- 2092). We find it to be an accurate account of what occurred.

430. Following a brief discussion with A/Insp Mullender, A/Insp Coltress decided that he should ask Essex Police to conduct an urgent welfare check on the Claimant at his home address. The result of this decision was that at around 10 pm that night, Essex Police attended the Claimant's house with two police cars with blue flashing lights outside. When the attending officers were reassured by the Claimant that he did not intend to harm himself, they reported this back to A/Insp Coltress who then spoke to the Claimant directly. The log records that A/Insp Coltress explained why he had ordered the welfare check and that the MPS could have been criticised if they had done nothing in response to the email or only phoned him. It notes that once the Claimant got past his annoyance of the situation, he understood the

rationale for the course of action. Following the exchange, A/Insp Coltress briefed PS Mullender on the phone and recommended that he make contact with the Claimant and consider a further OH referral.

431. Both PS Mullender and A/Insp Coltress told the tribunal that they continued to believe that the action taken that night was the correct and proportionate action to take in the circumstances.

432. It is relevant to note that some two months after the incident, the Claimant contacted Essex Police to obtain their report for the call out incident. Essex Police contacted A/Insp Coltress about this out of a concern that the Claimant was seeking to use his police credentials to obtain his personal information inappropriately (2107 - 2108).

433. The matter was reported to Mr Callanan who advised that further information was required. In his email to A/Insp Coltress dated 13 May 2021, Mr Callanan asked him to contact Essex police to follow up the points explaining that he was asking him to do it, "*because [PS Mullender] is already receive pushback from [the Claimant] that he is not impartial and I would rather somebody outside of his LM chain to make these enquiries for absolute fairness to [the Claimant]"* (2109). A/Insp Coltress told us that he believed Mr Callanan had asked him to follow the query up because he was black, but the evidence does not support his conclusion. We find that he was asked to do this because of his involvement in the original incident. As it transpired, no action was taken against the Claimant.

Follow Up After the Incident of 18 March 2021

434. Returning to the events of March 2021, on 24 March 2021, PS Mullender emailed the Claimant to explain that the Claimant could, in fact, appeal the decision to move him to half pay, but that he, PS Mullender could not do this on his behalf. Instead, it would need to be done by the Claimant or his Federation Representative and addressed to HR (2093).

435. PS Mullender told us that he did not call the Claimant straight away after the welfare check because he first wanted to check the appeal position and that he decided to email him rather than ring because the Claimant had originally asked him to respond by email. PS Mullender also texted the Claimant to arrange to speak to him.

436. On the same day as PS Mullender has emailed him, the Claimant also received the notes from the case conference which had taken place on 4 February 2021 in the post.

437. The Claimant sent two emails to PS Mullender that evening in response to the email about his sick pay and in response to receiving the minutes. In one email (sent at 19:12) he said that his current anxiety had not been caused by the outstanding misconduct investigation, for which he had not yet been served with a section 163 notice. He said that his anxiety was due

to the treatment he had been subjected to whilst in the VCTF OCU by many line managers and SLT. (2123)

438. In response to this email, PS Mullender replied (on 25 March 2021 at 08:02) to say that he had raised the issue of the Claimant not having been served with the section 163 with Mr Callanan. He had been informed that the section 163 had not been served on the Claimant because the Claimant reported sick before this could be done. The complaint was then placed on hold until his return from sickness. (2122)

439. In the second email (sent at 20:33) the Claimant requested that PS Mullender send him the document that he had submitted to the superintendent which was subsequently sent the Assistant Commissioner. He commented that it appeared to be missing and that PS Mullender appeared to have submitted paperwork relating to his period of sickness in 2019 rather than his current sickness. He added:

"It is clear that my extension of pay would never have been granted due to the information submitted being incorrect. Please can this be rectified and submitted again as a matter of urgency and forwarded onto me via email. In the meanwhile could I request the missing documents be sent to me via email also." (2095)

440. This was a misunderstanding on the part of the Claimant. AC Ephgrave had reviewed his sickness absence in 2019 as well as his current sickness absence. The Claimant had misread the decision letter he had received.

441. A/Inps Mullender replied to the Claimant's email on 25 March 2023 at -08:13. His response to this issue said:

"Your …. point about the submission of paperwork is incorrect. I have submitted all the relevant documentation as required. The AC has chosen to review your sickness record back to 2019. His decision is independent and he will not review any pay extension without the appropriate paperwork as required by policy.

Once this matter is concluded I will seek authority to release relevant paperwork to you." (2095-2095)

442. This reply, which was not worded particularly clearly, confused the Claimant because it appeared to contradict what A/Isp Mullender had said about the appeal. He clarified it, however, in a much clearer email sent to the Claimant on 27 March 2021 In that he explained that:

"What I mean is, unless all the relevant and correct paperwork is provided in the first instance then the AC will not review. The correct paperwork was submitted and he has reviewed your sickness record which covers your most recent absence and beyond.

Your federation rep can appeal on your behalf as previously mentioned." (2585).

443. The Claimant followed up the request he had made for the paperwork in a text exchange with PS Mullender on 9 April 2021. PS Mullender replied to him to say that he could sent the paperwork directly to him if he wishes, but that he was also sending it to HR and the Claimant could get it from them. Following this, the Claimant sent PS Mullender an email about the paperwork which he headed, "4th Request for Extension of Pay Paperwork" (2163)

444. PS Mullender took issue with the fact that the Claimant was suggesting he had asked him for the paperwork four times and emailed the Claimant back on 9 April 2021 to tell him he thought this was inaccurate. He added that the Claimant had now received all the paperwork he had in his possession and directed the Claimant to HR for any additional paperwork that he might needed (2162). The reason the Claimant believed he had asked for the paperwork four times was because he was counting the first request made on 25 March and his two text messages and email of 9 April as three separate requests.

445. Returning to the Claimant's second email of 24 March 2021 to A/Ips Mullender, the other point that that the Claimant made in his email was to say that the minutes were not accurate and he asked that they be amended accordingly. The Claimant set out several points which he requested be changed and/or added to the minutes. One of the points identified was that A/Isp Mullender had mentioned that the Claimant was under investigation. According to the Claimant's recollection, Ms Whalin had asked him twice if he had been served with a section 163 notice and he had confirmed that he had not.

446. The Claimant did not complain in his email exchange that PS Mullender had failed to record that he and Ms Mills had said at the meeting that they believed that the reason that the Claimant had become unwell was due to having subjected to poor treatment by his previous managers that they felt amounted to race-related harassment or racial discrimination.

447. PS Mullender replied to this point to say his minutes were written at the time of the meeting and that he believed that their recollections "may differ". He said he would keep a copy of the Claimant's email as a record.

448. The Claimant was unhappy with this approach. On 12 April 2021, Ms Mills emailed PS Mullender on the Claimant's behalf to reiterate the Claimant's request that the minutes be amended. She said she had checked her notes which concurred with the Claimant's recollection. She added that the discrepancies were important and would have a detrimental effect on the Claimant's case (2174). PS Mullender replied to say that he had already responded to the Claimant on this point and had nothing further to add 2173).

449. Ms Mills was not satisfied with this response and replied on 13 April 2021 asking A/Isp Mullender to contact Ms Walin and ask for her recollection of the meeting. She said she thought his response was "*dismissive*" (2173)

450. PS Mullender did this. Ms Whalin responded to him on 20 April 2021 saying:

Hi Ben,

The Fed Rep asked for a recommendation to remain on full pay due to circumstances, a question was asked as to the circumstances – this all stems from line manager up to SLT.

Wants text as communication.

In regard to the Misconduct issued, you – Ben were going to request an update, as you had not received any update. I asked whether AJ had been served with F163, he confirmed that he had not but had been told that there was going to be an investigation. He knew no more. I advised that this should be clarified as to the situation.

You also spoke about shift changes

Hope this is of some help.

Jill" (4261)

451. We interpret her email as identifying some areas of the discussions that were not included in PS Mullender's minutes. In particular, it is relevant to note that Ms Whalin recorded that there was a discussion about the Met CC investigation and she had asked the Claimant if he had been served with a section 163 notice. We find it likely that she asked this question a couple of times as noted by the Claimant.

452. In addition, Ms Whalin notes that the Claimant and Ms Mills had said that the circumstances of the Claimant becoming unwell stemmed from his treatment from his line managers up to SLT. We conclude this confirms that the Claimant and Ms Mills did allege that the Claimant's illness had been caused by the managers in VCTF, but we do not find that they went into detail about this. In our judgment had they made it clear that they were making allegations of race discrimination, either the Claimant would have included a request that this should be recorded in the minutes or Ms Whalin would have recorded it.

453. On 26 May 2021, Ms Mills chased PS Mullender for a response to her email of 13 April 2021. PS Mullender appears to have sent her the email he received form Ms Whalin because in a further email. Ms Mills says that what Ms Whalin had said was vague and that each discrepancy identified by the Claimant needed to be put to her (2171). PS Mullender replied to say he was not changing his position, but that Ms Mills was free to contact Ms Whalin separately about this matter. He also offered that future meetings

could be recorded so that similar issues did not arise in future. This reply led Ms Mills to respond saying that she would be raising a grievance about his "unacceptable" conduct (2170).

454. On 28 June 2021, the Claimant raised a grievance against PS Mullender in connection with the minutes. In his grievance, he stated that he believed that PS Mullender's refusal to agree to amend the minutes was "*a deliberate attempt to show [him] in a bad light, with the long term aim to attempt to have [him] dismissed from office*" and questioned his honesty/integrity and professionalism (3018 – 3019). The grievance was determined to be appropriate for informal resolution (2793), but this offer was declined by the Claimant pending the outcome of the employment tribunal case (2077).

The Claimant's Appeal

Refusing the C's appeal against the decision to impose half pay (xiv page 5). Failing to decide to allow full pay whilst an investigation into the C's grievance take place (xiv page 5).

455. On 18 April 2021, the Claimant sent Claire Chilvers/Batley, HR Case Manager, an email appealing against the sick pay decision (2097 – 2098). In the email the Claimant said: "*My sickness is due to the bullying, victimisation and racist behaviour I have been subjected to by my Line Managers and members of the SLT which is unacceptable*." He added that he had issued a tribunal claim about these matters.

456. On 21 April 2021, the Claimant was issued with a further fit note for 8 weeks until 15 June 2021. The reason given for absence was "stress at work" (2099).

457. Claire Chivers/Batley identified that the form PS Mullender had initially completed had not gone through the superintendent approval process so this was done retrospectively. On 27 April 2021 Superintendent Tom Naughton emailed her, PS Millender and the Claimant to do this. He attached a copy of the relevant completed form to the email. In his cover email he said:

"Please note the attached. Whilst the original 8306 was submitted direct to the Assistant Commissioner by PS Mullender, I have no differing view regards the original recommendation made by the PS. Contained within the attached form is my SLT recommendation. I sincerely hope that you are feeling better and we will continue to support your wellbeing moving forward." (2012).

458. The appeal was considered by Assistant Commissioner Basu. He had full and complete information about the Claimant's circumstances when making his decision, including the entire file that the Claimant wanted him to see (3452 – 3476).

459. The appeal process included a meeting with the Claimant (accompanied by Ms Mills) on 18 May 2021 when the Claimant had an opportunity to tell him himself about his concerns. This included telling Assistant Commissioner Basu that he had submitted a tribunal claim. Assistant Commissioner Basu's decision was made on 26 May 2021 (2166). He rejected the pay appeal, subject to the proviso that the Claimant's pay should be backdated if following investigation of the Claimant's grievances. His rationale was as follows:

"The circumstances here do not fit the standard criteria. I can use discretion however I cannot do so based on what I have been presented both in the documentation and the verbal representations from the officer supported by his fed rep. A parallel investigation needs to happen here given some of the serious allegations the officer has made; these include issues of racial discrimination and bullying and the officer has said he can so no other reason for the way he has been treated other than his ethnicity….

On the present facts I cannot extend pay, however should any complaint he makes in relation to issues of discrimination and bullying be upheld then his pay should be backdated." (2145)

460. Assistant Commissioner Basu also ensured that the Claimant was provided with advice from his staff officer about routes to pursue his complaints that would avoid contact with his own line management. In addition, his staff officer agreed that any new complaint and his existing complaints would be triaged and assessed as to whether they should be passed to the MPS discrimination investigation unit.

461. On the 1 June 2021 the Claimant raised a grievance about the outcome of the appeal. As the appeal mechanism covering his extension of pay had been used, this was deemed not to be within the remit of the Grievance Management Team. The case was closed on the 7 June 2021 (2793) and (3009 – 3014).

462. An internal investigation into the Claimant's complaints took place from July 2021 to 30 May 2022. A copy of the investigation report was included in the bundle (2965 – 2996). According to the information contained in the report, once the Respondent became aware of the Claimant's employment tribunal claim, the Discrimination Investigation Unit was asked to conduct a fact find.

463. There was no dispute between the parties that the finding in relation to all of the Claimant's allegations was 'no case to answer'. PS Kerr, however, was required to undertake some reflective practice in relation to the way he had conducted the meeting with the Claimant on 8 September 2020 and the VCTF was required to reflect on failings in the administration and progress of the Met CC investigation. The Claimant was not therefore paid any backdated sick pay.

Claimant's Ongoing Period of Sick Leave

464. On 25 May 2021, the Claimant's GP notes record that he had started his CBT therapy and expected it to last for 12 weeks (3331).

465. On 27 May 2021, PS Mullender completed a suicide risk assessment for the Claimant (2242). He was unable to complete a workplace risk assessment for him until he had clearer information about the workplace to which the Claimant would be returning seeking advice re risk assessment (2156).

466. On 3 June 2021, the Claimant's GP notes record that his solicitor wanted to know from his GP, at what point it became likely that his condition would last a year or longer. The GP notes record: "*This would be difficult to comment on he had an evolving condition and has already had it for about 2 years, receiving medication for it for nearly 1 year, things can improve with the therapy and medication he has hence we keep up follow up and meds may be reduced but likely to take some more months*." (3330)

467. On 14 June 2021, the Claimant was issued with a further fit note signing him off as unfit to work for a period of 8 weeks to 8 August 2021. The reason for absence was said to be "stress at work" (2214)

468. On 6 August 2021, the Claimant's GP notes record that he had completed his CBT therapy and was feeling much better, including anticipating being able to return to work in six weeks' time (3329). His medical notes contain a graph showing his IAPT outcomes by date including PHQ-9 and GAD-7 scores for the period from 18 August 2020 to 3 August 2021. It shows little improvement until early June 2021, but then quite rapid and significant improvement thereafter (3427).

469. He was issued with a final fit note signing him off for a period of six weeks to 16 September 2021. The reason for his absence was said to be "Stress at work" (3193)

470. The Claimant saw his GP again on 8 September 2021. His GP records that he would need to continue to take medication for 6-9 months. The Claimant was well enough to return to work on 17 September 2021, but took annual leave for two weeks. (3328). His actual date of return to work was 4 October 2021, on a phased return and working from home.

471. The Respondent arranged for the Claimant to be seen by OH on 6 October 2021. The OH report records that:

"[The Claimant] is likely to be covered under the Act as he has a health condition or impairment which:- has lasted longer than 12 months; would have a significant impact on the ability of the employee to undertake normal daily activities without the benefit of treatment; is likely to recur; is having a significant impact on his ability to undertake normal daily activities." (3201)

472. As at the date of the hearing, the Claimant informed us that he had not had any recurrences of his most severe symptoms. He told us he was continuing to take antidepressants, however.

Outcome of Met CC Investigation

473. In his report, Assistant Commissioner Basu recommended that the Claimant be issued with the paperwork in relation to the alleged Met CC misconduct allegation. He recorded that the Claimant's line managers had told Ms Chilvers that the incident had arisen "just prior" to the Claimant going off on annual leave/sick and that they had therefore decided not to serve the paperwork on the Claimant as they did not want to add to his stress. Assistant Commissioner Basu commented, "*The paperwork in relation to this complaint will now be served on the officer as it is clear that he has some knowledge of it and therefore any efforts to reduce additional stress on him are now moot." (2145)*

474. Despite Assistant Commissioner Basu's recommendation, the Claimant was not served with any paperwork relating to the alleged Met CC misconduct investigation. The investigation proceeded while the Claimant was absent, although without involving him. He was eventually served with the section 163 paperwork by email on 20 December 2022, after his sick leave finished, but while he was working at home as a reasonable adjustment (2814 – 2816).

475. In his email to the Claimant, serving him with the section 163 notice, A/Insp Luciano explained that the reason for the delay in serving the section 163 notice was: "*because you were off sick from the time that the matter had been recorded and it was deemed not suitable to serve you such notice when you are off work. I have also identified that since your return to work, there has been no clear opportunity to serve you the attached document due to you working from home and it not being proportionate to attend your home address for this reason*." (2815). The Claimant was not served with a notice of any restrictions.

476. The investigation report (2765 – 2779) had been completed by early October 2021. The conclusion reached by the investigator (a VCTF officer) was that there was a case to answer for misconduct. On 4 October 2021, PS Scudder sent the finished report to the DPS to pass to Met CC PSU for review by their AA because it was considered inappropriate for Mr Callanan to undertake this due to the Claimant's employment tribunal claim (2762 – 2783). The Met CC AA reviewed the report and agreed that there was a case to answer. The Met CC PSU were asked to arrange a misconduct hearing for the Claimant.

477. The misconduct hearing did not take place. On 23 January 2022, PS Scudder sent the report to be reviewed by an independent PSU (2825). We do not know what led to this. The review was undertaken by Supt Jo Edwards, AA for the MO7 Taskforce. Her assessment, sent by email to Mr Callanan on 25 January 2022 was that:

"[The] matter should be categorised not as misconduct but as Practice Requiring Improvement and can be proportionately and appropriately dealt with by way of the officer having a Reflective Practice Review meeting with his line manager….

This is about reflecting and learning for the officer. For him to sit down, with his line manager, reflect on his performance in call receipt at Met CC on that day, maybe listen back to the recording of the conversation with the victim. Then reflecting on his actions, and what then happened with the suspect attacking and injuring the victim's father. Reflecting on what might have happened, in terms of a far more serious ending. Reflecting on how he dealt with the call – passing it to TDIU rather than how he should more properly have dealt with the call, by recognising the real and imminent risk and ensuring it was passed to CAD, graded appropriately and that officers attended the scene in a timely manner, while supporting the victim and her family.

I see it as absolutely pointless to go through a misconduct meeting, assign blame and a sanction, when what is absolutely essential is the reflection, the learning and the improving so that a similar incident is avoided in the future and so that [the Claimant's] risk assessment and victim care improve.

The Reflective Practice Action plan which arises from the meeting could also include items such as a) further refresher training in call handling if the officer is going to retain the skill b) one-to-one support c) mentoring in Met CC d) closer supervision." (2825)

Interim Casey Report

478. On 17 October 2020, the Baroness Casey of Blackstock sent an interim report to the Respondent in which she reached the conclusion that the Respondent's misconduct system was not delivering in a way that she, Baroness Casey, the Respondent, MPS officers or the public would expect it to. She said:

"Cases are taking too long to resolve, allegations are more likely to be dismissed that acted upon, the burden on those raising concerns is too heavy, and there is a racial disparity across the system with White officers dealt less harshly than Black or Asian officers."

479. Of particular relevance to this tribunal hearing were the findings that:

"1. The Met takes too long to resolve misconduct cases ….

2. ….55-60% of misconduct allegations made by met officers, staff and their families receive a 'no case to answer' decision…

3. Allegations relating to ….discriminatory behaviours are less likely that other misconduct allegations to result in a 'case to answer' decision…

5. *….PSUs are overstretched, under-resourced and do not receive training in misconduct, undermining local efforts to improve standards of behaviour.*

6. *The Met is not clear about what constitutes 'gross misconduct' and what will be done about it. The Met threshold for what counts as Gross Misconduct is too high, meaning too many of those who fall short of what the public would expect cannot be removed. …*

7. *There is racial disparity throughout the Met's misconduct system. Despite improvement, it was still the case in 2021-2022 that Black officers and staff were 81% more likely that White officers to have misconduct allegations brought against them, while Asian officers were 55% more likely. Black and Asian officers were also more likely to have an allegation substantiated than White officers. This is a long standing issue and is clear evidence of systemic bias."*

480. The evidence that was used to prepare the Report included misconduct data extracted from the Respondent's Centurion system for all misconduct cases from April 2013 – March 2022 as well as underlying workforce statistics broken down in terms of ethnicity for the same period. Baroness Casey's team also engaged extensively with officers and staff across the MPS and undertook a literature and policy review of the police misconduct and disciplinary systems, a review of the legal and regulatory framework and the Respondent's policies on misconduct.

481. Mr Callanan confirmed that he had checked the position with regard to racial disparity in relation to misconduct cases in the VCTF. His told the hearing that during the period he was the AA for VCTF, "75% of allegations escalated to formal investigation were against white officers, 11% against black officers with the final 14% being officers identifying as other and undefined." This was in the context that the number of officers in the OCU that identified as non-white at the time was close to 18%. When questioned about this he explained that although he did not have a breakdown of the ethnicity of the 18% of non-white officers, he believed the majority of these officers were black as there had been a specific recruitment drive to encourage black officers to join the VCTF to reflect the ethnicity of the communities in which they were working.

Additional Facts Relevant to the Issue of Time

482. Although the Claimant was a member of the Police Federation, he chose to submit his first employment tribunal claim as an unrepresented litigant. He told the Tribunal Panel this was due to concerns about the closeness of the Police Federation to the MPS.

483. He later enquired about obtaining professional representation through the Police Federation, but says he was given a short time frame to provide

documents to the Police Federation and was not able to meet it due to being off sick.

484. The Claimant instructed solicitors privately a little while before making his application to amend his claim/submit a new claim in June 2021. He denied that he fully understood the position in relation to time limits for pursuing claims. He said he was not well enough to take action to pursue his claim prior to this.

THE LAW

Protected Disclosures

485. Section 47B(1) of the Employment Rights Act 1996 says:

> "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."

486. According to section 43A "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

487. Section 43B(1) says "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, [is made in the public interest and] tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,
(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
(d) that the health or safety of any individual has been, is being or is likely to be endangered,
(e) that the environment has been, is being or is likely to be damaged, or
(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

488. There must be a disclosure of information. In *Cavendish Munro Professional Risks Management Ltd v Geduld* [2010] IRLR 38, the EAT held that to be protected a disclosure must involve information, and not simply voice a concern or raise an allegation.

489. The Court of Appeal has subsequently cautioned tribunals against treating the categories of "information" and "allegation" as mutually exclusive in the case of *Kilraine v London Borough of Wandsw*orth [2018] EWCA Civ 1436. At paragraphs 30 -31, Sales LJ says:

"*I agree with the fundamental point …….. that the concept of "information" as used in section 43B(1) is capable of covering statements which might also be characterised as allegations. …….Section 43B(1) should not be glossed to introduce into it a rigid dichotomy between "information" on the one hand and "allegations" on the other. ……*

On the other hand, although sometimes a statement which can be characterised as an allegation will also constitute "information" and amount to a qualifying disclosure within section 43B(1), not every statement involving an allegation will do so. Whether a particular allegation amounts to a qualifying disclosure under section 43B(1) will depend on whether it falls within the language used in that provision."

490. He goes on to say at paragraph 35:

"*In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection [43B](1).*"

491. The leading case dealing with when the public interest test is met is *Chesterton Global Ltd & Anor v Nurmohamed & Anor* [2017] EWCA Civ 979. The Court of Appeal confirmed that where a disclosure relates to a breach of the worker's own contract of employment, or some other matter under section 43B(1) where the interest in question is personal in character, there may be features of the case that make it reasonable to regard the disclosure as being in the public interest as well as in the personal interest of the worker.

492. Section 47B ERA 1996 gives an employee the right not to be subjected to a detriment on the ground that he has made a protected disclosure.

493. Section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower.

494. The term "detriment" is not defined in ERA 1996 and tribunals have therefore looked to the meaning of detriment established by discrimination case law which is set out below.

Race Related Harassment and Direct Race Discrimination and the Meaning of Detriment

495. Race is one of the protected characteristics identified in section 4 of the Equality Act 2010. Section 9(1) of the Equality Act 2010 says race as includes colour, nationality and ethnic or national origins.

496. Section 39(2) of the Equality Act 2010 prohibits an employer discriminating against one of its employees by dismissing him or by subjecting the

employee to a detriment. This includes direct discrimination because of a protected characteristic as defined in section 13.

497. Section 40(1)(a) of the Act provides that an employer must not, in relation to employment by it, harass a person who is one of its employees. The definition of harassment is contained in section 26 of the Act.

498. A detriment can encompass a range of treatment from general hostility to dismissal. It does not necessarily entail financial loss, loss of an opportunity or even a very specific form of disadvantage.

499. The test for detriment was formulated in the case of *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11 where it was said that it arises where a reasonable worker would or might take the view that they had, as a result of the treatment complained of, been disadvantaged in the circumstances in which they had to work.

500. The EHRC Employment Code, drawing on this case law, says: '*Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage……. However, an unjustified sense of grievance alone would not be enough to establish detriment*." (paragraphs 9.8 and 9.9). Accordingly, the test of detriment has both subjective and objective elements.

501. In subsection 212(1) of the Equality Act, a *detriment* does not include conduct that amounts to harassment. It must be one or the other – it cannot be both. This provision is disapplied, however, by section 212(5) where it is not possible to pursue a claim for harassment related to a particular characteristic, such as being married.

Harassment

502. Section 26(1) of the Equality Act 2010 provides:

> "A person (A) harasses another (B) if
>
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
>
> (b) the conduct has the purpose or effect of—
>
> (i) violating B's dignity, or
> (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B."

503. The unwanted conduct must be shown "to be related" to the relevant protected characteristic. The EHRC Code at paragraph 7.9 states that 'related to' should be given a broad meaning 'a connection with the protected characteristic'.

504. The shifting burden of proof rules set out in section 136 of the Act can be helpful in considering this question. The burden is on a claimant to establish, on the balance of probabilities, facts that in the absence of an adequate explanation from the relevant respondent, show he has been subjected to unwanted conduct related to the relevant characteristic. If he succeeds, the burden transfers to the respondent to show prove otherwise.

505. Harassment does not have to be deliberate to be unlawful. If A's unwanted conduct (related to the relevant protected characteristic) was deliberate and is shown to have had the *purpose* of violating B's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for B, the definition of harassment is made out. There is no need to consider the effect of the unwanted conduct.

506. If the conduct was not deliberate, it may still constitute unlawful harassment. In deciding whether conduct has *the effect* of creating an intimidating, hostile, degrading, humiliating or offensive environment for B, we must consider the factors set out in section 26 (4), namely:

(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that affect.

Direct Race Discrimination

507. Section 13 of the Equality Act 2010 provides that 'A person (A) discriminates against another (B) if, *because of* a protected characteristic, A treats B less favourably than A treats or would treat others'.

508. Under section 23(1), where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.

509. In order to find discrimination has occurred, there must be some evidential basis on which we can find, often through inferring, that the claimant's protected characteristic is the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial evidence.

510. We must consider whether the fact that the claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.

511. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable

treatment was because of race. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the claimant was treated as he was.

512. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied. A two-stage process is followed. Initially it is for the claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the respondent, that the respondent committed an act of unlawful discrimination.

513. At the second stage, discrimination is presumed to have occurred, unless the respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the claimant's race. The respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.

514. Guidelines on the burden of proof were set out by the Court of Appeal in *Igen Ltd* v *Wong [2005] EWCA Civ 142; [2005] IRLR 258* and we have followed those as well as the direction of the court of appeal in the *Madarassy* case. The decision of the Court of Appeal in *Efobi v Royal Mail Group Ltd* [2019] ICR 750 confirms the guidance in these cases applies under the Equality Act 2010.

515. The Court of Appeal in *Madarassy*, states:

'*The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the respondent had committed an unlawful act of discrimination*.' (56)

516. We are not bound to always follow a two stage process when applying the shifting burden of proof. It may be appropriate on occasion, for the tribunal to take into account the respondent's explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (*Laing v Manchester City Council and others* [2006] IRLR 748; *Madarassy v Nomura International plc* [2007] IRLR 246, CA.) It may also be appropriate for the tribunal to go straight to the second stage, where for example the respondent assert that it has a non-discriminatory explanation for the alleged discrimination. A claimant is not prejudiced by such an approach since it effectively assumes in his favour that the burden at the first stage has been discharged (*Efobi v Royal Mail Group Ltd* [2019] ICR 750, para 13).

517. In addition, there may be times, as noted in the cases of *Hewage v GHB* [2012] ICR 1054 and *Martin v Devonshires Solicitors* [2011] ICR 352, where we are in a position to make positive findings on the evidence one way or the other and the burden of proof provisions are not particularly helpful. When we adopt such an approach, it is important that we remind ourselves not to fall into the error of looking only for the principal reason for the treatment, but instead ensure we properly analyse whether discrimination was to any extent an effective cause of the reason for the treatment.

518. Allegations of discrimination should be looked at as a whole and not simply on the basis of a fragmented approach *Qureshi v London Borough of Newham* [1991] IRLR 264, EAT. We must "*see both the wood and the trees*": *Fraser v University of Leicester* UKEAT/0155/13 at paragraph 79.

519. Our focus "*must at all times be the question whether or not they can properly and fairly infer… discrimination*.": *Laing v Manchester City Council*, EAT at paragraph 75.

520. Being treated less favourably than a comparator does not necessarily mean that a claim will succeed in establishing they have been subjected to a detriment, but it would be unusual for this not to be the case (*Deer v University of Oxford* [2015] ICR 1213 as per Elias LJ).

Victimisation

521. Section 39(4)(d) of the Equality Act 2010 provides that an employer must not victimise its employees. The definition of victimisation is contained in section 27 of the Act.

522. Section 27(1) of the Act provides that:

'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.'

523. The definition of a protected act is found in section 27(2) and includes:

(a) bringing proceedings under the Equality Act 2010;

(b) giving evidence or information in connection with proceedings under the Equality Act 2010;

(c) doing any other thing for the purposes of or in connection with the Equality Act 2010; and

(d) making an allegation (whether or not express) that an employer or another person has contravened the Equality Act 2010

524. A grievance can amount to a protected act under section 27(2)(d) without referring to the Equality Act 2010 and without using the correct legal

language. It must however contain a complaint about something that is capable of amounting to a breach under the Equality Act 2010 (*Beneviste v Kingston University* EAT 0393/05).

525. If the tribunal is satisfied that a claimant has done a protected act, the claimant must show any detriments occurred because he had done a protected act. It is only if the necessary link between the detriment suffered and the protected act can be established, the claim of victimisation will succeed. The protected act need only be one of the reasons. It need not be the only reason (EHRC Employment Code paragraph 9.10).

526. The shifting burden of proof found in section 136 of the Equality Act sets applies. Initially it is for the claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the respondent, that the reason for any unfavourable treatment was because of the claimant's protected act. If the claimant succeeds, discrimination is presumed to have occurred, unless the respondent can show otherwise.

Indirect Discrimination

527. Subsection 19(1) of the Equality Act 2010 provides that:

"A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's."

528. Subsection 19(2) provides that for the purposes of subsection 19(1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,
(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(a) A cannot show it to be a proportionate means of achieving a legitimate aim.

529. In establishing whether a PCP places persons of a protected characteristic at a particular disadvantage, the starting point is to look at the impact on people within a defined "pool for comparison". The pool will depend on the nature of the PCP being tested and should be one which suitably tests the particular discrimination complained of (*Grundy v British Airways plc* [2008] IRLR 74. The EHRC Employment Code provides useful guidance on this question. A strict statistical analysis of the relative proportions of advantaged

and disadvantaged people in the pool is not always required. Tribunals are permitted to take a more flexible approach.

530. The claimant must also establish that he is actually put to the disadvantage.

The Definition of a Disabled Person

531. Disability is a protected characteristic under section 4 of The Equality Act 2010 (the Act).

532. In order to be disabled for the purposes of the Equality Act 2010, a person must meet the requirements in section 6 of the Equality Act 2010. These are supplemented by the provisions of Part 1 of Schedule 1. The tribunal should also have reference to the "Employment: Statutory Code of Practice" and the "Guidance on matters to be taken into account in determining questions relating to the definition of disability" published by the Equality and Human Rights Commission (EHCR).

533. Section 6(1) of the Equality Act 2010 says that a person has a disability if they have a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

534. There are four key questions:

- Does the person have a physical or mental impairment?
- Does that impairment have an adverse effect on their ability to carry out normal day-to-day activities?
- Is that effect substantial?
- Is that effect long-term?

535. The EHRC Guidance tells us that physical or mental impairment should be given its ordinary meaning (paragraph A3).

536. "Day-to-day activities" are things people do on a regular or daily basis. This can include general work-related activities, but not unusual or specialised activities.

537. "Substantial" effect means more than minor or trivial (section 212(1) Equality Act 2010).

538. A person may have more than one impairment, any one of which alone would not have a substantial effect. In such a case, account should be taken of whether the impairments together have a substantial effect overall on the person's ability to carry out normal day-to-day activities. (EHRC Guidance paragraph B6).

539. When considering adverse effect, any medical treatment [or other measures] is to be disregarded (paragraph 5(1), Schedule 1, Equality Act 2010)

540. According to paragraph 2(1)(a) – (c) of Schedule 1 of the Equality Act, the effect of an impairment will be considered to be long term if:

- It has lasted for at least 12 months;
- It is likely to last for at least 12 months; or
- It is likely to last for the rest of the life of the person affected.

Paragraph 2(2) says that if an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

541. In *All Answers Ltd v W and anor* [2021] EWCA Civ 606 the Court of Appeal confirmed that where a condition has not lasted at least 12 months at the time of the alleged discriminatory acts, the test is whether, at the time of the alleged discriminatory acts, the claimant's condition was likely to last 12 months or for the rest of their life. "Likely" should be interpreted as meaning that it could well happen (e.g. EHRC Guidance, Paragraph C3). The tribunal cannot take into account what happens subsequently, but must make an assessment by reference to the facts and circumstances existing at the date of the alleged discriminatory acts.

Reasonable Adjustments

542. Section 39(5) of the Equality Act 2010 imposes a duty to make reasonable adjustments on an employer.

543. Section 20(3) provides that where a provision, criterion or practice (a PCP) applied by or on behalf of an employer, places a disabled person at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable to have to take in order to avoid the disadvantage.

544. Section 21 of the Equality Act provides that an employer discriminates against a disabled person if it fails to comply with a duty to make reasonable adjustments. This duty necessarily involves the disabled person being more favourably treated than in recognition of their special needs.

545. The duty to make reasonable adjustments only arises where the employer has knowledge (actual or constructive) that its employee is disabled and likely to be placed at a substantial disadvantage as (Paragraph 20 (1)(b) Schedule 8 of the Equality Act 2010).

546. In *Environment Agency v Rowan* 2008 ICR 218 and *General Dynamics Information Technology Ltd v Carranza 2015 IRLR 4* the EAT gave general guidance on the approach to be taken in reasonable adjustment claims.

547. A tribunal must first identify:

- the PCP applied by or on behalf of the employer
- the identity of non-disabled comparators; and
- the nature and extent of the substantial disadvantage suffered by the claimant in comparison with the comparators.

548. Once these matters have been identified then the tribunal will be able to assess the likelihood of adjustments alleviating those disadvantages identified. The issue is whether the employer had made reasonable adjustments as matter of fact, not whether it failed to consider them.

549. The phrase PCP is interpreted broadly. The EHRC Code says (paragraph 6.10):

"[It] should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements or qualifications including one-off decisions and actions."

550. In *Lamb v The Business Academy Bexley* EAT 0226/15 the EAT commented that the term "PCP" is to be construed broadly "having regard to the statute's purpose of eliminating discrimination against those who suffer disadvantage from a disability".

It is also generally unhelpful to distinguish between "provisions", "criteria" and "practices": *Harrod v Chief Constable of West Midlands Police* [2017] ICR 869.

There is no formal requirement that the PCP actually be applied to the disabled claimant. The EAT said in *Roberts v North West Ambulance Service* [2012] ICR D14 that a PCP (in this case, hot desking) applied to others might still put the claimant at a substantial disadvantage.

551. There are some limits to what can constitute a PCP. In particular there has to be an element of repetition, actual or potential. A genuine one-off decision which was not the application of policy is unlikely to be a "practice": *Nottingham City Transport Ltd v Harvey* [2013] All ER(D) 267 (Feb), EAT. In that case the one-off application of a flawed disciplinary process to the claimant was not a PCP. There was no evidence to show that the employer routinely conducted its disciplinary procedures in that way.

552. In *Ishola v Transport for London* [2020] ICR 1204 the Court of Appeal said that all three words "provision", "criterion" and "practice" "..carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again."

553. The test of reasonableness imports an objective standard. The tribunal must examine the issue not just from the perspective of the claimant, but also take into account wider implications including the operational objectives of the employer.

554. The Statutory Code of Practice on Employment 2011, published by the Equalities and Human Rights Commission, contains guidance in Chapter 6 on the duty to make reasonable adjustments. Paragraph 6.28 sets out some of the factors which might be taken into account in determining whether it is reasonable for an employer to have to take a particular step in order to comply with the duty to make reasonable adjustments. These include whether taking the step would be effective in preventing the substantial disadvantage, the practicability of the step, the cost to the employer and the extent of the employer's financial and other resources.

Discrimination Arising from Disability

555. Subsection 15(1) of the Equality Act 2010 provides that:

> A person (A) discriminates against a disabled person (B) if—
>
> (a) A treats B unfavourably because of something arising in consequence of B's disability, and
>
> (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim

556. Limb (a) involves a two stage test:

- Did the claimant's disability cause, have the consequence of, or result in, "something"?
- Did the employer treat the claimant unfavourably because of that "something"?

It does not matter which way round these questions are approached.

557. According to subsection 15(2), subsection 15(1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability. It is not necessary, however, for A to be aware that the "something" arises in consequence of B's disability (*City of York Council v Grosset* [2018] EWCA Civ 1105).

558. The concept of unfavourable treatment is unique to section 15. In the case of Williams v Trustees of Swansea University Pension and Assurance Scheme and another [2018] UKSC 65, the Supreme Court said it was a similar to a detriment. In particular, there is a requirement that the disabled person "must have been put at a disadvantage. "No comparator or comparison is required.

Objective Justification

559. Indirect discrimination and discrimination arising from disability is not unlawful where it can be objectively justified. The burden is on the respondent to prove justification. This involves two questions:

- Can the respondent establish that the measures it took was in pursuit of a legitimate aim that corresponded to a real business need on the part of the employer?

- If so, can the respondent establish that the measures taken to achieve that aim were appropriate and proportionate i.e. did it avoid discriminating more than necessary to achieve the legitimate aim?

(*Bilka-Kaufhaus GmbH v Weber von Hartz* [1986] IRLR 317)

560. A balancing act is required. The discriminatory effect of the treatment has to be balanced against the employer's reasons for it. To be proportionate, the unfavourable treatment has to be both an appropriate means of achieving the legitimate aim and a reasonably necessary means of doing so (*Homer v Chief Constable of West Yorkshire* [2012] UKSC 15)

561. When determining whether or not a measure is proportionate it is relevant for the tribunal to consider whether or not a lesser measure could have achieved the employer's legitimate aim (*Naeem v Secretary of State for Justice* [2017] UKSC 27). The tribunal should consider whether the measure taken was proportionate at the time the unfavourable treatment was applied (*The Trustees of Swansea University Pension & Assurance Scheme and another v Williams* UKEAT/0415/14).

562. The tribunal is required to make an objective assessment which does not depend on the subjective thought processes of the employer. This question is not to be decided by reference to an analysis of the employer's thoughts and actions. The question is whether the treatment, objectively assessed, at the time it occurred, a proportionate means to achieve a legitimate aim irrespective of the process adopted by the employer.

563. We must also consider the guidance contained in the EHRC Statutory Code of Practice that is relevant to this question. This is contained, in particular at paragraph 5.12 which states that:

"*It is for the employer to justify the treatment. They must produce evidence to support their assertion that it is justified and not rely on mere generalisations."*

The guidance in paragraphs 4.28 – 4.32 is also relevant.

Time limits

564. The time-limit for discrimination claims is at section 123 Equality Act 2010. According to section 123(1)(a) the tribunal has jurisdiction where a claim is presented within three months of the act to which the complaint relates.

565. The normal three-month time limit needs to be adjusted to take into account the early conciliation process and any extensions provided for in section 140B Equality Act.

566. By subsection 123(3)(b), a failure to do something is treated as occurring when the person in question decided on it. In the absence of evidence to the contrary. A person is taken to decide on a failure to do something when that person does an act which is inconsistent with doing it or, in the absence of such an inconsistent act, on the expiry of the period on which that person might reasonably have been expected to do it.

567. In claims for reasonable adjustments, this means time will start to run when an employer decides not to make the reasonable adjustment relied upon *(Humphries v Chevler Packaging Ltd* [2006] EAT0224/06). Alternatively, in a claim when an adjustment has not been actively refused time runs from the date on which an employer might reasonably have been expected to do the omitted act (*Kingston upon Hull City Council v Matuszowicz* [2009] ICR 1170 CA). This should be determined having regard to the facts as they would reasonably have appeared to the employee, including what the employee was told by his or her employer (*Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] ICR 1194, CA).

568. By subsection 123(3)(a), conduct extending over a period is to be treated as done at the end of the period.

569. In *Hendricks v Metropolitan Police Commissioner* [2002] EWCA Civ 1686, the Court of Appeal stated that the test to determine whether a complaint was part of an act extending over a period was whether there was an ongoing situation or a continuing state of affairs in which the claimant was treated less favourably. An example is found in the case of *Hale v Brighton and Sussex University Hospitals NHS Trust* UKEAT/0342/17 where it was determined that the respondent's decision to instigate disciplinary proceedings against the claimant created a state of affairs that continued until the conclusion of the disciplinary process.

570. It is not necessary to take an all-or-nothing approach to continuing acts. The tribunal can decide that some acts should be grouped into a continuing act, while others remain unconnected (*Lyfar v Brighton and Sussex University Hospitals Trust* [2006] EWCA Civ 1548; The tribunal in *Lyfar* grouped the 17 alleged individual acts of discrimination into four continuing acts, only one of which was in time.

571. A refusal of a request, where it is repeated over time, may constitute a continuing act (*Cast v Croydon College* [1998] IRLR 318).

572. A distinction needs to be drawn between a continuing act and a one-off act that has continuing consequences (*Barclays Bank plc v Kapur and others* [1992] ICR 208;). This distinction will depend on the facts in each case. (*Sougrin v Haringey Health Authority* [1992] IRLR 416*, CA)*

573. Alternatively, the tribunal may still have jurisdiction if the claim was brought within such other period as the employment tribunal thinks just and equitable as provided for in section 123(1)(b).

574. The tribunal has a wide discretion to extend time on a just and equitable basis. As confirmed by the Court of Appeal in *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23, the best approach is for the tribunal to *assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time. This will include the length of and reasons for the delay, but might, depending on the circumstances, include some or all of the suggested list from the case of British Coal Corporation v Keeble* [1997] IRLR 36 set out below, as well as other potentially relevant factors:

- The extent to which the cogency of the evidence is likely to be affected by the delay.
- The extent to which the party sued had co-operated with any requests for information.
- The promptness with which the claimant acted once they knew of the possibility of taking action.
- The steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action

575. It is for the claimant to show that it would be just and equitable to extend time. The exercise of discretion should be the exception, not the rule **(***Bexley Community Centre (t/a Leisure Link) v Robertson* [2003] EWCA Civ 576).

ANALYSIS AND CONCLUSIONS

576. The lengthy set of allegations contained in the table in the list of issues are said to give rise to complaints of either race-related harassment or direct race discrimination, in the alternative, and/or complaints of victimisation pursuant to section 27 of the Equality Act 2010 and complaints of detriment done on the ground that the Claimant had made a protected disclosure whistleblowing under section 47B of the Employment Rights Act 1996.

577. We therefore first sought to identity if the Claimant had done any protected acts, as defined in section 27(2) of the Equality Act 2020 or made any qualifying protected disclosures as defined in section 43B of the Employment Rights Act 1996 and if so, remind ourselves when these took place and who knew about them.

Did the Claimant do any Protected Acts?

578. The Claimant relied on five protected acts as set out in paragraph 23 of the list of issues, four of which the Respondent accepted amounted to protected acts. The four that were accepted were:

23 (i) The Claimant raising a grievance and responding to queries about the same between 7/7/20 and 5/8/20
23(ii) The Claimant contacting ACAS instigating the Tribunal
23(iii) The Claimant bringing ET proceedings
23(v) The C raising complaints on 18/4/21 to Claire Chilvers/Batley and the C's appeal against the decision not to extend his entitlement to full sick pay

579. The fifth alleged protected act was said to be the Claimant and his federation Gillian Mills raising complaints about his treatment on 4 February 2023 (23 (iv). We made a finding in fact that although there was a discussion at the meeting about the circumstances that had led to the Claimant becoming unwell during which he had alleged it was due to his treatment by his previous line managers all the way up to SLT, neither he nor Ms Mills were clear that he was alleging race discrimination had occurred. We therefore do not find that that there was a fifth protected act. There is no doubt, however, that the Claimant and Ms Mills did articulate this complaint in much more detail later as part of the sick pay appeal, however.

580. With regard to when the protected acts took place and who knew about them, we have reminded ourselves of the following findings of fact that we made.

581. The Claimant's grievance and grievance correspondence was undertaken between 7 July and 5 August 2020. Our factual finding was that only Grace Macauley and her supervisor knew about the grievance and its contents at the time and this continued to be the case for several months. The Claimant emailed C/Insp Jack May Robinson and told him that he had raised a grievance against Mr Callanan on 19 August 2021, but he provided him with no details of the grievance.

582. The Claimant initiated the Acas early conciliation process on 15 July 2021. Although he cited the MPS Grievance team as the Respondent to the grievance, our finding was that the Grievance Management team were not contacted by Acas and instead Acas made contact with the employment Tribunal Unit within DPS.

583. On 4 August 2021, a member of staff in that team had informed A/Insp Cook, DS Doherty and C/Insp Jim Corbett by email about the contact from Acas. The email referenced that the Claimant had made an allegation of race discrimination. Our finding was that DS Doherty spoke to A/Insp Cook and Mr Callanan about it on around that date and so they also had knowledge of the protected act. We consider it is likely that when Mr Callanan was informed a little later that the Claimant had submitted a grievance about him,

he assumed the grievance also contained an allegation of race discrimination, which of course it did. This means that by 19 August 2021 he knew that the Claimant had also done an additional earlier protected act.

584. DS Doherty emailed Insp Trice and C/Insp May-Robinson on 27 August 2020 to explain that he had been advised not to complete the Claimant's PDR because of the allegation of race discrimination and so they also knew of a protected act by this date.

585. Although the Claimant presented his first claim on 12 August 2020, it was not served on the Respondent until 1 June 2021. Our finding was that by 20 July 2021 at the latest, all of the people named in that complaint, namely Mr Callanan, Insp Trice DS Doherty, PC Pace, A/Insp Cook, PS Perry, A/PS Perry, Ms O'Meara and Insp Young had been informed about it.

586. With regard to who knew about it any earlier, the Claimant had mentioned the claim and that it related to racist behaviour in his sick pay appeal dated 18 April 2021. This was sent to Claire Chilvers/Batley. He also spoke to Assistant Commissioner Basu about this when they met on 18 May 2021 Claire Chilvers/Bately and Assistant Commissioner Basu also of course had knowledge of the appeal itself which was also a protected act. We found that they did not share the information contained in the appeal with anyone outside the appeal process.

Did the Claimant make any Public Interest Disclosures?

587. The Claimant relies on the same five purported protected acts set out above as public interest disclosures. In doing the four acts that were accepted as protected acts, we are satisfied that there was a sufficient disclosure of information by the Claimant. In addition, we are satisfied that he genuinely believed that the information tended to show that he was the subject of discriminatory bullying contrary to the Equality Act 2010 and that therefore these parts of the test for what constitutes a qualifying disclosure under section 43B(1)(a) are met.

588. Given the findings we have made about whether or not he was unlawfully discriminated against, the question of whether it was reasonable for him to hold that belief is a complex one. There need not be an actual breach of the Equality Act 2010 for someone to reasonably believe the information they are disclosing shows one. The Claimant made numerous allegations in his grievance and initial claim, some of which had a sounder basis than others. We are satisfied, without analysing each allegation individually, that it was reasonable for him to believe some of them.

589. However, we do not hold that the four protected acts constituted qualifying disclosures. This is because we are not satisfied that the Claimant believed he was raising his concerns in the public interest. When questioned about this when giving his evidence, he confirmed that his motivation for submitting his grievance and presenting his claim was to resolve his own personal issues and he was not acting out of any wider concerns.

590. In addition to his protected acts, the Claimant relied on two further purported public interest disclosures. These were clarified during the course of the hearing as follows:

25 (i) His solicitor's emails on 28.8.2019 (847) which he said contained information which tended to show that R was or was likely to be in breach of his legal obligations relating to the Claimant. The Claimant said that the relevant legal obligation was his right to meet his solicitor.

25 (ii) The C emailing AC & others on 29/8/19 at 12:07 (867) which he said contained information which tended to show that that R was likely or was acting in breach of legal obligations towards the C and that information tending to show this was being or was likely to be concealed (867). The Claimant reiterated that the relevant legal obligation as his right to meet his solicitor.

591. We do not consider that either of these amounts to a qualifying disclosure under section 43B(1)(a). This is because we do not consider the Claimant genuinely believed that he had a legal entitlement to be permitted to meet his solicitor at a time and location of his choosing during his normal working hours. If we are wrong about this, and he did genuinely hold this belief, this was not a reasonably held belief.

592. No such legal entitlement existed. The Police Conduct Regulations provide that a police officer is entitled to legal representation at a misconduct hearing, but are silent as to any right to meet a solicitor in advance during work hours.

593. At this time this issue arose, the Claimant was being advised by his solicitor. We found that her email to Mr Callanan was carefully worded and that she deliberately referenced that it was "common practise" for officers to be allowed time to meet with solicitors and fed representatives rather that asserted that this was or had become a legal entitlement. We consider this was because she did not consider that there was a legal entitlement, even an implied one and had advised the Claimant accordingly. We therefore attribute the same level of understanding she had about the legal entitlement to the Claimant.

594. A further reason for us not holding that the two disclosures amounted to qualifying disclosures for the purposes of section 43B(1)(b) is because we do not consider the public interest test is met for these two additional disclosures for the same reasons as explained above.

Direct Race Discrimination, Victimisation and Whistleblowing

595. We next reminded ourselves which of the allegations in the lengthy table of allegations actually occurred based on our findings of fact.

596. For those that were not in dispute or proven, we considered whether the treatment amounted to unwanted conduct related to race for the purposes of the claimant's race-related harassment claim and, if so did the conduct have the proscribed purpose or effect set out in section 26(2) of the Equality Act 2010.

597. At the same time, but alternatively because the definition of detriment in section 212 of the Equality Act 2010 excludes conduct that amounts to harassment, we considered:

(a) whether the conduct was less favourable treatment of the claimant because of race (direct discrimination claim); and/or

(b) for those allegations arising in time after the protected acts, whether it was because the Claimant had done a protected act.

We finally considered if the treatment amounted to a detriment.

598. We reminded ourselves that whether or not something is related to race or because of race involves asking two different questions, although often the same evidence will be relevant to both.

General Comments

599. Before setting out our analysis for each allegation, we set out first some general comments that were relevant to our decision making.

600. We noted that the Claimant had identified some actual comparators for the purposes of his direct discrimination complaints. We did not consider that the circumstances of any of the proposed comparators cited by the Claimant met the requirement of an actual comparator in section 23 of the Equality Act 2010. This was because, on the facts, their circumstances were not sufficiently similar to the Claimant's circumstances. We explain this in relation to the specific allegations below where relevant.

601. We therefore concentrated on what we considered was the reason for the relevant conduct and whether it was because of the Claimant's race and/or his protected acts.

602. In undertaking this exercise, we considered the shifting burden of proof in section 136 of the Equality Act and how to apply it. We found that our approach varied by allegation according to the explanations we were given and the cogency of the evidence before us, some of which was very detailed.

603. We were also careful not to adopt too fragmented an approach to the exercise of examining each allegation, but also to stand back from the detail and consider the position overall as well. We considered there were some general themes that emerged that informed our thinking. Having identified

these, however, we were also careful not to fall into the trap of constructing an alternative narrative based on those themes and over generalise.

604. As there were some general themes that informed our thinking, it is important that we set those out.

605. The first of these were the findings contained in the interim report prepared by Baroness Casey, upon which the Claimant placed significant reliance. We have found a number of things in this case which are in accordance with the findings made in the report including the length of time it takes the MPS to resolve misconduct cases and that PSUs are overstretched and under-resourced.

606. In relation to three findings in particular, we have considered what weight we should give them in relation to the Claimant's specific case.

607. The first Casey finding was her finding that 55-60% of cases result in a "no case to answer" suggesting that the MPS are not taking action against officers even though it would be justified. This was potentially relevant because the finding in the Claimant's first misconduct investigation. It was notable that we were not told how PS Grey reached this decision and that several of the Respondent's witnesses continued to express concern about the Claimant's actions notwithstanding the finding. We decided not to give the general finding by Baroness Casey very much weight at all. Instead, we kept it in mind, but based on findings primarily on the evidence before us.

608. The second Casey finding was the general finding that cases of misconduct where allegations of discriminatory behaviour are more likely that other misconduct allegations to result in a 'no case to answer' decision. All of the Claimant's own allegations of discriminatory behaviour resulted in such a decision when internally investigated. We have given no weight either to the general finding made by Baroness Casey because we have given no weight to the internal findings. We have instead considered each of the Claimant's allegations afresh based on the evidence before us.

609. The third Casey finding was the finding in relation to racial disparity in the Respondent's misconduct system. Her statistical finding, that black officers were 81% more likely than white officers to have misconduct allegations brought against them, is so stark and shocking that it cannot be ignored. The statistic strongly points to a difference in treatment between black and white officers, but does not necessarily demonstrate that black officers have cases brought against them that are not justified. It could mean this, but could equally mean that white officers are escaping having cases brought against them when they should be. The overall tenor of her interim report suggests that the statistic is likely to arise from a mixture of both scenarios.

610. In considering the weight to give this general finding made by Baroness Casey, we have borne in mind that Mr Callanan told us that the statistics in the VCTF did not follow the general statistic. He had not undertaken the

same statistical calculation, however, and we were not presented with any documentary evidence to corroborate what he told us.

611. We decided therefore to keep the existence of the statistic at the front of our minds as part of the relevant evidence produced by the Claimant towards the burden of proof in relation to his race claims should shift to the respondent. We have not, however, treat it as being sufficient on its own to shift the burden onto the Respondent in light of the counter evidence.

612. Another general theme was that it did not escape our attention that all of the Respondent's witnesses were white.

613. The Claimant pointed out that three black people could have been called by the Respondent as witnesses by it, namely C/Supt Adelekan, Grace Macauley and T/Detective Superintendent White. We decided not to infer anything from their absence as possible witnesses as we were satisfied with the explanation given by the Respondent for why they were not called. This was because the Respondent had called all the officers the Claimant had named in the list of issues with C/Supt Adelekan and T/Detective Superintendent White not being named. In relation to Ms Macauley, the explanation for her not attending was that she no longer worked in the Grievance Management team, although was still an MPS employee.

614. We further note that had the Claimant felt that their evidence was important to his case, he could have called them as witnesses himself and or sought witness orders for their attendance.

615. It did surprise us that when asked about racial stereotypes, such as black people being lazy and Nigerian's being associated with fraud, some of the Respondent's witnesses said they were not aware of such stereotypes. We bore this in mind when considering whether such stereotypical views might have influenced them unconsciously. A lack of awareness of such stereotypes might lead to individuals failing to check if they are applying them, but does not necessarily mean that they have applied them.

616. Another general theme that informed our thinking was that the VCTF was a newly established OCU in which there was a great deal of fluidity. It did not have the same procedures that operated in more established OCUs and was also required to operate differently in some respects to other OCUs because of its funding.

617. Another general theme that influenced our thinking about the Claimant's complaints was the context in which he was working. The MPS is a rank and file organisation in which hierarchy is considered to be important. As we understand it, this means that junior officers are generally expected to follow the instructions given to them by senior officers with limited challenge. Challenge is tolerated, but is expected to be measured and polite in tone. The practice of 'arcing', going to a more senior officer over the officer above you, to get your own way, is understandably viewed negatively.

618. In the Claimant's case, although his email correspondence with his superior officers was aways polite, the tone of some of his communications lacked tact and were confrontational. Probably the best example is found in the email correspondence he wrote when seeking to return to full working hours in February 2020. There was also no doubt in our minds that he was in the wrong in relation to his inability to get into work on time on Sunday 12 January 2020 and that his communications with DI Brownlee were arcing.

619. The final general theme concerned Mr Callanan's influence. The Claimant's case was that Mr Callanan deliberately involved himself in matters to do with the Claimant in an unusual way and sought to influence the way others behaved towards him. We found that while Mr Callanan was a senior and influential figure in the VCTF and his decision making about the Claimant was significant, it was not unusual or out of context. On analysis, Mr Callanan was the most appropriate person to provide advice about the Claimant or got involved because the Claimant himself involved him.

620. We now turn to the specific allegations.

- **Leaving the C to work in the POD on his own (xxvi – p. 17)**

621. Our factual finding was that the Claimant was at times left to work in the POD on his own, but there was no evidence that this was any more than any of his colleagues in the same role. This allegation therefore fails on the facts. The treatment did not constitute unwanted conduct related to race or less favourable treatment because of race.

- **Not approving C's requests for overtime (xxvi – 16)**
- **Criticising the C for getting overtime in other departments (xxvi – 16)**
- ***Stating the C must request overtime in his own department (xxvi – 16)***

622. In relation to these three general overtime allegations numbered xxvi on page 16 of the list of issues, only one of these allegations was made out on the facts, namely that the Claimant was told that he should request overtime in his own department, rather than do it elsewhere. We found that C/ Supt Adelekan did speak to the Claimant and said something along these lines to him. Our finding was this arose on C/Supt Adelekan's own initiative and did not take place because he had been asked to speak to the Claimant by Mr Callanan or DS Doherty.

623. We do not consider this occurred because of the Claimant's race or that the conduct was related to his race. Although C/Supt Adelekan was not present to give evidence at the tribunal, we find it unlikely, as a black man, that he would have picked on the Claimant because of his race. Indeed, the Claimant himself did not assert C/Supt Adelekan was personally influenced by race, but that he was influenced in his actions by Mr Callanan and DS Doherty.

624. A far more likely explanation for speaking C/Supt Adelekan speaking to the Claimant was related to the Mayor's funding of the VCTF rather than the

Claimant's race. C/Supt Adelekan wanted to ensure that the VCTF was fully resourced and a success and that they were not using the Mayor's funding to subsidise overtime for other OCUs. The Claimant adduced no evidence that other officers in the POD were not given a similar instruction. In addition, a local policy was introduced at a later date preventing all VCTF officers from doing overtime in other OCUs without SLT permission.

- **Attempting to move the C out of his role at the POD even after he set out why it was suitable – PC and ND (xvii – 17)**

625. The next allegation we considered was that DS Doherty and Mr Callanan attempted to move the Claimant out of his role at the POD, even after he set out why it was suitable (part of xvii, page 17 of the list of issues).

626. We found that SLT had decided that the Claimant would be moved to a syndicate and that this decision was communicated to him by DS Doherty and Mr Callanan. The decision was not implemented, however. The detriment to the Claimant was that for around a week he believed he would have to move. This was going to present difficulties for him because his family circumstances meant that the shift patterns would be difficult.

627. The evidence before us, however, was that the conduct was not related to or because of race. We say this because the same action was proposed for PC Jessica Gallagher, a white woman, at the same time. It was also not implemented in her case. The circumstances for both officers were the same. We conclude the trigger for the proposed moves was either because C/Supt Adelekan was annoyed that the two officers had suggested they had his support in their promotion applications or out of a genuine concern for their development.

628. In addition, for the sake of completeness, we confirm that given the short length of time during which the Claimant was left not knowing if the move would take place or not, we do not consider the treatment meets the threshold of being a detriment under section 39(d) of the Equality Act 2010 or that it had the proscribed purpose of effect in section 26(1)(b) of the Equality Act.

- **Not dealing with the C's flexible working request in a reasonable way - PC and ND – 22 Feb 2019 (xvii – 17)**
- ***Making the C organise his own rota and use rest and leave days – PC and ND – 22 Feb 2019 (xvii – 17)***

629. We do not agree that the process adopted by the Respondent when considering the Claimant's proposal for flexible working was unreasonable. DS Doherty put the request forward for him promptly and gave it his approval. Although correct that he was forewarned that senior officers had some concerns about the proposal and he could have been more proactive and told the Claimant this, neither Mr Callanan nor Insp Trice had indicated to DS Doherty that the proposal would definitely be rejected.

630. We also do not consider DS Doherty's subsequent behaviour to be unreasonable. When the formal proposal was rejected, DS Doherty wrote the Claimant a positive email telling him that although it was 'no' for now, the position would be changing quite quickly and encouraged him to remake his application.

631. We also consider it was not unreasonable for DS Doherty not to tell the Claimant initially about the possibility of informal arrangements, given that at the same time as he was discussing flexible working with the Claimant, questions were being asked about his lax management of the POD team around shift swaps and CARMS compliance. Once DS Doherty was reassured that Mr Callanan was happy for an informal arrangement to be put in place, he gave it his approval too.

632. We have considered the significance of the fact that the Claimant made a flexible working request that was not approved by LRPM on 20 March 2019 but his female, white colleague's request was approved. We do not find this to amount to less favourable treatment of the Claimant because of his race. The circumstances of PC Gallagher in March 2019 were different to those of the Claimant. This was because, as at 20 March 2019, she had already been informally working the flexible working pattern she was seeking. This gave her the advantage of being able to demonstrate that it was workable. When later the Claimant was able to demonstrate that his flexible working pattern could be accommodated, he was given formal approval for with effect from 1 July 2019.

633. That the Claimant had to organise his own rota and use rest and leave days in order to be able to take Thursdays off was not in dispute. This only occurred for the period between 22 February and 22 May 2019. Between 22 May and 30 June 2019, DI Maria Harris arranged for DS Doherty to undertake this task and for the Claimant to be given back the annual leave and rest days that he had used.

634. The Claimant's case that the reason he was made to organise his own shift pattern was related to or because of his race rests on two facts. The first is the involvement of Mr Callanan and DS Doherty. He says this is another example of a campaign by them against him. The second is because DCI Harris, a black officer, changed the position.

635. We do not consider that there is any evidence that such a campaign existed at this time. We would expect that it would be the person who wants to make changes to their shift pattern to have to be the one to organise it, where no formal approval has been given and so the fact that the Claimant was required to do this does not seem odd to us. In addition, the respondent has provided a full explanation for the change made by DCI Harris which was that she sought the changes when acting in the capacity of the Claimant's welfare officer and wanted to reduce stress for him at a time when he was under investigation. It does not follow that she would have considered the same intervention to be necessary if the Claimant was not under the additional stress of the investigation.

636. For the sake of completeness, we consider that any detriment to the Claimant as a result of his flexible working proposal being refused was minimal. This was because he was permitted to take Thursdays off in any event. We also do not consider the Claimant was subjected to a detriment for the period between 22 February and 22 May 2019 when he had to do this himself. It was not particularly onerous for him to have to organise his shift swaps himself.

- **16 March 2019 – Monitoring the C and changing his CARMS (xxvi page 17)**

- ***Criticising the C for getting overtime approved by other more senior and/or black officers (xxvi page 16)***
- ***March 2019 - C being asked to account for his overtime and authorisation. Failure to respond to the C's answer (xxiv page 16)***

637. In this section we address the three specific complaints that the Claimant has made against the Respondent in connection with the first misconduct investigation relating to his alleged fraudulent overtime claims.

638. It was not in dispute that PC Pace changed the Claimant's CARMS entry for 16 March 2019 and reported him to DS Doherty the following day. There was no evidence that DS Doherty had asked PC Pace to monitor the Claimant, however. Our finding is that he did this on his own initiative.

639. It was also not in dispute that one of the matters that aroused suspicion about the Claimant's overtime claims was that they were authorised by C/Insp Lamnea. As he is white, it was not the colour of his skin that raised the alarm. It was also not his seniority that led to suspicion, but the fact that he was not the Claimant's line manager. Given the number and frequency of the requests it was fair for the Respondent to be concerned.

640. Finally, it was not in dispute that when the Claimant replied to DS Doherty's email of 26 March 2019 which had asked him about his recent overtime entries, DS Doherty did not reply. This was because he forwarded the information on to Trice and A/Insp Luciano for the purposes of the MM1.

641. Although the list of issues was prepared by the Claimant's solicitors for him, the three specific complaints do not really address the heart of the matter and the Claimant's concerns about how the investigation came about and therefore, when considering these three specific complaints, we have considered the matter more widely.

642. The Claimant's complaints of race-related harassment/direct race discrimination around the investigation are essentially that PC Pace and DS Doherty (both white) jumped unjustly to the conclusion that he was dishonest about his overtime claims because he is black. He primarily relies on the fact that the outcome of the investigation was that there was no case to answer, thereby demonstrating that the investigation was not justified in the first place.

643. He also relies on the fact that PC Pace and DS Doherty chose not to speak to him directly to clear up any discrepancies before escalating their concerns. He accuses Insp Trice, A/Insp Luciano and Mr Callanan of doing the same thing and complaints that there was no attempt to conduct a local investigation which involved speaking to him before going down the MM1 route and accusing him of very serious and potentially criminal misconduct.

644. He also says there was a deliberate manipulation of the MM1 through the deletion of the information about widespread CARMS non-compliance which made his own non-compliance seem to be isolated and look far worse. Finally, he points to the finding of Baroness Casey in her interim report that between April 2013 and March 2022, black officers and staff were 81% more likely that white officers to have misconduct allegations brought against them. The Claimant says that if he was white, there would have been more of an attempt to resolve the concerns outside formal processes and the investigation would not have taken place.

645. We have decided not to uphold the Claimant's claims of race related harassment/direct race discrimination.

646. The Claimant had not worked the full hours of the overtime he was booked to do on the weekend of 16 and 17 March 2019. It did on the face of it appear that he might be doing something dishonest. PC Pace was entitled to report his concerns to his manager given the seriousness of them.

647. Faced with the report from PC Pace and concerns raised by other employees, DS Doherty was entitled to seek support and guidance from Mr Callanan. It was suspicious that the Claimant was not asking him to approve his overtime requests, but going outside his line management and asking C/Insp Lamnea. Having emailed Mr Callanan, the matter was then taken out of DS Doherty's hands and it was a combination of Insp Trice, Mr Callanan and A/Insp Luciano who determined the next steps. Those steps were subject to review by other officers within the DPS.

648. It is striking that DS Doherty emailed the Claimant to ask him about his overtime rather than speak to him, but his reasoning for doing this is clearly set out in his email of 21 March 2019 and was to ensure that the information and responses were recorded in writing. We consider that there is insufficient evidence to infer that race influenced DS Doherty's actions, whether consciously or unconsciously.

649. Turning to the assessment of the allegations by the others and whether a gross misconduct investigation was justified, we have given careful consideration to the allegation that the Claimant's race was an influential factor. In light of the finding made by Baroness Casey, that black officers are 80% more likely to face misconduct charges than white officers, we treated the matter as one where the burden of proof shifted to the Respondent.

650. This was notwithstanding that otherwise we considered we were not presented with compelling evidence that a white officer in the same circumstances as the Claimant would have been treated any differently to him. The Claimant had pointed to the fact that no action was taken against any of his colleagues who were equally bad, if not worse at complying with the CARMS booking rules. Although this was a relevant matter for us to take into account, the allegations against the Claimant were of a different nature entirely and so the two scenarios were not, in our judgment, comparable. We reached a similar conclusion when considering the comparison made by the Claimant and the situation involving PC Gallacher. In her case, there were significant personal circumstances that came to light very quickly and that led to a different outcome in her case.

651. Having treated the burden of proof as having shifted, in our judgment, the Respondent has met that burden of proof and has provide coherent evidence that the decision to classify the Claimant's conduct as misconduct was not based on race. The Claimant's activities generated justified suspicion and needed investigation. It was not possible to know that the conclusion of the investigation would be no case to answer until it was undertaken.

652. In light of the finding made by baroness Casey, that black officers are 80% more likely to face misconduct charges than white officers, we

- **C's request for a day off on 2 June 2019 refused (xxiii p. 16)**
- ***Failure to approve C's request for overtime and/or failure to respond to C's emails (xxii p. 16)***
- ***ND failing to respond to C's complaints of unfairness in his treatment made on 27/519 (xxi p. 16)***

653. The next set of complaints occurred in May 2019 and essentially were the background to the meeting between Mr Callanan and the Claimant on 31 May 2019. We do not uphold any of the complaints.

654. The first complaint, that DS Doherty refused a request made by the Claimant to take a day off on 2 June 2019, was not disputed. DS Doherty had a valid reason for refusing the request, however, which was a lack of cover. The refusal was not related to or because of the Claimant's race.

655. DS Doherty also refused the Claimant's request to cover PC Pearson's Bank Holiday shift as overtime. Again, he had a valid reason for this, namely it made more sense to get PC Modi and PC Pearson to swap shifts so both could have the time they wanted off. This decision was not related to or because of the Claimant's race.

656. DS Doherty also did not respond to the Claimant's emails about the Bank Holiday shift straight away. He was on annual leave when the Claimant first emailed him and then believed he had no need to respond further by email because he had asked PC Pearson to update the Claimant about the shift.

This was normal day to day business and communications where the Claimant's race had no impact.

657. Finally, when the Claimant emailed DS Doherty to complain that he was behaving unfairly towards him, DS Doherty did not ignore the Claimant's email. Instead, he responded at length to explain what had happened with the shifts.

- **C being reprimanded for questioning ND when he was supposed to challenge where appropriate. (xxi p. 16)**
- **C being informed it was not fair on ND to have to manage the C (xxi p. 16)**

658. In relation to the allegations made about the way the Claimant was spoken to by Mr Callanan on 31 May 2019, we have found that he was effectively reprimanded, but this was for the tone in which he had written to DS Doherty, rather than in relation to ever challenging his superiors. In addition, he was informed that it was unfair on DS Doherty to have to manage him, when clearly the Claimant thought he had something to do with the investigation into him.

659. We do not consider there to be any evidence that the meeting or what was said was related to or because of the Claimant's race or race more generally. There was a direct connection with the email exchanges that had taken place in the course of the last few days. DS Doherty had reached out to Mr Callanan for help and he had taken it upon himself to step in and speak to the Claimant directly.

660. As noted above, one of the Claimant's persistent themes when giving evidence was that Mr Callanan was unnecessarily involving himself in matters to do with the Claimant when there was no justification for someone at his level of seniority to be so involved. He made the point in relation to this meeting. We were satisfied that it was appropriate for Mr Callanan to involve himself in this matter. The Claimant had been personally informed of the investigation by Mr Callanan himself only a couple of weeks earlier. Mr Callanan clearly thought that the Claimant's behaviour was connected to that investigation and therefore it was a matter that should concern him. In addition, the Claimant had himself involved Mr Callanan in the email correspondence about his overtime request. Finally, DS Doherty sought help from Mr Callanan who at this time was his second line manager.

  - **PSU requesting excessive restricted duties on the C (inc. prior to seeking information above) (23 March 2019) (xxv p. 16)**
- ***C being served with a restriction as a result of the requests made by PC, ND, PT and/or BP (xx p. 16)***

661. The next two complaints do not succeed because they are factually inaccurate. The evidence was that no restrictions were sought by anyone in the VCTF at the time when the Claimant was initially notified on the investigation. Instead, the process of considering restrictions was dealt with

at DPS level. A suggestion was made by PS Grey, but the decision was taken by the DPS NPCC Commander.

- **Failing to be reasonably accommodating regarding hours in respect of the C's health, lack of sleep, investigation, stress and OH reports. (July 2019) (xix page 195)**

662. The next complaint in the list of issues is that the Respondent failed in July 2019 as set out above. This does not succeed on the facts. Due to no fault of the Claimant's line managers, the Claimant had not attended a prior OH appointment although a referral had been made for him. However, his new line manager, Sgt Perry ensured that they met and a referral was made. This was in additional to Sgt Cook supporting him with formalising his flexible working request. When the OH recommendation was made for recuperative hours, these were put in place entirely in line with the recommendation.

Complaints Relating to Restrictions and the Claimant's Meetings with his Federation Representative and Solicitor in August 2019

663. The next set of complaints concern the issues that arose in relation to the Claimant's restrictions and his meetings with his Federation Representative and solicitor in August 2019. There are around 25 separate allegations in the list of issues (amounting to fifty complaints). We have grouped some of these together.

- ***23 Aug – AC failing to respond and/or approve to the C stating he had a meeting that day with his Fed Rep in a reasonable time, requesting excessive details and failing to liaise with the Fed Rep (xviii p. 195)***

664. The first allegation concerns PS Cook's response to the Claimant's meeting with his Federation Representative on 23 August 2019. It is factually correct that PS Cook did not respond to the Claimant's email that morning before the Claimant had to leave for the meeting and that therefore he did not approve the request.

665. In our judgment, this was nothing to do with the Claimant's race. The fact that PS Cook replied to an email from one of the Claimant's white colleagues that morning does not lead us to infer that race was a factor in why he failed to respond in time. The reason was because PS Cook was busy and understandably thought that the email concerned a non-urgent request for annual leave. He therefore did not prioritise looking at it until it was too late, whereas the email from the white colleague was work-related and needed a prompt response.

666. When he responded, PS Cook asked the Claimant where the meeting was. He says that the reason he did this was because he believed that the Claimant was subject to a restriction that meant that he had to remain at all times in a police building when on duty and was prohibited from traveling between police buildings without permission (the "location restriction"). The

Claimant was not subject to such a restriction, but it was not unreasonable for PS Cook to believe he was given that he had been told this by Mr Callanan.

667. In any event, we do not consider that it was an unreasonable or excessive thing for him to ask regardless of the position with regard to the restrictions. At this stage, PS Cook was not asking for exact details, but a general indication. It is sensible, for health and safety reasons, for police officers to ensure that there supervising officers are aware of where they are while on duty.

668. The Claimant did not provide his location, but did explain why and did offer Mr Mills contact details so that PS Cook could verify what he was saying. It is correct that PS Cook did not do this, but this was because he believed the Claimant was obliged to inform him of the location regardless of the view of Ms Mills. We do not consider he should be criticised for this.

669. There is no doubt in our minds that PS Cook was also affronted by the fact that the Claimant had not sought his permission to attend the meeting in the form of an express request, but had instead, as he put it, had simply 'notified' him of the meeting and had left without having been given permission rather than cancel the meeting.

- ***24 Aug - AC reprimanding the C publicly (xii page 14)***
- ***AC reprimanding the C for breaching restrictions he was unaware of and had not been served with (xii page 14)***
- ***AC reporting the C for breaching restrictions which were not properly imposed on him (xii page 14)***
- ***AC failing to check the situation regarding restrictions (xii page 14)***
- ***24 Aug (AC, PC, RP) Reporting the C to the DPS again (xvii page 15)***

670. We have found as a matter of fact that PS Cook did not reprimand the Claimant publicly the following day. The meeting was conducted in a polite respectful manner. PS Cook did, however, accuse the Claimant of breaching a restriction that had not been imposed on him.

671. PS Cook had sought guidance on the restrictions and relied on the information provided to him by Mr Callanan. It was entirely appropriate for him to go to Mr Callanan about this issue as he was the expert on matters such as this. He genuinely believed that the Claimant was in breach and Mr Callanan, who also genuinely believed the same, made the decision that the Claimant should be reported.

- ***Requesting excessive details regarding the C's meetings with his rep and/or solicitors and/or failing to correspond with the Rep as requested (xvii page 15)***
- ***Emailing the C making unduly extensive requests for information in respect of a meeting with his Fed Rep and lawyer about fraud allegations. (xiv page 14)***

- ***Being obstructive regarding the C's meeting with Fed Reps or legal reps (xvii page 15)***
- ***Anyone more senior failing to address these issues (xvii page 15)***
- ***Asking for excessive details (xiv page 14)***
- ***Unreasonable in respect of restrictions not served or approved (xiv page 14)***

672. The next set of complaints concern the email PS Cook sent the Claimant after the meeting on 24 August 2019 in which PS Cook insisted that the Claimant needed to tell him the room number and police station where he had met Ms Mills the previous day and to provide the exact location and time as well as details of who he was meeting for future meetings.

673. There is no doubt in our minds that in light of the actual restrictions to which the Claimant was subject the request was manifestly excessive.

674. At the time PS Cook sent this email, the Claimant had informed him by email that he did not believe he was subject to the location restriction, but he had not provided him with the evidence of this. We do not consider that PS Cook should be criticised for assuming that the Claimant was mistaken and Mr Callanan was correct. He would expect Mr Callanan to have provided him with accurate information. We need therefore to measure his request against what he reasonably believed the position to be at the time.

675. Given that PS Cook believed that the Claimant was subject to the local restriction this was not an obstructive request for him to make, although in our judgment asking for the room number of the meeting was somewhat overzealous. He countered that a little by qualifying his request through giving the Claimant a choice that if he wanted to keep the location of his meetings secret, he could have them outside of working hours.

676. There was insufficient evidence before us that PS Cook's overzealousness was connected to the Claimant's race. In the absence of any such evidence, we cannot infer that the Claimant's race was a factor. We consider that a far more likely explanation for his overzealousness was because the Claimant was of a lower rank than he was and was, in his opinion, challenging his authority and failing to comply with his, a senior officer's instructions. In our judgment, PS Cook would have behaved in the same way to any junior officer in a similar situation regardless of their race.

677. In considering this and the allegations below, we have taken account of what the parties told us about PC Harrison and his treatment in relation to attending meetings with his Federation Representative and solicitor and whether he is a reliable comparator for the Claimant's direct discrimination claim. The Claimant was not in a position to know a great deal about PC Harrison's arrangements directly. We accept what we were told by the Respondent's witnesses, that PC Harrison gave lots of advance notice of his meetings and therefore do not consider his treatment provides a reliable comparison. The Claimant caused PS Cook to be annoyed with him

because he had not given him a reasonable amount of notice of his meeting on 23 August 2019 and matters spiralled from there.

678. At this stage, no-one more senior that Mr Callanan was involved in order to intervene. Although a staff member, Mr Callanan outranked PS Cook and Insp Moxham.

- ***Aug AC failing to reasonably respond to the C showing he was only given one restriction (xvi page 15)***
- ***Aug Changing the C's restrictions and stating they were confirmed by LL on 13 June 2019 without checking the emails on that day (xv page 15)***
- ***Not clarifying the position or seeking relevant guidance including from the DPS and RG who was investigating. (xiv page 15)***

679. It is not correct that PS Cook did not respond to the Claimant showing he was only subject to one restriction. The Claimant emailed him with the evidence of this on 27 August 2019 at 13:03. PS Cook replied the following morning at 8:12. This was a prompt response.

680. The response was, however, factually incorrect. On receipt of the actual documentation provided to him by the Claimant, PS Cook did question what he had been told. However, having checked with Mr Callanan, PS Cook's response informed the Claimant that in addition to the NPCC restriction, he was subject to two local restrictions which C/Insp Lamnea had served on him. This was not correct. PC Cook's response was drafted for him by Mr Callanan who we found was responsible for this attempt to rewrite history.

681. PS Cook did not seek guidance form the DPS on this point or from PS Grey but relied on what Mr Callanan told him. Having been provided with a plausible explanation by Mr Callanan, we do not consider PS Cook can be criticised for believing it, even though it was not true.

682. We do, however, find Mr Callanan to be culpable of perpetuating a falsehood. He was even informed by his PSU colleagues that PS Grey had advised that the local restrictions did not apply but nevertheless did not admit he had made a mistake and seek to clarify the position for the Claimant. Instead, he sought to manipulate the truth.

683. We were deeply unimpressed with Mr Callanan's actions in this regard and there is no doubt in our minds that he caused the Claimant unnecessary stress. The Claimant does not succeed on this point with regard to his legal complaints, however, because he presented insufficient evidence that Mr Callanan's actions were influenced by his race. In our judgment, Mr Callanan behaved in this way because he did not want to admit he was wrong to a junior officer and the Claimant's race did not influence him even unconsciously. We consider he would have done the same with any junior officer challenging his seniors.

- ***28 Aug AC stating the shift had been altered to assist the C (xiv page 14)***

684. It is also factually correct that in the information provided to Inspector Moxham and Mr Callanan about it, PS Cook's description of what had happened with the Claimant's shift pattern on 30 August 2019 was not entirely accurate. His email had the effect of painting the Claimant in the worst light and made it seem as if the Claimant was being manipulative when the Claimant thought he was actually suggesting a time for the meeting when there were plenty of people on duty.

685. We do not consider this was the deliberate intention of PS Cook. It arose in part because he did not take the time to check the facts fully before committing them to paper. He was not able to check the background with PS Perry as he was absent on leave.

686. We find again that PS Cook had ceased to be fully objective in relation to the matter of the meeting by this time and this was influencing his perspective. There was insufficient evidence before us that this lack of objectively was influenced by the Claimant's race, however. As before, we consider that the far more likely explanation for it was because the Claimant was of a lower rank that he was and was challenging his authority. He was not prepared to back down. In our judgment, PS Cook would have behaved in the same way to any junior officer in a similar situation regardless of their race.

- ***AC and PC telling the C he could not attend a meeting with his Fed Rep and solicitor (xiv page 14)***
- ***AC and PC stating the C had to attend meetings in his own time (xiv page 14)***
- ***AC obstructing the C attending meetings (xiv page 14)***
- ***PC being obstructive to the C attending meetings. (xiv page 14)***

687. It is not factually correct that PS Cook told the Claimant that he could not attend any meetings with his Federation Representative and solicitor, nor was he told that he had to attend all meetings in his own time.

688. The Claimant was told, however, that he could not attend the meeting he had arranged for 30 August 2019 in work time, even though there did appear to be sufficient cover on the POD on the early shift that day. This was obstructive. PS Cook made this decision and sought approval from his superior officers for it, which was duly given.

689. As with the other conduct by PS Cook that was not ideal and lacked objectivity, we consider there was insufficient evidence before us that he was influenced by the Claimant's race. We find that the explanation for his lack of objectivity was a determination not to back down to a junior officer who had challenged his authority.

- ***28 Aug PC sending an aggressive email to the C and his solicitor and others setting out that the C was not allowed to attend the meeting as requested and making unfounded claims about the C breaching restrictions and confirming he understood them (xiv page 14)***

- ***Alleging the C was committing gross misconduct in referring the matter to his solicitor and Fed Rep. (xiv page 14)***

690. The Claimant asked his solicitor to write to PS Cook with details of the meeting. When she did this, Mr Callanan sent the lengthy reply which we have set out in some detail in the facts.

691. We do not consider that it is correct to categorise the email as aggressive, but there is no doubt that it is written in extremely robust language. It also reiterates the untruth that Mr Callanan had begun perpetuating, namely that the Claimant was subject to three not one restriction and had acted in breach of his restrictions. It also threatens the Claimant with future disciplinary action, although not gross misconduct as alleged, if he again asks his solicitor to write to his supervising officer on his behalf. In our judgment, this is an entirely unacceptable stance for Mr Callanan to have taken in response to the letter from the Claimant's solicitor given the context and circumstances in which it was written.

692. The letter also refuses the Claimant permission to attend the meeting at his chosen time during work hours, despite there being sufficient cover to enable him to do so. In writing this, however, Mr Callanan was relying on the information provided by PS Cook.

693. Notwithstanding our criticism of the letter, we do not uphold the Claimant's complaints of race related harassment or direct race discrimination in relation to it. This is because the Claimant presented insufficient evidence that his race was involved.

- ***End Aug 2019 PC's dismissive response to the C's email about issues he was facing (xi p 14)***
- ***AC failing to respond to the email and issues raised (xi p 14)***
- ***Failing to clarify the position regarding restrictions (xi p 14)***

694. The final complaints in this section concern the response by Mr Callanan and PS Cook to the Claimant's lengthy email of 29 August 2019 sent to PS Cook, but copied to a wide audience. Mr Callanan's response was essentially to provide a brief reply in order to 'close down' any further correspondence. PS Cook did not respond. In effect this was simply a reiteration of their earlier positions on which we have commented above.

695. His complaints of race related harassment and direct race discrimination in connection with these allegations are not therefore upheld.

696. Mr Callanan's email had the desired impact and brought the matter to an end. The Claimant rearranged his meeting and attended on a different date.

697. Having explored the possibility of imposing the additional two restrictions and found out that this was complicated, Mr Callanan could, and in our judgment, should have clarified the position for the Claimant in writing. He

did not do so. However, for his part, the Claimant took no further action and let the issue go at this time.

698. The consequence of this lack of resolution was that when the Claimant was being investigated for a second allegation of misconduct and was told he was subject to restrictions, he was understandably suspicious.

- **Refusal to allow the C to work altered hours around 9 – 17:00 and offering him unsuitable options instead (September 2019) (x page 13)**
- **Informing the C that they were not happy he was on recuperative duties (x page 13)**
- ***Informing the C that his role would be changed permanently to part time if he remained on recuperative hours (x page 13)***

699. The complaints concerning the Respondent's attitude to the Claimant's recuperative hours also do not succeed.

700. We were not provided with any evidence that the Claimant requested a move to a 9 to 17:00 role at this time. The September OH report had recommended that he remain on recuperative hours, which were continuing to be accommodated. There was also a recommendation that he be allowed to finish his late shift by 10 pm. It was this latter request that was refused, for, in our judgment, legitimate reasons to do with cover that had nothing to do with the Claimant's race. Although there were no roles in the VCTF at that time where the OH recommendation could be accommodated, the Respondent suggested other roles where it could and it was the Claimant that turned these down.

701. We did not find on the facts that PS Perry or indeed anyone else told the Claimant that they were unhappy with him being on recuperative hours. We did find that PS Perry informed the Claimant that if he remained on recuperative hours, a permanent change to part time working might arise. This was in line with the Respondent's policy on recuperative hours and had nothing to do with the Claimant's race or race generally.

- **Refusal to allow the C to undertake VBOS course to enable him to undertake overtime (ix p 13)**

702. The Claimant's complaint that he was refused permission to undertake the VBOS course is also not upheld. PS Perry refused permission for the November course, but this was because it arose during a ban on annual leave in the VCTF. He gave the Claimant permission to attend the next iteration of the course when the ban had been lifted. There was no evidence to support the Claimant's belief that this was part of a concerted and deliberate ploy to prevent the Claimant from being able to earn money from doing overtime as he believes or that any of PS Perry's decision making was influenced by the Claimant's race.

- **RP not allowing the C to come into work late and causing issues about the same. (viii page 13)**

703. It is factually correct that PS Perry did not agree to the Claimant coming into work late on 12 January 2020. The reason he did not agree was that the Claimant's early shift on that date was part of his normal shift pattern. The reason the Claimant wanted to come in late was not because of anything unforeseen or unexpected, but because of the normal times the train service from where he had moved to in Essex operated. In PS Perry's opinion, which we find he was entitled to have, this was not a valid reason for the Claimant to expect to be allowed to commence work late.

704. In addition, the Claimant's approach to asking if he could come in late was extremely lax and undermining of PS Perry. We consider it is reasonable for any employer to expect its employees to investigate their travel arrangements and establish that they can fulfil their shift patterns prior to moving house. The Claimant appeared not to have done this at any time prior to leaving work on 11 January 2020. In addition, when PS Perry refused his request, the Claimant sought to undermine him by directly approaching his superior officer.

705. We consider that PS Perry was entitled to view the Claimant's behaviour as constituting misconduct and therefore the complaints fail on the facts.

- **C not being selected for APS roles and not being informed about the same in good time (vii, page 13)**

706. It is correct that the Claimant was not selected for the A/PS roles on the POD. The two posts went to PC Clarke and PC King. The Claimant was given the same opportunity to submit an expression of interest for the roles as all the other candidates. While it is true that PC Clarke and PC King were initially appointed on a temporary basis, pending the outcome of the EOI process, we are satisfied that A/Insp Cook gave genuine consideration to all the candidates and made a fair selection based on merit. It is notable that even if the most recent MM1 was not part of his considerations, the Claimant would still have not been selected. We therefore do not uphold the complaints in relation to this allegation.

- **The handling of the C coming off recuperative hours from 31/1/20 to 20/2/20 (vi, page 13)**

707. The Claimant's allegations about the way the Respondent dealt with him coming off recuperative hours do not focus solely on how it was handled. Instead, he believes that A/PS King, A/Insp Cook and PS Perry conspired to put barriers in his way so as to prevent him from having the opportunity to earn extra money from overtime.

708. We consider that there is no validity in this allegation whatsoever. It is striking that the Claimant was not prevented from undertaking any overtime. He chose the date of 7 February 2020 to return to normal hours and from

this date was able to book overtime in Met CC. Even if A/PS King has emailed Ms Gerrans sooner, the position would not have been different.

709. We consider it was entirely understandable that A/PS King, an inexperienced line manager, would want to ensure that he was following the correct process in relation to the Claimant coming off recuperative hours. It was sensible for him to question whether OH needed to approve this in order to ensure that the Claimant was not putting his health at risk.

- **Not dealing with the C's flexible working request reasonably or at all (iv page 12)**

710. The next complaint concerns the Claimant's updated flexible working request made in May 2020. Rather than have every Thursday off, he wanted to change to having every Friday off. He made the request after he had been transferred to Tasking and Operations and no longer worked late shifts.

711. Our factual finding is that the Claimant was able to work the revised pattern even though no formal approval was ever given to it. This was because no-one informed the Claimant or PS Nelson that the change had not been approved at LRPM. Mr Callanan had an ideal opportunity to inform the Claimant of the position, because the Claimant had emailed him directly, but because he did not reply to the Claimant's email missed the opportunity. We do not find that the Claimant's race had anything to do with the communication failures and note that they occurred in both directions. The Claimant could have made more attempts to seek clarity, but appears to have been happy to let the situation 'drift', despite his CARMS being inaccurate.

- ***Not dealing with the Incident reasonably and/or not considering training issues. (iii page 12)***
- ***C not being served with a Section 163 notice nor any safeguards being put in place for being under investigation despite being told he was being investigated and was subjected to restrictions. (ii page 12)***
- ***Met CC PSU and AM and DY not informing the C of what was happening adequately. (ii page 12)***
- ***AM refusing to communicate with the C about what was happening. (ii page 12)***
- ***No one getting in touch with the C to explain and/or to appoint him with a welfare officer and have a meeting with a Fed Rep. (ii page 12)***

712. The next set of complaints chronologically concern the fresh misconduct allegations that arose in the Met CC. The incident occurred on 23 May 2020 and was immediately picked up that day. The Claimant was informed that he would not be able to book overtime at the Met CC while the initial investigations took place.

713. Ultimately the outcome of the investigation was that the claimant should be given some training and therefore the question arises as to whether this action should have been taken from the start, rather than undertake any

investigations. In our judgment, the Claimant's failings in connection with the call were serious enough to justify escalating the matter as misconduct. The Claimant's failure to properly assess the circumstances of the 999 caller and follow relevant protocols resulted in a member of the public being injured. It was therefore appropriate and reasonable for Ms Wixon to act as she did. We do not consider that she was influenced by the Claimant's race or that Mr Callanan had any role in her decision making.

714. The Claimant was not issued with a section 163 notice straight away nor placed on any formal restrictions initially, but this was to be expected as a process of assessment was required before this could be done. Consideration was shown by Insp Young for his welfare during this period when he emailed the Claimant's line manager. Insp Young also responded to the Claimant's queries about the case within a reasonable timeframe.

715. In addition, Ms O'Meara did not refuse to communicate with the Claimant about what was happening. She did not know what was happening as the matter had been passed on to the PSU to address. She did her best to put him in touch with the right people who would know what was happening.

716. The problems regarding communication did not occur with Ms O'Meara, Insp Young or the Met CC PSU, but arose in connection with the VCTF PSU. It was the VCTF PSU that should have issued the Claimant with a section 163 notice, which in turn would have triggered his eligibility to a welfare officer and to be accompanied to any meetings by a federation representative. In fact, the Claimant was not invited to any investigation meetings, so this latter omission had no immediate impact on him, but the lack of a welfare officer was to his detriment. It was also the VCTF PSU that should have ensured that the Claimant's restrictions were formalised.

717. The problem arise because of confusion about which OCU should be leading on the investigation, a failure to respond to emails and the multiple references to the same incident on the Centurion system.

718. Ultimately, we were appalled by the length of time it took for the Claimant to be issued with a section 163 notice in connection with the Met CC misconduct allegation, but deal with this further below. At this point in the chronology though, these allegations are either not upheld on their facts or do not constitute harassment related to race or direct discrimination because of race. We revisit them later.

- ***3 June 2020 C was not informed that there was no further action to be taken in respect of the fraud and misconduct investigation and/or restrictions were not removed and/or the C was not informed of the same formally (xliv, pages 11-12)***
- ***Not formally informing the C that no further action would be taken in respect of the allegations of fraud and gross misconduct (xxix, page 9)***
- ***Failing to formally inform the C in writing of the outcome of the investigation into gross misconduct and fraud (viii, page 4)***

719. PS Grey reached his decision that there was no case to answer in relation to the original fraud investigation on 3 June 2020 and emailed the VCTF PSU that day. The email was not actioned and up to and including the hearing, the Claimant has not had a formal letter telling him this or confirming the removal of the restrictions to which he was subject.

720. It is not accurate to say that the Claimant was not informed of the outcome of the investigation, however. He was informed by PS Grey himself on 22 June 2022 and could have contacted anyone in the VCTF PSU to chase up a formal outcome letter and clarification regarding his restrictions. He chose not to do this, however, and instead began keeping a diary to note how many opportunities Mr Callanan had to tell him that he was not taking.

721. We do not find that the Claimant's race or protected acts were the reason for the failure to confirm the position to him. Our finding was that the VCTF PSU team simply missed the relevant email. The team was under resourced at the time and this is disappointing, but not surprising.

722. Our finding was also that Mr Callanan was not aware of the outcome until late August 2022. He did not therefore deliberately not inform the Claimant of the outcome. Thereafter, Mr Callanan failed to ensure that the Claimant received a final concluding letter. As the VCTF PSU came under his management, this was his ultimate responsibility. However, we find the explanation for this was that it simply was an administrative task that never got finalised as matters moved on. The Claimant suffered no detriment from not having the final concluding paperwork and could have followed this up himself.

- **C was asked to come into the office every day during the pandemic and was not permitted to work remotely despite his personal circumstances (i page 12)**

723. The Claimant claims that he was the only person who was required to work from Lambeth HQ between June and September 2020 and that others officially based there were able to work from home or from other much more convenient bases. He says this was related to his race as the other officers were all white. He also highlighted that as a black man he considered himself to be particularly vulnerable to COVID-19 and his personal circumstances included having a father who was vulnerable due to a medical condition, but accepted he did not raise this as an issue at the time.

724. We considered there to be no evidence that the Claimant was singled out for different treatment when compared to the other officers who were based in the same place as him in Lambeth HQ. Almost all of them were more senior than him and had ongoing front line operational responsibilities that were best undertaken at the relevant police stations.

725. The only PCs in a comparable position to him were PS Adams, who was initially assigned to Tasking and Operations under PS Nelson and PC Modi.

726. It was PS Nelson's decision to ask him and not PS Adams to work at Lambeth HQ. Our factual finding was that PS Nelson assumed that Lambeth HQ was a better location for the Claimant and that it was not surprising that he continued to think this when the Claimant did not raise any concerns.

727. In July and August 2020, PS Nelson ceased to be involved in Tasking and Operations, although he remained as the Claimant's official line manager. From that time PS Kerr and PC Modi arrived, but they continued to be assigned to a front line syndicate team based at a police station initially which explained why they were often not present at Lambeth HQ.

728. This complaint is not upheld either as an allegation of race related harassment or direct discrimination based on race.

- ***C's request to work from home was denied (16 June 2020) (xlv page 12)***
- ***C's request to work from home was refused. (28 June 2020) (xlii page 11)***

729. We are satisfied, in respect of both of these specific occasions when the Claimant asked to be allowed to work from home for childcare and personal reasons, there was a legitimate reason for refusing the request that was not related to or because of his race. The decision maker was PS Nelson and he made his decision because he considered the childcare involved was incompatible with being able to do the required work. Rather than permit the Claimant to work from home, he allowed him to take annual leave despite the very late requests. These complaints therefore fail.

June / July 2020

- ***C was not pre-warned about a team meeting on 24/6/20 (xliii page 11)***
- ***C was told to print off labels for all members of the team apart from himself. (xxxix page 11)***
- ***C was excluded from a team meeting. (xxxix page 11)***
- ***C was told his own workspace would be marked with a Guest label where others had their name. (xxxix page 11)***
- ***C's uniform was taken from the locker room and then returned when he requested a new one without explanation (xli page 11)***
- ***C was not given work despite requesting the same. (xxxv page 10_***
- ***C was given trivial jobs to do or not enough work to do in his role despite being requested to come in and be the face of his department. (xxxv page 10)***

730. The next set of allegations concern how the Claimant was treated during the period while he was assigned to Tasking and Operations in the summer of 2020. The Claimant believes that he was being ostracised during this period.

731. We do not consider that the evidence the Claimant presented that he was deliberately excluded from team meetings and that his uniform taken was sufficiently convincing for us to uphold these allegations on the facts.

732. The rest of the things he cites by way of allegations did occur, however. He was asked to print name labels for the desks, but not for his own desk although we saw no evidence that his desk was labelled guest. It was understood to be an unallocated hot desk that he used. In addition, he was not allocated a great deal of work and was asked to do some trivial jobs such as moving furniture, files and fixing computers.

733. The Claimant alleges that this conduct constituted unwanted conduct related to his race or was less favourable treatment of him than a hypothetical comparator because of his race. We do not agree. We do not consider that, either in isolation or when looked at collectively, the Claimant's treatment amounted to him being ostracised.

734. It is our finding that the reason for the Claimant's treatment at this time was because he was not being given work or directly supervised by PS Nelson and the other senior officers working in Lambeth HQ did not really understand his role or how best to make use of him. The Tasking and Operations team was extremely fluid and developing. PS Kerr was focussed on the work he was doing with PC Modi and did not think to involve the Claimant in it. The effect for the Claimant was that he was left to drift, but we do not consider this was deliberate or even that there was much awareness that it was happening. There is no evidence that it was related to the Claimant's race.

735. In addition, or in the alternative, the Claimant says that the reason for the behaviour was because of his protected acts. By 7 July 2020, the Claimant had submitted his grievance and by 15 July 2020 he had commenced the Acas early conciliation process. However, our finding was that none of the people involved in these allegations were aware of either.

The Claimant's Grievance

- ***C's grievance was effectively ignored (xl page 11)***
- ***C was told to raise the issue with the PSU about the PSU (xl page 11)***
- ***C's grievance was not referred to anyone else including those looking into discrimination and/or bullying (xl page 11)***
- ***Further details were sought of C's grievance despite the R not being willing to accept the same (xl page 11)***
- ***Further assistance was not given to the C as to steps he could take (xl page 11)***
- ***Closing the C's grievance on 7/8/20 (xl page 11)***
- ***Informing others of the C's grievance (xl page 11)***

736. The next set of allegations concern what happened to the Claimant's grievance. It is not accurate that it was ignored.

737. The grievance was closed following the triage process because the Claimant wanted an outcome that was not deliverable through the grievance procedure. It was entirely appropriate to seek further details from the Claimant as part of the triage process.

738. In order to get the outcome, he wanted the Claimant was told that the matter should be raised through the PSU. Ms Macauley who told him this was technically correct that the PSU was the correct department, but failed to appreciate that that she should have directed the Claimant to the buddy PSU of the VCTF PSU. We do not find that she was influenced by the Claimant's race when doing this, or that this constituted unfavourable treatment of the Claimant because he had done the protected act of raising the grievance. We consider this is best explained as a genuine mistake made by someone inexperienced who did not fully appreciate the significance of the Claimant's grievance in an under resourced busy team.

739. At the relevant time, the Respondent's procedures did not direct members of the Grievance Management Team to identify grievances alleging discrimination and/or bullying and refer them directly. This is sub-optimal and left the Claimant feeling that he had no option other than to pursue a claim to the employment tribunal. However, this did not constitute race related harassment of the Claimant or direct race discrimination or unfavourable treatment of him due to his protected act.

740. We do not find that anyone in the Grievance Management team informed anyone outside of the team about the grievance.

July / August 2020

- ***C was not given work despite requesting the same (xxxv, page 10)***
- ***C was given trivial jobs to do or not enough work to do in his role despite being requested to come in and be the face of his department (xxxv, page 10)***
- ***SS asked the C if he was bored yet (xxxvii, page 10)***
- ***C was asked to fill in a formal holiday request form (xxxvi, page 10)***

741. As noted in our findings of fact, for the rest of the summer the Claimant believed that the campaign of ostracising him continued. The four things he cites (set out above) did occur. The Claimant continued not to be fully utilised, but arose because there was simply a continuing misunderstanding about his role and supervision. We found nothing sinister or detrimental in relation to the holiday form or PS Scudder's comment to him. All of these complaints fail.

Investigations Role / 19 August Meeting

- ***MR and Steve Brownlee offering the C a role in the VCTF Investigation Unit which he had not applied for and did not suit his personal needs around hours of work (xxxiii, page 10)***
- ***The C was removed from CARMS and the mailing list for his role and his role was advertised for (xxxiv, page 10)***
- ***C was given incorrect reasons for his move to VCTF Tasking and Operations (v, page 13)***
- ***PC and/or MR stating and/or making it clear to the C: (xxx, page 9)***

- ***that the C's shift pattern would not suit the Tasking & Ops Unit;***
- ***that he was not suited to the role;***
- ***that he had applied for another job role;***
- ***that he was not wanted in his unit;***
- ***that they could not now accommodate his flexible working request;***
- ***that he as under restrictions not to work in control and command (without presenting the restrictions or any safeguards);***
- ***that they were struggling to find a place for him in the VCTF;***
- ***that there was no further action in respect of the fraud allegations (despite knowing about this for many months);***
- ***that he would be served with new investigatory papers shortly.***

- ***PC denying that he had discussed the fraud allegations or the Incident investigation (xxxi, page 9)***
- ***MR not responding to or addressing in any reasonable way the C's complaint that he had had such a meeting with PC when the C had raised a grievance about PC's conduct towards him (xxxii, page 9)***

742. The Claimant's Summer 'limbo' came to an end in late September and was triggered by the decision to offer him a transfer to the Investigations team.

743. The Claimant had shown interest in an investigation role and we therefore find that no detriment can have arisen out of his being offered the opportunity to pursue such a role. For the sake of completeness, we also find that the reason such a role was considered for him was because he had expressed an interest in the role to T/DCI Brownlee and did not have anything to do with his race or protected acts. Keen to have additional resources in his teams, T/DCI Brownlee had followed the Claimant's interest up. There was a delay in the offer being made because there was no July LRPM meeting. The LRPM had legitimately decided that the POD could not release PC Nyoke because of resource issues there, but that the Claimant could be released straight away. His complaints about being offered the role is not therefore upheld on the facts.

744. There was also no evidence that the EOI that was sent out asking for interest in moving to Tasking and Operations was for the Claimant's role. There was a general drive to grow the team at that time. This was why it was surprising to us that the LRPM log noted that there was not a role in Tasking and Operations for the Claimant. The complaints connected to this allegation also fail.

745. As at 20 August 2020, the Claimant was on CARMS as a member of the POD, rather than Tasking and Operations. Our finding is that this was because he had never been moved over from the POD to Tasking and Operations on CARMS. He had been removed from the POD team group email however and added to the Tasking and Operations email.

746. The Claimant's rejection of the role in investigations led to renewed interest in the Claimant's position. In our judgment, the approach adopted was negatively influenced by the fact that members of SLT had become aware

that the Claimant had submitted a grievance claiming race discrimination and had initiated the Acas early conciliation process claiming race discrimination, both of which were protected acts. This knowledge prevented Mr Callanan, in particular, from dealing with the Claimant with the required amount of objectively.

747. We find that the Claimant was given an incorrect reason by Mr Callanan for why he had been moved to Tasking and Operations. Had Mr Callanan retained his objectivity towards the Claimant he would have realised that what he had told the Claimant, that he had been moved because of the incident in Met CC, could not be right.

748. We also found that in the meeting on 19 August 2019 and subsequent email correspondence, Mr Callanan imposed a restriction on the Claimant not to work in a Command and Control environment without any formal process or safeguards being followed. We consider that, at least in part, his reason for imposing the new restriction was to force the Claimant to accept a job in Investigations.

749. Mr Callanan was also disingenuous in relation to what he told the Claimant about the Met CC investigation. He denied having any responsibility for or detailed knowledge of it, when in fact it was the VCTF PSU that was responsible for it and he who had identified the investigator to conduct the investigation. In addition, although subsequent to the meeting, Mr Callanan reassured the Claimant that he would be served with the paperwork relevant to the investigation within a few days, this was not done.

750. Mr Callanan told the Claimant that he could not remain in Tasking and Operations and began discussions with him about possible place to which he could be transferred. In our judgment, there was no genuine reason why the Claimant could not remain in Tasking and Operations.

751. Mr Callanan also told the Claimant that he would need to return to a full roster when he returned to the POD after the Met CC Investigation. This ignored the fact that the Claimant had had flexible working arrangements in the POD. Although a return to the POD would have meant that the Claimant would have to revert to shift and weekend working which he had not been doing in Tasking and Operations, there was no reason why a flexible working arrangement similar to that he had previously had would not have been able to be considered.

752. Mr Callanan did not, however, tell the Claimant that he was not suited to the role in Tasking and Operations, say the Claimant had applied for another job role or that he was not wanted in Tasking and Operations. He also did not deny that he had discussed the misconduct investigations with the Claimant.

753. We find that the things Mr Callanan did say that were inaccurate or unjustified created uncertainty for the Claimant about his position and working arrangements and therefore constituted a detriment. In addition,

imposing a restriction on the Claimant without following correct procedures was also a detriment.

754. The Claimant therefore succeeds in relation to the complaints that we have found proved factually because they were done, at least in part, on the ground that the Claimant had done a protected act. We do not uphold his complaints of direct race discrimination or race related harassment however as there was insufficient evidence presented that race was operating as a factor in Mr Callanan's mind either consciously or unconsciously.

755. C/Insp May Robinson did not respond to the Claimant's email mentioning that he had raised a grievance about Mr Callanan. Our finding in fact was that the email did not ask for a response or any action to be taken by C/Insp May Robinson and in those circumstances. We conclude it was not unreasonable for him not to respond and therefore do not uphold this complaint.

Work Issues in Early September 2020 Leading to Transfer

- ***C was not informed of a new member joining the team (xxxvii, page 10)***
- ***Telling PC O'Connor that he could not work from home as they would not allow the C to work from home (xxiv, page 7)***

756. We find that the allegation that the Claimant was not informed in advance of the arrival of PC O'Shea into the Tasking and Operations Department is true on the facts. However, we would not necessarily expect him to have been told about this in advance. PC O'Shea arrived as a result of the EOI exercise and was the first of several new arrivals. We can see no detriment to the Claimant in not being given advance warning of his arrival.

757. We did not find, on the facts, that PC O'Shea was told that he could not work from home because the Claimant had been told this.

- ***Not being provided with items needed or to assist with tasks for work (xxvi, page 8)***
- ***From, after the C contacted ACAS and the R were aware that he had or was likely to, providing the C with work but without full instructions or information and not responding to the C's requests for assistance or calls (xxvii, page 8)***
- ***CK – criticising the C in public and private unreasonably (xxvii, page 8)***
- ***CK being aggressive and making derogatory comments in meeting (xxiv, page 7)***
- ***SS saying nothing in that meeting (xxiv, page 7)***
- ***CK saying the C was aggressive due to his menacing look (the C maintains this was based on racial stereotypes) (xxiv, page 7)***

758. The Claimant was given two pieces of work on 1 September 2020, however there was no link between this and his protected acts. The people who gave him the work, PC O'Shea and PS Kerr were not aware of the protected acts.

759. Neither PC O'Shea nor PS Kerr sat down with the Claimant to go through the tasks, but he was provided with the relevant information to complete them and a contact to liaise with. Although the Claimant believed he had completed the tasks correctly as required, at least one of them was not done to standards expected of PS Kerr.

760. It was reasonable for PS Kerr to email the Claimant to highlight the inaccurate information contained in the form the Claimant completed so that the Claimant would understand the standards expected of him and could improve. PS Kerr did not intend to criticise the Claimant publicly. His initial email was sent privately and only copied to his supervisor Insp Trice, which was entirely appropriate. He did send a subsequent email which had the effect of making the earlier email more widely available to everyone in the Tasking and Operations Team, but he deleted this very quickly. It was because the Claimant 'replied all' to that email that it stayed in the Tasking and Operations email in-box.

761. We therefore did not uphold the first three allegations in this section, as they did not occur according to our factual findings.

762. Turning to the PS Kerr's conduct at the meeting on 8 September 2020, we did not find it was aggressive. He was very forthright and assertive and gave the Claimant very little, if any opportunity to speak. We categorised the meeting as a 'dressing down' but consider PS Kerr's conduct did not overstep any boundaries, save perhaps when he compared the Claimant's performance to that of an 11 year old child. This was a demeaning insult and we note that an outcome of the Claimant's internal complaint process was that this comment was held to be inappropriate.

763. It was not a helpful intervention for the Claimant, who was at that time suffering from depression, but this was not something that PS Kerr knew. Had PS Kerr taken a different approach, it is possible that the Claimant would have felt able to trust him and open up to him. As it was, PS Kerr believed the Claimant was robust and resilient in light of the email he had written to him challenging him.

764. We do not find that PS Kerr's behaviour at the meeting constituted race-related harassment. Nothing that he said or any of his actions were connected to the Claimant's race and we concluded that was caused him to approach the meeting in the way he did was the content of the Claimant's challenging email. Although he described the Claimant as 'sly' at the start of the meeting, there was an accurate context to this comment, namely the recording of it, and so we do not consider it is related to any kind of racial stereotype. The comparison between the Claimant to an 11 year old child was also not related to race.

765. We consider PS Kerr would have adopted the same approach at the meeting with any other PC who had similarly challenged him, regardless of their race. PS Kerr was unaware of the Claimant's protected acts and so these cannot have influenced his conduct.

766. In the subsequent correspondence PS Kerr sent the Claimant, we do consider that PS Kerr allowed himself to be influenced, most likely unconsciously, by the Claimant's race. We consider that the reference that PS Kerr made in his email to the Claimant looking at him "menacingly" derives from the racial stereotype of black men behaving aggressively.

767. The comment was not justified as we did not find that the Claimant stared at PS Kerr inappropriately or aggressively. Instead, our factual finding was that he reacted very passively to what PS Kerr was saying.

768. The comment upset the Claimant and we consider it was reasonable for him to be upset in the circumstances. We therefore find in his favour that the comment constituted race related harassment as it had the proscribed effect of creating a hostile environment for the Claimant.

769. Finally in this section, it is correct that PS Scudder attended the meeting and said nothing. We make no finding against her in this respect, based on our conclusions about the meeting.

- ***Installing a command and control function on the computer used by the C (xxviii, page 8)***
- ***Asking the C to take notes of a meeting inc. command and control issues (xxv, page 8)***
- ***Telling the C he could take notes with no guidance as to what the "command and control" restrictions were (xxv, page 8)***

770. The next set of allegations concern the Claimant's stance towards command and control following his meeting and exchange of correspondence with Mr Callanan. There is no evidence that any of the actions were taken in order to try and trap the Claimant into breaching any restrictions or that PC Trice arranged for the Command and Control function to be put on the computer on the Claimant's desk for any reason other than its location near a screen. The Claimant was simply asked to help out with some tasks that needed doing.

771. It was understandable that the Claimant was concerned about the restriction given that he had not seen it in writing. However, there was no justification for him to refuse to undertake the duties he was being asked to assist with. Having sought some clarity, he was provided with it in writing, albeit not on the form of a formal notice of restrictions.

772. We do not uphold the Claimant's complaints in connection with these allegations.

- ***Interfering with the C's computer and his access (xxiii, page 7)***
- ***Not informing the C about why his access had been altered (xxiii, page 7)***
- ***Asking the C for a timeline of his activity that morning (xxiii, page 7)***
- ***Transferring the C to Bow that day (xxiii, page 7)***

- ***Not allowing the C to serve his 28 days' notice period in VCTF (xxiii, page 7)***

773. The Claimant did not present any evidence that anyone interfered with his computer. The difficulty he had on the morning of 9 September 2021 was that he appeared not to have access to the Tasking and Operations email in-box. We were not able to establish if this was because his access to the in-box was removed as soon as the decision was taken that he should be transferred away from the Team or due to a glitch on his machine.

774. Although we think the latter is more likely, based on the timings of events, we have not found it necessary to make this finding. This is because we are satisfied that because the Claimant was being transferred out of the team, even if his access had been removed a few hours prematurely, this of itself did not cause a detriment to him. The far more significant detriment was the transfer.

775. PS Kerr did not ask the Claimant to provide a timeline of his activities that morning, but he did ask him to explain why he had not noticed that he did not have access to the email in-box until nearly an hour into his shift. This was not an unreasonable request given that they had discussed how the Claimant was spending his working days the previous day.

776. As stated above, the detriment to the Claimant was the transfer. It was not to his detriment that the transfer was immediate, because his shift patterns were protected for 28 days. However, once the 28 days had elapsed, it was highly unlikely that it would not be possible for the Claimant's flexible working pattern to be accommodated. This was to his detriment. Although the Claimant told T/Detective Superintendent White that he was happy to be moving to Bow because he would be properly utilised, does not negate that detriment.

777. We do not find the decision to transfer the Claimant was related to or because of his race. There was insufficient evidence to infer this. However, Mr Callanan's email of 8 September 2020, which contains the reason for the transfer decision, is clear that the decision was in part based on "*the concern raised by [DS Doherty]."* In our judgment, this is a reference to the fact that the Claimant had made an allegation of race discrimination against DS Doherty and therefore to the Claimant's protected act. In view of this finding, we do not need to consider what Mr Callanan's reference to "*ongoing issues*" meant. We are satisfied that the Claimant' complaint that he was subject to a detriment because he had done a protected act is made out.

- ***10/9/2020 - Failing to refer the C's complaints deal with or refer the C's complaints in the circumstances (xxii, page 6)***

778. We do not find that this allegation is made out on the facts. It refers to the contact the Claimant made with PS Grey on 9 and 10 September 2020 to ask for his help. PS Grey did not refer the Claimant's complaints on, but this was not an appropriate action for him to take. Instead, he provided the

Claimant with accurate advice over the telephone and in writing on the proper avenues the Claimant could use to progress his concerns.

Events After the Claimant's Transfer

- ***BM informing OH that the C was subject to a misconduct investigation and performance issues. Discussing the same with the OH provider (xxi page 6)***
- ***Seeking a transfer out of VCTF (xxi page 6)***

779. These complaints arise out of the information that A/Insp Mullender included in the OH referral form dated 17 November 2020.

780. It was not in dispute that A/Insp Mullender informed OH that the Claimant was subject to a misconduct investigation and had previously been spoken to about his performance.

781. We accepted the evidence given by A/Insp Mullender that he informed OH about the misconduct investigation and performance issue because the form specifically asked about investigations and A/Insp Mullender thought this was relevant to the Claimant's OH referral. It obviously was important for OH to be informed of anything that might be contributing to the Claimant's mental health condition. We see nothing suspicious about this or the fact that A/Insp offered to provide further detail over the phone. This allegation therefore fails as a complaint of race-related harassment or direct race discrimination and as a detriment done on the ground of a protected act.

782. As a matter of fact, we found that A/Insp Mullender was not trying to get the Claimant transferred out of the VCTF. He simply asked OH whether a move to a different OCU might benefit the Claimant. Again this was an appropriate question for him to ask in the circumstances.

- ***Failing to provide details of the C's grievances and contentions around the causes of his ill health and grievances to the relevant Decision Maker (xx page 6)***
- ***C moved onto half pay – 29/3/2021(xvi page 6)***

783. The next set of allegations arise out of the initial application made by A/Insp Mullender on behalf of the Claimant for an extension of his full sick pay.

784. It is not in dispute that A/Insp Mullender failed to provide details of the Claimant's grievances and contentions around the causes of his ill health in the application form he completed on 9 February 2023. He did not do so because he did not consider this was relevant information to include based on standard criteria for extending sick pay. We consider it is unfair to criticise him for this. We were not presented with any evidence that he was trying to manipulate the information to the decision maker to produce a poor outcome for the Claimant and/or that the Claimant's race or protected acts were in his mind when doing so.

785. The consequence of the decision made by Assistant Commissioner Ephgrave was that the Claimant moved onto half pay from 29 March 2021. The decision was made in accordance with the standard criteria for extending sick pay. We were not presented with any evidence that he was influenced in his decision making by the Claimant's race or protected acts.

786. All complaints relating to these allegations fail.

- ***Failing to put in an appeal as requested on 18/3/21 by the C (xv page 6)***
- ***Informing the C he could not appeal the decision around pay (xv, page 5)***
- ***Not informing the C of his right to appeal pay decision (xv page 5)***

787. It was not in dispute that A/Isp Mullender told the Claimant during their telephone call on 18 March 2021 that he did not think it was possible to submit an appeal against the decision not to extend the Claimant's full sick pay. Our factual finding was that this was his understanding at the time. It would have been helpful if A/Insp Mullender had anticipated the Claimant's question and clarified the position before speaking to the Claimant, but we do not believe he acted unreasonably or deliberately. He clarified the position within days of the request.

788. The position was that A/Insp Mullender could not submit an appeal on the Claimant's behalf and so he cannot be criticised for this.

789. All complaints relating to these allegations fail.

- ***Failing to provide further information in light of the decisions (xx, page 6)***
- ***Refusal to review decision regarding pay with further information (xvii, page 6)***

790. These allegations appear to arise from the Claimant's misunderstanding. about the decision made by Assistant Commissioner Ephgrave. When the Claimant read the decision letter, he thought the decision was in connection only with his 2019 sickness absence and not his current sickness absence. He therefore assumed Assistant Commissioner Ephgrave has not been provided with the correct information and asked A/Insp Mullender to remedy this and for the decision to be reviewed.

791. It was entirely appropriate for A/Insp Mullender to refuse to do this because he knew that the correct information had been provided and that Assistant Commissioner Ephgrave's decision included the Claimant's current period of sickness absence.

- ***Failing to update minutes of the meeting on 4/2/21 as requested on 24/3/21 and including by the C's Fed Rep on 13/4/21 and failing to provide minutes of the same within a reasonable period after the meeting and despite chasing for the same on 24/3/21, 9/04/21 three times (xv, page 5)***
- ***Failure to provide the full file re. the appeal (xv, page 5)***
- ***Failing to include in the minutes that the C was asked about the s. 163 notice on multiple occasions (xv, page 6)***

- ***Dismissive email of BM on 9/4/21 (xv, page 5)***

792. The way these allegations are put in the list of issues is somewhat confusing. The Claimant's complaints, as clarified at the hearing, concerned two matters, namely A/Insp Mullender's approaches to the minutes of the case conference held on 2 February 2021 and to providing the Claimant with paperwork necessary to pursue his appeal against the decision not to extend his full sick pay.

793. It did take A/Insp Mullender a long time to provide the Claimant with his notes of the case conference held on 4 February 2021. We have found that the Claimant did not receive them until 24 March 2021 through the post. A/Insp Mullender told us this was through pressure of work. He did not delay submitting the application for the extension to the Claimant's full sick pay however, and did this paperwork on 9 February 2021.

794. Having sent the minutes to the Claimant, A/Inps Mullender refused to amend them to incorporate a number of discrepancies the Claimant and Ms Mills said were contained within them.

795. We have found that A/Insp Mullender did miss out some details from the minutes, based on the contents of Ms Whalin's email dated 20 April 2021. One such detail was that there had been a discussion of the Met CC alleged misconduct investigation and Ms Whalin had asked him whether he had been issued with a section 163 notice. However, we did not find that A/Insp Mullender did this as part of any deliberate strategy to portray the Claimant in a negative light, or to prevent him from successfully being awarded a full sick pay extension. He was not influenced by the Claimant's race or his protected acts.

796. Although A/Insp Mullender did not accept that his version of the minutes was inaccurate, he agreed to include the Claimant's notes on file so that anyone reading the file would be able to see his comments and understand his position. In our judgment, this was a reasonable approach for him take, that was not influenced by the Claimant's race or his protected acts.

797. The Claimant and Ms Mills appear to have treated the minutes as more significant than they actually were. We do not consider there was any detriment to the Claimant as a result of A/Insp Mullender's approach to the minutes, both in relation to the time it took to send them to the Claimant and the amendment issue.

798. The Claimant was keen to obtain the paperwork that had been submitted to Assistant Commissioner Ephgrave in order to pursue an appeal against that decision. He first asked for the paperwork on 24 March 2021. When he had not received it, the Claimant followed this up by text and email on 9 April 2021. The Claimant's email implied that, even after he had made four requests for the paperwork, A/Insp Mullender had not provided the paperwork to him.

799. In our judgment, this was an embellishment of the truth. In the text exchanges on 9 April 2021, A/Insp Mullender had confirmed he would send the paperwork, but also advised the Claimant that he had sent it to HR. His response was intended to be helpful, offering a potentially quicker avenue for the Claimant to obtain the paperwork than from him, a front-line serving officer managing a team of front-line serving officers. It is therefore not surprising that the Claimant's subsequent email on 9 April 2021 irked A/Insp Mullender and he felt he needed to correct the position in writing. In our judgment, A/Insp Mullender's replies to the Claimant's email of 9 April 2021 were not dismissive, clearly set out his position and the reasons for his position. Neither the Claimant's race nor his protected acts influenced A/Insp Mullender.

800. We also do not find that the Claimant suffered any detriment with regard to the supply of paperwork. By the time his appeal was being considered he had the full paperwork and was able to make whatever representations he wished to Assistant Commissioner Basu.

801. The Claimant's complaints therefore fail.

- ***Failing to refer the C's grievances and/or complaints on for investigation including those made on 18.04.21 to Claire Chilvers/Batley (v, page 4)***
- ***The C's appeal in relation to half pay was refused (xix, page 6)***
- ***Refusing the C's appeal against the decision to impose half pay (xiv page 5).***
- ***Failing to decide to allow full pay whilst an investigation into the C's grievance take place (xiv page 5).***
- ***Failing to pay the C full pay until at least his grievances are dealt with and investigated in the circumstances (vi, page 4)***

802. These allegations concern the decision by Assistant Commissioner Basu not to extend the Claimant's sick pay. In our judgment, the reason he gives for this decision in the relevant paperwork represents his genuine reason. The Claimant's complaints that the decision constituted race-raced harassment or because of his race or protected acts therefore fails.

803. In our judgment the Assistant Commissioner's decision that the Claimant would be entitled to back dated sick pay in the event that his complaints of racial discrimination and bullying were upheld following investigation, rather than while the investigation was ongoing, was sensible and pragmatic. There was no evidence before us that his decision was based on reasoning that had anything to do with the Claimant's race or protected acts such that he would have reached a different decision for an officer of a different race or who had not alleged discrimination or was pursuing an employment tribunal claim.

- ***Failing to serve the C with a s. 163 notice whilst telling the C he was under investigation within a reasonable time or at all (i, page 3)***
- ***Failing to appoint a welfare officer or ask C to select one after allegations of issues regarding the incident, the C being told he was under***

investigation, further restrictions being placed on the C and the C being signed off work (xviii page 6)

- ***Informing the C that the reason he was not served with a s. 163 notice was his sickness absence (on 25/3/21) (xv page 5)***
- ***Justification of failure to properly notify of investigation and restrictions (xiv page 5).***

804. The Claimant was not served with a section 163 notice in relation to the alleged Met CC misconduct incident that occurred on 23 May 2020 until 20 December 2022, several months after he had returned to work. There is no doubt in our minds that this was not within a reasonable time.

805. The consequence of not receiving the section 163 notice was that he did not become eligible to be assigned a welfare officer.

806. The Claimant was never served with a notice of any formal restrictions. He was told in May, at the time of the incident, that he was subject to the restriction of not being able to do over time at the Met CC. This was a reasonable restriction in the circumstances.

807. He was told later, by Mr Callanan, at the end of August 2020, that the restriction was of wider scope and that he was prohibited from working in a Command and Control environment that meant that he could not work in Tasking and Operations or the POD.

808. The justification given for not serving the Claimant with the section 163 notice or formal notice of restrictions was said to be because of his sickness absence. This was the explanation given by Mr Callanan to A/Insp Mullender who in turn provided this information to Claire Chilvers/Batley and ultimately to Assistant Commissioner Basu.

809. This explanation was, to coin a well-used phrase, extremely economical with the truth. It omitted to explain the delay in serving the Claimant with the section 163 notice during the period from 23 May to 21 September 2021 before his period of annual leave/sickness absence. Assistant Commissioner Base was led to believe that the misconduct incident occurred "just prior" to the Claimant going off on sick leave when it had actually occurred four months earlier.

810. Mr Callanan reassured the Claimant, in writing, on 21 August 2021, a full month before his leave began, that he would be served with the paperwork in the "*next few days*".

811. In addition, as recognised by Assistant Commissioner Basu, not serving the section 163 notice on the Claimant to protect him from additional stress while he was on sickness absence was "*moot*", because he was fully aware of the investigation. No one from the Respondent has explained why Assistant Commissioner Basu's recommendation made on 26 May 2021 was not implemented and the Claimant instead had to wait a further seven months before receiving the paperwork.

812. We do not uphold the Claimant's complaint that not serving him with the section 163 notice and details of the restrictions was conduct related to his race. Not do we uphold his complaints that the reason for it was because of his race he had done any protected acts. We find that the reasons were initially because of exceptionally poor administration and then because the Claimant was off on sick leave. We have therefore considered this further when determining the Claimant's complaints of disability discrimination.

Remaining Overarching Detriments

- ***Imposing restrictions on the C without formal processes and checks and safeguards (iii, page 4)***
- ***Failing to apologise and/or acknowledge at each opportunity for wrongly imposing restrictions, for reporting the C for breaching restrictions of which he was not aware and/or were not approved despite this being confirmed by RG (ix, page 4)***
- ***Failing to withdraw restrictions on the C or inform the C of the same (ii, page 4)***

813. We have grouped these four overarching detriments together because they all deal with the matter so restrictions. They repeat some specific allegations already considered, but for the sake of completeness we confirm that we did find that restrictions were imposed on the Claimant without formal processes and checks and safeguards.

814. This occurred twice and on both occasions Mr Callanan was responsible. The accompanying allegations about Mr Callanan's failure to apologise and the reporting of the breach only arose in relation to the first occasion and not the second occasion.

815. Being subjected to restrictions without formal process and checks constitutes a detriment in our judgment. It is something in relation to which a reasonable worker would take the view that they have been disadvantaged in the circumstances in which they had to work.

816. The first occasion was when Mr Callanan persisted in saying the Claimant was subject to three not one restriction during the initial misconduct investigation. He repeatedly failed to acknowledge that he had made a mistake and/or apologise for the action he took.

817. We did not find that this was because of or related to the Claimant's race, however. In our judgment, Mr Callanan had formed the view of the Claimant was difficult and he did not want to be seen to be backing down in light of this and the Claimant's junior status. The Claimant had not done any protected acts at that stage.

818. The second occasion was when Mr Callanan imposed the restriction on the Claimant working in a Command and Control environment saying this was because of the Met CC incident and investigation, albeit several months

after that incident occurred. Mr Callanan's reason continued not to be because or related to the Claimant's race, but was connected with his on-going perception of the Claimant as difficult. In our judgment, that perception was influenced by the fact that the Claimant had done the protected act of initiating the Acas early conciliation and this is what led Mr Callanan to act in the way he did. The accompanying allegations about Mr Callanan's failure to apologise and the reporting of the breach only arise in relation to the first occasion and not the second occasion.

819. The Claimant's complaint that restrictions were imposed on him without formal processes and checks as a result of the Met CC investigation because of his protected acts therefore succeeds.

- ***Failing to reasonably deal with the Claimant's complaints and grievances (iv, page 4)***
- ***Failing to refer the C's grievances and/or complaints on for investigation including those made on 18.04.21 to Claire Chilvers/Batley (v, page 4)***

820. These overarching detriments concern the way in which the Respondent dealt with the Claimant's formal grievance of 7 July 2021 and how PS Grey responded to his request for assistance on 9 September 2021 which we have already dealt with and not upheld earlier.

821. The only new allegation concerns what the Respondent did with the information that the Claimant included in his appeal against the decision not to extend his full sick pay. Although that information was not automatically investigated without the Claimant having to take further action, Assistant Commissioner Basu recommended that the Claimant's complaints be investigated and ensured that he was provided with advice as to how to progress such an investigation.

822. An investigation did subsequently take place, although it is not clear if this arose because of Assistant Commissioner's recommendation or was triggered by receipt of the Claimant's employment tribunal claim. We conclude, in the absence of any evdience to the contrary, that it was most likely a combination of both and therefore we do not uphold any of the complaints of race-related harassment, direct race discrimination or victimisation.

- ***Attempting to manage the C out of the VCTF and/or the R (xii, page 5)***

823. We do not uphold any of the complaints associated with this factual allegation because in our judgment it fails on the facts.

824. Four proposed transfers were suggested for the Claimant. The first was in January 2019 to a frontline operational role within the VCTF. This was never implemented. The second was from the POD to Tasking and Operations in April 2020. This was also within VCTF. This was implemented and the Claimant was happy with it in principle, although in practice, during the Summer of 2020 he found that he was being under-utilised. The third

proposed transfer was to Investigations, another role within VCTF. The reason for the proposed transfer was because the Claimant had shown an interest in moving to Investigations. When he rejected the proposed transfer, it was not implemented. The fourth transfer was to frontline operations within the VCTF in September 2020. This was imposed on him to his detriment.

825. Options outside the VCTF were only mooted twice. The first time was in August 2021 when Mr Callanan told the Claimant he was subject to a restriction on working in a Command and Control environment. We do not think this was said as part of an attempt to move the Claimant out of VCTF, but to make him reconsider his refusal of the investigation role he had been offered.

826. The second occasion was when A/Insp Mullender asked a standard question about a transfer outside of VCTF when referring the Claimant to Occupational Health. We found that there was nothing inappropriate about this.

827. The Claimant presented insufficient evidence that there was an attempt to manage him out of the MPS altogether and therefore this allegation also fails.

- ***Failing to provide adequate care and support for the C in the circumstances (x, page 4)***
- ***Failing to provide a safe place of work for the C in the circumstances (failure to consider welfare alongside restrictions and purported investigations) (xi, page 5)***

828. We have taken these two allegations together because they deal with similar matters. Our overall view is that the Respondent took a lot of positive steps to support the Claimant, but there were three key failings. The failings were (a) the failure to replace DI Harris as the Claimant's welfare officer, (b) the failure to appoint a welfare officer after the Met CC incident while the investigation was outstanding and (c) the decision to impose restrictions on him meaning he would have to change jobs.

829. At the start of the first misconduct investigation, the Respondent appointed DI Harris as his Welfare Officer who ensured that he was given support, including an OH referral. Although the OH referral was delayed, that was not the Respondent's fault. It resulted in the Claimant being given recuperative hours which he came off at his own choice. Unfortunately, when DI Harris left the VCTF, she ceased to act as the Claimant's Welfare Officer and was not replaced. This meant that as the investigation dragged on in time, he did not have access to a welfare officer. He did not seek a new one, however. We do not find that the failure to appoint a new Welfare Officer was linked to the Claimant's race. It was the circumstances instead.

830. There was a failure to allocate the Claimant a welfare officer in connection with the second misconduct investigation. This arose because of the failure

to issue him with a section 163 notice. We have found that this was not because of the Claimant's race or protected disclosures.

831. Although he did not have a welfare officer, Insp Young alerted the Claimant's then line manager about the Met CC incident however, as an interim welfare measure. They had apparently discussed the incident at the time and the Claimant was not unduly concerned about at this time.

832. The period during which the Claimant appears to have found most difficult was the period when he was working for Tasking and Operations at Lambeth HQ, but being not being adequate meaningful work or guidance during the months of June, July and August 2021. We did not find that this was a deliberate conspiracy to ostracise him, but arose because of a misunderstanding of his role and the reason for his transfer to VCTF among those people who were responsible for giving him work.

833. The Met CC investigation was part of the Claimant's concerns at this time, but not the overriding concern. He was keen for the investigation to be progressed, and chased this in June and July, but not in August. It only became an overriding concern, when on 19 August 2020, Mr Callanan that him he was subject to restrictions which meant he would need to change roles. We found this was influenced by the Claimant's protected acts, but not by his race. We note that the Claimant had been diagnosed with depression and anxiety by his GP five days before this occurred, but that Mr Callanan did not know this and could not have known this.

834. In early September 2020, when the Claimant informed T/Detective Superintendent White that he had been diagnosed with depression and given medication, T/Detective Superintendent White immediately took steps to support the Claimant and ensure that he was supported. He was also able to self-refer to OH for counselling at this time.

835. When the Claimant went off on sickness absence he was, in our judgment, well supported by PS Mullender. Although on his own evidence, PS Mullender was suspicious of the Claimant, he did everything we would expect a line manager to do in the circumstances, including maintaining regular contact with the Claimant and referring him to OHP. We also consider he acted appropriately when he read the Claimant's email of 18 March 2022 and escalated the matter resulting in the police visiting the Claimant at home. PS Mullender dealt with the initial application for extended full sick promptly and, after correcting himself with regard to the procedure, advised the Claimant that he had a right to appeal and provided him with the relevant documents to submit his appeal.

836. Only one of the three failings identified above was linked to the Claimant's protected acts. In our judgment, it was a one- off act rather than an ongoing failure. Therefore, although it was conduct that was not supportive of the Claimant we do not find, when the Respondent's conduct, as a whole, is analysed, that either of these allegations succeed.

- ***Not supporting the C to progress in his career at the R through promotion and training (xiii, page 5)***

837. The Claimant's career did not progress during the period we have examined. However, there are several factors that contributed to this, not least that during the latter part of the period, the Claimant was absent on long term sick leave. During the earlier part of the period we examined, there were a mixture of circumstances. We set out below, the ones that we consider to be significant in relation to this allegation.

838. The progression opportunities that arise for the Claimant began with his application for a place on a fast track programme. His application was considered, even though he had not sought the required prior approval from C/Supt Adelekan. As part of this process, the Respondent identified that the Claimant would benefit from an opportunity to develop his operational skills. He was therefore offered a transfer to a frontline operational position, but declined the option.

839. The Claimant applied for promotion to Acting Police Sergeant, but was not successful. We considered the circumstances of that process and found that there was nothing untoward about it.

840. The Claimant sought support from PS Nelson to take his sergeant exam and was given that support. He was also supported in this regard by Insp Trice, despite having used in named in his application without first discussing it with him.

841. A key factor that hampered the Claimant's progression was the fact that he had so many changes of line manager in 2019 and 2020. The fluidity in his line management arrangements arose as result of the pace of development in VCTF and was not unique to him. When PS Perry took over his line management for example, this affected others in the same team as him. The same is true when A/PS King became his line manager. The transfer to Tasking and Operations and change in line management at that point (April 2020) was unique to him, but this was something he was happy with.

842. The fluidity in the Claimant's line management contributed to him not having the requisite PDRs in place when he needed them for the purposes of taking his sergeant's exams. The Claimant had put his application in saying he did have the requisite PDRs when he did not. In our judgment, the onus was on him to ensure the PDRs were in place before submitting his application through liaison with his line managers. Just prior to his transfer to Bow Police Station, Insp Trice had informed the Claimant he would support him in relation to taking his sergeants exams and was working with him to try and resolve the PDR problem.

843. The Claimant was under-utilised in Tasking and Operations and this did not help his promotion prospects overall. It gave him an opportunity to undertake study for his sergeant's exams, although we do not consider this advantage

sufficiently counteracted the disadvantage associated with the fact that he was left with very little work to do over the Summer.

844. Finally, we note that although the interaction with PS Kerr was a difficult one for the Claimant, PS Kerr made some helpful suggestions to the Claimant. He suggested he spend time enhancing his Word and Excel skills and asked him to identify any training he wished to undertake to carry out a role in Tasking and Operations.

845. From a factual perspective our finding is that this allegation fails as overall the Claimant was given sufficient support to enable his career to progress had he wanted it too. If this assessment is overly generous to the Respondent, we add that we do not find that the Claimants race or protected acts contributed to the reasons for his lack of career progression. Instead, the reason was his overall circumstances.

- ***Passing on information that the C was not permitted near any of the R's buildings and/or not correcting or preventing such information being spread (vii, page 5)***

846. We do not understand this allegation as the Claimant presented no information to explain it or evidence supporting it. We have therefore not upheld it.

Indirect Race Discrimination

847. We turn now to the Claimant's complaints of indirect race discrimination. We first considered whether as a matter of fact, the Respondent had the alleged PCPs. These were taken from paragraph 9 of the Claimant's list of issues. Depending on whether we found as a matter of fact that the Respondent had the relevant PCP, we went on to consider to whom the PCPs were applied and whether to put persons of the same race as the Claimant at a particular disadvantage. In relation to this latter point, we considered the possibility of disadvantage for people of Nigerian heritage, black people and people who are not white.

9(i) Not investigating grievances or complaints where potential misconduct is alleged at all or reasonably
9(ii) Not referring allegations of racism and/or bullying for investigation when raised to a someone who can deal with the same at the R
9(iii) Closing grievances where misconduct and/or discrimination is alleged without referral or further assistance or further action
9(iv) Telling those raising grievances regarding members of the PSU to raise them with the PSU
9(xi) Not investigating allegations of bullying and mistreatment by an officer's PSU;

848. As we understand them, these PCPs derive from the way the Claimant's grievance was treated.

849. Our finding is that the Respondent does not have a PCP of not investigating grievances or complaints where potential misconduct is alleged at all or reasonably. The position is that complaints of misconduct are investigated, but not where they are raised using the grievance process. This is because the outcome that the grievance process seeks to achieve is an informal resolution of the complaint. The Claimant's own complaint of misconduct was investigated once it had been directed to the right place.

850. There is also no PCP of telling those raising grievances regarding members of the PSU to raise them with the PSU. Although this occurred in the Claimant's case, this was because the person dealing with the triaging of the Claimant's grievance failed to appreciate that she should be referring the Claimant to the buddy PSU of the VCTF PSU.

851. We find that the Respondent had a PCP of not referring on all misconduct matters contained in grievances. Based on what we were told by Mr Burman, the Grievance Management Team convert some grievances where the complainant says that they want to pursue the matter as misconduct into MM1s and refer them on, but not all of them. The significant factor as to whether or not they do this appeared to be the level of detail contained in the grievance allegations, rather than the nature of the grievance allegations. We therefore do not find that the Respondent had a PCP of not referring allegations of racism or bullying on, although inevitably it appears that some allegations of racism and bullying will not be referred on. Although we have no legal power to do so , we recommend that this is an area that the Respondent reviews.

852. Similarly, we do not find that the Respondent has a PCP of closing grievances where misconduct and/or discrimination are alleged without referral or further assistance or further action. In all cases where grievances are closed, advice will be given as to how to pursue a complaint of misconduct.

853. In light of our factual findings, the Claimant does not succeed in establishing indirect race discrimination in relation to these PCPS.

9(v) Supporting colleagues in their treatment of less senior colleagues or other colleagues even where this treatment is negative.

854. In our judgment, this alleged PCP is too vague and ill-defined to enable us to consider it. It therefore fails.

9(vi) Controlling which employees can work overtime and where they work overtime;

855. The Respondent, in common with most employers, has various policies and procedures that control which employees can work overtime and whether they work overtime. We therefore find this PCP was in place. However, the Claimant presented no evidence that it operated to the disadvantage of

people of the same race (broadly and narrowly defined) as him. This allegation therefore fails

9(vii) Imposing restrictions on officers without formal processes or notices
9(vii) Imposing restrictions on officers without formal investigations or protections
9(viii) Not serving officers subject to an investigation of which they are informed any official notice or any formal process

856. We do not find that any of the above existed as PCPs across the Respondent. Although there was evidence of Mr Callanan imposing restrictions without formal process or notice on the Claimant on two occasions, the Claimant did not present any evidence that this was a more widespread practice.

857. Similarly, although the Claimant was not served with a section 163 notice relating to the Met CC alleged misconduct case for an unreasonably long period, we were not presented any evidence to suggest that this was commonplace. Although the interim Casey report found that non white officers are more likely to face misconduct investigations than white officers, the information available to us did not deal with delays in serving section 163 notices.

858. We were told that officers who are off sick are routinely not served with section 163 notices, except in the most serious cases, and therefore this PCP does exist.

859. The Claimant did not present any evidence that a PCP not to serve section 163 notices on officers absent on sick leave put officers with Nigerian heritage, black officers or non-white officers at a particular disadvantages compared to others without the particular protected characteristic and therefore his indirect race discrimination claims based on these three PCPs also fail.

9(x) Obstructing access to officer's meeting with Fed Reps and/or lawyers during working hours in respect of allegations through excessive requirements and/or refusal to allow time;

860. Although we found that the Claimant experienced some difficulty meeting with his Federation Representative and lawyer on one occasion, the difficulty was limited to one occasion in August 2019. We were not presented with any evidence of more widespread difficulties. We therefore cannot di find that this PCP existed.

9(xii) Not remedying or acknowledging when an officer is wrongly accused of misconduct or potential misconduct by their line management or PSU.

861. The Claimant presented no evidence that this PCP existed. In his own case, there was no evidence that he himself had been wrongly accused of

misconduct or potential misconduct. In relation to both of the investigations that were undertaken, there was evidence of possible misconduct that needed investigating. The find that there was no case to answer in the first investigation was an acknowledgement that he was not guilty of misconduct. The recommendation for learning in the second investigation was an acknowledgement that his performance had been below standard, but this does not amount to misconduct.

9(xiii) Not apply the R's procedures around discipline, restrictions and/or complaints and grievances.

862. This is an extremely broad alleged PCP. We do not find that the Respondent has a PCP of not following its own procedures. We have found several examples of where the procedures have not been correctly followed in the case of the Claimant. We have no doubt that there are other examples across the MPS, but we did not hear evidence about them and cannot therefore reach a conclusion that this PCP exists.

9(xiii) Not supplying welfare support to an officer who has been accused of misconduct and/or subjected to restrictions but has not been formally served in respect of either;

863. The Respondent does have a PCP of not allocating a welfare officer to an officer accused of misconduct until they have been issued with a section 163 notice. This is not the same as not supplying any welfare support, however. In the Claimant's case, he was given welfare support through normal line management processes when he did not have a welfare officer allocated to him and we anticipate this is the same for other offices. When the Claimant had an allocated welfare officer, however, the welfare support he received was better, although it is difficult to know if this is generally true or in the Claimant's case was because of the individual involved.

864. We have not found it necessary to resolve this question. This is because the Claimant presented no evidence that officers of the same race as him (broadly and narrowly defined) are subject to a particular disadvantage when compared to others of a different race as a result the PCP of not allocating support officers until a section 163 notice is issued. As noted above, although the interim Casey report found that non white officers are more likely to face misconduct investigations than white officers, the information available to us did not deal with delays in serving section 163 notices.

9(xv) Reducing employees pay to half pay after a period of absence.

865. The Respondent does have a PCP of reducing sick pay to half pay after six months of absence. This is contained in regulation 28 of the Police regulations 2003.

866. The Claimant presented us with no evidence that the operation of the sick pay PCP particularly disadvantages officers of the same race as him

(whether defined broadly or narrowly) compared with officers of a different race to him.

Was the Claimant Disabled?

12. Did the Claimant have a mental impairment from at least 1 September 2019, namely depression, anxiety, and stress?

13. Did it have a substantial adverse effect on his day-to-day activities? (discounting the effect of medication in improving his symptoms)

14. Was it long term, in that it had lasted for 12 months or was likely to last for 12 months or was likely to recur?

15. Did the R have actual or constructive knowledge of such a disability from that time or at any relevant time thereafter? If so, from what time?

867. It was not in dispute that the Claimant's depression and anxiety gave rise to him being disabled for the purposes of the Equality Act 2010. The disputed issue was whether he was disabled at the material times for the purposes of his disability discrimination claims.

868. The Claimant's position was that he should be treated as disabled from as early as August 2019 as this is when he first began to display symptoms of depression and anxiety. The Respondent's position was that the Claimant did not meet the definition of a disabled person until October 2021. This was when its occupational health advised that he would meet the definition.

869. The critical question for us is at what point did it become likely (meaning "could well happen") that the Claimant's mental impairment would have a substantial adverse impact on his ability to carry out day to day activities for more than 12 months. We cannot apply hindsight to this question, but must consider it as the Claimant's condition developed based on the presentation of the Claimant's symptoms at the relevant times.

870. There is no evidence that the Claimant was experiencing significant medical symptoms until August 2020 that had a substantial adverse impact on his ability to carry out day to day activities. Although he reported symptoms of low mood, poor sleep, fatigue and tiredness to the Respondent's occupational health adviser in September and November 2019, he was still able to work, albeit on reduced hours. His symptoms were not significant enough for him to need to see his GP or begin to take medication.

871. In August 2020, however, his symptoms had worsened and he saw his GP on 14 August. His GP immediately prescribed him with anti-depressants and referred him to mental health specialists. In our judgment, this was the start of a period of prolonged depression which did have a long term substantial impact on the Claimant's ability to carry out day-to-day activities.

872. The Claimant had not had depression previously so this was not a recurrence of a long standing condition. Although depression is often recurring, many people have a one-off episode which never returns. Nothing in the Claimant's medical notes between August 2020 and August 2021 suggests that his condition would be recurring. In fact, the contrary is evident. The claimant's illness appears to have arisen as a reaction to events rather than 'out of the blue'.

873. As to the likelihood of his depression lasting for more than twelve months, episodes of depression vary significantly in length. The fact that the Claimant had been formally diagnosed with depression and given antidepressants did not automatically mean that it was likely that his ability to carry out day to say activities would continue to be adversely affected for 12 months. Commonly, people who experience reactive depression can expect to recover in around six months depending on how they respond to treatment.

874. Our conclusion in this case is that the relevant time is that around the start of 2021 it became clear that the Claimant was not going to recover this quickly. He did not respond well to initial treatment. His anti-depressant medication had to be increased on three occasions, first from 50 mg to 100 mg on 28 September 2020, next to 150 mg on 30 October 2020 and finally on 26 November 2020 to 200 mg. In addition, although he was referred for CBT on 11 September 2020, he did not start the treatment until 25 May 2021. His PHQ-9 and GAD-7 scores continued to be high until after the start of June 2021, but there was significant improvement thereafter.

875. We note that the Claimant was assessed by the Respondent's OH adviser in December 2020 who advised that the Claimant was not likely covered by the Equality Act 2010 because his condition had not lasted 12 months. The report does not, however, address the likelihood of his condition lasting for 12 months. The Claimant was not then seen in the Respondent's OH service until October 2021.

876. When, on 3 June 2021, the Claimant asked his GP to comment on the date when it would become likely that his condition would have a substantial adverse impact on his day to day activities for 12 months, his GP said:

"*This would be difficult to comment on he had an evolving condition and has already had it for about 2 years, receiving medication for it for nearly 1 year, things can improve with the therapy and medication he has hence we keep up follow up and meds may be reduced but likely to take some more months*."

877. With regard to the Respondent's knowledge that the Claimant was disabled, his actual knowledge did not arise until receipt of the OH report carried out in October 2021. However, we find that he had constructive knowledge much earlier than this, namely from 26 February 2021 onwards.

878. On 26 February 2021, the Claimant submitted a medical certificate for a further period of 8 weeks off until 22 April 2021. Although the reason on the sick note was stress at work rather than depression and anxiety, we do not consider anything turns on this. The occupational health report dated 3 December 2020 had confirmed that the Claimant had been diagnosed with depression, was taking a high dose antidepressant medication and had been referred for CBT.

879. By 26 February 2021, the Claimant had officially been off work for nearly five months, although they knew he had been taking medication from mid-August 2020. The latest medical certificate would extend that period to more than six and a half months. In addition, PS Mullender had met with the Claimant who had told him that there had been no improvement in his condition and he was not anticipating any improvement until he could have CBT therapy. Taking into account all of these indications, we conclude the Respondent ought to have realised, at that time, that the Claimant's impairment was likely to have a substantial adverse impact on his ability to carry out day to day activities for 12 months.

Indirect Disability Discrimination and Failure to Make Reasonable Adjustments

880. The Claimant relies on the same PCPs for the purposes of an indirect disability discrimination claim and a claim that the Respondent failed to make reasonable adjustments for him when it was under a duty to do so. The PCPs are set out at paragraphs 16 of the list of issues.

881. We first considered whether as a matter of fact, the Respondent had the alleged PCPs. If we found as a matter of fact that the Respondent had the relevant PCP, we then went on to consider the relevant legal test for the two forms of discrimination that are said to arise.

16a The requirement of consistent attendance at work

882. This is a PCP that the Respondent had. This is likely to be a PCP that causes more difficulty for disabled people that non-disabled people. It is usually identified as a relevant PCP where employees are pursuing claims about warnings and dismissal for sickness absence.

883. In this case, however, the Claimant was not subjected to a disadvantage of this nature. We therefore consider that any complaint of indirect disability discrimination and/or for the failure to make reasonably adjustments based on this PCP is misconceived.

16b Not looking in the circumstances of employees being signed off work for mental health conditions.

884. We do not consider the Respondent had this PCP. From what we learned of the Respondent's absence management processes, our understanding is that officers who are absent with mental health conditions are able to share

this with their line managers and HR and occupational health. The degree to which this will be investigated will depend on what is said about those circumstances.

16c Not providing information about the reasons for an officer's mental health sick leave when requested.

885. It is unclear to what this PCP relates and we have therefore not been able to consider it.

16d Paying those on long term sick leave half or nil pay.

886. The Respondent operates a sick pay policy that results in half pay after 6 months and nil pay after 12 months of long term sickness absence. It therefore has this PCP.

887. For the purposes of the Claimant's complaints, we note that the PCP is applied universally to all employees, although it is subject to some exemptions. We therefore find that it is applied to officers that are not disabled. We consider it is likely to be inevitable that disabled employees with long term conditions are put at a disadvantage by reason of the policy as it will result in them not being paid when off for long periods of time. The Claimant himself was disadvantaged financially by the policy.

888. We do not uphold the Claimant's complaints of indirect disability discrimination or a failure to make reasonable adjustments, however. We consider that the policy is legitimately justified by the Respondent's aim of seeking to ensure efficient use of public funds.

889. Giving employee's six months full pay followed by six months half pay is generous comparted to many private sector employers. In addition, the Respondent gave careful consideration to the Claimant's personal circumstances when it considered extending the Claimant's sick pay, but rejected this, pending the outcome of the investigation into his allegations of misconduct.

890. The only adjustment the Claimant has suggested to alleviate the disadvantage he experienced as a result of moving to half pay was to pay him in full. This is not a case where he was suggesting adjustments should have been made to his workplace or that would have enabled him to return to work and his normal earnings. When asked about possible adjustments he made no suggestions because at the time he could envisage none that would help him. In our judgment, paying him in full was not a reasonable adjustment in all the circumstances.

16e. Not looking into the raised circumstances and or grievances raised by those on long term sick leave.

891. We were not presented with any evidence that the Respondent does not consider complaints or grievances raised by those on long term sickness

absence. We anticipate that there are occasions where investigations into complaints and grievances raised by officers on long term sickness absence may need to be delayed until a point in time where the officer in question is well enough to participate on the ensuing process, but this is a different matter. We therefore do not find that this PCP was in place.

16f Not addressing grievances or complaints reasonably or at all.
16e Not referring such grievances or complaints to those who will investigate the same.

892. These PCPs appear to be a repeat of the PCPs derived the way in which the Respondent dealt with the Claimant's grievance and which we considered in connection with his complaints of indirect race discrimination. Our finding was that the Respondent did not have such PCPs as a matter of fact because some grievances and complaints are referred on. As noted above, however, we consider that the process for promptly referring complaints on for investigation is an area that the MPS should look at. Our understanding is that the final Casey Report deals with this in detail.

16h Not providing a welfare officer to an officer on sick leave and/or accused of misconduct and/or subject to restrictions.

893. As drafted, the PCP here is misconceived. The Respondent did not have a PCP of not providing a welfare officer to an officer on sick leave and/or accused of misconduct and/or subject to restrictions. The Respondent's policy was to allocate a welfare officer to all officers who had been issued with a section 163 notice, regardless of whether or not they were on sick leave.

894. It is relevant to note, however, that as occurred in the Claimant's case, the respondent also had a PCP of not issuing an officer with a section 163 notice while absent on sick leave. The Claimant has pursued a complaint about this under section 15 of the Equality Act 2010 which we have upheld. We have not therefore given it further consideration here.

16i Not addressing rumours regarding restrictions imposed on officers.

895. We do not understand to what this refers and we have therefore not been able to consider it.

16j Sending police officers to the home of someone expressing distress without contacting them or anyone around them first.

896. We find that the Respondent does not have a PCP of this nature. The practice in the MPS is that a welfare visit by police officers will be made where there is a legitimate and significant concern about a police officer's wellbeing, that in the judgment of those dealing with the matter decide is urgently required. There is no blanket policy in the terms found in this PCP.

Discrimination Arising from Disability

897. We now turn to the Claimant's complaints of discrimination arising from disability under section 15 of the Equality Act 2010. These are found in paragraphs 21 and 22 of the list of issues.

898. The Claimant clarified during the hearing that his complaints are about three allegations of unfavourable treatment as set out in paragraph 22 of the list of issues, which he says he was subjected to because of something arising in consequence of his disability. The "somethings" arising in consequence of his disability are the matters set out in paragraphs 21(a) and 21(c). The Claimant clarified that 21(b) had been included as a mistake and that this was a duplication of the alleged unfavourable treatment.

22(a) The reduction of the Claimant's pay to half and no pay
21(a) ***His absence from work***

899. It was not in dispute that the Claimant's pay was reduced after he had been absent on sick leave for 6 months (on 29 March 2021) due to his depression and anxiety. The Respondent further conceded that if we found that the Claimant was disabled as at this date, the treatment would be unfavourable treatment because of something arising from disability, depending on the timings. As we have found that the Claimant was disabled from early 2021 and the Respondent ought to have known this as at 26 February 2021 the first parts of the test in section 154 of the Equality Act 2010 are satisfied.

900. The Respondent seeks to justify the reduction of sick pay relying on the aim of ensuring efficient use of public funds. We find that this is a legitimate aim and that the Respondent has not discriminated against the Claimant more than is necessary. As noted above, giving employee's six months full pay followed by six months half pay is generous comparted to many private sector employers. In addition, the Respondent gave careful consideration to extending the Claimant's sick pay, but rejected this, pending the outcome of the investigation into his allegations of misconduct.

901. The justification therefore means that reducing the Claimant's sick pay to half pay did not constitute unlawful discrimination.

22(b) Failing to serve the C with a section 163 notice or follow any reasonable procedure regarding restrictions and/or allegations of misconduct ongoing
21(a) ***His absence from work***

902. The Respondent did not serve the section 163 notice relating the Met CC incident on the Claimant while he was absent on sick leave because of his sick leave. It also did not clarify what restrictions he was subject to during this period. We consider this amounted to unfavourable treatment as the Claimant was fully aware of the misconduct allegation against him and had actively been requesting a copy of the relevant paperwork from before he went off sick. He made the same request while he was off sick. The failure

to serve him with the notice left him in a vacuum of uncertainty and meant that he was not able to be allocated a welfare officer.

903. If the Claimant's absence on sick leave arose because of a disability, the unfavourable treatment was because of something arising in consequence of a disability. We find that it was and the first part of the test in section 15 of the Equality Act 2010 is satisfied.

904. We first considered whether the decision not to serve the Claimant with the section 163 notice and clarify the restrictions should be viewed as a one-off act that occurred before the Respondent became aware the Claimant was disabled. We did not consider this was the correct analysis. In our judgment, the omission to serve the notice an ongoing failure which continued after the Respondent ought to have realised that the Claimant's circumstances meant that he was disabled for the purposes of the Equality Act 2010.

905. If we are wrong about this, we find that there was a subsequent decision not to serve the notice on the Claimant which occurred after Assistant Commissioner Basu had recommended it should be served on him. This was towards the end of May 2021, well after the date we have found the Claimant was disabled and the Respondent ought to have known he was, which was 26 February 2021. He therefore succeeds on this basis, subject to the Respondent's ability to objectively justify its actions.

906. The Respondent has sought to justify the decision not to serve the notice "*as a proportionate means of achieving the legitimate aim of protecting officers' welfare whilst signed off sick with a mental illness*." We do not find that this is made out for much the same reasons that we have determined the Respondent acted unfavourably in this case. There will no doubt be some cases where it will be in an officer's interest to delay service of an investigation notice while they are off sick, but this was not one of them, as Assistant Commissioner Basu recognised.

907. The Respondent expressed concern about having to send officers to the Claimant's house to serve the notice, but this was also not justified. There was no need to do this because the notice could have been served by email, as it eventually was. We find it staggering that even after Assistant Basu recommended the section 163 notice be served on the Claimant on 26 May 2021, it was not served until 20 December 2022.

908. The Claimant's complaint of discrimination arising from disability in relation to this allegation therefore succeeds.

22 (b) Sending police officers to the C's home at night on 19/3/21 without making any checks and/or refusing to apologise for the same

21 (c) His sending the email on 19/3/2021 to BM about his frustration at the R.

909. The final allegation concerns the occasion when the Respondent sent police officers to the Claimant's home to undertake a welfare check on him. There

is no dispute that this occurred. It arose because the Claimant wrote an email expressing his frustrations about the Respondent's conduct at a time when he was absent on sick leave due to a mental health condition. It is unlikely that the Respondent would have felt the need to take such action in the event that the Claimant was fully fit and in work and therefore, we find that the treatment did occur because of something arising from the Claimant's disability. As it occurred on 19 March 2021, this was after the date the Respondent should have known the Claimant was disabled.

910. The Claimant does not succeed in relation to this allegation, however. There are two reasons for this. First, we do not consider the Respondent's actions amounted to unfavourable treatment in the circumstances. At the time of the welfare check, the Claimant was absent on long term sick leave due to a mental health condition. In our judgment, the welfare check was undertaken for his benefit rather than amounted to unfavourable treatment.

911. If we are wrong about this, however, and we appreciate that the Claimant found the arrival of a police car with flashing blue lights to his home at night embarrassing and unsettling, the alternative reason why his claim fails is because the Respondent's actions were fully justified. Even A/Insp Coltress said that he would take the same action again in the same circumstances. The Claimant therefore does not succeed with this allegation.

Jurisdiction / Time

912. Finally, we have considered whether the Claimant's complaints were submitted in time. We have only done this for the allegations that we have upheld.

913. None of the allegations we have upheld were contained in the Claimant's first claim. his second claim was presented on 17 June 2021, following a period of Acas early conciliation which lasted a day, namely 3 June 2021. This means that anything that occurred prior to 4 March 2021 is prima facie out of time.

914. The dates the complaints we have upheld occurred as follows:

- race-related harassment – occurred on 9 September 2020
- victimisation – all occurred on or around 19 August and 9 September 2020
- discrimination arising from disability - an ongoing failure between 26 February 2021 and 20 December 2022.

Only the latter complaint is therefore in time. The other complaints are between six and seven months out of time.

915. We do not consider the complaints constitute a continuing act for the purposes of section 123(3)(a) of the Equality Act 2010. However, we have

decided to grant the Claimant an extension of time under section 123(1)(b). The primary reason for granting the extension is because the Claimant was unwell from October 2020 and we consider this was the cause of the delay. The delay was not excessively lengthy in the overall scheme of things, and understandable in the circumstances given the Claimant's illness.

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Employment Judge E Burns

11 September 2023

Sent to the parties on:
.11/09/2023

For the Tribunals Office