EMPLOYMENT TRIBUNALS

Claimant: Mr P J Jackson

Respondent: The Chief Constable of Greater Manchester Police

Heard at: Manchester in public, in person and by CVP

On: Between 1 November 2021 to 16 May 2023 on the dates set out in Annexe B to this judgment; save for private hearings which are not therein recorded and divers dates thereafter In Chambers.

Before: Employment Judge Holmes
Ms B Hillon
Mrs M Conlon

Representatives

For the claimant: Mr D O'Dempsey, Counsel leading Ms A Bond, Counsel
For the respondent: Mr S Gorton, Leading Counsel with Mr D Tinkler, Counsel

RESERVED JUDGMENT

It is the unanimous judgment of the Tribunal that:

1. The claimant made no protected disclosures, and his claims are accordingly dismissed.

2. Whilst unnecessary in the light of the Tribunal's first finding, the Tribunal nonetheless finds that the claimant was not, in any event, constructively dismissed.

REASONS

1. By a claim form presented on 12 May 2014 the claimant , who was at the time a serving Police officer, brought claims of whistleblowing detriment arising from protected disclosures that he had made to the Independent Police Complaints Commission ("the IPCC") on 31 January 2014. On 2 September 2016 the claimant presented the second claim, case no. 2402865/2016. The claims are of protected disclosure detriments, and

automatically unfair dismissal for having made a protected disclosure, arising from the same disclosures.

2. It is not proposed to rehearse the lengthy procedural history of the claims, and their case management in this judgment, the salient parts are set out in Annexe A to it. The parties agreed to provide a recording and transcription service for the hearing , for which the Tribunal is grateful. That service, however, is a service to the parties, and has not been provided by the Tribunal, although its output has been provided to the Tribunal . The transcription, accordingly, of the proceedings is not part of the public record of them, save where any part of it has been expressly referred to in the evidence , submissions or this judgment. Private hearings were also recorded and transcribed, although not always in their entirety. There were various applications made in the course of the hearing, upon which the Tribunal ruled, and made orders or gave judgment. Those orders and judgments, and the reasons for them, were given orally, or were promulgated in writing , at or around the time, and will not be rehearsed again in this judgment.

3. It is appreciated that this reserved judgment is being promulgated over two years after the start of the final hearing. The Tribunal regrets this, but the procedural history and Annexe B should explain , or largely explain, the reasons for this. Further, whilst the Tribunal was (having reverted back to the parties on a specific issue in November 2023) ready to promulgate its judgment in early December, it was hesitant about doing this so close to the Christmas and New Year break, given how that was likely to impact upon the parties' time and ability to read and digest the judgment, take legal advice and any other necessary further steps. The claimant was agreeable to this further delay, but the respondent suggested that the Tribunal could release a brief letter stating , in summary, the outcomes. The claimant resisted this, and the Tribunal considered that it would not be appropriate. Whilst the Tribunal was prepared to send the judgment to the parties on 8 January 2024, the claimant , who had a pre-booked holiday in January 2024, preferred that it await his return from that holiday, hence it has not been sent to the parties until the date at the end of this judgment. The Tribunal needed a little more time for the whole Panel to proof read the draft, and this final reserved judgment is now promulgated with the Tribunal's gratitude to the parties for their considerable patience.

The scheme of this judgment.

4. Given the complexity of the claims, the issues, and the evidence, this judgment will be broken down into Chapters, with the aim of providing some clarity and concision . The first Chapter will be introductory, with some basic background to the claims and relevant information about the final hearing. It will also provide some guidance to the audience for this Reserved Judgment as to what to expect from it. The second Chapter will set out the Tribunal's findings of fact which are relevant as background and context for an examination of claims made, and determination of the issues that they raise. These are largely uncontroversial facts, which set out the overall chronology of the events which give rise to the claims. The third Chapter will set out the Tribunal's approach to the determination of the issue of whether the claimant made any protected disclosures. That will involve a consideration of how the Tribunal should approach the disclosures , in terms of each party's pleaded case, and the List of Issues, and what legal tests to apply. In the fourth Chapter the Tribunal will then go on to make its findings

of fact relevant to the particular issues relating to the individual disclosures , and will then determine whether the claimant made any protected disclosures, and which of the claimed protected disclosures are made out by the claimant.

5. The fifth Chapter will address the Tribunal's approach to the issue of whether the claimant was subjected to any detriments by the respondent on the grounds that the claimant had made any protected disclosures.

6. The sixth Chapter will relate to the claimant's claim of constructive automatically unfair dismissal, and will set out the Tribunal's findings of fact as to whether the claimant was constructively dismissed, and, if so, whether that was for the automatically unfair reason that he had made any protected disclosure. The Tribunal will then determine that claim. The seventh Chapter will contain some general observations of the Tribunal upon the proceedings generally. Finally, taking its lead from the claimant, and to help to navigate the numerous paragraphs and sub-paragraphs that this judgment will require, the Tribunal will enumerate the Chapters with roman numerals (in different font) , so that the paragraphs set out under each Chapter can more readily be distinguished, and the numeration of paragraphs will restart with each new Chapter. It is hoped this will assist the reader.

7. To further assist navigation, the Tribunal can provide this Index to the judgment which should direct readers to specific topics for ease of access.

Chapter I.

a).The claims generally and the final hearing.

I. 1. The final hearing commenced on 1 November 2021, but was taken up with applications and case management, so no evidence was heard until 2 December 2021. The hearing was concluded with the end of the parties' closing submissions on 16 May 2023. The hearing was not continuous, and considerably overran the original estimate of 70 days. This was for a variety of reasons, including an application in relation to rule 50, various other applications between the parties which arose in the course of the hearing, and non – availability of parties , witnesses, or representatives, and/or the Tribunal , sometimes by reason of or connected to COVID – 19, and other issues.

I. 2. It is not proposed to set out the precise history of the hearing here, nor of the various witnesses who gave evidence, and when they did so. Those details are set out in Annexe B hereto. Witnesses who gave live evidence for the claimant were :

The claimant ; Officer 28 , Carl Jones, Officer N , Graham Brock , Kevin Dolan, Tom Elliott, Richard Mortimer .

For the respondent they were:

Simon Barraclough , Kay Dennison, Neil Evans , Julian Flindle , Denise Hill , Caroline Jones (formerly Ball) , Anthony Mole , Ian Palmer , Jamie Pearson ,Jonathon Rush, Zoe Sheard, Stephen Keeley , Nicola Spragg , Russ Jackson, Paul Savill ,Sir Peter Fahy, Debbie Ford, Ian Pilling , and Martin Bottomley.

Additionally, the claimant adduced witness statements from, but did not call:

Simon Akker and Shaun Donnellan whose written evidence was agreed,

and Julie Barnes , Maggie Oliver, and David Sutcliffe whose witness statements were admitted, but not agreed.

The respondent adduced witness statements from, but did not call:

Scott Sloan , whose witness statement was agreed, and Paul Parker, who was not called, and whose statement was not agreed, but was admitted.

I. 3. At the conclusion of the originally listed period of the hearing on 10 March 2022, the Tribunal postponed the hearing, to be resumed for an initial period of two weeks on 13 June 2022, and a further three weeks commencing in July 2022. For various reasons the evidence was not concluded until 1 December 2022, and the parties then made Submissions. These were written, and supplemented by 3 days of oral submissions. the respondent's Final Submissions are dated 24 February 2023, the claimant's Closing Submissions undated, the respondent's Responsive Submissions are dated 12 March 2023, and the claimant's Response to the Respondent's Closing Submissions are also undated. Whilst the Tribunal appreciates that each parties' written Submissions were co-authored by the Juniors and their Leaders, the Tribunal hopes that the former will forgive it for referring to them only by reference to the names of their Leaders.

I. 4. These claims were first commenced (effectively, as there was a prior unsuccessful attempt by the claimant when acting in person) on 29 July 2014, with the second claim form being presented on 2 September 2016. There was then amendment of that claim. The claims have been extensively case managed, and the final hearing has been postponed on a number of occasions. After much revision of case management timetables, and extensions of time for steps such as exchange of witness statements, the final hearing, listed for 70 days , finally commenced on 1 November 2021.

I. 5. The Tribunal has been provided with a hearing bundle (some parts of which are for hearings to be held in private) of some 25 lever arch files, running to some 10,000 plus pages. The claimant has given evidence (being recalled at the end of the March 2022 sitting), as have all of his live witnesses, and the respondent has called a large number of witnesses, as set out in Annexe B.

I. 6. By way of summary, the claimant's claims are of protected disclosure detriment, and automatically unfair constructive dismissal by reason of his having made protected disclosures. He relies now, having withdrawn some, upon 19 protected disclosures, and claims that he was subjected to some 31 alleged detriments.

I. 7. All the protected disclosures relied upon were made at the same time, in January 2014, to the IPCC (as it was then, now the Independent Office for Police Complaints, the IOPC), in three documents referred to as PDR1, PDR2 and PDR3.

I. 8. In his (the Tribunal will treat the respondent as a person, not an entity, although as the Chief Constable he is sued solely in his capacity as Head of the GMP, and the incumbent has changed three times since the commencement of the claims) responses, which were consolidated in the Consolidated Grounds of Resistance dated 21 March 2017 , the respondent makes no admissions as to the claimant having made any protected disclosures , the fact of his communication of information to the IPCC being admitted (save for two PDs) , but no more. He denies any detriment or causation thereof by any protected disclosures that may be proved, denies that the claimant was constructively dismissed, or , if he was, that this was because he had made any protected disclosures.

I. 9. In terms of documents , there were some 19 lever arch files of open documents produced to the Tribunal, but this was added to during the hearing. Because of the sensitivity of some of the material for ongoing criminal investigations, or for Police methods and tactics generally (which had at one point led to the claims potentially being heard as national security cases in London), some of the evidence was heard in private, and material for use in such parts of the hearing was in closed bundles, of which there were 6. It was possible, however, during the progress of the hearing for the amount of redaction and exclusion from public accessibility to be considerably reduced , which the respondent carried out. There were three lever arch files of witness statements (for use in open and closed sessions).

b).Adjustments for the claimant and history of the judgment.

I 10. The claimant has mental health issues, and the Tribunal was asked to make adjustments for him during the course of the hearing. Whilst not part of his claims that he is a person with a disability, the Tribunal has been asked to make reasonable adjustments on the basis that he is. To that end the claimant , on 21 February 2022, produced to the Tribunal two Psychiatric Reports from Dr J K Appleford, a Consultant Psychiatrist, the first dated 11 October 2021,the second dated 18 January 2022.

I 11. The status of these documents is not totally clear, but it was made clear that they were not agreed by the respondent. They have not been admitted into the bundle. The Tribunal , accordingly , considers that they can only have limited weight, and they have been accepted at face value for the purposes of case managing the hearing, and ensuring that the claimant , regardless of whether his condition does or does not amount to a disability under the Equality Act 2010, had a fair hearing.

I 12. A number of “adjustments” (for that is the term used, regardless of whether, strictly, they were) were made for the claimant during the hearing. From the outset the Tribunal was asked for, and granted, regular breaks for consultation by Mr O’Demspey with the claimant . A “buffer” day was sought , and the claimant’s cross – examination began on 2 December 2021. The claimant asked for , and was granted, a day of not giving evidence on 15 December 2021, as he had not slept for two nights. There was

an early adjournment on 17 December 2021, when the claimant became upset during cross – examination.

I 13. The claimant also contracted COVID during the hearing, and no cross – examination of him took place on 10 January 2022 and 11 January 2022.

I 14. In a private preliminary hearing on 13 January 2022 the Tribunal raised with the claimant's counsel the absence of medical evidence, in the light of the need for these adjustments , and also the claimant's answers to questions in cross – examination , in which he seemed to suggest that he may be seeking to rely upon his mental health in respect of his ability to prepare his case, and prepare for cross – examination. The concern was expressed by the Tribunal that if it was going to be argued that it should take the claimant's mental health into account when assessing his evidence, some medical evidence would be required.

I 15. A further preliminary hearing was held on 19 January 2022, in which the claimant produced the two Psychiatric Reports from Dr Appleford, and 2 pages of GP notes. The latter were subsequently admitted into the Bundle (pages 6639 and 6640), but the former never have been. At a further preliminary hearing on 24 January 2022 , after the claimant's evidence had (at that time) not concluded, but before the respondent was to call his first witness Nicola Spragg, Mr O'Dempsey told the Tribunal of the level of distress that the claimant had experienced when giving his evidence, and how he would need more time to give his counsel instructions before the cross – examination was commenced. No application was made at that time for the formal admission of the Psychiatric Reports, and, indeed, if they were to be admitted, Mr O'Dempsey indicated that an application for an order under rule 50 would be made. The issue of the deployment or otherwise of these Reports was discussed again on 28 January 2022, when Mr O'Dempsey drew a distinction between the GP records, and the Reports. As to the first of the Reports , he said that this had relevance to the question of compensation. That is indeed so, as in it , at para. 1.2, Dr Appleford quotes from the letter of instruction from the claimant's solicitors dated 18 August 2021:

"We are seeking an opinion in relation to both the cause and extent of our client's psychological condition and in particular and the impact upon his earning capacity.

As already indicated, this is an urgent request as, whilst we require the report primarily in order to assist our client with his application for an Injury Award, it is anticipated that your responses will also assist with his Employment Tribunal claim."

The Tribunal's understanding of an "Injury Award" is that this is an entirely separate and extra – judicial form of compensation scheme, probably under the Police Pensions Regulations, and other Regulations ("Injury Benefit") , whereby a Police officer injured with a permanently disabling condition on duty may apply for a monetary award. Indeed, the ensuing 6 pages of the instructions to the doctor set out the relevant tests that would be applied for this purpose, and invite his opinion as to whether the claimant satisfies them. In summary, the opinion of Dr. Appleford was that the claimant would indeed satisfy the requirements of the Injury Award scheme.

I 16. In the course of the Report, the doctor sets out his opinion on the claimant's mental health and its effects upon him. That was, of course, predominantly in the context of his ability to continue to carry out the duties of a Police officer. The Report does, however, touch upon a number of matters which are not confined to the duties of a Police officer, such as (para. 20.39 of the Report) :

▪ *the ability to sit for reasonable periods, to write, read, use the telephone and to use (or learn to use) IT;*

• *the ability to make decisions and report situations to others;*

• *the ability to evaluate information and to record details;*

• *the ability to understand, retain and explain facts and procedures.*

I 17. At para.20.40 he says this:

"In my opinion, and on balance of probabilities, Mr Jackson remains unwell. His account, as described in the body of this report, is that he remains depressed, lacks interest, enjoyment, and motivation, has memory and concentration difficulties, has reduced energy, and has become socially withdrawn. He lacks confidence in his abilities. He has significant and disabling anxiety. He is anxious and avoidant of contact with Police Officers."

I 18. The issue of the status of these Reports was discussed again on 28 February 2022, when Mr O'Dempsey again said that the Reports were not being deployed in evidence at that stage. In terms of the status of this Report, it was made clear that the respondent did not agree it, nor that it should go before us. It did, of course, and the question therefore is how we should treat it. Our view was that we should treat it as an unagreed document , to which we could give some weight as to the adjustments that the Tribunal should make to accommodate any difficulties that the claimant may experience in the hearing , as a result of his mental health, regardless of causation of his condition, but not whether the condition did or did not amount to a disability. It could also assist us in conjunction with our own observations, and experience of the claimant during the course of the hearing. That , however, relates to the first Report. We will return to the second in our discussion of the claimant's testimony below.

I 19. To continue with examples of the adjustments that were made , on 22 February 2022 there was an adjournment of a day because the claimant was too ill (i.e mentally ill) to give instructions for cross – examination. An application was made, and granted , that the Tribunal allowed a full day before commencing the cross – examination of Martin Bottomley , after the conclusion of the cross – examination of Simon Barraclough.

I 20. On 23 June 2022 the claimant left the Tribunal building with what was described as a massive panic attack, and was unable to give instructions. On 11 July 2022 the claimant requested that the hearing day did not extend beyond 16.30, which was agreed. On 29 July 2022 , during the cross – examination of Supt. Savill, the claimant was unable to attend the Tribunal , either in person, or even remotely, for the second time. This caused difficulty in Mr O'Demspey getting instructions, with the result that the

cross – examination could not be concluded, and Supt. Savill's cross – examination had to be resumed in September 2022.

I 21. The claimant on 11 November 2022 again could not attend in person, or remotely, having gone missing from home, to the understandable consternation of his wife who had informed his solicitor about this. This was, it should be noted, after the disclosure of a third notebook by Martin Bottomley. The Tribunal adjourned, and in due course was asked , on 21 November 2022 for an additional day for cross – examination of Martin Bottomley. This was granted, for 25 November 2022, but the claimant on 22 November 2022 informed the Tribunal that he had overlooked a family commitment , so would not be available to see or hear the evidence to be given on 25 November 2022. The Tribunal declined to change its decision, and the further evidence was heard on 25 November 2022. Whilst the transcript of that evidence was made available to the claimant over that weekend, he did not read it, so on 28 November 2022 the Tribunal was faced with an application from Mr O'Dempsey for a further delay because the claimant had not been able to give him instructions. The Tribunal determined that the cross – examination should continue, with the proviso that Martin Bottomley could be recalled by CVP if necessary. This, it should be noted, was not so much an accommodation that was being sought by the claimant because of any medical issue, but was predominantly a domestic issue.

I 22. That is not an exhaustive list of all the adjustments that were made, and generally whenever additional time was sought by the claimant , it was granted.

I 23. It is perhaps opportune at this juncture to correct some assertions that have been made as to the length of the claimant's cross – examination. This has been put , in some documents, at 31 days, or 6 weeks. The Tribunal does not agree this calculation. Its calculation is 21 (or thereabouts) days. The last (subject to a brief recall) full day of the claimant's cross – examination was 31 January 2022, day 24 of the transcribed hearing when evidence was taken, but the claimant did not give evidence on 10 and 11 January 2022 due to illness, Nicola Spragg gave evidence on 26 January 2022, and the claimant's evidence was concluded on 1 February 2022. He may have been "in the witness box" , of course, for longer, but his actual time under cross – examination was less than 31 days.

I 24. In terms of the length of time the hearing took, whilst some complaint is made as to the length of the claimant's cross – examination, neither side stuck to the estimates for cross – examination that had been provided in November 2021 at the start of the hearing. By way of example, the estimate for cross – examination of the claimant was 15 days, but ran for 21.5 days, that for Martin Bottomley was for 4 days at most, but ran for 8.5 days, the estimate for Sir Peter Fahy was 1 day at most, but took 2.5 days, Russ Jackson was estimated for 5 days, but took 11, and the evidence of Ian Pilling and Paul Savill ran in each case for around twice the estimates provided. This is not to be critical, and was affected by a number of factors, one of which was continuing (and late) disclosure, and another was the delays in obtaining instructions from the claimant for the reasons discussed above. The Tribunal must also accept some responsibility for this, but given representation by senior employment counsel , and general acceptance by both sides that all the evidence heard needed to be heard, there was little more that

the Tribunal feels could have been done (given the claims and the issues) to reduce the time that this hearing has taken.

I. 25. The List of Issues, despite the considerable previous case management that had bene carried out, was not agreed until 1 December 2021. As will be seen, there are issues as to what the parties may or may not be free to argue as a result of that List of Issues . The parties made substantial written closing submissions , to which they spoke, and the hearing concluded on 16 May 2023. The Tribunal's deliberations then commenced, but were perforce non – continuous, due to, firstly , the fact that the Panel had not expected still to be engaged upon this case that long after it had commenced, with consequent limitations upon the availability of the Panel. There were also other factors (including industrial action affecting access to the Tribunal, and health issues of various parties) , which has contributed to the delay in its promulgation. As will be seen below, the Tribunal considered it prudent to seek the parties further representations upon a crucial aspect of how it should approach its task, and these were sought and provided in November 2023. The parties are thanked for their patience.

c).The Tribunal's task, and what it will decide.

I. 26. Whilst the parties doubtless are fully aware of the nature of the litigation process in the Employment Tribunal, and the issues that it will decide, the wider audience for this judgment may not be. The Tribunal is aware that there has been a considerable amount of interest by external parties , and the general public , in this case, and many of them have, from time to time, observed the hearings, or parts of them. Some have a particular personal interest, by reason of being involved directly, or indirectly, in some of the subject matter covered in the evidence, others have a wider, more "political" interest , quite legitimately, in how the GMP conducted itself in the period to which the claimant's disclosures relate.

I. 27. The Tribunal will say a little more , in particular , to the former group at the conclusion of this Judgment, but at this stage we consider it important to make it clear to our wider audience what the Tribunal will and will not be deciding.

I. 28. The Tribunal hearing was not a public inquiry. It was the forum for the determination of the specific claims brought between the two parties. It will decide those claims, and only the issues necessary for that purpose. It will, therefore, firstly be deciding whether the claimant made any protected disclosures. That is not the same as deciding whether he was a "whistleblower", in general terms. That is a lay term, and is a status. The protected disclosure legislation does not recognise "whistleblower status", and the term "whistleblower" appears nowhere in it. It requires , instead, a claimant to establish that he made protected disclosures, as defined by s.43 of the Employment Rights Act 1996. That , as will be seen by anyone who reads on, is a highly technical and legalistic issue, to which the Tribunal is required to apply strict tests in accordance with the legislation and considerable body of caselaw that has grown around it.

I. 29. That means that the Tribunal will not be deciding if any of the matters that the claimant disclosed were true, it will be deciding whether the claimant had the requisite reasonable beliefs under the relevant sections of s.43 of the Act. Whilst the true factual

situation will often have some bearing upon the claimant's beliefs, it will not be a central finding that the Tribunal will be required to make in order to determine these claims.

I. 30. Further, whilst the claimant has to show that he reasonably believed that it was in the public interest to make the disclosures that he did, the Tribunal will not be deciding whether in taking his disclosures to the IPCC, the claimant "did the right thing". As it was, the claimant took more matters to the IPCC than he has relied upon as protected disclosures for these claims. The claimant had , as anyone has, the right to bring matters to the attention of the IPCC, and it is not the Tribunal's role to comment upon what he took to the IPCC, or the manner in which he did so, save to the extent that this is relevant to the issues in these claims.

I. 31. The Tribunal will therefore not , for instance be determining :

Whether there was a culture of cronyism within the GMP;

Whether any officers were corruptly promoted as a result of that culture, or for any other reason;

Whether any officers lacked experience , ability, or competence in the roles into which they were promoted;

Whether any of these alleged failures or alleged corrupt practices had serious consequences of the nature that the claimant has claimed in his disclosures.

I. 32. The Tribunal will, of course, be examining the claimant's beliefs in what he disclosed, but it will, we hope, be appreciated that a finding that he had or did not have any particular reasonable belief is not the same as a finding that what he disclosed was either correct or incorrect.

I. 33. In summary, therefore, despite the entirely understandably high level of public interest in these proceedings, from a variety of standpoints, this has not been (although at times it was in danger of becoming) a public inquiry into the promotion practices or policing decisions made by the GMP in the first and second decades of the 21st century. Rather, it has been, as all such cases are, an examination, of the narrow issues between the parties , within the confines of the Employment Tribunal litigation process, applying the applicable legal tests to the facts that it has found, and the determination of whether the claimant's claims should succeed or fail. That ultimately has been the Tribunal's task, nothing more.

Chapter II. – Background core facts.

a.)Abbreviations.

II. 1. Given the plethora of abbreviations and acronyms used in the evidence, the Tribunal considers it more helpful to set these out at this stage than to refer the reader to some (perforce far distant) Annexe or Glossary at the end of the Judgment.

II. 2. The abbreviations, acronyms and other forms of shorthand most commonly used in the evidence and the documents are summarised thus:

ACC – Assistant Chief Constable

ACO – Assistant Chief Officer

ACPO – Association of Chief Police Officers

CC – Chief Constable

COG – Chief Officers' Group

CPS – Crown Prosecution Service

CS – Chief Superintendent

DCC – Deputy Chief Constable

DCI – Detective Chief Inspector

DCS – Detective Chief Superintendent

DI - Detective Inspector

DS – Detective Superintendent (sometimes Detective Sergeant; will be D/Sgt where so)

EOI – Expressions of interest

FRO – Force Review Officer

MAPPA – Multi - Agency Public Protection Arrangements

MFH – Missing from home

MCRU - Major Crime Review Unit

MIT – Major Incident Team

NWRCS - North West Regional Crime Squad

NWCTU- North West Counter Terrorism Unit

OCG – Organised Crime Group

OIOC – Officer in Overall Command

OLWD – Organisational Learning and Workforce Development

OPYS – Force Operational Security Officer

PIP 4 – This is a reference to the Professionaling Investigation Programme , under which officers were to attain levels of qualification as part of their career progression as SIOs. Once such qualifications had been achieved at a certain level, the officer would be designated , for example, a PIP3 or a PIP4. The latter was a specific role, in that it was

common for a PIP4 officer to be assigned to an investigation to assist the SIO as a "critical friend "

PSB – Professional Standards Branch

SCD – Serious Crime Division

SLT – Senior Leadership Team

SIO – Senior Investigative Officer

SPOC – Single Point of Contact

SWIP – Senior Women in Policing

T/… Temporary [applicable rank]

TOR – Terms of reference

WYP – West Yorkshire Police

The above, however, come with the health warning that they are not always consistently applied, and where this occurs the Tribunal will alert the reader.

b).The background facts and chronology.

II. 3. The Tribunal unanimously finds the following relevant background facts, the majority of which are agreed, or non – controversial. In such instances the Tribunal may not cross reference page numbers or other sources of the evidence for these undisputed facts. Where page numbers are referred to they will be from the main, open, bundle. Where, however, they are references to the closed bundle (but not those subject to Advanced Handling Conditions), they will be preceded by "OL".

i)The claimant's career and other events within GMP up until June 2012.

3.1 In January 1986 the claimant Joined Greater Manchester Police .In June 1987 the claimant was made an Area Officer. In summer 1988 he became a trainee Detective Constable . In 1988 he passed his sergeant's exams, ranking in the top 200 nationally.

3.2 In January 1989 he joined the new plain clothes unit. On 6 January 1992 the claimant was promoted to Sergeant at Oldham. In 1993 the claimant joined the CID in Oldham. In 1995 the claimant set up the Proactive unit for Oldham division to tackle crime and drugs . In 1996 the claimant was promoted to Inspector in uniform at Stretford . Later that year he was promoted to DI and was a founder member of the MCRU.

3.3 Between 1996 -2000 the claimant attended a HOLMES (a computerised database) course. He completed all national SIO development modules and attended the Management of Serious Crime course. In Summer 2000 the claimant became a DI on the Bolton division.

3.4 In 2002 the GMP set up the MIT , and the claimant joined that unit at the outset.

3.5 In 2006 the claimant became a temporary DCI. In June 2007 he was promoted to permanent DCI and remained in MIT as SIO. In October 2008 the claimant became a temporary Superintendent.

3.6 In February/March 2009 the claimant applied for promotion to permanent Superintendent , but was not appointed.

3.7 On 20 April 2009 the claimant was posted to Stockport and reverted to a DCI role

3.8 On 13 January 2010 the claimant again made an application for promotion to permanent Superintendent . He was supported in this by his line manager Supt. Barton. On 24 March 2010 the claimant attended a Promotion board chaired by ACC Sweeney and ACC Hopkins. The claimant was not appointed.

3.9 In 2010 the respondent's Force was subject to austerity measures which resulted in cuts to the Force's budget , and the need to reduce the number of serving officers. For first time in its history the Force was faced with the prospect of reductions in Police staff, and reduction in the number of officers in senior ranks.

3.10 On or about 4 February 2011 Operation Nixon, an investigation into the activities of Dominic Noonan, a suspected paedophile on release on licence, began, and was assigned to MIT Syndicate No.8. DCI Dominic Scally was appointed a TD/Supt., and on or about 22 March 2011 become the SIO on Operation Nixon. On 17 April 2011 an incident occurred during this Operation which resulted in a 13 year old boy being present inside a flat with Noonan, with no intervention being carried out. The claimant was not involved in this Operation, and did not learn of these events until some time later. The relevant facts are set out in the discussion of PDs1.2 and 1.3 below.

3.11 On 9 June 2011 the claimant applied for a Detective Superintendent role in the North West Regional Crime Squad ("NWRCS"). He was not successful, and did not get an interview. He had been supported , however, by DCS Shenton.

3.12 The claimant's Individual Achievement Review of June 2011 , completed by D/Supt. Ross (pages 6749 to 6752 of the bundle) was positive. On 5 July 2011 the claimant was appraised by D/Supt. Ross and D/Supt, Barraclough. He was deemed suitable for immediate promotion.

3.13 On 9 January 2012 D/Supt. senior CID posts were advertised in the Serious Crime Division. On 15 January 2012 the claimant expressed interest in a role in Operation Warrior (page 445 of the bundle) . On 16 January 2012 the claimant's application for the Supt. role was supported by D/Supt. Barraclough and DCS Shenton (pages 448 and 449 of the bundle).

3.14 On 21 April 2012 a domestic incident occurred between Supt. X and his wife, which resulted in the involvement of TD/Supt. Scally and an MIT team, and the subsequent arrest of Mrs. X. The claimant was not involved at the time, and this became the subject matter of his PD3.3, the facts relating to which will be found in the discussion of that particular disclosure below.

3.15 On 26 April 2012 the respondent opened a promotion process for CIs to temporary Superintendents. On 1 May 2012 the claimant had a discussion with DCS Shenton, who told him that he would not be supporting the claimant in this exercise. The claimant accordingly did not make an application. On 15 May 2012 the claimant had a meeting with ACC Heywood about not being supported by DCS Shenton for the T/Supt. promotion exercise, and about issues with his promotion process.

3.16 DCI Denise Worth did apply in this process, and was supported in it by TD/Supt. Scally and DCS Shenton. The latter had supported her application "with limitation" because of her lack of experience as a detective.

3.17 On 17 May 2012 ACC Heywood called the claimant regarding the issue of support in the promotion process , and they discussed the issues that the claimant had with DCS Shenton. ACC Heywood supported DCS Shenton's views.

3.18 On 25 May 2012 a member of a criminal gang , Mark Short, was murdered , and Operation Somerville was commenced to investigate this serious crime . Dale Cregan was later declared a suspect and arrested. Further facts in relation to this, and linked investigations are set out under the findings for PDs 1.5 to 1.9 below. T/Supt. Worth was initially the SIO on this Operation, but stood down , and TD/Supt. Scally became the SIO. The facts relating to this Operation, and the roles of T/Supt. Worth and TD/Supt. Scally are discussed in further detail in our findings in relation to PDs1.5 to 1.9, and 1.16 below.

3.19 On 22 June 2012 DCS Barraclough forwarded to the claimant an email he had sent to DCS Shenton regarding the lack of promotion support for the claimant (page 525 of the bundle), in which he said this:

"You asked me to put down my views concerning the suitability of Pete Jackson for temporary promotion to Superintendent.

Pete is an extremely able SIO who really knows his business. He leads his team well from the front and works hard to get impressive results. He is intelligent and very passionate. This passion can often be the undoing of him, and it is my view that over the last 12 months Pete has felt himself in conflict with the organisation, and perceived that he had been badly treated over aspects of a previous spell on the J Division. This in turn has led to a great deal of emotion, which flavours his current leadership style.

Until Pete rationalises this and learns to control his passion he will find promotion a significant challenge. I have discussed this with him on previous occasions, and in particular, following his recent meeting with you.

Having said that, his view on this process, which is entirely understandable, is formed from a personal comparison with those who have been supported in this process. The question as to his suitability therefore becomes one of 'it depends who you are measuring him against', as I am not convinced that the same standard of selection for support is being used across the force for every candidate.

I also think that he is not the sort of person force command are currently looking to promote. He is extremely forthright in his opinion, would not necessarily share their view

of the world, and would find it impossible to hide it This probably reflects back on his passion and emotion, and to some extent the current narrow church of senior officer selection, with inevitable reductions in senior ranks on the horizon. However, there is no doubt in my mind that Pete could be trusted to lead any investigation, regardless of size and complexity, and the risk presented to the force."

ii)The claimant's grievances, further promotion applications, and involvement of the PCC.

3.20 On 25 June 2012 the claimant raised a grievance against DCS Shenton for failing to support him in the promotion process (Grievance Report pages 527-536 of the bundle). This is the first time that the claimant makes many of the allegations that later become his PDR1 document. At this stage, however, he only raised these matters internally, by way of a grievance.

3.21 On 26 June 2012 the death of a Hungarian male occurred, which became the subject matter of Operation Agricola to which on 28 June 2012 T/Supt. Denise Worth was appointed the SIO . Further relevant facts are set out under PD3.5 below.

3.22 On 2 July 2012 the claimant sent CS Rush, who had been appointed to investigate it, his grievance report (pages 553 to 558 of the bundle). This is set out in the formal form provided by the respondent for this purpose, but its contents are the same as the document referred to above. Whilst the first two pages of this grievance are about the failure of DCS Shenton to support him for promotion in the recent T/Supt. EOI exercise, and DCS Shenton apparently changing his mind, having previously supported the claimant, in the next four pages the claimant warns of dangers of cronyism to the police and the public. He highlights the deficiencies of TD/Supt. Scally as the SIO on Operation Somerville, and his handling of Operation Nixon. He also makes reference to the promotion of DCI Worth, and her alleged failings.

3.23 On 24 July 2012, after the claimant met with CS Rush, and the matter was referred back to ACC Heywood, the claimant's grievance was passed to ACC Ian Wiggett.

3.24 On 25 July 2012 the claimant presented his first Employment Tribunal claim, case number 2408935/2012. He was acting in person at that time. In that claim (pages 1 to 6 of the bundle) he brought claims of sex discrimination. In this claim he gave the details as follows:

"My claim relates to being unfairly denied the opportunity for promotion to Superintendent and is set against a background of a culture of cronyism, favouritism and discrimination that currently exists within GMP, which is seeing some officers unfairly advanced and promoted and others unfairly disadvantaged. The closeness of an officer's relationships with a senior officer and their gender are now more important factors in determining promotion than their performance, skills and experience.

My claim relates specifically to a process for temporary promotion to Superintendent which was advertised via the GMP internal e-mail system on Tuesday 26th April 2012 with a closing date for submissions being Friday 4th May 2012. On Friday 1st May 2012 I went to see my Divisional Commander, DCS Shenton, with a view to applying for

promotion but was told that he was refusing to support me for the process. I believe that DCS Shenton practices cronyism and favouritism and that his decision was not based on my performance and ability and that he favoured officers with closer personal relationships to him.

As a result on Tuesday 15th May 2012 I met with ACC Heywood to make a complaint about DCS Shenton not having supported me . ACC Heywood reported back to me on Thursday 18th May 2012 and told me due process had been followed. He did not offer to support me for promotion although it was within his power to do so and he had told me only in January 2012 that I was a very strong applicant for promotion and that there would be a number of Detective Superintendent posts becoming available in the following 12 months.. ACC Heywood reported back to me on Thursday 18th May 2012 and told me due process had been followed. He did not offer to support me for promotion although it was within his power to do so and he had told me only in January 2012 that I was a very strong applicant for promotion and that there would be a number of Detective Superintendent posts becoming available in the following 12 months.

Neither did he provide any explanation as to what had changed. Around this time I became aware that DCI Denise Worth had applied for the promotion process but had circumvented DCS Shenton (the process requiring the support of your Divisional Commander) and had gone directly to ACC Heywood, who had supported her for the promotion process. DCI Worth holds the same position as myself, as an SIO in the Major Incident Team. I would strongly contend and believe I can provide evidence to support the view that I am a far stronger candidate than DCI Worth, in terms of my performance, experience, achievements, academic background and leadership skills. I am aware that DCI Worth has had performance issues and is currently struggling to cope in her current role. On many investigations she has not been allowed to undertake the SIO role and on a recent investigation junior officers had to take the lead, Investigative opportunities were missed and she was removed from the investigation. I find it difficult therefore to comprehend how DCI Worth could be supported by ACC Heywood when she does not appear to be competent in her current role. I believe ACC Heywood has only supported DCI Worth because she is female. I contend that her current performance and experience does not warrant support for promotion and that she is not as strong a candidate as myself. I firmly believe that if I were a female officer with my background, achievements, performance level and experience that ACC Heywood and DCS Shenton would have undoubtedly supported me for promotion.

I have submitted a grievance report which relates to this complaint of discrimination. Much of the report also relates to the practice of cronyism and favouritism which I contend currently exists in GMP and which provides a backdrop against which this kind of behaviour is allowed to go unchecked. It also contains protected disclosures.

In the first instance ACC Heywood gave my grievance to a Senior officer who is a personal friend of DCS Shenton to try to resolve. As a result I have asked for it to be reassigned to another senior officer."

There is no further documentation , other than the ET1, relating to this claim in the bundle for these claims, for which it was not necessary. As no ET3 was served until 19 April 2014 (pages 7 to 14 of the bundle) , and the claimant was following the grievance

process, it seems most likely that the parties agreed a stay of that claim pending the completion of the grievance process, as mentioned in an email from the claimant on 12 March 2013 , page 782 of the bundle.

3.25 On 8 August 2012 the claimant had a meeting with ACC Wiggett, following which he was asked to provide more documentation (page 616 of the bundle).

3.26 On 10 August 2012 Dale Cregan murdered David Short, the father of Mark Short, and Operation Mirato was commenced, followed by Operation Dakar (the hunt for Cregan and others) T/D Supt. Scally was appointed OIOC of Mirato and Somerville (see the facts found in relation to PDs 1.5 to 1.9).

3.27 On 10 September 2012 ACC Wiggett sent an email to ACC Copley (page 632 of the bundle) asking her to explain the process of temporary Superintendent promotion, and in particular the difference between uniform and detective roles. He wished to interview DCS Shenton for the grievance investigation, and there was a delay whilst this was arranged.

3.28 On 18 September 2012 the claimant received an update regarding complaint progress. The same day PCs Nicola Bone and Fiona Hughes were murdered by Dale Cregan.

3.29 Having interviewed DCS Shenton on 26 September 2012, and other relevant parties, ACC Wiggett concluded his grievance investigation . His report is dated 23 October 2012 (pages 651 to 664 of the bundle) , and was sent to the claimant on 24 October 2012 (page 665 of the bundle).

3.30 In his grievance outcome ACC Wiggett went through the temporary Superintendent promotion process, and how it had changed. He rejected the claimant's claims of cronyism and favouritism, and advised the claimant to concentrate upon what he needed to do to make himself more suitable for promotion. He rejected the suggestion that gender had played any part in the promotion of DCI Worth, or that TD/Supt. Scally had been promoted because of cronyism. The claimant was advised of his right of appeal.

3.31 On 25 October 2012 the claimant appealed by email sent to ACC Wiggett (page 668 of the bundle). He raised a number of points, challenging the decision and how it had been arrived at. He also sought an extension of time to submit his appeal, which was granted.

3.32 The claimant appealed the grievance outcome by submitting a Stage 3 Appeal form dated, originally on 8 November 2012, but updated on 12 November 2012 (pages 682 to 687 of the bundle). In that document he made reference to being contacted by DI Dennison on 14 August 2012 on Operation Mirato , the details of which are discussed further in the findings relating to PD1.9 below. He also referred to the recent arrest of the target of Operation Nixon for the rape of a 15 year-old boy, relevant to, and discussed in relation to PD1.2 below.

3.33 The claimant ended this appeal form with this:

"I have been highlighting serious issues about the above cases and certain SIOs since May 2012 when I started this grievance process. I feel the Force has ignored my warnings ands [sic] *nothing has been done. I believe the above issues and investigations need to be addressed and that Op Nixon, Op Somerville, Op Mirato and Op Dakar should be subject of independent review."*

3.34 On 12 November 2012 the claimant sent an email to ACC Wiggett with a further updated grievance appeal (pages 694-699 of the bundle), making some handwritten annotations to the previous document.

3.35 On 23 November 2012 Joanne Foley confirmed that ACO Lynn Potts would deal with the claimant's Stage 3 Grievance Appeal.

3.36 On or about 22 November 2012 CS Zoe Sheard became an acting ACC (see email from ACC Copley page 703 of the bundle) , and TD/Supt. Scally was confirmed as being retained on Operation Mirato until 31 March 2013.

3.37. On 29 November 2012 the claimant applied for a Superintendent role with WYP (see pages 727 to 735 and 1471 of the bundle). TD/Supt. Scally also applied for the same role (see pages 736A to 736M of the bundle).

3.38 DCS Shenton supported the claimant for the WYP role, and indicated that he was a level "B", a "Good Candidate" on the application form. In an email to ACC Heywood of 30 November 2012 (at page 713 of the bundle) DCS Shenton explained why he would support this application, but would not support the same application if made within GMP. The gist of his reasoning was that, having discussed the WYP role with a counterpart in that Force, he considered that the WYP role was akin to the former role that a Superintendent would have carried out in GMP, as an SIO, but that was no longer the case. Whereas the claimant would be suitable for the WYP role, which was in his view similar to what a Superintendent role in the GMP had been, he would not, in the view of DCS Shenton, be suitable for such a role as it now was in GMP.

3.39 On 30 November 2012 TD/Supt. Scally also expressed interest in a vacancy for a role in the NWCTU. He then withdrew from the application for the WYP role (in which he had been supported by the Chief Constable as an "Excellent Candidate" – see pages 736H and 736I of the bundle).

3.40 On 17 December 2012 TD/Supt. Scally was appointed to the NWCTU role as a substantive Supt. (see page 1805 of the bundle) . He remained a GMP officer. The relevant facts are set out in the findings for PD1.11 which relates to this appointment.

3.41 On 21 December 2012 the claimant was interviewed for the WYP post, but was not appointed (page 745 of the bundle).

3.42 On 4 January 2013 the claimant was to meet with ACO Lynn Potts regarding his Stage 3 Appeal and disclosures. In preparation for that meeting ACO Potts sought advice from Lesley Kewin of HR. She prepared note for ACO Potts , setting out the history of the claimant's grievance (pages 750 to 753 of the bundle). She made reference to the claimant's ET claim, and to the issues he had raised in the course of

his grievance about the culture of cronyism and the promotions of TD/Supt. Scally and DCI Worth.

3.43 In preparation for the meeting ACO Potts approached Paul Rumney of the PSB to enquire whether any of the matters that the claimant had raised in his grievance may give rise to conduct issues that should be investigated by the PSB. Supt. Paul Turner replied to him by email at 11.28 on 4 January 2013 (at page 754 of the bundle , before the meeting between ACO Potts and the claimant) in these terms:

"I refer to page 6 of his stage three documentation where he alludes to serious issues raised regarding Op Nixon,Somerville, Mirato and Daker [sic]*.*

The only operation that raises any detailed concerns that may require our attention appears to relate to Operation Nixon and the decision not to safeguard the child. However, a review has taken place already and this was alluded to at page 3 of his stage two document. This was commissioned by Darren Shenton. I would recommend that contact Is made with Darren and a copy of the review be requested and or the case discussed with the reviewing officer to find out its findings and recommendations. This will allow us to access the rigour of the review and whether it addressed the concerns raised and whether there are any PSB matters that need consideration. If a further review is required then a resource may need to be identified that has the requisite skills and is as independent as possible from those involved in the grievance. There may be no good solution as I would have suggested PPD resources other that [sic] *two people mentioned in the grievance material now having been deployed there.*

I think the other three operations are all related to the manhunt and Investigation into Creegan. I am open to correction as the operations do not seem to have had their remits defined within the documentation. However, I have not found any material within the documentation that causes me any great concern that would require PSB involvement. There may have been some decisions taken that were not fully considered in terms of repercussions around the deployment of unarmed staff. These did not occur and the failure of Peter Jackson to seek alternative solutions may have been as poor as the decision he alleges was bad. After all. by failing to deploy, we may have lost opportunities to arrest him which may have exposed the public to more danger. In short, his arguments are poor with regard to wanting a full review.

As such, I think we need no more than a light touch assessment to look at Nixon and ensure that Command and SCD management are content with there being no requirement for any formal investigation bearing in mind they reviewed it and did not refer the matter to us first time around."

3.44 The appeal meeting was held on 4 January 2013 by ACO Potts supported by Lesley Kewin of HR, and the claimant was with his Fed. rep. Kieran Murray. The notes are at pages 755 to 765 of the bundle. The meeting covered the various aspects of the claimant's appeal, and why he disagreed with the findings of ACC Wiggett. In relation to the allegations of operational failings that the claimant had made, the notes record this exchange (PJ being the claimant, LP being ACO Potts , IW being Ian Wiggett and KM being Kieran Murray) :

"7. PJ then raised that he had highlighted some serious operational failings to the Force since May 2012 and that nothing had been done about this. LP said that she had read the file details relating to stage 2 of his grievance and that IW had advised him that there were other routes outside of the grievance process that he could explore to raise these concerns. PJ said that he had discussed this issue with the Federation and sought legal advice in respect of this and the advice given was that he had already highlighted his concerns to the Force via this process and did not need to explore these other routes. LP said that if this was the case, then she needed confirmation from PJ that he was agreeable to her passing his concerns on to the Professional Standards Branch for them to progress. PJ and KM agreed with this course of action."

3.45 After the meeting ACO Potts made a formal approach to PSB about these matters, with the result that on 10 January 2013 Supt. Turner wrote to her , saying this (page 759 to 760 of the bundle):

"The allegations that cause concern having read the grievance documentation are levelled at Detective Supt Scally and his decisions around Merato [sic] *(and associated operations) and Operation Nixon.*

The Merato allegations are around the deployment of staff without adequate health and safety considerations regarding armed support during the manhunt for Cregan. Interventions were undertaken not to deploy staff and as such nobody was put in the way of harm even if the decision was poor. In fact, I think the outlined actions by peter Jackson are poor as if he did perceive that the instruction was flawed and or therefore unlawful, he should have addressed I through raising his concerns with the decision maker so that an appropriate deployment could take place. By just pulling the plug, it could be argued that he exposes the public to further risk.

The more serious allegation in my mind was operation Nixon. This amounts to no action taking place that resulted in a victim not being safeguarded and being raped by the target of the operation. I have read through a review document from SCD into Operation Nixon. Safeguarding measures were put in place. The review indicated that these could have been better had there been an overarching strategy and that some assessments could have been better. Good practice has also been identified. I think it is noteworthy that the team set up was acknowledged not to have all the ideal skill sets to conduct the enquiry (Operation Span was partially responsible for this). However, the force sought to provide specialist advice and peer review to support the investigation team. In short, as per many operations things were not perfect; lessons can be learnt but this is not a PSB matter.

Turning to the specific allegation that a 15 year old boy was abused due to inaction. On the 30th October 2012, 1 sent a reply to Mary Doyle outlining our findings after she raised concerns about the response. In point of fact, Dominic Scally did not feature within the review. There was a delay in finding the boy as he was not able to give his location to be rescued. After some repeat calls, the victim was able to identify his location. The response then took 39 minutes as officers were sent to an RV point before entering the flat to rescue the boy. This appears to be to ensure the officers were properly briefed prior to deployment. Again, this is not a PSB issue and I found no evidence to indicate

any misconduct issues regarding any of the management team investigating Operation Nixon.

In conclusion, I cannot see any evidence, intelligence or information in the grievance documentation to justify a formal investigation into any officer named. If DCI Jackson is forthcoming with any evidence to support allegations of wrong doing I will be only too happy to access it."

3.46 On 18 January 2013 DCI Worth was promoted to Temporary Superintendent in uniform in Oldham (see page 1471 of the bundle).

3.47 On 7 February 2013 Kieran Murray, sought clarification regarding the information provided that had been passed to PSB, and asked when an outcome would be provided.

3.48 On 4 March 2013 ACO Potts concluded her grievance appeal outcome (pages 774 to 781 of the bundle). She rejected the claimant's appeal, and upheld the decision of ACC Wiggett. In relation to the matters that had been referred to the PSB she said this:

"Following our meeting on 4th January 2013, I forwarded the content of your grievance appeal to Temporary Chief Superintendent Paul Rumney, Professional Standards Branch. An investigation into the allegations you made was carried out by Superintendent Peter Turner. At the end of his investigation, Superintendent Turner concluded that he could not see any evidence, intelligence or information in the grievance documentation you submitted to justify a formal investigation into any officer named. He advised that if you are forthcoming with any evidence to support allegations of wrong doing he will address this."

3.49 There would appear to have been some delay in the claimant seeing this, as he had not done so by the time he sent an email to Lesley Kewin on 12 March 2013 (page 782 of the bundle) in which he questioned information he had been given to the effect that the stay of the ET proceedings (i.e the claimant's first claim , alleging sex discrimination) would be lifted as the grievance had been concluded. The claimant was then sent a copy. He made comment upon the outcome in an email to his Fed. rep. on 13 March 2013 (page785 of the bundle).

3.50 On 28 March 2013 the claimant's Fed. reps. Kieran Murray and Tom Elliott met with DCS Paul Rumney of PSB. The claimant was not present. The meeting was noted in Paul Rumney's Day Book (pages 786 and 787, with a typed – up version at 787A and 787B of the bundle). They discussed the ET claim, and Mediation was discussed. They also voiced the claimant's concerns about Operation Nixon, led by TD/Supt Scally , and the review of it. They also discussed his concerns about the investigation into Dale Cregan, where the claimant felt that the failings of TD/Supt. Scally on Nixon had led to the deaths of the two PCs who were killed. It was recorded how the claimant now wanted to "go outside" to get an alternative investigation. It was stated that the claimant had taken legal advice on the whistleblowing legislation, and he had witnesses queuing up to provide evidence that the decision making was flawed. It was also recorded that, post – Nixon , Noonan had been charged and remanded for similar issues. The claimant was said to have accepted that lessons had been learned, and neither he nor the Fed.

had any desire for misconduct action. It was recorded that the Fed.'s view of Ian Wiggett's assessment was that it was fair and valid.

3.51 After that meeting DCS Rumney spoke with DCS Shenton , who agreed to convene a meeting of stakeholders on Operation Nixon to discuss the issues raised by the claimant , and reassure the PSB on matters of governance.

3.52 On 17 April 2013 Supt. Rumney held a meeting with ACC Sweeney, DCS Shenton, Martin Bottomley the FRO, TD/Supt .Scally and Supt.Lyon. He also reviewed the review of Operation Nixon. He examined safeguarding issues , and noted that the covert environment was a testing one. He recorded how the review had noted the SIO policy book entries that had been made (see pages 788 and 788A of the bundle).

3.53 On 18 April 2013 the claimant sent an email to his Fed. reps. asking them to take matter of Op Nixon outside of force command (see page 789 of the bundle).

3.54 On 29 April 2013 the claimant's Fed. reps (without the claimant) again met with Supt.Rumney regarding the claimant's concerns about Operation Nixon. Again Supt. Rumney noted the meeting in his Day Book (page 791 and typed up at 791A). Reference was made to managing the claimant's expectations after the meeting with the Nixon SLT that had been held by Supt. Rumney. , who reported that he had only seen the review, and was reassured it had been thorough, and contained recommendations. There had, he said, also been an SLT review. He offered to speak to any witnesses that the claimant had referred to, in order to explore whether there was any tangible evidence of wrongdoing, but the Fed. reps. agreed to do this. They reported that the claimant saw Supt. Rumney as involved in the "cronyism". He stated that he had not seen the core material, but from the review, he could not see any misconduct issues.

3.55 The claimant pressed his Fed. reps. for an update in early May 2013.

3.56 On 28 May 2013 an expressions of interest exercise opened for CI's to apply for T/Supt. posts (page 797 of the bundle) .

3.57 The claimant wanted to apply for such a post , and on 30 May 2013 sent an email to DS Barraclough asking to discuss this (page 799 of the bundle). It is unclear if they met, but on 2 June 2013 the claimant sent his application form and supporting documents to DS Barraclough (pages 804 and 805 of the bundle) , and the same day submitted it formally. It is entitled "Senior Officers Development Pool" (page 807 of the bundle) and was submitted by Supt. Barraclough to DCS Shenton by email on 2 June 2013. The latter replied to Supt. Barraclough on 5 June 2013 that he had previously stated, when the claimant applied for the WYP post , that he could not support him in a similar application within GMP. He therefore asked Supt. Barraclough for his considerations as to why he (DCS Shenton) should now do so (page 809 of the bundle). His reply (page 810 of the bundle) was that he (Barraclough) would support the claimant's application, as he considered that the claimant had addressed the previous issues that had been fed back to him.

3.58 On 6 June 2013 DSC Shenton sent the claimant's application to ACC Heywood, along with his email exchange with Supt. Barraclough . Whilst DCS Shenton stated that

he does not support the claimant's application, he left it to ACC Heywood to complete the form and return it to OLWD (page 811 of the bundle).

3.59 As the claimant's application was not supported, it was not included with the other 48 which went forward for consideration (see page 813 of the bundle).

3.60 On 11 June 2013 the claimant prepared 'Protected Disclosure (Report 1) (pages 814 to 834 of the bundle).

3.61 On 20 June 2013 the claimant prepared Protected Disclosure (Report 2) (page 1029-1054 of the bundle) . The claimant sent a copy of both these reports to Kieran Murray on 24 June 2013.

3.62 Around this time, precisely when is not clear, the claimant and his Fed. reps. were in contact with the office of the Police and Crime Commissioner, who was at the time the late Tony Lloyd. Russell Bernstein was their contact there, and it was him whom they met. Whilst in his IPCC witness statement the claimant says he met with the PCC in June 2012 (page 1476 of the bundle) this must be wrong, it was June 2013. In these meetings the claimant handed his PDR1 and PDR2 documents to the PCC. By the time he sent an email to ACC Copley on 2 July 2013, he had met with the PCC (or rather Russell Bernstein) three times.

3.63 By email of 28 June 2013 DCS Shenton informed the claimant that he has not supported him for promotion , and explained why (page 865 of the bundle).

3.64 On 2 July 2013 the claimant sent an email to ACC Dawn Copley complaining that he was being bullied and victimised by DCS Shenton , arising out of his previous grievance in 2012, and his recent lack of support for his application for the Superintendent cadre (pages 879 to 880 of the bundle). In this email he again refers to the culture of cronyism, and cites , without naming him, TD/Supt. Scally and his alleged failings on Operations Nixon and Mirato.

3.65 On 5 July 2013 the claimant's father passed away.

3.66 On 10 July 2013 the claimant had his first meeting with ACC Copley. His Fed. reps. were also present. She met with him again on 24 July 2013, following which she wrote a lengthy file note (pages 893 to 895 of the bundle). In these meetings ACC Copley agreed with the claimant that CS Rumney would carry out a review of Operation Nixon, to see if there were any grounds for misconduct proceedings, and then report back to her. The claimant had reservations about this, but agreed to this course of action. It was agreed that she would look into Operation Nixon first. The claimant had provided ACC Copley with part of his PDR reports that he had supplied to the PCC, but not their totality. Her note records how the claimant was to come back to her on whether she could have "full and unfettered" access to the reports. It was also agreed that a welfare officer , John O'Hare, would be appointed for the claimant.

3.67 On 23 July 2013 DCS Shenton sent an email to ACC Copley setting out his rationale why the claimant was not supported by him for promotion (page 890 of the bundle).

3.68 The same day, ACC Wiggett sent ACC Copley an email about the allegations raised by the claimant in his grievance in respect of TD/Supt. Scally and DCI Worth, and how he had invited the claimant to take those up outside his grievance, but he had not done so (page p891 of the bundle).

3.69 ACC Copley asked DCS Rumney to review Operation Nixon, and he was provided with a written report from David Pinder of the MCRU in an email of 5 August 2013. The report itself is not in the bundle. DCS Rumney reported to ACC Copley on 19 August 2013 (page 899 of the bundle)

3.70 On 22 August 2013 the claimant, in reply to an email from him seeking a further meeting and update on his grievance, received an email from ACC Copley regarding her progress Operation Nixon (page 901 of the bundle). She also made reference to the need to review the promotion processes, and also to the Human Tissue Act issue that the claimant had raised. She also referred to the claimant's outstanding ET claim, and how it would now proceed. She offered him a further meeting if he wanted one.

3.71 The claimant replied to her later the same day (page 902 of the bundle). He expressed concern at the delay, and the lack of progress in the review of Operation Nixon. He repeated his lack of confidence in DCS Rumney, given his previously expressed view that there had been nothing which warranted further action. He said that there was evidence of serious failings, misconduct in public office, and that there had been a cover up. He described these as "the most serious of issues". He had wanted people brought to account and was concerned that some officers were due to retire in the near future. He sought a meeting as soon as possible.

3.72 The claimant also sent an email to Russell Bernstein ,to whom he had copied in the email to ACC Copley , the same day (page 903 of the bundle) requesting that his disclosures be referred out of the Force as a matter of urgency.

3.73 ACC Copley responded again to the claimant later that day, by a two page email (pages 904 and 905 of the bundle) in which she set out the actions that had been taken to investigate the wide ranging issues that the claimant had raised. She pointed out that she had only been involved for some 6 weeks, had held two meetings with the claimantand had been gaining clarity of his complaints. She pointed out that whilst he had provided her with some information, he had provided the PCC with more. She had asked for his agreement to her being provided with all the relevant papers, but was still awaiting this. She went on to express her confidence in DCS Rumney and his investigation. She assured him that once the investigation was complete a decision would be made whether a misconduct or a criminal investigation was required. She also sought to clarify whether the claimant did or did not want to raise a grievance against DCS Shenton for his recent conduct in relation to the EIO exercise, as she was unclear what the claimant wanted. She assured him of her intention to take the proper action , including referral to the IPCC or an external Force, once the investigation was complete.

3.74 The claimant replied to ACC Copley on 23 August 2013 (pages 907 and 908 of the bundle). He raised many questions as to why various steps had not been taken, the deficiencies in the investigation so far, and repeated his lack of confidence in DCS Rumney.

3.75 On 28 August 2013 ACC Copley replied to the claimant's previous email (page 909 of the bundle). She agreed to a meeting. She went on to explain the stage that DCS Rumney had reached in his review, and gave an indication of when he would be likely to complete it. She accepted that the claimant had actually previously indicated that he did wish to pursue a grievance against DCS Shenton, but she had discussed this matter with DCS Shenton, and had got his explanation for why he had not supported the claimant's application , which she set out. She relayed his explanation for the delay in this being communicated to the claimant . She invited the claimant to determine whether he still wanted to raise a grievance.

3.76 On 1 September 2013 DCS Russ Jackson became Head of the Serious Crime Division.

3.77 On 4 September 2013 the claimant asked ACC Copley to request a statement directly from DI Rick Mortimer about Operation Nixon, and to provide DI Mortimer with some reassurance that there would be no consequences for him if he did so (page 920 of the bundle). On 5 September 2013 ACC Copley requested a statement from Rick Mortimer , who responded immediately (page 926 of the bundle).

3.78 On or about 5 September 2013 the claimant had (or arranged, it is unclear whether it took place) a further meeting with Russell Bernstein of the PCC.

3.79 On 6 September 2013 (the date is taken from the document he prepared dated 4 February 2014 at pages 2075 to 2100 of the bundle) CS Savill of the PSB was tasked to undertake a severity assessment on Operation Nixon.

3.80 On 10 September 2013 the claimant submitted a further Stage 2 (Formal) Grievance (pages 929 to 932 of the bundle). In it the claimant grieved against DCS Shenton and ACC Heywood, for victimisation and bullying. He referred back to his grievance of June 2012, and their treatment of him since then. He covered a number of matters that he had already raised, plus some other ones, in support of his contention that he had, since June 2012 . been subjected to this type of conduct. In box 5, in answer to the request to outline the remedy he was seeking, the claimant stated "Promotion to Superintendent".

3.81 On 10 September 2013 the claimant had a meeting with ACC Copley. The claimant sent her an email the day after (page 938 of the bundle). He referred to her request for all the papers that had been provided to the PCC, and said he would call in for them , and provide copies to ACC Copley's PA. He went on to query whether the HSE and HM Coroner had been made aware of the issues he had raised about Operations Nixon, Somerville, Mirato and Dakar, or when they would be. She replied on 15 September 2013 (page 941 of the bundle) that no such notifications had been made, and would not be until the investigation into Nixon had been completed.

3.82 Following up the meeting ACC Copley sent the claimant an email on 24 September 2013 (pages 944 to 948 of the bundle). In this three page document she firstly asked whether the claimant would object to her being allocated his grievance. She outlined the steps that would then be taken, and identified what she considered he was raising in this grievance, which she summarised as

"1. You are unhappy with the investigation into your last grievance by ACC Wiggett and ACO Potts at Stages 2 and 3 respectively.

2. You are unhappy that DCS Shenton did not support you for a temporary promotion in June 2013 and you are also unhappy about the circumstances in which you were informed of that decision.

3. That you consider DCS Shenton and ACC Heywood have bullied and victimised you."

She went on the explain that there was no process for reviewing a concluded grievance, which was what she considered the claimant was seeking in issue 1. She went on to identify four sub – issues in the second and third headings. She explained how she had met with ACC Sweeney ahead of the meeting on 10 September 2013, and how it may be possible to resolve matters by an apology from him She discussed other matters in relation to how the claimant might be able to re-engage with the promotion process. She ended by making reference to the possibility that the claimant had raised of resolving his ET claim by without prejudice discussions.

3.83 On 25 September 2013 the claimant replied to ACC Copley (page 950 of the bundle) agreeing to her dealing with his grievance. He went on to respond to points that she had made in her email about his promotion. In conclusion he mentioned the possibility of another ET claim, but also expressed interest in resolving his existing ET claim by means of a without prejudice meeting.

3.84 On 26 September 2013 the claimant had a without prejudice meeting with ACC Copley , in which there was a discussion of a package of development for the claimant and promotion , including reporting immediately to Russ Jackson.The claimant would agree to withdraw his existing ET claim , and would agree that he would not be pursuing a second claim. The outcome of the meeting was not finalised until the claimant on 1 October 2013 sent an email to ACC Copley setting out his position (pages 962 to 964 of the bundle). He expressed his continued dissatisfaction, and that he would continue to seek an apology from the Force, and expose the cronyism in the Force and its consequences. He did however, agree to withdraw his ET claim, and said that he would not take out any further ET claims in respect of this grievance.

3.85 The same day the claimant sent an email to Russell Bernstein (page 965 of the bundle) expressing that he had reached an impasse with the Force, and asking for a further meeting. He pointed out that he was still awaiting the severity assessment on Operation Nixon, despite being assured that it would be completed by 20 September 2013. He asked for a further meeting.

3.86 On 2 October 2013 Kieran Murray sent an email to ACC Copley (page 967 of the bundle). He had seen the claimant's email to her, which he described as "unfortunate", and expressed his disappointment that the claimant had felt it necessary to send it to her. He said that the Fed. would continue to work hard to support the claimant , and thanked her for her patience to date. ACC Copley replied to him the same day (page 968 of the bundle), agreeing that the claimant needed some time to reflect, and noting that he appeared to be content with some issues, but that other remained, where he clearly wanted more.

3.87 On 2 October 2013 the claimant wrote to the Employment Tribunal withdrawing his claim (page 970 of the bundle).

3.88 The claimant copied to Russell Bernstein his email to ACC Copley of 26 September 2013, ahead of the meeting he was seeking.

3.89 There ensued further correspondence between the claimant and ACC Copley, but on 8 October 2013 the claimant, ACC Copley and Russell Bernstein met. It is unclear whether the claimant was accompanied by any Fed. rep. in this meeting.

3.90 The outcome was recorded in an email from ACC Copley of 8 October 2013, headed "Summary of our discussions and agreement", in which she said this, (pages 982 to 984 of the bundle) :

"I do understand that you continue to feel wronged and aggrieved by the decisions which have been made in relation to your promotion prospects, as well as the concerns you have raised about operational matters and cronyism.

In trying to deal with the complex range of issues please find below a summary of where I believe we are now at:-

You have withdrawn your ET and will not be submitting a second.

You consider your current grievance to be completed and at an end.

You will be accepting the package of development opportunities that we agreed at our last meeting, specifically:-

(a) I will arrange that with immediate effect you will report to Detective Chief Superintendent Russ Jackson for the purposes of demonstrating and assessing your readiness for promotion to the rank of Superintendent.

(b) DCS Jackson will identify a piece of project work for you to undertake to assist you in demonstrating skills and abilities to perform at the rank of Superintendent.

(c) When Detective Chief Superintendent Jackson considers you suitable to act in the rank of Superintendent, you will immediately be placed onto the list of those to be considered for temporary Superintendent duties.

(d) We will identify and agree an officer at the rank of Chief Superintendent who will act as your mentor.

(e) I will arrange for you to be invited to attend at one SLF Away Day to assist In the development of your strategic awareness.

(f) I will arrange a meeting between yourself and ACC Heywood for you to receive an apology about the delay in informing you about the decision not to support you for temporary promotion.

I would be grateful if you could now confirm that your current grievance is finalised and that you wish to accept these measures. Please also then let me know who you wish to have as a mentor and I will approach them. I understand that you would prefer your meeting with ACC Heywood to be alone, please let me know if you change your mind.

I will now copy your plan to ACC Heywood and DCS Jackson so that your structured development work can continue.

I wish you well with this and encourage you to try to look forward.

You agreed that you trust DCS Jackson to assess you fairly and objectively but you remain concerned that ACC Heywood may not assess you fairly in the future. If you believe you are unfairly treated please let me know."

3.91 ACC Copley sent an email to Russell Bernstein on the same day (pages 895 and 896 of the bundle) confirming this agreement.

3.92 The claimant met with DCS Russell Jackson on 11 October 2013 which he reported to ACC Copley by email that day (page 987 of the bundle).

3.93 On 5 November 2013 ACC Copley sent an email to the claimant about the draft of the Operation Nixon severity assessment (page 2062 of the bundle) where she said:

"I would now like to turn to operational disclosures that you have made. I have read and carefully considered the draft severity assessment for Operation Nixon which has been written by D/Supt Paul Savill. It is a detailed and lengthy document. He and I are of the view that we would value the involvement of CPS at this early stage to help inform the final version of the severity assessment and the way forward. To that end we have secured the services of Janet Potter, head of the Complex Case Unit for Merseyside and Cheshire to advise us. It is not appropriate for our advice to come from John Dilworth and his team due to their connections to the investigations under discussion, Janet has agreed to deal with the matter confidentially and it is our intention that the document will be hand delivered to her.

I am therefore now seeking your written agreement for me to disclose your full 'Protected Disclosures' document to the CPS to assist this process. I would be grateful if you could please respond to me at your earliest convenience. At this stage we are keeping this matter confidential and I ask that you do the same."

The claimant agreed by return email the same day (page 2063 of the bundle).

3.94 On 7 November 2013 the claimant prepared an application for a (substantive) Supt. post , and sent it to DCS Russ Jackson (page 991 of the bundle). He gave the claimant qualified support for the application (see pages 991K(L) and (M) of the bundle), and the claimant formally submitted the application on 8 November 2013.

3.95 On 29 November 2013 a Manchester Evening News ("MEN") article was published (not it seems, in the bundle) about the disposal of retained body parts relating to victims of Dr Harold Shipman, without the knowledge of the families. This led to a Force wide message being issued by the Chief Constable (page 994 of the bundle). In it he

expressed his concern that this information had been given to the victims's families by a GMP officer.

3.96 The claimant sent an email to ACC Copley on 29 November 2013 denying that he was the source for the MEN article, fearing that suspicion would fall upon him due to his disclosure (page 995 of the bundle). She replied suggesting that they meet.

3.97 Around this time ACC Copley was in contact with CS Savill who was intending to speak with the claimant. She spoke with the claimant on 2 December 2013, and sent an email to CS Savill on 3 December 2013 setting out what they had discussed (page 1002 of the bundle).The claimant had repeated that he was not responsible for the leak, and she told him that it was being investigated, and he would be spoken to. The claimant had expressed trust and confidence in the way in which ACC Copley was dealing with his concerns, and it would have been a ludicrous time for him to do anything to affect that.

3.98 On 9 December 2013 ACC Copley informed the claimant that she must withdraw from interview panel for his promotion application, and that ACC Shewan would take her place (page 1003 of the bundle).

3.99 On 11 December 2013 (a change from the original date of 12 December 2013) the claimant attended the promotion board interview for the Supt. post. The panel consisted of DCC Hopkins, ACC Shewan and CS Donnellan. He was unsuccessful. DCI Worth, however, was successful, although the date of her appointment is not documented in the bundle (the claimant references this in the third paragraph of section 4 of his PDR3 document.)

3.100 On 3 January 2014 ACC Copley sent an email about staffing in which she acknowledged that the claimant had been unsuccessful, and that he was to remain in post (page 1012 of the bundle).

3.101 On 17 January 2014 the claimant sent to ACC Copley a document entitled 'Report re complaint of victimisation and Protected Disclosure Report 3' dated 16 January 2014. The email to ACC Copley is at page 1015, and the attached document is at pages 1016 to 1027 of the bundle. The email was copied to Russell Bernstein. In the email the claimant said that he only wanted the Chief Constable to see the document, and was not submitting it through HR. He sought reassurance as to who had already had access to his reports. He said that he had lost all confidence in the Force and would be taking all his complaint outside it. He sought her assistance and support in ensuring that he was not subjected to any further victimisation or disadvantage.

3.102 The first three and a half pages of this document are headed "Grievance report re victimisation", and relate to the claimant's complaints about the promotion process he had just unsuccessfully undertaken. It starts with a specific complaint about a question that he was asked in the interview, which he believed had been hastily prepared solely for his interview, had not been asked of other candidates, and was unfair. He went on to question the whole process, including why the date of the interview as re-arranged from 12 December 2013 to 11 December 2013. He expressed his fear that he was being

treated this way because of his disclosures, and a suspicion that he might have been the source of the Shipman body parts story in the MEN .

3.103 The claimant went on under the heading "2. Further evidence in support of 'protected disclosure" to make reference to the retirement party for DCS Shenton held on 27 November 2013, and the speech given by ACC Sweeney at that event. In that section he gave more information about the HTA issue (to become PD1.2) and what was to become PD3.3 , relating to the incident involving Supt. X. In the final section , entitled "Warnings proved right – further failings!" he went on to make reference to matters which would become PDs 3.1, and 3.2, and which relate to DCI Julian Snowball. Section 4 of this document is headed "Further concerns re Superintendent Promotion Process, the continuing smell of cronyism and further risks to the public." Over the next three pages the claimant sets out allegations in relation to (but not exclusively, there are others mentioned) Denise Worth's handling of two investigations, which would become PDs3.4 and 3.5. The latter relates to an investigation into the death of a Hungarian man, on which she was the SIO as a DCI in 2012. The former was more recent, and related to her involvement in the search for a missing person in Manchester City Centre, at the end of December 2013, when she was a Superintendent.

3.104 The claimant ends this document , under the heading "5. Conclusions" with 15 bullet points. He goes on to state his intention to take his whistleblowing reports outside the Force. He also requested that his grievance for victimisation and unfair treatment during the Superintendent Promotion Board process to be investigated.

3.105 In a separate email addressed to Russell Bernstein the same day (page 1029 of the bundle) the claimant confirmed his intention to take his whistleblowing outside the Force, and expressed his loss of patience with the Force. He attached his two previous whistleblowing reports. Whilst the claimant has stated that the PCC had referred his complaints back to the GMP, this is not, as such, documented. It is correct that the PCC did not refer the matters he raised to the IPCC, or anyone else, and did appear content that GMP continued to carry out its own investigations into the claimant's grievances. The Tribunal cannot , however, see any formal "handing back" of the matters back to the GMP.

3.106 On 23 January 2014 the claimant emailed the IPCC , stating that he wished to disclose information as a whistleblower. He did not, at that stage, attach any of his documents, but sought a meeting. In this email he said this:

"I have raised my concerns internally within GMP and tried to have the incidents investigated and action taken against those involved but as the cover ups go right up to Chief Officer level I have found that the Force has had no appetite to investigate itself. Chief Officers have simply closed ranks; prevaricating, constantly delaying responses and meetings and ultimately simply ignoring the issues I have raised, and this includes the Professional Standards Branch.

I first made my complaints in May 2012 and despite my constant requests to have my complaints referred outside the Force for investigation I have been repeatedly ignored. Furthermore I have become isolated and victimised, with attempts made to blacken my name. As a result of my treatment and the resistance received within Force, In June

2013 I took my complaints to the PCC as a Whistleblower. Unfortunately I have found that the PCC's office appear to enjoy a very close relationship with the Chief Constable and Senior Officers, and despite my requests for the PCC to refer my complaints outside the Force he has allowed GMP to investigate Itself. As a result I have continued to encounter further delays and further prevarication and have been waiting for over 6 moths [sic] *for the Force to conduct a 'severity assessment'. I know that as I write officers are Involved in trying to minimise actions, mislead and misinform to prevent the truth becoming known.*

I do not want to detail my disclosures within an e-mail but they are of the most serious nature and some are of a very sensitive nature, they include fallings resulting in the abuse of children, people being subjected to violent crime and loss of life. I believe the behaviour and actions of a number of senior officers amounts to Misconduct in a Public Office and criminal conduct."

3.107 There was an initial telephone discussion (noted at pages 1084 to 1087 of the bundle) and then a meeting with the IPCC was arranged for 31 January 2014.

3.108 ACC Copley continued to correspond with the claimant. She asked whether he wanted her to continue to deal with his grievance about the promotion process. The claimant agreed that she should, so she made some enquiries. There was an exchange of emails between ACC Copley and the claimant between 24 and 27 January 2014 (pages 1062 to 1081 of the bundle). Some of these will be considered in greater detail when individual PDs are considered, but in essence , and in summary, ACC Copley explained , and apologised that the PSB assessment of Operation Nixon had been delayed, there had been CPS advice and a meeting would be held to discuss this with the claimant. On the Shipman issues, given the claimant's referral outside the Force, she was not going to investigate this issue any further.

3.109 In relation to the concerns that the claimant had raised about a number of named colleagues, she said this (in her email of 24 January 2014, page 1063 of the bundle) :

"You have again raised personal and professional concerns about a number of named colleagues, citing issues that you have observed and your conclusions. Please bear in mind that you may not know the whole story on some of these issues, you may have no knowledge of whether there has already been PSB involvement and if so, to what extent. In some cases you may never know this as it would not be appropriate for details of misconduct or performance issues for others to be shared with you."

3.110 In relation to the missing person case involving T/Supt. Worth, she set out her account of what she asked T/Supt. Worth to do (to be considered further under PD3.5 below).

3.111 In relation to the grievance about the promotion process, ACC Copley set out her understanding of what had happened in that process.

3.112 She ended by asking him to clarify his intentions to take his disclosures outside the Force, and offered him a meeting with the DCC. She copied this email to Russell Bernstein.

3.113 In his response of 26 January 2014 (pages 1067 and 1068 of the bundle) the claimant declined a meeting with the DCC. He requested sight of the question papers for his promotion interview. He wanted to know who had seen his disclosures. He reiterated his concerns about the investigation of Operation Nixon, its scope, and how GMP was investigating itself. He commented upon his view of the Shipman issues (to be considered further under the discussion of PD2.1 below), his view of some of his colleagues and the cronyism that had taken place. Finally he responded with his further account of the MFH enquiry. He suggested that they should cease the exchange of such emails, but did want a meeting to discuss the update on the investigation into Operation Nixon.

3.114 In her reply on 27 January 2014 (pages 1074 and 1075 of the bundle) ACC Copley informed the claimant that she had the file from the promotion board in her office, which he was welcome to view. She told the claimant that his reports had been shared with DCS Rumney, CS Savill and the CPS. They had also been shared with the CCU and DI Packer who was investigating the Shipman leak. She asked again for the claimant to clarify his intentions to take matters outside the Force. The claimant relied with an email later that day, saying that he would decide whether to pursue his grievance once he had seen the promotion board file. He did not say much more about his intentions, other than that he wanted matters examined outside the Force, but would discuss them when they met to discuss Operation Nixon.

3.115 DSI Liston of the IPCC opened a work book relating to the claimant's complaints on 27 January 2014 (page 1082 of the bundle).

3.116 On 28 January 2014 Tom Elliott, one of the claimant's Fed. reps. emailed ACC Copley . He referred to the claimant's recent disclosure about the robbery in Operation Oakland, and how this was reinforcing his views about over - promotion of unsuitable officers. Tom Elliott expressed the view that seeing some progress on Operation Nixon may reduce the claimant's "angst" (page 1089 of the bundle).

3.117 On 29.January 2014 ACC Copley emailed the claimant regarding the Operation Nixon update, and send an email to Russell Bernstein confirming the discussion as whether the Nixon matters should be investigated as matters of conduct or performance. She noted that the claimant had still not clarified his intentions in terms of going outside the Force , and stated her intention to continue dealing with matters until they were taken from her jurisdiction (pages 1091 and 2067 of the bundle).

3.118 On 30 January 2014 the claimant and Tom Elliott had a meeting with DCS Rumney. An account of what was said can be gathered from the claimant's email later that day to ACC Copley, copied to Russell Bernstein, and DCS Rumney's email to ACC Copley also of the same day, at pages 2068 and 2072 of the bundle respectively. In short, the claimant was told that the CPS had advised that the circumstances of Operation Nixon fell well short of the offence of misconduct in public office. (This will be discussed further under PD1.2 and PD1.3 below).

3.119 On 30 January 2014 ACC Copley emailed to DCS Russ Jackson about the need to keep an eye on the claimant's welfare (page1098b of the bundle).

iii)The claimant's disclosures to the IPCC.

3.120 On 31 January 2014 the claimant, with his Fed. rep. Tom Elliott, met with DSI Liston , and Investigator Doodson, of the IPCC , and PDR1, PDR2 and PDR3 were handed to them by the claimant. Those documents included two exhibits PPJ 1 and PPJ 2, and 10 Appendices, A to .J These have not been produced in that form to the Tribunal, and are not in the bundle, although some of the documents that comprised them may be. These are the disclosures that the claimant relies upon for these proceedings. To be clear, the actual copies of the PDRs as disclosed to the IPCC, in the form in which they were handed over to the IPCC, are not apparent from the bundle as such, but the Tribunal considers that they were in the case of PDR1 and PDR2 , they were as they appear at pages 1029 to 1054 of the bundle, and in the case of PDR3, at pages 1016 to 1027 of the bundle.

3.121 In PDR1 (page 1030 of the bundle) the claimant said this:

"I have brought the very serious issues which I detail within this report to the attention of the GMP Force Command Team and other senior officers throughout the past 12 months (ACC Heywood, Chief Supt Rush, ACC Wiggett, ACO Potts, DCS Shenton and Acting Chief Supt Rumney). I also identified witnesses who could provide evidence of my disclosures; which relate to corrupt practice and serious failings in GMP. The Force has refused to investigate the matters and none of the witnesses have been seen. In sum, the issues raised have been ignored.

The Police Federation have provided support to me during this time via Kieran Murray (Equality Lead) and Tom Elliott (Discipline Lead). In a final attempt to have the Force investigate the issues they met with T/Ch. Supt Paul Rumney, Head of the Professional Standards Branch. He said he had looked at the issues and refused to take the matter further.

I no longer have any trust or confidence in GMP and now wish to bring these matters to the attention of the Police and Crime Commissioner.

There are references within this report to a number of officers who can provide evidence in relation to the corrupt practices and serious failings within GMP which are detailed in this report. The names of some of these officers are already known to GMP Command. They and other officers also referred to within the report are rightly fearful of victimisation. As a result I have referred to all officers and GMP staff by letters of the alphabet and not by name. Their identities are disclosed as at Appendix 'A'. I would ask that they also be afforded protection for assisting in this disclosure. Some of these officers are fully aware of my disclosure; others are persons that I know can provide evidence if interviewed, having 'first hand' knowledge of the information and evidence that they can provide."

The Appendix A referred to has never been produced to the Tribunal.

3.122 On 7 February 2014 the claimant exchanged emails with ACC Copley (pages 1103 to 1109 of the bundle). This was largely further discussion of the CPS advice about Operation Nixon, and how ACC Copley was to deal with the outstanding grievance about

the promotion process. The same day the IPCC requested the claimant's permission to share his IPCC documentation with the respondent. The claimant did not immediately provide this, and at that time the respondent was unaware that he had gone to the IPCC.

3.123 On 12 February 2014 the claimant informed ACC Copley by email that he had taken his concerns to the IPCC (page 1113 of the bundle). She replied the same day acknowledging this, and asked him to clarify what he wanted done about his outstanding grievance. She assured him of her, and DCS Russ Jackson's , continuing support.

3.124 On 12 February 2014 IPCC Commissioner Jan Williams wrote to ACC Copley regarding the claimant's disclosures (pages 1116-1117 of the bundle), copies of which she enclosed. She noted how , on the face of it, either there had been no assessment of whether any of the allegations amounted to a conduct matter , or whether there was any indication that a criminal offence had been committed, or disciplinary proceedings were justified. She directed that the GMP refer the Operation Nixon matter to the IPCC under the provisions of the Police Reform Act 2002.

3.125 On 13 February 2014 ACC Copley sent an email to CS Rumney and Supt Savill about the IPCC referral (page 1118 of the bundle). Supt. Savill had completed his severity assessment of Nixon on 4 February 2014, and she asked him for an electronic copy of this. She briefed the Chief Constable on the matter, and later that day sent a further email to CS Rumney and Supt. Savill (page 1120 of the bundle) in which she discussed whether ACC Sweeney , who was now seconded to the Hillsborough enquiry, should be informed of the IPCC enquiry, and what he should be told.

3.126 On 18 February 2014 ACC Copley sent a letter Jan Williams of the IPCC (pages 1124 to 1125 of the bundle) in which she provided more details of what actions the GMP had taken in response to the claimant raising many of the issues now before the IPCC. She attached a "log" of actions taken (which has been referred to as a "tracker" document) , but this has not been copied with this letter as it appears in the bundle. It was prepared by Supt. Savill, and is to be found at pages 5339 to 5567 of the bundle. It is an extensive document which sets out the respondent's responses to the disclosures that the claimant had made , and the actions that had already been taken in response to the matters that the claimant had raised internally.

3.127 She referred to the history of the claimant's applications for promotion since 2012, and the ensuing grievances. She explained the work that she had done to try to resolve these matters, and , in particular , how a severity assessment had been carried out on Nixon, and CPS advice had been sought, with the result that a Reg. 15 notice was to be served on TD/Supt. Scally. In relation to the various matters raised by the claimant in his disclosures, she said that the position was that some appeared worthy of a misconduct investigation, some had already been dealt with and others appeared to be mistaken. She stated that all GMP activity was now on hold pending the IPCC's determination.

3.128 On 11 March 2014 ACC Copley had a discussion with Jan Williams as to what information could be provided to ACC Sweeney, whether the claimant would be identified as the whistleblower, and what matters the IPCC would be investigating. ACC Copley recorded this conversation in an email to herself (page 1129 of the bundle). On

12 March 2014 Jan Williams sent ACC Copley a letter , setting out what action the IPCC would be taking. In her letter she adopted numbering from a document that the Tribunal does not have before it, as it appears to be the "log" referred to above. It is, however, based upon the claimant's PDR documents, and can be summarised thus. The IPCC agreed it would investigate:

Operation Nixon

DCI Snowball's conduct as set out in PDR3

The Human Tissue Act issues

The IPCC therefore declined to investigate the culture of cronyism and internal promotions, Operations Somerville, Mirato and Dakar, bullying, cover up, and Supt. Worth.

3.129 On 17 March 2014, having alerted GMP that it would be doing so, the IPCC issued a press release (page 1148 of the bundle) in these terms:

"The Independent Police Complaints Commission (IPCC) has launched three investigations into Greater Manchester Police (GMP) following allegations made by an officer serving in the force.

The officer has made a number of allegations including cronyism among senior officers, failure to follow correct procedures, failure to investigate complaints properly and corruption.

The three investigations will examine;

whether GMP officers misled families and the public when human remains from victims of serial killer Harold Shipman were disposed of;

the actions of a Detective Chief Inspector and whether these put public safety at risk as well as the officer's alleged unauthorised bugging of a GMP office, which the force has told the IPCC did take place.

claims that an investigation into alleged sexual abuse was poorly handled and the alleged failings covered-up by GMP.

Officers whose actions will be investigated range from the rank of constable up to that of Assistant Chief Constable. GMP's Assistant Chief Constable Terry Sweeney is among those whose actions will be investigated. He was seconded to work on Operation Resolve, the police investigation into the Hillsborough disaster but has now stepped down from that role.

IPCC Commissioner Jan Williams said: "These are serious allegations and the gravity and nature of the allegations, and the fact that they are made against senior officers within the force, means they must be investigated independently."

Following an IPCC assessment, a number of other allegations have been returned to GMP for the force to deal with."

3.130 On 17 March 2014 Chief Constable Sir Peter Fahy circulated a force-wide email regarding the IPCC investigation (page 1191 of the bundle) , saying this:

"Colleagues,

You may be aware that today, the Independent Police Complaints Commission (IPCC) has announced that it Is to investigate a number of individuals within GMP following allegations that have been made by a serving officer.

We will be fully cooperating with the IPCC to assist their Investigation and hope that this will be carried out as swiftly as possible.

As matters are now subject to an independent investigation I am unable to go into much detail. However, I have stated before that the decisions dealing with (the aftermath of the Shipman Investigation were complex and sensitive; our priority was to avoid causing further distress to the families. We will be supporting the IPCC Investigation on all matters.

We have a tremendous workforce that deal with challenging situations round the clock and I know that we will continue to do so and not let this situation distract us. It is important that people feel able to raise any issues or concerns they have and that those matters will be addressed.

I support the need for difficult issues we face to be subjected to scrutiny and for there to be a transparent process for this. We have been working nationally with the College of Policing to develop Ethics Committees that will consider sensitive issues of policy. Locally we see great benefit in the creation of an Ombudsman to provide a clearer route for people who wish to raise issues of concern."

He went on to provide details of support available for anyone affected by the investigation.

3.131 The MEN carried the story the same day, (page 6351 of the bundle) and reported, correctly that , as a result of the IPCC investigation, ACC Sweeney had stood down from the Hillsborough Inquiry, and had returned to the GMP.

3.132 The respondent's response to the IPCC investigation was Operation Centaurus. That was chaired by ACC Copley and first met on 17 March 2014. There had been prior discussion as to whether the claimant should be named as the whistleblower, and the view was taken that he should not be, and he was not. There was, as was anticipated, speculation in GMP that he may be, but the respondent did not release that information, nor did the IPCC.

3.133 On 20 March 2014 ACC Copley and Supt. Savill met with the IPCC, and she later set out the details of what was discussed in an email to the Chief Constable that day (pages 1251A(iii) to (iv) of the bundle). In that meeting ACC Copley asked the IPCC to investigate everything that the claimant had raised, but they would not. Further, they

made it clear that they would not investigate the claimant's grievance about the last promotion process.

3.134 On 1 April 2014 ACC Copley emailed the claimant about her meeting with the IPCC, and in anticipation that he would be meeting them soon, for which she assured him he would be released from duty. She pointed out that the IPCC would not be dealing with his grievance about the Superintendent promotion exercise, and asked if he wished to progress this, and , if so, how (page 1260 of the bundle). The claimant replied to her on 3 April 2014 (pages 1263 and 1264 of the bundle) to say that he did not expect the IPCC to deal with his grievance, and asking her to return to it and investigate it. He went on to provide more information and advance more argument in support of this grievance.

3.135 On 1 April 2014 the IPCC issued the Terms of Reference for each of the investigations, code – named "Poppy" in these terms (pages 5368 to 5369, 5479 to 5480 and 5657 to 5658 of the bundle respectively):

Poppy 1:

Summary of events:

Whether Greater Manchester Police misled families and the public relating to the disposal of human tissue from the victims of serial killer Harold Shipman.

Terms of Reference

To investigate;

a) Whether there was active engagement with the families in respect to the human tissue.

b) Was sufficient information given to families so that they could make informed decisions about the actions taken by Greater Manchester Police.

c) Who made the decision to dispose of the human tissue by incineration.

d) Whether the decision making was supported in law.

e) Whether the human tissue had previously been declared correctly through the ACPO audit process.

f) Whether the actions of Greater Manchester Police, in the disposal of the human tissue, were reasonable in the circumstances.

g) How was the human tissue destroyed and how did Greater Manchester Police record this.

2. To identify whether any subject of the investigation may have committed a criminal offence and, if appropriate, make early contact with the Director of Public Prosecutions (DPP). On receipt of the final report, the Commissioner shall determine whether the report should be sent to the DPP.

3. To identify whether any subject of the investigation, in the investigator's opinion, has a case to answer for misconduct or gross misconduct, or no case to answer.

4 To consider and report on whether there is organisational learning, including:

• whether any change in policy or practice would help to prevent a recurrence of the event, incident or conduct investigated;

• whether the incident highlights any good practice that should be shared.

Poppy 2:

Summary of events

Claims that an investigation, Operation Nixon, into alleged sexual abuse was poorly handled and the alleged failings covered-up by Greater Manchester Police.

Terms of Reference

1- To investigate;

a) What was the purpose of the Operation.

b) Were there clear strategic objectives for the Operation.

c) If these strategic objectives of the Operation were met by the actions on Sunday 17 April 2011.

d) If the strategic objectives were not met, were there any individual or organisational failings which contributed to it.

e) Was Greater Manchester Police's subsequent internal review of Operation Nixon effective to address the events of 17 April 2011.

2. To identify whether any subject of the investigation may have committed a criminal offence and, if appropriate, make early contact with the Director of Public Prosecutions (DPP). On receipt of the final report, the Commissioner shall determine whether the report should be sent to the DPP.

3. To identify whether any subject of the investigation, in the investigator's opinion, has a case to answer for misconduct or gross misconduct, or no case to answer.

Poppy 3:

Summary of events

That Julian Snowball utilised an unauthorised audio recording device and he was then transferred. There is an issue whether his actions on Operation Oakland put public safety at risk.

Terms of Reference

To investigate;

a) Were the actions of Julian Snowball, in relation to the placement of an audio recording device in the offices of Greater Manchester Police, lawful?

b) Were these actions of Julian Snowball appropriately dealt with by Greater Manchester police In relation to the audio recording device.

c) Examine the actions of Julian Snowball whilst engaged on Operation Oakland.;

• What was the purpose of the Operation.

• Were there clear strategic objectives for the Operation.

• If the strategic objectives for the Operation were met.

• If the strategic objectives were not met, were there any individual or organisational failings which contributed to it.

2. To identify whether any subject of the investigation may have committed a criminal offence and, if appropriate, make early contact with the Director of Public Prosecutions (DPP). On receipt of the final report, the Commissioner shall determine whether the report should be sent to the DPP.

3. To identify whether any subject of the investigation, in the investigator's opinion, has a case to answer for misconduct or gross misconduct, or no case to answer.

4. To consider and report on whether there is organisational learning, Including:

• whether any change in policy or practice would help to prevent a recurrence of the event, incident or conduct investigated;

• whether the Incident highlights any good practice that should be shared.

3.136 On 7 April 2014 the claimant received the approved Terms of Reference for the IPCC investigation (page 1267 of the bundle). On 7 April 2014 the claimant sent an email (pages 1271 to 1272 of the bundle) to ACC Copley regarding his concerns about officers being approached regarding status in the investigation, the signing of a card of support for ACC Sweeney , the claimant's status as a whistleblower becoming known , the selection of officers for the team to respond to IPCC disclosures and his Fed, rep. Tom Elliott being put on "gardening leave" (matters that have been relied upon, in most instances, as detriments).

3.137 On 10 April 214 the claimant met with IPCC. In the ensuing weeks there was further email traffic between the claimant and ACC Copley in which the claimant raised various issues about his treatment as a whistleblower. The IPCC are involved in this, as the lead investigator, Steve Martin , was also appraised of the claimant's concerns. The possibility of a further grievance, against the DCC, was discussed. The PCC was also involved as a possible decision maker. It is not proposed to rehearse this communication in any detail here.

3.138 On 16 April 2014 the IPCC updated ACC Copley on the progress of the three Poppy Investigations (pages 5765 and 5766 of the bundle).

3.139 On 30 April 2014 the IPCC issued a reg. 16 Notice of alleged breach of the standards of professional behaviour on TD/Supt. Scally (page 2117 to 2120 of the bundle).

3.140 On 2 May 2014 there was a meeting between two members of the IPCC, Chief Constable Fahy and the Police and Crime Commissioner (see page 1306 of the bundle).

3.141 On 6 May 2014 ACC Copley and the claimant had a phone conversation. The next day ACC Copley sent the claimant an email (page 1313 to 1315 of the bundle) confirming their discussion. An Acting Detective Superintendent post in the MIT had become available. This was a development post, but as there was another candidate for it, Peter Marsh, each of them would do 6 months, Peter Marsh doing the first 6, with the claimant starting on 1 December 2014. In the rest of the email ACC Copley sought to answer the claimant's various issues that he had raised in his previous emails, as to his welfare and allegations of further mistreatment due to his being identified as a whistleblower.

3.142 There ensued further email traffic about the claimant being offered the role of head of MIT , and regarding his welfare . On 12 May 2014 the claimant presented his further ET claim, number 2401467/2014 (pages 17 to 28 of the bundle). The claimant informed ACC Copley that he had done this by email on that day (page 1328 of the bundle) . In this claim, which he drafted himself , he claimed to have suffered detriments in the form of being identified as a whistleblower, and being victimised. This was, however, as he said, a protective claim, as he hoped to resolve issues by means of his grievance.

3.143 On 19 May 2014 ACC Copley invited the claimant to a meeting with Chief Constable Sir Peter Fahy (page 1335 of the bundle).

3.144 On 19, 21 and 23 May 2014 the claimant was interviewed by the IPCC.

3.145 On 11 June 2014 the claimant attended a meeting with Chief Constable Fahy along with ACC Copley and DCS Jackson and Federation representative PC Rothwell. This meeting was intended to resolve the claimant's grievances, but did not go well, and became one of the detriments that the claimant claims in these proceedings. ACC Copley's account of that meeting is in her email of 14 June 2014 (pages 1356 to 1358 of the bundle) and the claimant's is in a note (wrongly dated 13 May 2014) attached to an email from him of 13 June 2014 (pages 1346 to 1350 of the bundle). It is not necessary at this juncture for the Tribunal to make findings about the details of what occurred in this meeting.

3.146 The claimant then went off work sick, with work related stress , having said , in his email referred to above, that he assumed that negotiations were now at an end, and that he had no option now but to proceed to an Employment Tribunal.

3.147 On 13 July 2014 the claimant's son suffered a serious and potentially life - threatening assault in Manchester city centre. Whilst the claimant had been due to return to work, he then obtained a fit note for a further week for stress (page 1385 of the bundle). The ensuing investigation was assigned to the MIT, an unusual step. The claimant was unhappy with the investigation, became involved in it, having issues with the way in which it was being conducted, and seeking to have some input as to what charges should be preferred against the suspect that was arrested. This was to cause some issues as to whether he unduly interfered in it, and the CPS later raised some concerns about his actions.

3.148 On 15 July 2014 the Employment Tribunal rejected the claim that the claimant had submitted dated 12 May 2014 (pages 36-37 of the bundle) due to non – compliance with the early conciliation provisions.

3.149 Whilst it had been the intention that the claimant would take up the Acting position in MIT in December 2014, due to there being no successful candidate for the post of Head of MIT, and Peter Marsh declining to take up the Acting post , on 16 July 2014 the claimant was offered the post as Temporary Detective Supt as Head of Major Incident Team by ACC Copley in a meeting with her. The claimant expressed the view that this should be a permanent position, a substantive promotion, but she explained how this was not possible. He returned to work on or about 23 July 2014 (when he underwent a return to work interview) as a T/DSupt. in the role of Head of MIT.

3.150 On 29 July 2014 the claimant presented his ET1 in claim number 2401945/2014 (pages 38-55 of the bundle). The claimant was now represented, and this claim was drafted by and submitted by his solicitors. The Tribunal refers to the procedural history in Annexe A for the details of this claim.

3.151 On 5 August 2014 the claimant withdrew his grievance of 1 September 2013, after discussion with ACC Copley. This is recorded in the form at page 1402 of the bundle.

3.152 On 12 August 2014 the IPCC issued a press statement , entitled 'Notices served on GMP officers as part of whistleblower investigations' (page 1407 of the bundle). This was a reference to the fact that the Chief Constable, ACC Sweeney, TD/Supt. Scally and DI Bridge had been served with Notices under the Police (Conduct) Regulations 2012.

3.153 In 14 August 2014 the PSB was considering the claimant's conduct in connection with the assault on his son, and a severity assessment was carried out, with a view to a possible referral to the IPCC. That referral was made on 18 August 2014, but on 22 August 2014 the IPCC returned it (page 2718A of the bundle) saying that there did not appear to be evidence of misconduct , and left the matter for GMP to deal with.

3.154 On 20 September 2014 IPCC and GMP made statements about ACC Sweeney's retirement (whilst ACC Sweeney was being investigated) . He retired on 30 October 2014, and this was the subject of a newspaper article in the MEN (pages 6394 to 6396 of the bundle).

3.155 On 22 September 2014 a final (there had been earlier ones) severity assessment was carried out into the claimant's actions in respect of his son's case. The recommendation was for local management action (page 2759 to 2764 of the bundle). On 24 September 2014 ACC Copley agreed to local management action being taken, and this was implemented by DCS Russ Jackson.

3.156 DCS Jackson continued to line manage the claimant , and there remained some difficulties in their relationship. Various issues were raised, which are not relevant for this section of the judgment, but, in short, each had issues with the other. In summary, the claimant was still raising some historic issues, and concerns about his treatment for being perceived as a whistleblower, and DCS Russ Jackson was finding the claimant difficult to manage , with senior colleagues reporting their issues with the claimant to him.

3.157 The IPCC investigations continued, with witness statements being taken from a large number of witnesses. On 1 December 2014 the claimant signed his IPCC witness statement (pages 1444 to 1515 of the bundle).

3.158 On 5 March 2015 the IPCC issued a press release entitled 'Update on GMP whistleblower investigations'. In it the withdrawal of misconduct notices against the Chief Constable, ACC Sweeney (whose retirement was noted),and another unidentified retired officer was mentioned, as was the fact, that a DI and a DS were still under notices of criminal or misconduct notices , and that a DCI remained subject to a misconduct notice. The press release went on to state that the investigation into the Shipman body parts was continuing, but that the IPCC was no longer investigating the alleged cover – up of Mr Snowball's bugging of other officers. The Operation Oakland investigation (without it being so identified) was also continuing .

3.159 On 11 March 2015 the claimant met with the Chief Constable to discuss his grievances, the discussion focussing on the promotion process. Denise Hill , the Head of Human Resources, was to carry out a review of the process. The claimant sent an email (pages 1534 and 1535 of the bundle) after this meeting setting out his suggestions for how this should be carried out.

3.160 On 13 April 2015 a gross misconduct notice was served on Mr Snowball. The same day the claimant wrote to the IPCC Commissioner expressing his concerns over the progress of the IPCC investigations . In this 5 page document he was critical of the IPCC for the manner in which it had returned much of what he had disclosed back to the GMP, and had split the investigations into three. He was very critical of the investigations, and questioned the experience and abilities of the investigators. He asked for a meeting with the Commissioners. He also gave the IPCC further information about D/Supt. Barraclough allegedly suggesting there should be destruction of documentation relating to actions taken over Shipman body parts in order to frustrate any future FOI (Freedom of Information Act) requests (pages 1537 to 1541 of the bundle).

3.161 The substantive response from the IPCC (Dan Budge) of 24 April 2015 does not appear in the bundle, but the claimant's response to it of 26 May 2015 does (pages

1547 to 1550 of the bundle). In it, he remained critical of the IPCC, did not accept the responses he had been given, and sought more updates.

3.162 On 26 July 2015 Paul Massey , the head of a Salford OCG, was shot dead . Shortly afterwards , on 12 August 2015 Mark Fellowes, another OCG member, was also shot . The initial investigation was carried out by Operation Vail. After some discussion, however, and because of the seriousness and potential escalation of inter – gang violence , it was suggested by the claimant that all the connected Operations be brought under one umbrella Operation. This was agreed, and that Operation became Operation Leopard. On 25 September 2015 Russ Jackson set Terms of Reference for Operation Leopard (see page OL 1210).

3.163 On 29 September 2015 the claimant was sent those terms of reference for Operation Leopard, and was confirmed as OIOC by DCS Russ Jackson . Russ Jackson was appointed PIP4 on 12 October 2015

3.164 On 23 October 2015 Chief Constable Sir Peter Fahy retired. His successor was Ian Hopkins

3.165 There are a number of issues which arose during the claimant's tenure as OIOC of Operation Leopard, many of which are relied upon as detriments and/or particulars of breach of contract for the claimant's detriments and constructive dismissal claims. They will be considered, as appropriate, in those contexts in due course. It is not, however, necessary to consider them any further at this juncture, save to record that there were conflicts between the claimant and DCS Russ Jackson, and other senior officers in Operation Leopard.

3.166 The next relevant background facts relate to the review of Operation Leopard, the proposed removal of the claimant from the post of OIOC, his sickness absence, and subsequent departure from the Force. These are basic , chronological facts, and not findings of any issues which require determination for the purposes of the detriment and/or constructive dismissal claims.

3.167 On 2 March 2016 Martin Bottomley was instructed by DCS Russ Jackson to complete a review of Operation Leopard within 2 weeks. On 16 March 2016 the Organisational Review began.

3.168 On 29 March 2016 there was a meeting between DCC Pilling, ACC Sutcliffe, DCS Russ Jackson , Martin Bottomley and a legal representative at which the claimant's tenure as OIOC was discussed (see OL page 1092).

3.169 On 30 March 2016 ACC Sutcliffe and DCS Russ Jackson met with the claimant to discuss his removal as OIOC . ACC Sutcliffe sent the claimant an email (sent 16:19) with the rationale for the decision (see OL page 1118) The claimant was informed by ACC Sutcliffe and DCS Jackson of his removal as OIOC. It was then suggested the claimant became Deputy OIOC with full time PIP4 rather than being replaced as OIOC. The claimant challenged the decision to remove him as OIOC. ACC Sutcliffe said the claimant could remain as OIOC with D/Supt Barraclough as full time PIP4.

3.170 On 5 April 2016 the claimant informed ACC Sutcliffe, DCS Jackson and Martin Bottomley of his intention to remain as OIOC , but with a PIP4 other than Simon Barraclough . DCC Pilling then took the decision to remove him and replace him with D/Supt Barraclough (see OL pages 1147 to 1150)

3.171 On 5 April 2016 the claimant submitted a grievance in relation to DCS Russ Jackson, ACC Rebekah Sutcliffe, and Martin Bottomley (OL page 1150). The history of that grievance, who deal with it, when and how, are the subject of the Tribunal's findings of fact in relation to the constructive dismissal claim under Chapter 6.

iv).The IPCC investigation outcomes.

3.172 On 6 April 2016 the IPCC provided the Poppy 3 (Snowball) outcome report, dated 5 April 2016 (pages 5661 to 5734 of the bundle) to the respondent (see page 5807 of the bundle where this is confirmed to the claimant). Its conclusions in relation to the respondent's investigation into the bugging incident (pages 5714 to 5715 of the bundle) was that the investigation carried out by the GMP complied with the legislation, was within the range of reasonable responses and could not be criticised. The decision to award a written warning was similarly found to be one that the GMP was entitled to make at the misconduct meeting.

3.173 In relation to Operation Oakland the IPCC conclusions were (at pages 5728 to 5734 of the bundle):

Mr Snowball's conduct was not criminal

He had a case to answer for misconduct

There were mitigating factors which the Appropriate Authority may wish to take into account when determining the misconduct charge.

3.174 On 7 April 2016 the claimant reported sick due to work related stress. He never thereafter returned to work .

3.175 On 26 April 2016 the IPCC sent the Poppy 1 (human tissue) outcome report to the respondent, as was confirmed to the claimant in a letter from the IPCC on 25 May 2016 (page 5810 of the bundle). The final report was dated 29 April 2016 (pages 5372 to 5464 of the bundle) . Its conclusions (pages 5463 and 5464 of the bundle) were:

ACC Sweeney did not have a case to answer for misconduct in respect of the disposal of the Shipman human tissue by incineration and without informing the Shipman victims' families.

In respect of an email exchange between ACC Sweeney and DCS Shenton (which came to light in the investigation, and was not one of the matters that the claimant had disclosed) this was inappropriate and may be considered to demonstrate indifference to the distress and upset caused to professional colleagues engaged in grappling with an extremely difficult and emotive issue. The degree of indifference expressed in the email, taken together with the apparent failure to engage in a fully transparent and accountable manner, was so serious as to amount to a case to answer for misconduct.

3.176 The investigator recorded this:

"627. Hence for the avoidance of doubt in the view of the investigator there is evidence which may provide the basis for a potential finding that ACC Sweeney's conduct fell below the standards of professional behaviour expected of him relating to the manner in which the issues around the Shipman tissue samples were dealt with but not as regards the substantive decisions on the issue of disclosure to families and the manner of disposal."

3.177 On 2 September 2016 the claimant presented his further ET1 claim number 2402865/2016 (pages 83 to 99 of the bundle).

3.178 On 23 September 2016 the Poppy 2 outcome report (pages 5481 to 5611 of the bundle) was sent by the IPCC to the respondent, of which the claimant was informed by letter (see page 5817 of the bundle) the same day . Its conclusions (at pages 5607 and 5608 of the bundle) were:

"1020. Regardless of the lack of resources available to Det. Supt Scally, he made the decision to have DI Bridge, an officer inexperienced and untrained in covert policing, on duty that weekend. Further, he considered it appropriate to deploy knowing the limitations of the team.

1021. He also knew the limitations of the surveillance position and the intelligence feed. Det. Supt Scally had been made aware of the paramountcy principle and duties therein. It is reasonable to suggest that that at no time was Det. Supt Scally absolutely sure that the Children were not at immediate risk of harm or even had been harmed. This aspect remains unclear.

1022. There was a lack of pre-planned tactics, due to Det Supt Scally's record keeping, limited the available options for DI Bridge. It meant that any intervention or disruption would be based on dynamic decision making. While an experienced officer may have been comfortable with this situation, DI Bridge clearly was not.

*1023. Det Supt Scally*s telephone support to DI Bridge was well intentioned, however there is and was clearly confusion as to who had responsibility for decision making. The lack of clarity as to what was expected from DI Bridge, in terms of updates and Information sharing, exacerbated this issue.*

1024. By default, during the incident on 17 April 2011Det Supt Scally delegated the risk management of Child 44 and 48 to an inexperienced officer. Given he had effectively declared himself on duty and he was the only experienced covert officer, Det Supt Scally should have considered managing the incident personally having decided to let It go ahead without any kind of intervention to prevent it taking place.

1025. It is also evident that Det Supt Scally was made aware that Nominal 7 had left with Child 44 and 48. Like DI Bridge, Det Supt Scally did not instigate any action to deal with this risk. Indeed, it is also not clear that he had even planned or considered this scenario.

1026. Given his seniority of rank, the nature of the risks posed by Nominal 7, the foreseeable limitations of resources available to manage the risk it is considered by the lead investigator that Det Supt Scally was not diligent in his duties.

1027. Based on the evidence presented above, it is my opinion that Det. Supt. Scally has a case to answer for misconduct."

3.179 In relation to DI Bridge, the conclusion was similarly that he too was not diligent in his duties, and had a case to answer for misconduct. Accordingly TD/Supt. Scally and DI Bridge were recommended for misconduct proceedings. The claimant was informed that this was the outcome, without the officers being named.

3.180 in summary, the claimant was informed by the IPCC of the final conclusions of the Poppy reports (but not provided with copies thereof) , and whether any misconduct action had been recommended , by:

Poppy 3 – letter of 13 May 2016 (page 5808 of the bundle)

Poppy 1 – letter of 25 May 2016 (page 5810 of the bundle)

Poppy 2 – letter of 15 November 2016 (page 5820 of the bundle)

3.181 On 31 January 2017 the claimant retired from the GMP. The full facts of the circumstances leading up that are set out in the Tribunal's judgment at Chapter 6.

3.182 On 17 March 2017 TD/Supt. Scally's misconduct hearing was held by CS Wayne Miller. The outcome was that misconduct was not proven, and "unsatisfactory performance" was the decision. The Written Decision dated 17 March 2017 is at pages 2191 to 2196 of the bundle .

3.183 The hearing of the misconduct allegation against DI Bridge was also heard by CS Wayne Miller the same day. He came to the same conclusion in respect of his conduct, and this too was found to be unsatisfactory performance (see pages 2197 to 2201 of the bundle for his Written Decision).

3.184 On 31March 2017 the Julian Snowball misconduct meeting, arising out of Operation Oakland was held by DS Emily Higham. The decision she made is recorded in the Written Decision document at pages 2402 to 2404 of the bundle. She noted his inexperience, and naïve decision making, but found, after some discussion, that the charge of misconduct was not proven, and that the issues should be treated as a performance matter.

3.185 As a result of the IPCC investigations, the following officers had received Notices (at the level set out below) under the Police (Misconduct) Regulations, with the following outcomes:

Sir Peter Fahy	Gross Misconduct	1 Aug 2014 - Withdrawn 5 March 2015
ACC Sweeney	Gross Misconduct	3 Sept 2014 – Retired

DCS Shenton	Gross Misconduct	3 Sept 2014 - Withdrawn 5 March 2015
DCI Warren	Gross Misconduct	11 Aug 2014 - Withdrawn 2 July 2015
TD/Supt. Scally	Gross Misconduct	19 May 2014 – Unsatisfactory performance
DCI Bridge	Gross Misconduct	3 October 2014 – Unsatisfactory performance
DCI Snowball	Gross Misconduct	13 April 2015 – Unsatisfactory performance

3. 186 The claimant continued to correspond with the IPCC after his retirement, enquiring about what actions had been taken against the officers whose conduct had been referred back to the GMP, and trying to persuade the IPCC to investigate Operation Grainger, in which ACC Heywood's evidence had been the subject of strong criticism from a Crown Court Judge.

II. 4. Those, then are the relevant facts which are the background or core facts, which set the timeline, and context in which the claimant's claims fall to be considered. Both types of the claimant's claims, be they detriment or dismissal, rely upon his having made protected disclosures. Indeed, given that the claimant seeks to make no link between any particular disclosure, and any particular detriment , or treatment amounting to grounds for him to resign and claim constructive dismissal, his case (not accepted by the respondent, however) is that his claims could potentially succeed if he only establishes that he had made one protected disclosure. The converse, of course, is that if he cannot establish that he made even one protected disclosure, all his claims must fail.

II. 5.The Tribunal proposes therefore, rather than rehearse all its relevant findings of fact in respect of all the issues in the claims, to pause here, and next to set out its findings in respect of the issues as to whether the claimant made any protected disclosures. Then, if it is found that he did, to identify those disclosures , and then set out its relevant findings of fact in respect of the detriment and dismissal claims. The Tribunal trusts that this will assist to prevent conflation of the evidence and issues, and assist in the determination of what are quite separate and distinct issues.

Chapter III: The protected disclosures – the Tribunal's approach.

a.The protected disclosures relied upon – summary.

III 1. As the claims were finally presented to the Tribunal, the claimant put his case solely upon the disclosures that he made to the IPCC in January 2014. Thus , whilst there is reference to prior "disclosures" made internally in grievances to the respondent, and then to the PCC, in mid - 2013, none of these were, in the end, relied upon as protected disclosures for the purposes of these claims. That was, however, not always the case, and, as the procedural history sets out , initially the claimant was relying upon disclosures made to the respondent and the PCC, but then abandoned these, and relied solely upon those he made to the IPCC, (in writing, and not, as was set out in the List of Issues, in any information provided orally in interviews) .

III 2. All the disclosures relied upon, therefore, are those contained in the three documents that the claimant submitted to the IPCC – "PDR1" (pages 836 - 857 of the bundle) , "PDR2"(pages 858 to 860 of the bundle) and "PDR3" (pages 1016 to 1027 of the bundle). The first two of these documents bear the date 20 June 2013, because the claimant submitted them to the PCC around that time. The third, however, is dated 16 January 2014, and had not previously been submitted to the PCC.

III 3. Whilst these documents contain the disclosures that the claimant relies upon for these claims, the claimant does not claim that the entirety of the contents of these documents constitute his protected disclosures for the purposes of these claims. It therefore follows that the claimant , on his own case made , in these documents, both protected and unprotected disclosures.

III 4. The respondent , in his response documents, has admitted that the claimant made disclosures which "conveyed information", but has made no further admissions than that. He has therefore put the claimant to proof of all the remaining elements of protected disclosure.

III 5. The claimant originally contended that he had made 23 protected disclosures, but by email of 1 December 2021 disclosures nos.1.7, 1.10, 1.15 and 1.17 have been abandoned, so that now only some 19 are relied upon for these claims.

They are (using abbreviated descriptions which are not necessarily totally accurate):

Protected disclosure 1.1: Corrupt promotion of DCI Scally in early 2011.

Protected disclosure 1.2: decision by Scally not to intervene to protect child.

Protected disclosure 1.3: cover up of failure to safeguard child.

Protected disclosure 1.4: Scally allowed to retain position and critical role.

Protected disclosure 1.5: release of Dale Cregan on bail.

Protected disclosure 1.6: significant failings in Operations Somerville, Mirato and Dakar.

Protected disclosure 1.8: strategy of executing repeated warrants on Cregan family.

Protected disclosure 1.9: placing two unarmed officers outside the house of an associate of Dale Cregan.

Protected disclosure 1.11: corruption in promotion of Scally in 2013 to North-West Counter-Terrorist Unit.

Protected disclosure 1.12: unlawful use of bugging devices by CI Snowball.

Protected disclosure 1.13: failure to impose appropriate disciplinary sanction on CI Snowball.

Protected disclosure 1.14: When a review of Operation Span (sexual abuse of children in Rochdale) undertaken by the Greater Manchester Police Review Team resulted in a report which was highly critical of the Force, ACC Sweeney told the authors of the report to change it and, when they refused to do so, suppressed the original report and arranged for a report to be written by the Force Review Officer, Martin Bottomley.

Protected disclosure 1.16: DCI Denise Worth was supported for promotion because of her close relationship with ACC Sheard and in spite of having been taken off the Operation Somerville murder investigation for alleged failings (this being cited as another example of cronyism)

Protected disclosure 2.1: DCS Shenton, with the knowledge of ACC Sweeney and ACC Heywood, authorised the destruction of human tissue from the victims of Harold Shipman without notifying their families.

Protected disclosure 3.1: DCI Snowball oversaw an operation whereby police were ordered to stand by and watch as criminals put on balaclavas in a car park and then armed themselves with baseball bats before committing an armed robbery at a pub in the Stockport area. DCI Snowball could have directed officers to intervene, arrest the offenders and safeguard the members of the public in the pub, but instead allowed the landlord/licensee and customers to be subjected to a violent robbery.

Protected disclosure 3.2: No disciplinary action was taken against DCI Snowball for allowing the robbery to take place, or for falsifying details on a warrant in the investigation, because of his friendship with ACC Sweeney and other senior officers.

Protected disclosure 3.3: ACC Sweeney arranged for DCS Shenton and TD/Supt Scally to deal with a domestic incident between a Superintendent and his wife in an unlawful and inappropriate manner, which involved the Superintendent's wife being unlawfully arrested and her home unlawfully searched by a Major Incident Team for sexual video material relating to the Superintendent.

Protected disclosure 3.4: Superintendent Denise Worth failed to implement urgent actions in relation to a missing person's investigation, including actions recommended by the Claimant, which could have located the missing person's mobile phone and thus the missing person himself many hours earlier. The individual was later found dead after a fall.

Protected disclosure 3.5 : Superintendent Worth, when DCI, led an investigation into the death outdoors of a Hungarian man and determined it was accidental. At the inquest the Coroner concluded that the case was suspicious and referred the case back to GMP for review. Following that review, it was decided to investigate the case as a murder, the previous decision making of DCI Worth hindering the progress of the case and reducing the opportunities for successful conclusion.

III 6. These disclosures have been given the abbreviations "PD1.1" etc., and the term "protected disclosure" has been abbreviated to "PD" in much of the documentation, and this will generally be the usage adopted in this judgment.

b.) Discussion of the Tribunal's approach to the determination of the protected disclosures.

i)Grouping.

III 7. Whilst the claimant has pleaded his protected disclosures in a particular fashion, they are not , with respect and no criticism, set out in a particularly logical or coherent manner. If taken strictly in numerical order they would involve the Tribunal having to recite and refer back to evidence that is relevant evidence across more than one disclosure.

III 8. The Tribunal, accordingly, proposes to group the disclosures together, so that where the evidence overlaps, it will not need to be rehearsed in full more than once , and a more coherent overall picture will hopefully emerge.

III 9. In some instances, of course, disclosures are "stand alone", and will be treated as such, in Group 6. Where they are not, whilst still considered as separate and individual disclosures, they will be considered in sequence as part of a group with broadly common subject matter.

III 10. Accordingly, the Tribunal proposes to deal with the disclosures in this order:

Group 1: Disclosures pertaining to TD/Supt. Scally and cronyism:

i.Protected disclosure 1.1: (Corrupt promotion of DCI Scally in early 2011)

ii.Protected disclosure 1.11 (Corrupt promotion of TD/Sup Scally in 2013 to North-West Counter-Terrorist Unit)

Group 2 : Disclosures relating to Operation Nixon , the alleged cover – up and lack of action against TD/Supt. Scally .

iii.Protected disclosure 1.2: (Decision by Supt. Scally not to intervene to protect child)

iv.Protected disclosure 1.3: (Cover up of failure to safeguard child)

v. Protected disclosure 1.4 (Scally allowed to retain position and critical role)

Group 3 : Disclosures pertaining to the failings of TD/Supt. Scally and others in respect of the Operations to apprehend Dale Cregan.

vi.Protected disclosure 1.5 (Release of Dale Cregan on bail)

vii.Protected disclosure 1.6: (Significant failings in Operations Somerville, Mirato and Dakar)

viii .Protected disclosure 1.8 (Strategy of executing repeated warrants on the Cregan family)

ix. Protected disclosure 1.9 (Placing two unarmed officers outside the house of an associate of Dale Cregan)

Group 4 : Disclosures relating to the conduct of T/Supt. Snowball and the lack of action taken against him.

x. Protected disclosure 1.12 (Unlawful use of bugging devices by DCI Snowball)

xi .Protected disclosure 1.13 (Failure to impose appropriate disciplinary sanction on CI Snowball)

xii. Protected disclosure 3.1 (DCI Snowball allowing robbery in a public house to take place)

xiii. Protected disclosure 3.2 (Failure to take disciplinary action against DCI Snowball)

Group 5 : Disclosures relating to the promotion of DCI Worth and her alleged failings as an SIO.

xiv. Protected disclosure 1.16 (Support of DCI Worth for promotion)

xv. Protected disclosure 3.4 (Supt Worth's failure to utilise covert tactic CT1 in a missing person enquiry)

xvi. Protected disclosure 3.5 (Supt Worth's failure to treat the death of a Hungarian man as other than accidental)

Group 6: Stand alone disclosures:

xvii .Protected disclosure 1.14 (Re – write of review of Operation Span)

xviii. Protected disclosure 2.1 (Disposal of human tissue)

ix. Protected disclosure 3.3 (Despatch of senior officers to deal with a domestic incident)

ii).The Law – protected discsloures.

III 11. Before setting out the relevant facts, and considering each PD in turn, the Tribunal considers that it would be of assistance to set out the relevant law that it will apply to these issues. The definition of protected disclosure is to be found in the Employment Rights Act 1996 (the ERA"), thus:

43B Disclosures qualifying for protection

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(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, or is likely to be deliberately concealed.

III 12. Whereas, up until 2013 there was also a requirement that the disclosure be made in good faith, that requirement was removed in relation to the definition of protected disclosure , and instead, by s.49 ,and amendment of s.123 of the ERA, good faith now only goes to remedy, whereby a lack of good faith, if established, will entitle the Tribunal to reduce any compensation awarded by up to 25%. The respondent made an unsuccessful attempt to amend the response to add such a plea in this case, so any alleged lack of good faith can go to neither liability nor to remedy.

III 13. Further, the Tribunal's understanding is that , as he is relying solely upon his disclosures to the IPCC, and not any prior disclosures to the respondent internally, or the PCC, the claimant has made disclosures which fall within s.43F of the ERA, disclosures to a prescribed person. The "person" in question was therefore the IPCC, now the Independent Office for Police Conduct.

III 14. The claimant did make a late, but unsuccessful , application to amend his claims to contend that he had made his disclosures pursuant to s.43C(2), in that , although made to the IPCC, the disclosures were made by him "in accordance with a procedure whose use by him is authorised by his employer ", and hence are to be treated as being made to the respondent. That would take them out of the regime of s.43F.

III 15. The Tribunal rejected that application (reasons were given orally and in writing). Examination of the manner in which the claimant made his disclosures to the IPCC confirmed that he did so by direct contact with the IPCC, so could not begin to bring himself within the provisions of s.43C(2).

III 16. Hence the provisions of s.43F are applicable. They are as follows:

43F Disclosure to prescribed person

(1) A qualifying disclosure is made in accordance with this section if the worker—

(a) makes the disclosure … to a person prescribed by an order made by the Secretary of State for the purposes of this section, and

(b) reasonably believes—

(i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and

(ii) that the information disclosed, and any allegation contained in it, are substantially true.

(2) An order prescribing persons for the purposes of this section may specify persons or descriptions of persons, and shall specify the descriptions of matters in respect of which each person, or persons of each descriptions, is or are prescribed.

III 17. At the time of the claimant's disclosures in January 2014, the relevant order prescribing the IPCC as a prescribed person was the Public Interest Disclosure (Prescribed Persons) Order 1999. That was superseded by the 2014 Order, which expressly provides that the former will apply to any disclosure made before 1 October 2104. Whilst the original 1999 Order did not prescribe the IPCC as a relevant body for this purpose, it subsequently was by Public Interest Disclosure (Prescribed Persons) Order 2014 (SI 2014/2418) , and no issue is taken upon the claimant having made his disclosures to the IPCC, or that he reasonably believed that the information disclosed fell within a description of matters in respect of which that body was so prescribed.

iii) The Tribunal's approach to determining whether the claimant made protected disclosures.

III 18. Guidance as to how the Tribunal should carry out its task is set out in the leading case of ***Kilraine v. London Borough of Wandsworth [2018] ICR 1850*** , in which Sales LJ said , at para: 36

"Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in s 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill LJ in Chesterton Global at [8], this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief."

And at para. 41

"It is true that whether a particular disclosure satisfies the test in s 43B(1) should be assessed in the light of the particular context in which it is made."

III 19. Before proceeding any further, the Tribunal must set out the issues that it has had to consider , and the legal tests that it has to apply, before determining whether the claimant did make any protected disclosures. Whilst ordinarily that would be a relatively straightforward exercise, that has not been the case in these proceedings.

III 20. The reason for that lies in the origins and evolution of the claimant's disclosures. The genesis of the difficulties faced by the Tribunal lies in the fact that the claimant's disclosures were not contained in one single document, in which a few specific and clear disclosures were made, which are claimed to attract protection under s. 43B, but rather they were contained in three separate documents, sent to the IPCC on 31 January 2014. Further, the entirety of the contents of these documents is not relied upon as amounting to the protected disclosures, but rather some 19 (now, formerly it was 23) specific disclosures are relied upon as amounting to protected disclosures. The Tribunal has also not been assisted by the fact that the PDR documents have not been included in the bundle in the form that they were sent to the IPCC, in that there were at least 10 Appendices to the first PDR, referenced by the claimant as Appendices A to J, but , whereas one would have expected them to have followed on in the bundle in sequence, they do not. Rather the Tribunal has had to try to identify them in the bundle by piecing together the evidence as to what they may have been. This has proved possible in most instances, but the Tribunal is far from confident that it has even now correctly identified all these Appendices.

III 21. These disclosures have their origins in the claimant's grievances following his unsuccessful applications for promotion. The claimant first raised a grievance against DCS Shenton for failing to support him in the promotion process (Grievance Report pages 527-536 of the bundle) on 25 June 2012 . That document not only sets out why the claimant felt that he had the necessary qualifications and experience to be promoted, but also sets out the claimant's allegations that other officers had been favoured and over – promoted because of a culture of cronyism that went on to become the central theme of the disclosures that he made to the IPCC, some (but not all) of which are relied upon as the claimant's protected disclosures in these proceedings.

III 22. A full account of the procedural history is contained in Annexe A, but a consequence of the way in which the claimant's protected disclosures have come to be fully formulated and pleaded has been that this did not occur until a very late stage in the proceedings . For a considerable time previously , the protected disclosures were not identified as individual disclosures , but merely by reference to the claimant's PDR documents (1,2 and 3) that he submitted to the IPCC.

III 23. It was not until the Scott Schedule was produced on 23 March 2015 that the claimant specified some 31 specific protected disclosures that he (at the time) relied upon. Thereafter , the claimant produced a List of Issues dated 15 February 2018 (pages 205 to 265 of the bundle) . The claimant has made some complaint that the List of Issues was agreed, but has since been referred to as "the claimant's List of Issues" , but the fact remains that it was in the draft List of Issues produced initially by the claimant that

he , for the first time (for the previous claim forms and Grounds of Claim did not), specified the individual disclosures that he was relying upon as protected disclosures, and what specific matters under the various subsections of s.43B(1) of the ERA he claimed that they tended to show . Only as the case was being heard, did the claimant's case become clear. The respondent (and the Tribunal) was unclear until final submissions whether the claimant was relying upon s.43F only, or was seeking to rely upon s.43C as well in respect of the disclosures to the respondent or the PCC, both of which were still pleaded at para.6.1 in the List of Issues . The claimant confirmed in his final Submissions that only s.43F was relied upon, the disclosures to the IPCC. To be clear, whilst para.6.2 of the List of Issues confirms that the claimant relies upon the written disclosures in PDRs 1,2 and 3 made to the IPCC, para.6.3 goes on to suggest that he was also relying upon oral disclosures to the IPCC that he made in three days of interviews with the IPCC, but this has not been pursued, and only the written disclosures contained in the documents provided to the IPCC are relied upon.

III 24. The List of Issues has therefore become, in effect, the claimant's pleaded case. In relation to the protected disclosures , its scheme has been to refer back to the claimant's PDR documents, and extract from those specific allegations, which are then pleaded to amount to protected disclosures, and in each instance the basis upon which the claimant contends that the disclosure in question amounts to a protected disclosure is set out. In many instances the full text of the relevant parts of the claimant's PDR documents is recited in the body of the List of Issues. In some instances, however, it is not. Care therefore needs to be taken in identifying what the claimant is relying upon as constituting his protected disclosures, as in some instances it will not be confined to the text that has been extracted and replicated in the List of Issues, but will require reference back to the PDR document to see what other information is also being relied upon as part of any particular protected disclosure.

III 25. This has been graphically highlighted by the respondent producing a table of the information contained in the PDR documents and relied upon by the claimant in the List of Issues, in which those parts which have been expressly recited in the List of Issues are highlighted in yellow, and those parts which , the respondent contends , have been pleaded in it as constituting the allegedly protected disclosure , but have not been reproduced in the List of Issues , are highlighted in red. This document was produced on 9 May 2023, annexed to a document entitled "Response to consider whether to apply to plead aggregation", and is entitled "Analysis of PDR Submissions by Peter Jackson for matching content in Agreed List of Issues", and will be referred to as the "Yellow/Red Analysis" document. The form it takes is to highlight in yellow the disclosures as they have been recited in the List of Issues, and to highlight in red those other parts from the PDR documents which the respondent contends have been, or ought to be, included in the information that the claimant disclosed. (It is not always 100% accurate, but graphically illustrates the issue.) The respondent has characterised this approach as "filleting" of the information disclosed. The Tribunal's consideration of each protected disclosure below will show where this has occurred, and what information was not expressly recited in the List of Issues but which, on the respondent's case, forms part of the claimant's pleaded case. This issue affects all the PDs to a lesser or greater degree, save for PD1.8, PD1.9, PD1.10 (now withdrawn) , PD1.15 (which only omits the words "Example 1") , and PD2.1.

III 26. It is unfortunate that technical limitations do not permit that Yellow/Red Analysis document to be annexed to this judgment, but the Tribunal trusts that this will assist in understanding how the Tribunal has approached its task. The respondent has also produced another (10 page when printed) colour – coded document, in which the total of 287 allegations made by the claimant in the claimant's grievances, appeals, PDR documents , pleadings and witness statements (some 19 columns in total) are tracked through all these documents, and then, in the 20th column, are ascribed a current status. Again, it is regrettable that this too cannot be attached to this judgment, but it has been a useful tool for the Tribunal, and will be described as the "Master Tracker" document.

III 27. The claimant too has helpfully provided a colour - highlighted document in which the relevant parts of the three PDR documents have been highlighted , and the protected disclosures to which they relate have been highlighted (not always , the Tribunal considers, accurately but that is of no consequence). This document shows how the claimant's disclosures have been constructed from divers parts of these three documents, and , in some instances , overlap.

III 28. It is unfortunate that the claimant's protected disclosures have had to be extracted from his three substantial PDR documents in this way. This sometimes means that the totality of the content of some of the protected disclosures has had to be gleaned from various disparate parts of the PDR documents. That is not a criticism of the claimant, who probably , when he wrote them (basing them in large part on previous documents he had submitted as grievances or complaints to the PCC) did not expect that years later he would be required to identify and extract from them a number of specific protected disclosures. Few workers, the Tribunal expects, sit down and draft their whistleblowing complaints so as to ensure that they will fall neatly and clearly into the requisite categories of protected disclosures under the ERA, unless they are doing so with legal assistance , with a view to ensuring that they are making valid protected disclosures. Equally, few workers make such wide ranging disclosures, with serious and disparate allegations being made about a considerable number of individuals and instances of wrongdoing over some 36 pages.

III 29. All this, however, serves to highlight how the issue of precisely what the claimant's pleaded case requires , or allows, the Tribunal to consider when determining whether any of the disclosures relied upon amount to protected disclosures , is not a simple one.

III 30. At one point it appeared that the respondent was seeking to argue that the claimant had only made one protected disclosure, namely that there was a culture of cronyism in GMP, and that all the matters contained in the PDRs were but examples of this one disclosure. This was prompted, in part, by the claimant's own evidence, in cross – examination, where he appeared to be saying just that, he had only really made one disclosure – that there was a culture of cronyism leading to corrupt promotions of incompetent officers. The claimant's legal representatives, however, have not framed his claims this way.

III 31. This has been given the term "aggregation" by the respondent, and also has been referred to by him as the claimant's "macro case". If that was to be the respondent's position, however, the claimant contended that this would require amendment , and

would be a considerable and impermissible departure from the List of Issues. The respondent, however, did not seek to go so far , and expressly rowed back from such a contention. He accepted that the claimant had pleaded a "micro case", in which he had made, and the respondent had responded to , upon 19 separate disclosures, each one of which would require the Tribunal to determine whether it was or was not a protected disclosure. It was submitted that they were, however, part of a macro case, in which the respondent contends the claimant could not have any reasonable belief, but the claimant had pleaded 19 specific disclosures, and the Tribunal should determine whether each one amounted to a protected disclosure

III 32. Mr O'Dempsey, for the claimant , has been a little unclear in his approach to the proposition that the Tribunal must consider the totality of what the claimant disclosed . For example , at para. 49 of his Submissions he says:

In the List of Issues, in the case of each PD relied upon, reference is made to the passages in the PDR which set out the information disclosed. It is important that the ET clearly understands that the List of Issues is not therefore the summary that appears at the start of each, but the passages that are set out and/or cross referenced within the PD.

iv).What should the Tribunal consider?

III 33. The issue is how the Tribunal should approach the protected disclosures, and what material the Tribunal may, or may not, take into account in determining whether the claimant has made any protected disclosures.

III 34. The Tribunal's consideration of each protected disclosure will show where this alleged "filleting" has occurred, and what information was not expressly recited in the List of Issues but which is understood to, or should be found to, form part of the claimant's pleaded case. This issue affects all the PDs to a lesser or greater degree, save for PD1.8, PD1.9, PD1.10, (PD1.15 only omits the words "Example 1" – and is withdrawn) , and PD2.1. In some instances this type of omission results in substantial amounts of material contained in the relevant and cited paragraphs of the PDRs not being replicated in the List of Issues. This is particularly so in the case of PD1.2 where 14 relevant paragraphs of PDR1 are not recited, PD1.5 where 12 paragraphs and the whole of Section H are omitted, and PD1.6 where 9 out of 18 bullet points are omitted.

III 35. In the course of its deliberations, however, the Tribunal had encountered parts of the PDR documents which were not picked up by the respondent as also containing parts of the information that the claimant had disclosed in respect of disclosures that he expressly relies upon. This may be partly due to the withdrawal of some of the specific disclosures, but information (in some instances quite extensive) set out under those disclosures remains relevant to, and part of, other, maintained, disclosures (see for example "Section H" and "Section L"). This in effect meant that there were more potential "red" areas that the respondent could have included in its Yellow/Red Analysis document.

III 36. Thus the Tribunal's proposed approach , when setting out the PDs, has been to set out the entirety of the information disclosed , whether expressly or by incorporation,

in the PDRs which is contended to amount to any one of the PDs. The Tribunal proposes to consider, when determining whether any of the disclosures relied upon amount to protected disclosures, not only the expressly recited extracts from the relevant parts of the PDRs that are contained in the List of Issues, but also any additional parts thereof, and any other parts of the PDRs referred to, which are expressly, or implicitly, relied upon, but which are not replicated in the body of the List of Issues.

III 37. The Tribunal noted that in some instances the omitted parts of the PDRs referred to are minor, and nothing will turn upon them. In others, however, large swathes of text have been omitted from the List of Issues, but have been expressly pleaded to contain the relevant protected disclosure relied upon, and contain information that the claimant did disclose, and will arguably fall to be assessed against the relevant tests for s.43B and s.43F disclosures.

III 38. A particular issue arises in relation to PDR3. Unlike PDR1 and PDR2, the claimant has not used paragraph numbers in this document. Hence, in the List of Issues he has not referred to any paragraph numbers, but has simply recited paragraphs taken from PDR3, which are said to constitute the disclosure that he made. Unlike PDRs 1 and 2 where the claimant has made reference to, but not recited in full, whole paragraphs in these two documents, he has not done so in respect of PDR3. He has instead cited specific parts of the paragraphs relied upon, and not always in their entirety.

III 39. The Tribunal will therefore need to consider whether it can, and should, take into account any other parts of PDR3, outside those paragraphs from which extracts are recited, when determining whether the expressly pleaded parts do or do not amount to any protected disclosures.

III 40. Mr O'Dempsey, for the claimant , appeared to accept that the Tribunal would be entitled to take the first approach, i.e that of considering the totality of the paragraphs expressly pleaded, but with omissions, as also containing information that constitutes the disclosure which is alleged to be protected. Para. 49 of his Submissions set out above is cited.

III 41. Inherent in that paragraph appeared to be acceptance that if there is "cross – reference", this material too can be considered. This is particularly germane to Section H, and Section L, to which the claimant cross – refers in various parts of his PDR documents which are relied upon as his protected disclosures.

III 42. That was the Tribunal's understanding. Whilst there had been some discussion of these issues in the hearing, the Tribunal wanted to be totally clear of the parties' positions before finalising its Judgment. To that end, it contacted the parties before finalising its judgment, to ensure that their positions were clearly understood.

III 43. The Tribunal also sought the parties' views upon whether it is confined to only those pleaded paragraphs, as expanded, and whether , in determining whether the claimant has made the particular disclosure relied upon , it can, or indeed should, also take account of other paragraphs in the same document, not overtly omitted by any

ellipsis, in determining whether the claimant made the protected disclosure contended for.

III 44. This is very germane to PD3.5, where, immediately after the pleaded paragraph in the List of Issue comes an ellipsis (with the omitted parts thereof supplied in red in the respondent's Yellow/Red Analysis document), there appears this paragraph:

As a result a murderer is free to walk the streets of Manchester, perhaps to strike again. I understand T/Supt Worth has blamed her mismanagement of the case on her lack of training and not being PIP 3 accredited. I find this hard to accept when her last 3 roles have been as a Detective and I and many other SIOs have dealt with numerous murders and 'critical incidents' prior to becoming PIP 3 accredited. On a daily basis unaccredited DIs and DCIs with far less experience make decisions on persons found deceased in a variety of circumstances. I understand no action has been taken in respect of T/Supt Worth. The murder T/Supt Worth wrote off as not being suspicious is ironically now being investigated by another officer who was unsuccessful in the recent promotion process and is having to pick up the pieces following T/Supt Worth's failings.

III 45. The Tribunal asked whether the claimant contended that the Tribunal is not entitled to consider that this is part of the information conveyed as part of this disclosure, as it was sent to the IPCC and if not, why not?

III 46. A further part of this section of PDR3 states:

"It cannot be ignored that DCI Worth is a very close friend of CS Sheared (sic) *, the Head of Workforce Development who has been involved in setting up the Promotion Process. It is CS Sheard who in her short time as ACC promoted DCI Worth to Temporary Superintendent; this was at a time when another male officer had been promised that he would be next to be given an acting superintendent position. Furthermore, CS Sheard, when previously the officer's Divisional Commander had re-written for her a poor appraisal which had been completed by T/Supt Worth's line manager, as referenced in my 'whistle-blowing report. The officer's current daily work colleague is CS Hankinson, one of the main interviewers in the process. Although nothing can be proved there was widely held suspicions that this officer would be better 'informed' and 'prepared' on her attendance for interview than other candidates. The officer's success certainly did not come as a surprise to anyone."*

III 47. Part of this information was also contained in PD1.16, and will be considered there, but was the claimant's case that the Tribunal is not entitled to consider this information also in the context of PD3.5, and, if not, why not?

III 48. The claimant's solicitor replied by letter to the Tribunal by email on 27 November 2023. In it he said:

"You have asked for the Claimant's view on how the tribunal should approach the protected disclosures and what material the tribunal may or may not take into account in determining whether the claimant has made any protected disclosures.

As you point out the starting point is the list of issues , which is the list of issues agreed between the parties.

Where text has been omitted, this was because the claimant has not relied on the information contained in those omitted paragraphs as comprising part of the disclosure of information under section 43B. If not part of the disclosure of information, the information of course does not fall for consideration under section 43F.

With respect, the tribunal have misunderstood the terms of paragraph 49 of the claimant's submissions. Within the agreed list of issues for each protected disclosure relied upon there is an introductory paragraph which sets out in summary the information disclosed. The point being made by Mr O'Dempsey was that the protected disclosure was not that summary but rather was the quoted passages that followed. The position, if unclear in paragraph 49 of the primary submissions, was clarified in the responsive submissions by the claimant at paragraph 581 where the claimant "submits that the disclosure should be defined by reference to the material contained in the list of issues and taken from the PDR for that purpose." There would have been no point in setting out the passages relied upon (as the information disclosed and said to constitute the disclosure in the list of issues) if the intention of the parties had been to indicate that the disclosure information was in reality all of the paragraphs (that is including those not quoted in the agreed list of issues) to which reference was made to locate the subset of information relied upon within the PDRs. The list of issues makes clear by the use of two formulae that it is the quoted passage that is the information relied upon as the disclosures. The first is that the protected disclosure was set out at a particular paragraph(s) of PDR1 "which stated as follows"; the second is "which were worded as follows".

The position of the claimant remains unchanged. The tribunal, when it is considering the tests of whether "the information disclosed and any allegation contained in it, are substantially true" is confined to consider only the information relied upon as the disclosure and is confined therefore to considering only those paragraphs that are set out. It cannot take into account other material in the same document to determine whether the claimant made the qualifying and therefore the protected disclosure contended for. Similarly, when referring to the test under s43B the reasonable belief can only be judged in reference to the quoted information. The claimant does not repeat his submissions on reasonable belief in this letter.

You have referred specifically to a paragraph relating to PD 3.5 commencing "As a result a murderer is free to walk…" and also to a section of PDR 3. The oral submissions at day 101 p 135, l 16 ff to 140 were dealing with the disclosure identified in the list of issues at 3.5 and dealing with the cross examination that had occurred in relation to that protected disclosure and the question of reasonable belief in the allegations and information in the disclosure identified in the List of Issues. .

The position of the claimant is that the tribunal is not entitled to consider these as part of the information constituting the disclosure as:

a. *it is not in the agreed list of issues and neither has it been pleaded as such;*

b. *the witness evidence did not address material parts of these paragraphs as they were not included in the agreed list of issues*
c. *disclosure did not cover all issues referred to in these paragraphs for the same reason;*
d. *it would be necessary to hear argument on each such piece of information as to whether it constituted part of the information disclosed and relied upon as having any causal effect and this could not happen due to the above reasons.*

The Claimant's position therefore remains as set in the oral submissions day 101, 15 May 2023: p6 l13 – p21 l5 and p 83, l10-20, p 135 l15- 13.All of these aggregations and sub-aggregations should have been identified by the respondent as issues. In brief all of the submissions objecting to the respondent's attempt to argue for aggregation apply to the idea that some form of sub-aggregation is permissible. In summary, quite apart from the unfairness to which it manifestly gives rise, the tribunal will be drawn into error if it pursues this sub-aggregation approach."

III 49. The respondent's response to this on 27 November 2023 was :

(i) This issue is relevant to C's credibility and his alleged PDs.

(ii) The ET's analysis of how C's case is framed is correct: this is a matter of express pleading by C.

(iii) C's response is wholly contrary to C's own (oft repeated) evidence to the ET: his alleged PDs must be read as a whole and not analysed in isolation.

(iv) It is also contrary to how C expressly argued the case in the submissions at para 49.

(v) Finally, as a matter of common sense, a claimant cannot pick and choose parts of the PD he/she makes – the PD must be analysed as it is not as a claimant wishes it (sc. "to") be seen.

III 50. The claimant's response to that, also on 27 November 2023, was that item (i) was not relevant , as this was not the issue, the claimant did not accept point (ii), the List of Issues had been agreed, in point (iii) the claimant's evidence did not define the disclosures, and point (iv) had been addressed. As to point (v), this was said:

The parties have frequently pointed out the technical nature of the concepts involved in PIDA detriments, and the point now under consideration is such a technical point. The definition of the issues in this case was a matter of protracted consideration by both parties. It was plain that the respondent has created an issue with the way in which the disclosures were defined. It failed over the majority of the proceedings to indicate that there was a dispute in this area. The respondent now seeks to resile from the way in which the parties had approached the disclosures to be considered by the tribunal, and should not be permitted to do this.

v).Discussion of the scope of the Tribunal's consideration of what information was conveyed.

III 51. Whilst the claimant's position is heavily reliant upon the List of Issues, the Tribunal will start by considering what approach it should take, untrammelled by the List of Issues, and then consider whether it should deviate from that approach because of the List of Issues.

III 52. The Tribunal's first task must be to determine what information was conveyed in determining whether the claimant has made any protected disclosure. In ***Twist DX Ltd and others v. Armes and others (UKEAT/0030/20/JOJ)***, Linden J said:

"[52] The first stage is to identify the information disclosed by the worker which is said to amount to the qualifying disclosure. This is crucial because section 43B(1) requires the tribunal to go on to consider whether the claimant's beliefs about that information fell within the section and, if the conclusion is that there was a qualifying disclosure, whether the disclosure of that information was a, or the, reason for the treatment complained of, depending on whether the complaint is victimisation contrary to section 47B of the 1996 Act, or automatic unfair dismissal contrary to section 103A."

At para. 64 he said:

"[64] Having identified the information which was disclosed, the ET should ask whether the claimant believed, at the time of the alleged disclosure, that the disclosed information tended to show one or more of the matters specified in Section 43B(1)(a) -(f) of the 1996 Act and, if so, which of those matters."

III 53. The Tribunal notes that whilst Linden J. uses the term "which is said to amount to the qualifying disclosure" in para. 54, he does not in para. 64. This Tribunal considers that its first task is to consider what information was disclosed, in totality, and not just to focus upon what information was disclosed "that is said", i.e. pleaded by the claimant , to amount to the qualifying disclosure.

III 54. In some, indeed, many, instances this is not an issue, as the claimant's pleaded case (i.e as set out in the List of Issues) does, or at least appeared to, include contentions that he disclosed information in wider terms than have been expressly recited in the List of Issues. In others, however, the inclusion of some further material as part of the information conveyed leads to the inclusion, by reference or implication, of more information , which must then also fall to be considered in determining whether any particular protected disclosure has been made. Beyond that , however, may be other material which does not fall into either of these categories, but which the Tribunal considers must also be considered as forming part of the information conveyed, even if not expressly pleaded as information relied upon as forming part of the disclosure.

III 55. Our conclusion is that the determination of what information was conveyed, and whether it amounted to any particular protected disclosure , is a matter for the Tribunal alone, which cannot, absent any other reason to do so, be circumscribed by the claimant choosing not to rely on any particular part of the information that the Tribunal may go on to find was in fact part of the information that he conveyed as part of his disclosure. That this must be so is apparent from the provisions of s.43F, s.43G and s.43H of the ERA, which apply to third tier and above disclosures , all of which require a whistleblower to show that at the time they made the disclosure they reasonably believed that the

information disclosure and any allegation contained in it are substantially true. If, therefore a worker could , despite conveying certain information in the course of making disclosures , in the non – legal sense of the word , in which they lacked the necessary reasonable belief, avoid the consequences of that lack of belief by not relying upon that information or allegation as part of their disclosure, they would be able to circumvent those provisions by "filleting" as it has been put by the respondent their disclosures. Whilst the respondent has suggested that this may be why the claimant has taken this approach, the Tribunal does not so find, and , frankly it does not matter why he has done so. The logic of this conclusion leads the Tribunal to find that it cannot be restricted in its enquiry as what information was conveyed in the disclosures that were made by the claimant only to those matters upon which he expressly relies in support of his contention that any particular disclosure was protected. As ever, that approach must be tempered by common sense and proportionality. The Tribunal , when considering whether the claimant has made any particular protected disclosure , must look at the information that was conveyed, in context and in the round. Clearly, were the Tribunal to start bringing in unconnected extraneous information, with no apparent nexus to the disclosure relied upon, that would be impermissible. As will be apparent, however, the Tribunal has approached its task by considering very carefully the information disclosed, how it was disclosed, and how it should be read.

III 56. The Yellow/Red Analysis document produced by the respondent vividly highlights what information the respondent is contending should also be considered. Whilst it was produced late in the proceedings, on 9 May 2023, the claimant's counsel had an opportunity to respond to it, and make any points that he wanted to in response to it in his oral submissions on 15 May 2023, but he did not do so in specific terms. He did dispute the respondent's entitlement to "aggregate" the omitted parts of the PDRs with those that had been expressly pleaded, but made no specific points upon any specific instances where the respondent's Analysis had done this.

III 57. This is consistent with the origin and evolution of the claimant's case on his protected disclosures. They were initially very wide ranging, with blanket pleading that his disclosures "were contained in" the three PDR documents. Further particularisation was ordered, and more specific disclosures were identified, in stages, but reference was always made back to the PDR documents. The claimant's position now is that only the expressly recited portions of the PDR documents that are set out in the List of Issues can be considered as the information that was conveyed, and the Tribunal cannot stray outside their confines.

III 58. Mr O'Demsey's submissions have not always been clear or consistent on this point. Quite apart from what he meant in para.49, in some instances he fails actually to set out the exact wording of the disclosure in his submissions. In relation to PD1.3, for example, in para.83 he says:

"The wording is significant. PD1.3 was set out at (xxix) to (xxxiii) of PDR1, and was worded as follows:"

No wording then follows. That happens again in:

para. 96, in relation to PD1.4

para.105 in relation to PD1.5

para.128 in relation to PD1.6

para.139 in relation to PD1.8

para.165 in relation to PD1.9

para.172 in relation to PD1.11 (although arguably less clearly so, but there is a colon at the end of the paragraph which betokens a likely recital of text)

para.185 in relation to PD1.12

para.190 in relation to PD1.13

para.197 in relation to PD1.14

para.208 in relation to PD1.16

para.221 in relation to PD2.1

para.235 in relation to PD3.1

para.243 in relation to PD3.2

para.259 in relation to PD3.3 (even referring to underlining being added to the words which then do not actually follow the colon)

para.282 in relation to PD3.4

and para. 299 in relation to PD3.5

III 59. Returning to PD1.6, in para.128, Mr O'Dempsey refers to the information that the claimant was disclosing. He says this:

"It is submitted that the disclosure contains, in context, information amounting to information capable of being disclosures: there was significant interference in all three investigations from ACPO/ Senior Officers, including ACC Heywood, ACC Shewan, DCS Shenton, who did not have the level of knowledge of the officers running the different investigations and they were ordering SIOs to conduct actions that they did not necessarily agree with in terms of arrests etc; leading to e-mails being pasted into policy books by SIOs who wanted to evidence decisions that were not of their own making;.there was a sense of panic at times within Command team, demonstrated when ACC Heywood suggested at one point that they should go public with a 'Name Your Own Price' reward for information to secure the arrest of Cregan. (In fact this was a persistent discussion: see throughout August ……. September 2012). This would clearly have been a desperate measure which would have caused enormous embarrassment to the Force, but it highlights the feelings of desperation problems arose around the strategy in relation to Cregan family and other suspect families, in particular what was viewed as an antagonistic approach taken to Cregan family with a large number of search warrants executed by TAU and firearms teams without success,

alienating the family and increasing the ill feeling of Cregan towards the police. This approach was reflected in a message sent out to the Force by ACC Heywood via the GMP Intranet website on 29/08/12 when he said; 'Public safety demands that we visit Dale Cregan's family and friends regularly until he reappears' (C attached this at Appendix 'F'). It was also released to the media (C attached this as 'G'). There was real danger in this 'tactic', yes it is fine to execute a firearms warrant at an address when you have good intelligence that the person is hiding up there but it is a totally different story to repeatedly call at relatives and friends addresses without any information, particularly as it is a tactic that is oft used by police to flush out 'wanted criminals' by becoming an annoyance to their families, however it is not a tactic to be used when the person sought is an 'out of control' killer armed with firearms and hand grenades. In such a case there is a real danger that the tactic will unduly antagonise him and thereby hugely increase the risks to police officers. There were significant failings in the understanding of risk by TD/Supt Scally, including the lack of risk assessments both for his investigation team officers and divisional officers. There are examples on two separate occasions of him wanting to deploy officers to properties connected to Cregan with his requests being refused by myself on one occasion and a (sic) *Inspector due to the risks and lack of risk assessment .there were significant failings in the understanding of risk by Force Command, including the lack of risk assessments both for the investigation teams and in particular the lack of understanding of risk in regard to other police staff not directly involved in the investigation, including the failing to identify and assess risk in terms of how the G division conducted its daily business, the introduction of patrol plans to mitigate risks, and the assessment of calls received and the response to incidents….."*

This is, of course, largely a repetition of the matters that the claimant set out in paras.(lix) to (lxi) of PDR 1.

III 60. Comparison with the agreed List of Issues is instructive. Under PD1.6 it is therein pleaded , at para. 128, that paras.(lix) to (lxi)) of PDR1 contain the information disclosed, which is not then recited. The further matters that Mr O'Dempsey alludes to (page 34 of his submissions) as being information that "was capable of being disclosures" from "there was significant interference" onwards are largely matters that appear in PDR1 in the list of bullet points under para.(lxi) , which forms the basis of PD1.6. Taking the "interference" bullet point as the 10th, the next 7 points are what are rehearsed by Mr O'Dempsey in this paragraph under PD1.6. Those later bullet points, however, are not recited in the List of Issues (and are hence red in the Yellow/Red Analysis document), but Mr O'Dempsey is here inviting the Tribunal to consider them as part of the information disclosed.

III 61. Another example of the confused approach of the claimant can be seen in PD1.3. In the List of Issues (pages 265G to 265H of the bundle) paras. (xxix), (xxxi) and (xxxii) are recited as setting out PD1.3. Para. 20, however, refers to paras.(xxix) to (xxxiii). Only three of these paragraphs, however, have been recited , the first, para. (xxix) ending with an ellipsis. Thus, para.(xxxiii), which reads:

"The actions of ACC Sweeney and DCS Shenton amount to a 'cover up' of TD/Supt Scally's actions; on a point of law if this were proven then they may have conspired to pervert the course of justice and it is requested that their actions should also be subject

of an independent investigation and again a file should be submitted for consideration by the Crown Prosecution Service."

has not been included in the recited parts of this PD. In para.22 of the List of Issues, however, which sets out what the claimant says he reasonably believed his disclosures tended to show, reference is made to the claimant's belief that this disclosure tended to show that one or more criminal offences had been committed, namely perverting the course of justice, and misconduct in public office. Whilst the latter is not mentioned anywhere in paragraphs referred to , the former is. If the Tribunal is not to consider any information which is not expressly recited in the List of Issues, how can it find that the claimant had these beliefs ?

III 62. The respondent points out that the claimant may be seeking deliberately to exclude the omitted parts of his PDRs that should really be considered for tactical reasons. The claimant contends that the respondent agreed to the List of Issues, which has this restrictive effect, and cannot now, and the Tribunal cannot now, look outside it.

III 63. Whilst there has been much discussion of "aggregation" , and "filleting", it is interesting to note that the evolution of the argument as to what the Tribunal can and cannot consider when determining whether the claimant conveyed information, and if so what that information was, lies in the line of cases which arose from whilstleblowers seeking to rely upon information which was not expressly conveyed in one document or upon one occasion, claimed as amounting to a protected disclosure, when the respondents contended that they had not conveyed "information" which satisfied the statutory test. In other words , they sought to restrict the relevant disclosures to one document , or piece of information, that had been relied upon. This led to the decision of the EAT in ***Norbrook Laboratories (GB) Ltd v. Shaw [2014] ICR 540*** which held that it was possible to "aggregate" information conveyed in separate documents or provided on separate occasions so that , when taken together, they amounted to information of the quality required to satisfy s.43B. Subsequent cases examined when "aggregation" was or was not appropriate, but the principle was well established. The caselaw, however, from the Tribunal's research, is one – way traffic – with the claimants were arguing that their disclosures should be considered from the point of view of "aggregated" information , in order to survive as potentially protected disclosures, and respondents saying they should not be, thereby failing to meet the statutory definition.

III 64. To the extent that the claimant in this case seeks to limit the Tribunal to the pleaded case on what information was conveyed , the Tribunal questions whether he can do so. It seems to us a necessary corollary of the aggregation line of cases that if the Tribunal is satisfied that the claimant disclosed information , as part of the disclosure relied upon, which included information not expressly pleaded as information relied upon, the Tribunal is entitled to consider that information as well, even if the claimant did not seek to rely upon it as part of his protected disclosure. That must, the Tribunal considers, be the position, as otherwise, a whistleblower would be able to circumvent the provisions of s.43F, whereby he is required to show a reasonable belief in the information conveyed and any allegation contained in it, by simply excising parts of the information conveyed in which he may not be able to satisfy that test.

III 65. In the alternative, the Tribunal considers that it is entitled to examine the parts of the PDRs not expressly relied upon in the List of Issues as being relevant context in which to assess the reasonableness of the beliefs of which the claimant has to satisfy the Tribunal under s.43B and s.43F.

III 66. In summary and conclusion therefore, in determining whether the claimant made any protected disclosures the Tribunal will, subject to the List of issues point, consider:

a)The information expressly pleaded and recited in the List of Issues as having been conveyed;

b) Where in the List of Issues reference is made to complete paragraphs, which had not been recited in full in the List of Issues, and/or where any ellipsis appears to indicate any omission, the omitted information will also be considered;

c) Where , whether in the recited information, or that to be considered by virtue of (b) above, reference is also made to any other information by reference to any other part of the PDR document (e.g. Section H), that information shall be considered too as forming part of the information conveyed;

d) To the extent that any unenumerated paragraphs have been pleaded and recited in the List of Issues taken from PDR 3, where the pleaded paragraph has been incompletely set out, the omitted words will be considered as forming part of the information conveyed;

e) To the extent , that whilst not expressly pleaded , or partly pleaded, in the List of Issues as forming part of the information conveyed, any preceding or ensuing paragraphs in PDR3 which are inextricably linked to the pleaded information conveyed in any PD under PDR3 will also be considered as forming part of the information conveyed, or, in the alternative, the context thereof.

vi).The effect of the List of Issues.

III 67. That finally brings us back to a consideration of the effect of the agreed List of Issues, and the caselaw in connection with the significance of effect of an agreed List of Issues.

III 68. The claimant relies heavily upon the judgment in ***Chandhok v Tirkey [2015] IRLR 195*** (a case the spelling of which seems to vary in various references, but is believed to be correct in this iteration). This case emphasised the importance of Tribunals adhering to a List of Issues, particularly an agreed List of Issues. It is right that this is an agreed document, but as with all agreements, it falls to be construed as to what the parties thereby agreed. The respondent's position is that where , by reference to complete paragraphs of the PDR documents the claimant has claimed to have made a disclosure by conveying the information in those paragraphs, then it is the totality of the contents of those paragraphs that the Tribunal should consider. That is the case even if the List of Issues contains , as it sometimes does, an ellipsis, by the use of "…" in the List of Issues, and parts of the paragraphs referred to, or even complete paragraphs, are not recited. The respondent, in effect, is saying that this was the basis of his agreement to the List of Issues.

III. 69. The Tribunal's understanding of para. 49 of the Closing Submissions was that this was the claimant's position too, but it now appears it is not.

III 70. It is a frequent direction at a preliminary hearing is that the parties draw up an agreed list of the issues of law and fact to be decided in the case. As Mummery LJ has stated: 'A list of issues is a useful case management tool developed by the tribunal to bring some semblance of order, structure and clarity to proceedings in which the requirements of formal pleadings are minimal' see ***Parekh v London Borough of Brent [2012] EWCA Civ 1630***). The list of issues must not, however, be confused with the pleadings: whilst a party may permissibly signal that they are no longer relying upon a pleaded claim by agreeing to a list of issues which does not include that claim, a party may not unilaterally introduce a new claim or defence through the vehicle of the list of issues. Any contested additions to the factual or legal issues in a claim or response require an amendment application dealt with in the proper way. The EAT held in ***Chandhok v Tirkey*** that the ET1 and ET3 are the documents which define the parameters of a claim. The list of issues should reflect the pleadings and it follows that where the parameters of the claim have changed via a consensual amendment or the decision of a Tribunal judge on a disputed amendment application, it may be good practice for the pleadings to be amended with the list of issues then mirroring the final version of the pleadings.

III 71. Even when presented with an agreed list of issues at a case management hearing, the Tribunal has a role to play in examining the list and ensuring that it correctly reflects the legal and factual issues which must be resolved at the full hearing. As stated by the EAT in ***Price v Surrey County Council UKEAT/0450/10*** 'Even where lists of issues have been agreed between the parties, they should not be accepted uncritically by employment judges at the case management stage. They have their own duty to ensure that the case is clearly and efficiently presented'.

III 72. The authorities reveal something of a tension between the need for a Tribunal at the final hearing to respect an agreed list of issues and the need to apply afresh some critical evaluation to that list. Since the purpose of the list is to serve as a roadmap from the early stages of proceedings, and both the documentary and witness evidence should have been directed around relevance to those identified issues, it is right that Tribunals should be slow to depart from the agreed issues at a late stage.

III 73. The Court of Appeal has expressed the view that where a list of issues is agreed, the general rule is that the issues to be determined at the final hearing will be limited to those in the list (see ***Parekh*** at [31], per Mummery LJ; ***Land Rover v Short UKEAT/0496/10*** per Langstaff J). This applies not just to the list of complaints made by the claimant but also to the list of defences relied on by the respondent (see ***Scicluna v Zippy Stitch Ltd [2018] EWCA Civ 1320***).

III 74. However, notwithstanding this general rule, the Court of Appeal in ***Mervyn v BW Controls Ltd 2020 IRLR 464*** described it as 'good practice' for an Employment Tribunal, at the start of a substantive hearing where one or more parties are unrepresented, to consider whether any list of issues previously drawn up at a case management hearing properly reflects the significant issues in dispute between the parties. In providing this guidance the court recognised (at [38]) that it will be unusual

for the Tribunal at the final hearing to depart from a list of issues agreed at the case management stage, but stated that there is no requirement of exceptionality for such a departure (the question is whether it is 'necessary in the interests of justice' per rule 29). This approach is consistent with the previous decision of the Court of Appeal in ***Parekh***, where Mummery LJ pointed out that although the general rule is that a Tribunal at the final hearing will decide only the issues in the list which has been agreed, tribunals are not 'required to stick slavishly to the list of issues agreed where to do so would impair the discharge of its core duty to hear and determine the case in accordance with the law and the evidence', and stated that, as case management decisions are not final decisions, they can be revisited and reconsidered, for example if there has been a change of circumstances, thereby avoiding 'endless appeals, with potential additional costs and delays' (at [31]).

III 75. In ***Mervyn*** the Court of Appeal gave guidance (at [38]) that relevant considerations when considering whether it is necessary in the interests of justice to depart from an agreed list of issues at a late stage will include: just how late a stage it is (an amendment before the evidence has been called is quite different from an amendment afterwards); whether the list of issues was the product of agreement by lawyers or involved a litigant in person; and whether amendment would lead to a delay to the hearing for further evidence or submissions to be prepared or, even without such a hiatus, to the issues becoming too extensive to resolve within the time allotted for the hearing.

III 76. If a Tribunal at the final hearing does propose to alter the ambit of the list of issues from the list that was agreed by a previous employment judge at an earlier stage, it must give its reasons for doing so and must give a proper opportunity to the parties to make submissions before a decision is made. That was the view of Keith J in ***Ijegede v Signature Senior Lifestyle [2022] EAT 4*** .

III 77. A further consideration must be what the parties agreed when they agreed the List of Issues. It was an overdue document, not produced until after the hearing had started. The ellipses in the text of the disclosures referred to were not readily apparent. In some cases there are swathes of omitted whole paragraphs, in others only a word or a line was omitted. The respondent's yellow/red Analysis document shows where this occurs. It may be that neither party quite realised what the effect of the List of Issues being set out in this way would be.

III 78. As the caselaw makes clear, departure from an agreed List of Issues does not require exceptional circumstances. The test is whether it is in the interests of justice to do so. All the factors set out in ***Mervyn*** (which doubtless are not intended to be exhaustive) need to be considered. The List of Issues was agreed, and that carries a lot of weight. What that agreement meant, however, is open to argument, and even the claimant's position on what can and cannot be considered part of the information conveyed has not been clear or consistent. The departure , if such it be, is late, but the parties have been given an opportunity expressly to make representations upon it, and have done so. The claimant has submitted that the Tribunal should not allow such a departure because the claimant has prepared his case on the basis of the "narrow" construction of the List of Issues, and it would be unfair for him now to be faced with a

wider set of issues, covering evidential matters that have not been considered, and matters which would require further evidence and documents.

III 79. We do not agree. The claimant has identified no specific areas where consideration of the further material as information contained in the disclosures has not been dealt with in the evidence, or where the claimant would be prejudiced by the inclusion of this material. He was extensively cross – examined upon not only the expressly pleaded disclosures, but virtually all of the wider material that was contained in all his PDRs, regardless of whether they were being expressly relied upon as part of the pleaded disclosures. The claimant has not identified any specific aspects where he can say he would be prejudiced because he did not cover these matters in his evidence (which was itself very wide ranging) or in cross -examination. The Tribunal's view is that there are no such instances, but, if there are , they are very few, and minor, and the Tribunal will be alert to them as it considers each disclosure separately. In principle, the Tribunal considers that departure from the List of Issues, to the extent that the Tribunal proposes to do so, would be in the interests of justice as it would enable the Tribunal to carry out its prime function of determining what information was conveyed, and then whether , in the circumstances, any protected disclosure is thereby established.

vii).The tests to be applied in determining whether any disclosure was a protected disclosure.

III 80. In terms of the tests to be applied when considering whether the claimant has made any protected disclosure, the Tribunal has been referred to, and assisted by, reference to Whilstleblowing Law and Practice , 4th Edition. The relevant tests are discussed in these passages (sections 6.82 to 6.83), from which the Tribunal has extracted these passages:

"……. The reasonable belief test for a qualifying disclosure has been considered notably in the cases of ***Darnton v University of Surrey (2003] ICR 615 (EAT)*** *and* ***Babula v Waltham Forest College [2007] ICR 1026****, In* ***Muchesa v Central & Cecil Housing Care Support (EAT/0443/07, 22 August 2008)****, the EAT acknowledged that there are differences in wording as compared to section 43B. As the EAT accepted (at para 26), The subject matter of the belief , i.e what the worker had reasonably to believe if he is to obtain protection is different. Notwithstanding this, the EAT concluded that the guidance in* ***Darnton*** *and* ***Babula*** *applies also to the test under sections 43 F, 43G, and 43 H. Having regard to this, we suggest that the following considerations are relevant:*

(a) As in the case of the reasonable belief test for a qualifying disclosure, the worker's reasonable belief must be tested by reference to the circumstances as they were understood, or ought to have been understood, by the worker, rather than simply by the facts as ultimately found to have existed by the ET.

(b) It must be reasonable for the worker to believe both (i) that the factual basis for what was disclosed was true and (ii) that it tends to show a relevant failure (see ***Muchesa*** *at para 27), In relation to a qualifying disclosure, the extent to which the worker is expected to investigate and hold a belief in the truth of what is disclosed will depend on the circumstances. Indeed, there may be cases where a worker can only pass on information from a third party and is not in a position*

*to assess whether it is true: eg **Dr Y-A-Solt v Imperial College of Science, Technology anti Medicine (UKEAT/0350/ 14/DM, 3 September 2015)**. But in relation to a disclosure under sections 43F, 43G, and 43H, the statutory language makes expressly clear that a reasonable belief is required that (i) the information disclosed and (ii) any allegation contained in it are substantially true.*

*(c) The worker will not lose protection if the belief was mistaken, provided it was a reasonable belief for the worker to hold, But, as with the test for reasonable belief in section 43B, whether the allegation was in fact true may be relevant in ascertaining the reasonableness of the belief. This was emphasized in **Muchesa**. [There ensues a recital of the facts of that case] …….The ET found that the claimant did not have a reasonable belief that the disclosures made to the external recipients were substantially true. The EAT concluded that the ET was entitled to consider whether the complaints were true and to regard its view of this as an important tool in the resolution of the reasonable belief issue, especially as the claimant was complaining of matters of which she claimed to have direct knowledge. The ET was also entitled to have regard to objective factors such as the failure to use the whistleblowing policy and to ask another member of staff to witness the conduct of which she was complaining, failure to write up the incident, and spending time photocopying rather than dealing with the incident. In all, she had not behaved in the manner to be expected had she reasonably (or indeed genuinely)believed in the truth of the complaints.*

*(d) Again, as in the reasonable belief test for a qualifying disclosure, and as illustrated by **Muchesa**, all the circumstances must be considered in order to ascertain whether the belief was reasonable. However, the standard to be applied in relation to whether it was reasonable to hold the belief is higher than that for a qualifying disclosure. In particular, the worker may be required to have done more to look into the matter, or have had it looked into, than at the first tier of disclosure. Thus, in relation to a disclosure to the employer (or other first tier disclosure) there may be a reasonable belief even though the worker has done little to investigate the matter, because the policy of the legislation is to encourage workers to raise their concerns with the employer who may be best placed to investigate. More investigation may be required in relation to regulatory disclosure for the worker to hold a reasonable belief in the substantial truth of the information disclosed.*

(e) Under section 43 F, there is no obligation first to raise the matter with the employer. However, if it was raised with the employer, it will be relevant to take into account any response by the employer, or any failure to respond or inadequacies in the response, in relation to how this affects the reasonableness of the belief.

(f) The differing considerations which are likely to apply to a disclosure under section 43F are indicated by the fact that the phrase 'tends to show' which appears in section 43B does not appear in section 43F (or 43G or 43H). ……. the phrase is important in the context of section 43 B. It accommodates the possibility that the worker may only have access to part of the evidential picture. As such, it might be premature to require, prior to making a disclosure to the employer (or other

first tier disclosure), that the worker hold a reasonable belief that the allegation is substantially true. It might he sufficient that the worker has come across, and disclosed, information which tends to show a relevant failure, even though it is possible that on further investigation the full evidential picture may show this not to be the case. By contrast, for the purposes of section 43F (and 43G and 43H), the worker cannot merely say that the information disclosed tends to point in the direction of a relevant failure, and needs further investigation. The worker must reasonably believe that the allegations are substantially true.

(g) Notwithstanding the degree of leeway built into the 'substantially true test, it does not follow that the worker can make any allegations that are known to be false, even if those allegations are only peripheral. In ***Korashi v Aberfawe Uro Morgannwg University Local Area Health Board |2O12| 1RLR 4*** *it was argued that where there were a number of allegations made as part of a disclosure, it would be sufficient if the gist of the complaint was reasonably believed to be substantially true. However, the EAT expressed the view that, whilst there is no obligation to make any allegation, the statutory formulation requires that in relation to each allegation made, there must be a reasonable belief that it was substantially true. The effect is that scattergun allegations will not be protected if they include some wild allegations known to be false. However, ETs will still need to exercise care not to overlook the degree of leeway afforded by the term substantially". There is a public interest in concerns as to relevant failures being raised with the appropriate prescribed body. It would be unfortunate if those with the courage to come forward and raise such concerns were to lose protection because of a degree of lack of circumspection in the terms in which the concerns are raised.*

III 81. The reference to ***Muchesa*** is to ***Muchesa v Central & Cecil Housing Care Support [UKEAT/0433/07]*** in which it was held that it was relevant to consider , when assessing whether a worker held a reasonable belief in the truth of what was disclosed and what it tended to show, how the worker would have been expected to have behaved if they genuinely held such beliefs. The worker's conduct in that case was incompatible with her having such a belief, and the EAT upheld the dismissal of her claims on the grounds that she had not satisfied the test for reasonable belief. Similarly, in ***Simpson v Cantor Fitzgerald Europe [2021] ICR 695*** the Court of Appeal upheld the EAT's dismissal of an appeal where the worker's failure to act upon what were allegedly very serious breaches of financial regulatory requirement for about a month was found to be relevant to the issue of whether he genuinely believed that his disclosures tended to show any serious wrongdoing.

III 82. The Tribunal has also considered the case of ***Korashi*** , referred to above, and a first instance decision of an Employment Tribunal sitting in Scotland, chaired by Peter Wallington (then) QC, ***Hassan v Community InfoSource S/4105570/2016*** . Both concerned disclosures claimed to be protected under s.43G, and possibly other sections, but the issue of what the claimant had to show he or she reasonably believed was discussed.

III 83. ***Korashi*** is a persuasive case, as it is an appellate authority from the Employment Appeal Tribunal, although it is accepted that the finding on this point was *obiter* (if the

Tribunal, with legal representation on both sides, and a claimant with a law degree, can be forgiven recourse to Latin). The judgment of the late HHJ McMullen QC is clear. Paras. 64 to 66 are the relevant parts of the decision.

"64
The additional layer placed by s.43G upon a disclosure made pursuant to s.43B is that the claimant reasonably believes that 'the information disclosed and any allegation contained in it are substantially true.' The dispute between the parties is as to whether it is sufficient that the gist of a complaint, here as to the competence of Mr A, qualifies as being substantially true or whether the information and each allegation must be reasonably believed to be true. Counsel say that there is no authority on this. The example given by Mr Wallington is of a disclosure made by scattergun which includes one point which qualifies under s.43G and nine which do not. This he contends would not mean that each allegation is substantially true.

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In this case it is plain that not all the allegations made to the GMC were believed by the claimant to be substantially true. Instead, reliance is placed upon the gist which is that Mr A was not properly qualified. Applying the direction which is to give a generous approach to whistleblowers, we do not consider that this subsection would be satisfied.The structure of s.43 is to impose additional obligations the further removed the recipient of the information is from the worker's employer. The first place for any worker to turn is to his employer. Next is the legal adviser (s.43D) government minister (s.43E), regulator (s.43F) and then any other person (ss.43G, 43H). At each stage additional responsibilities are placed upon the discloser. The reason for this is understandable. You do not go beyond the person who might immediately take action unless there are special circumstances as set out in each of the sections. A fairly weak condition is placed upon disclosure to an employer but strong conditions are placed upon disclosure to those outside the relationship. That is why s.43G(1)(b) requires not only the information but each allegation under it to be substantially true. It will be recalled that under s.43B allegations are not required to be made. This is the softest treatment of information provided by the statute; the use of the words 'tend to show' and 'reasonable' belief without the requirement of allegations being made all point in that direction.

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However, once one goes outside the immediate confines of the employment relationship and to an outsider, here the GMC, additional layers of responsibility are required upon the discloser. The information must in the reasonable belief of the discloser be substantially true. There is no obligation to make allegations but if they are made they too must in the reasonable belief of the discloser be substantially true. Both information and allegations must fit that criterion. Here on the facts found by the tribunal they did not. If we were required to decide this matter it would not be sufficient to show that a matter was believed to be substantially true when a number of the allegations were not so believed."

III 84. Mr O'Dempsey submitted that the Tribunal should distinguish ***Hassan***. He pointed out that the case was not a s.43F case, and the claimant failed on other grounds. That

is correct, and (perhaps a little curiously, as the Employment Judge was counsel for the respondent in it) ***Korashi*** is not cited in the Employment Tribunal judgment. The Tribunal takes the point that ***Hassan*** may be of very limited assistance, but the principles set out in ***Korashi*** are the relevant ones to which the Tribunal has to have regard.

viii).The claimant's submissions on Korashi.

III 85. At paras. 547 to 564 of his responsive submissions Mr O'Dempsey addresses the ***Korashi*** case. He submits that it does not cause any problems for the claimant. He argues that this point does not appear to be foreshadowed in the List of Issues. The agreed list does not indicate that the respondent was going to be arguing this point at all. He submits:

"548. Korashi is predicated on having already identified the "protected disclosure" relied upon in a certain way. What was relied on there by C was the disclosure to the GMC as a whole and not specific items within it.

549. In any event C did contact R, and the PCC, before going to the IPCC. C has to show that the information he relies upon was objectively reasonable for him to believe. It was a case pre-eminently concerned with good faith. Motive was therefore important in that context.

550. It is submitted that even taken at its highest (which is inappropriate), Korashi does not cause a difficulty for C (as per submissions above). The analogy between material that a consultant surgeon could access in relation to the points made in Korashi, and the material that a police officer in C's position could have access to is not a strict analogy.

551. In relation to the obiter remarks cited by R in Korashi, it is important to note that Mr Wallington QC's analysis was predicated on "a disclosure" made by scattergun. It is therefore necessary to define what the disclosure is before looking at the allegations within it to determine whether in that disclosure a scattergun approach is adopted. That in turn requires defining the putative protected disclosures as was done in the present case in case management.

552. It is submitted that even if Mr Wallington QC's approach was adopted, this does not mean that if a very important disclosure was made but the ET considered that it was housed in the disclosure that was made with other allegations where the ET thought there was not a reasonable belief by C in their truth, the important disclosure is automatically infected by this. It is not the overall reasonableness of the discloser's behaviour or overall beliefs that are in question, but whether in relation to a disclosure, the discloser had reasonable grounds for believing in the substantial truth of the information in it.

553. If, to use Mr Wallington QC's apparent example of one point which qualifies but nine that do not, this tells the ET nothing about the status of the one. Nor was that the

submission of Mr Wallington QC. His submission was about the infectivity of the one allegation towards the nine, and not (as R seeks to argue) the nine in relation to the one.

554. Mr Wallington QC's point was that if there is a disclosure (which C argues needs to be defined in accordance with the statutory wording) and if that disclosure is by scattergun including one which qualifies under s 43G (not 43F), this does not indicate that the non-qualifying allegations within that disclosure are substantially true.

555. That is a matter of common sense. The issue in this case is not whether C believed that the allegations within the individual disclosures were substantially true, or whether as R denied in pleading that they were substantively true, the issue identified in the list of issues between the parties is whether C had a reasonable belief that they were substantially true.

556. It must however be a matter of degree. Parliament it is submitted cannot have intended that if in relation to even one allegation (relating for example to a comparatively trivial matter) C did not have a reasonable belief, then he should not be protected at all, despite raising very serious matters which were plainly in the public interest. The Korashi obiter statement recognizes this because it does not say that. Instead what is said is "Both information and allegations must fit that criterion." (must in the reasonable belief of the discloser be substantially true) "Here in the facts found by the ET they did not. If we were required to decide this matter it would not be sufficient to show that a matter was believed to be substantially true when a number of the allegations were not so believed". The principle being put forward in the obiter remarks was not that each and every allegation must be in the reasonable belief of the disclosure, substantially true, if that had been the principle it would be easy to say "it would not be sufficient to show … when one of the allegations was not so believed". In accordance with the protective aim of the legislation therefore the proper approach is to adopt a balanced approach, including the significance of the allegation and information amongst other things.

557. In relation to the disclosures which this case concerns it is submitted that in each case C shows a reasonable basis for his beliefs, and even if R could show in relation to matters which are not said to be protected disclosures by C, that he did not have a reasonable belief in their truth, this would make no difference whatsoever.

558. R was responsible for defining the basis on which R puts its case and did not do so in the list of issues to indicate that this was an issue between the parties."

III 86. The Tribunal cannot agree with all of Mr O'Dempsey's para. 555, which follows on from his para.554. In that paragraoh he is referring to the effect of one allegation in a "scattergun" disclosure satisfying the test, and how that would not save the other allegations. He is right that the issue here is indeed whether the claimant reasonably believed in the substantial truth of any allegations contained within the information that was disclosed and is relied upon as amounting to a protected disclosure, but he has to have that belief in respect of any of the allegations or the information conveyed by him It is the effect of any unbelieved allegations in scattergun disclosures which is at issue.

III 87. This debate has echoes of the debate above in relation to the List of Issues. The Tribunal's view is that in order to assess whether the claimant has made any protected disclosures it is entitled, nay, obliged, to consider what information the claimant disclosed, and then whether that amounted to a protected disclosure. Whilst accepting the claimant's right to plead what he relies upon as constituting any of his disclosures , the Tribunal does not consider that it can be precluded from determining what information he disclosed in totality, and then assessing it to see if it amounts to a protected disclosure. That must be the case, as otherwise, as previously observed, the provisions of s.43F(1)(b)(ii) could be circumvented by a claimant simply declining to rely upon any information that was disclosed which did not satisfy the requirement that the claimant had the requisite belief in the substantial truth of each of the allegations made.

III 88. The Tribunal's view is that there is little controversy here. Whilst the EAT in ***Korashi*** did not have to decide this issue, so its judgment in this regard is *obiter* , it accords with common sense, and has been approved by the learned authors of Whistleblowing Law and Practice.

III 89. The extent to which the claimant has to show that he had a reasonable belief in any of the allegations contained in his disclosure is one of degree, and as discussed in the caselaw, lack of reasonable belief in a minor aspect of the allegations made ought not to be fatal to the disclosure relied upon particularly taking a purposive approach to encourage and support whistleblowers in the workplace. A qualitative , rather than a quantitative , approach would be more appropriate, the Tribunal considers. That said, the more stringent provisions of third tier protected disclosures do mean that there can be bear-traps for the unwary, and whistleblower who makes such disclosures needs to be rather more circumspect than one who only makes such disclosures to his employer. A minor slip may not vitiate a potentially protected disclosure, but one that is more than minor must be capable of having that effect, or the wording of s.43F would be of no effect. The Tribunal must therefore look at all of the allegations which it considers constituted the information disclosed which is relied upon as amounting to any of the claimant's pleaded 19 protected disclosures.

ix).Effect of lack of pleading of want of reasonable belief.

III 90. Another issue, again by reference to the List of Issues, relates to whether the respondent needed to plead lack of reasonable belief on the part of the claimant . It is submitted that it was not open to the respondent to raise this issue now, and that the claimant was not cross – examined upon all these aspects of his alleged lack of reasonable belief.

III 91. Mr O'Dempsey, for the claimant , however, contends that the Tribunal is not permitted to undertake this exercise, because of the lack of pleading of this issue by the respondent in the response(s), or any subsequent iterations of them.

III 92. This submission, however, overlooks the fact that in the case of each disclosure, the List of Issues contains a paragraph (e.g.para. 13 in respect of PD1.1) in these terms:

In relation to the disclosure to the IPCC , did the claimant reasonably believe that the information disclosed, and any allegation in it, were (sic) substantially true?

III 93. That is, of course (save for the grammatical error and omission of the word "contained") , the wording of s.43F(1)(b)(ii). To the extent to which the List of Issues became, on both sides, their pleaded cases, this issue clearly was pleaded.

III 94. In terms of the burden of proof , on this aspect – i.e of proving that the claimant had made any protected disclosure, as opposed to causation of any detriment or dismissal – there is surprisingly little authority or commentary. This may be because it is taken as axiomatic that the burden of proving that he made any protected disclosure must lie upon the claimant , and that the burden of proving that he had the requisite reasonable belief must also rest with him. Like all such "axiomatic", or "trite law" propositions, one can often struggle to find support for them.

III 95. The judgment in ***Korashi*** , however, quite fortuitously, provides assistance in this regard, as at para. 32 HHJ McMullen said this:

"…..It is common ground that the approach Mr Stanworth and I took in the EAT in ***Boulding v Land Securities Trillium Ltd [2006] All ER (D) 158 (Nov)*** *is correct.*

'24. ... The approach in ***ALM v Bladon*** *is one to be followed in whistleblowing cases. That is, there is a certain generosity in the construction of the statute and in the treatment of the facts. Whistle-blowing is a form of discrimination claim (see* ***Lucas v Chichester [2005] All ER (D) 92 (Feb)****). As to any of the alleged failures, the burden of the proof is upon the claimant to establish upon the balance of probabilities any of the following.*

(a) there was in fact and as a matter of law, a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on.

(b) the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.'

III 96. Whilst the case to which HHJ McMullen was referring was a s.43B case, we consider that these dicta would be equally applicable in a s.43F case, and support the contention that the burden of proof in terms of proving that any protected disclosure was made rests with the claimant. To confirm the position, in ***Babula v Waltham Forest College [2007] ICR 1026*** Wall LJ said, at para. 74 of his judgment:

"It seems to me that in each of the instances identified in the six subsections, the whistleblower has to establish a reasonable belief that the information being disclosed 'tends to show' one or more of the situations identified in s.43B(1)(a) to (f)."

III 97. The List of Issues clearly puts the claimant's reasonable belief in issue. If the respondent has not cross-examined upon every aspect of it, that is his concern, he accepts the consequences. If the claimant , however, upon whom this burden lies, has not , in any particular instances, adduced sufficient evidence to satisfy it, that is a matter for him and his legal team. Whether the respondent advances , through cross – examination or otherwise, a positive case on lack of reasonable belief is of no consequence. If the claimant fails to satisfy the burden upon him in respect of any aspect of any pleaded protected disclosure , that disclosure will fail.

x). The public interest test.

III 98. In respect of each disclosure the claimant will have to show that he reasonably believed that it was in the public interest to make the disclosure. The correct test to be applied was confirmed by Underhill LJ in the Court of Appeal in ***Chesterton Global Ltd. and another v. Nurmohamed [2018] ICR 731***. The guidance has been interpreted and summarised by the EAT in ***Dobbie v Paula Felton t/a Feltons Solicitors [2012] IRLR 679*** . HHJ Tayler said this:

There are a number of key points I consider it is worth extracting from Underhill LJ's reasoning (in Chesterton) , and re-emphasising:

(1) the necessary belief is that the disclosure is made in the public interest. The particular reasons why the worker believes that to be so are not of the essence

(2) while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it – Underhill LJ doubted whether it need be any part of the worker's motivation

(3) the exercise requires the tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest

(4) a disclosure which was made in the reasonable belief that it was in the public interest might nevertheless be made in bad faith

(5) there is not much value in trying to provide any general gloss on the phrase "in the public interest". Parliament has chosen not to define it, and the intention must have been to leave it to employment tribunals to apply it as a matter of educated impression

(6) the statutory criterion of what is "in the public interest" does not lend itself to absolute rules

(7) the essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest

(8) the broad statutory intention of introducing the public interest requirement was that "workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers"

(9) Mr Laddie's fourfold classification of relevant factors may be a useful tool to assist in the analysis: i. the numbers in the group whose interests the disclosure served ii. the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed iii. the nature of the wrongdoing disclosed iv. the identity of the alleged wrongdoer

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

28 There are a few general observations I consider it worth adding:

(1) to (7) (not cited)

(8) while motivation is not the issue; so that a disclosure that is made with no wish to serve the public can still be a qualifying disclosure; the person making the disclosure must hold the reasonable belief that the disclosure is "made" in the public interest. If the aim of making the disclosure is to damage the public interest, it is hard to see how it could be protected. Were a worker to disclose information to his employer, that demonstrates that it is discharging waste that is damaging the environment, with the aim of assisting in a coverup, or to recommend ways in which more waste could be discharged without being found out; while the disclosure would otherwise be a qualifying disclosure, it is hard to see how the disclosure could be "made" in the public interest. The fact that a disclosure can be made in "bad faith" does not alter this analysis. A worker might make public the fact that the employer is discharging waste because he dislikes the MD, and so is acting in bad faith, but nonetheless hold the reasonable belief that making the disclosure is in the public interest because the discharge of waste is likely to be halted. Generally, workers blow the whistle to draw attention to wrongdoing. That is often an important component of why in making the disclosure they are acting in the public interest.

29 Disclosures about certain subjects are likely to be "made in the public interest"."

That will be the test that the Tribunal will apply.

xi).Meaning of "belief".

III 99. Before embarking upon our examination of each PD, we will finally emphasise that the test to applied in each instance , i.e whether under s.43B or s.43F, is of reasonable belief. That is more, as was observed by Lord Summers in ***Kirby v. Glasgow Caledonian University (UKEATS/0021/18/JW)*** (at para. 32 of the judgment) than reasonable suspicion, which is not enough. ***Chapter IV: Findings upon the disclosures.***

Chapter IV: Findings upon the disclosures.

i)The claimant's evidence and credibility issues.

IV 1 .Before making its findings on whether the claimant made any protected disclosures, the Tribunal will set out some of the considerations it has taken into account in determining whether the it can safely rely upon the claimant's evidence. His credibility, in the widest sense of the word is central to these issues, as the burden of proving what he believed, and that his beliefs were reasonable, for these purposes, rests solely with him.

IV 2. Mr Gorton's Final Submissions contain a substantial section on this topic (pages 4 to 48) . He starts off by referencing general principles to be applied when a Court or Tribunal is considering evidence, citing Chapter 45 of *Phipson on Evidence,* and the judgment of Leggatt J. in the case of ***Gestmin SGPS SA v Credit Suisse (UK) Ltd. [2013] EWHC 3560 Comm*** . He invites consideration of the nature and reliability of oral

and documentary evidence generally. He then goes on to make specific points against a "checklist" of matters taken from *Phipson* namely:

(1) the consistency or otherwise of the witness's evidence with what is agreed, or clearly shown by other evidence, to have occurred;

(2) the internal consistency of the witness's evidence;

(3) consistency with what the witness has said or deposed on other occasions;

(4) the credit of the witness in relation to matters not germane to the litigation;

(5) lies established in evidence or in the context of the proceedings;

(6) the demeanour of the witness;

(7) the inherent probabilities of the witness's account being true.

65. Under inherent probabilities (7) there are 17 helpful indicators:

A long list of indicators of a not credible and unreliable witness may be given, some of the most common ones are as follows:

(1) evasive and argumentative answers;

(2) tangential speeches avoiding the questions;

(3) blaming legal advisers for documentation (statements of case and witness statements);

(4) disclosure and evidence shortcomings;

(5) self-contradiction;

(6) internal inconsistency;

(7) inconsistency with contemporaneous documents;

(8) shifting case;

(9) new evidence; and

(10) selective or absence of disclosure.

To this list can be added some more equivocal and subjective indicators:

(11) getting flustered at difficult questions;

(12) giving incredible detail and making things up on the spot;

(13) changes in demeanour and signs of being uncomfortable when giving certain answers;

(14) answers which are inherently incredible and contrary to sense;

(15) making uncorroborated allegations of fabrication;

(16) wild speculation;

(17) scripted and well-rehearsed witness.

IV 3. With the exception of (17) , which Mr Gorton accepts does not apply to the claimant's evidence, he goes on to set out several specific instances where it is argued that the claimant has given evidence which is either not reliable, or is untruthful, and which is not the result of any confusion or lack of complete recollection.

IV 4. It is not proposed to set out again here all the matters that are relied upon in relation to credibility and reliability in the Final Submissions, as many will be considered in the context of the Tribunal's examination of the individual protected disclosures, and detriments, but two major examples of where the respondent contends that the claimant has gone further than simply not having recalled, or having been vague, or confused in his evidence, but has lied, are in relation to DSupt. Peter Marsh (relating to PD3.5) , and what he alleges he told the claimant about the investigation being a murder investigation , and Operation Nixon , where he relied upon information from a Confidential Unit, for the first time , in his evidence before the Tribunal.

IV 5. In relation to the former, the claimant , we accept, added in his oral evidence, an allegation that DSupt. Peter Marsh (whom he did not call) had told him that the death of the Hungarian male , the investigation into which by DCI Worth is the subject matter of PD 3.5 , was being investigated as a murder, when the documentary evidence shows that this was not the case. That was a possibility, but the Coroner had not returned the investigation "as a murder", nor was that the immediate assessment that DSupt. Peter Marsh made, as shown in the documentary evidence of his report of 14 January 2014. This will be discussed further in the discussion of PD3.5 below.

IV 6. In relation to the latter, the claimant has, he accepted, given different accounts on different occasions as to whether , firstly, the 13 year old boy involved in Operation Nixon, was at risk of sexual assault, or was actually sexually abused by the nominal under investigation, and secondly whether that nominal went on actually to rape a 15 year old boy. As will be seen , the claimant changed his account, and accepted that he gave different accounts for different audiences. The suggestion that he had obtained information from a Confidential Unit was not made until his evidence on 16 January 2022, in cross – examination.

IV 7. We find there is considerable force in the respondent's Submissions, and these are indeed instances where the claimant has overstated the facts, and made allegations for which there was no foundation.

IV 8. Another factor relied upon, is the claimant's failure to mention the Family matter (the subject of PD3.3) for over 18 months, only raising it in his PDR3 document in

January 2014. Mr Gorton took the Tribunal through the history of these allegations, and invites the Tribunal to question why this was.

IV 9. Mr Gorton also relies upon the absence of certain matters from the claimant's evidence, in particular his first witness statement. He points out, correctly , that whilst this is said to be full and comprehensive, and runs to 226 pages, it omits the following:

The claimant's promotion board held on 13 January 2010

The claimant's application of 9 June 2011 for the Regional Crime Squad application when ACC Sweeney was chair of interview panel

His application to join Operation Warrior in 2012 when he was supported by Darren Shenton and Simon Barraclough when DS the former was allegedly only supporting those in his 'tribe'

His application to West Yorkshire Police on 29 November 2012 with support from Darren Shenton and ACC Heywood

The fact that he had previously in his very first Employment Tribunal claim attributed his lack of promotional success to sex discrimination in July 2012, that claim being about the claimant not getting promoted whereas DCI Worth was.

The significant assistance provided to him by ACC Copley and Russ Jackson in 2013 which is in effect "air brushed" out of existence in his witness statement. Having sent his grievance to ACC Copley on 10 September 2013 ,she agreed to a meeting and then a subsequent meeting on 26 September and a further meeting 8 October 2013 involving Russ Jackson from which a package of development measures to ready the claimant for promotion was agreed.

His application to the 7 November 2013 Supt. promotion board with help, counselling and guidance from Russ Jackson, and the fact that he was interviewed and failed the Board (with Supt. Donnellan part of the Board).

The failure to mention that Russ Jackson and ACC Wiggett had supported him in remaining in the pool and continuing as head of MIT in September 2015

IV 10. All of these are facts, and potentially highly relevant ones, but the claimant has omitted any reference to them in his witness statement, thereby painting an incomplete and partial picture of the way in which he had been treated . This , it was submitted, was because the claimant felt that these matters would not advance his case, and he was being selective.

IV 11. Whilst the claimant has, in this aspect, and others, sought to blame his legal representatives (of which he has had 6 individual lawyers , but has had the same firm represent him, and Mr O'Dempsey has been his counsel since at least November 2019) this too is a factor on Mr Gorton's "checklist" , as a potential flag for dishonesty or unreliability of a witness. The Tribunal would add to that the fact that the claimant's witness statement is dated 6 August 2021. The omitted matters were all in the claimant's knowledge, and indeed , in relation to the first ET claim, his solicitors' knowledge , as

the respondent , in his response to the first of these claims , expressly, in para. 6 of the Grounds of Resistance to these claims , on 3 October 2014 (page 63 of the bundle) referred to that claim , which had been withdrawn. The claimant's failure to mention that claim at all in his witness statement, when it related to some of the same issues he raises as protected disclosures in these claims, is very odd. It leads the Tribunal to the conclusion that this was deliberate, as the claims made in that first claim were of sex discrimination, and related to the promotion of DCI Worth, about which the claimant has made some of the disclosures relied upon in these claims. The Tribunal is also troubled by the other omissions highlighted by the respondent, and does indeed consider that these omissions , whether deliberate or not, considerably undermine the claimant's credibility, and support an inference of a lack of candour in his evidence.

IV 12. Whilst not accepting all of them, in many respects the Tribunal considers that the respondent's points are well made, and he has advanced cogent arguments for the Tribunal approaching the claimant's testimony with a degree of caution.

IV 13. For the claimant , Mr O'Dempsey submitted that the claimant , a distinguished and experienced senior detective, who was widely respected by his colleagues, was not, and should not be found to have been, dishonest, or unreliable, in his evidence to the Tribunal. He had relied upon information from trusted colleagues, and was entitled to take it at face value. In his oral submissions, Mr O'Dempsey invited the Tribunal , repeatedly , to reject any notion that the claimant was "making stuff up". This was, of course, a response to the respondent's submissions that he was doing so, at least in some instances. Mr O'Dempsey argued, correctly, that much, perhaps 95%, it was hard to put a figure on it, of what the information he conveyed was correct , and could be shown to be true. That, however, is not the point. As will be seen , in the case particularly s.43F disclosures, that is not enough. If the claimant did not have a reasonable belief in even 5% of any disclosure, that is potentially fatal. Mr O'Dempsey is doubtless seeking to rely upon the reliable aspects of the claimant's disclosure to support other aspects where there is less corroboration or support for what he disclosed.

IV 14. A stark feature of the claimant's case on his protected disclosures is that in most instances the claimant has given as sources of his information, either his own knowledge, some identified officers or persons, or other unidentified officers or persons. In the case of the latter, he was largely unable to provide details of who these persons were , and in one case he was able to, but unwilling to do so. This led to the creation , at the request of the Tribunal, of the Table showing his sources of information, which is contained at pages 359 to 362 of the respondent's Final Submissions. Of these he called Rick Mortimer, Shaun Donellan, Kevin Dolan and Graham Brock.

IV 15. His own witness statement is very sparse on details of what he was told by his informants. His evidence of what he was told, before he made his disclosures, is therefore highly germane. In no instances has the claimant produced any note or record of what he was told verbally by his sources, and when.

IV 16. This is surprising, to say the least. The claimant was, as was clear from all the evidence , a highly experienced and effective detective, who had led many serious and extensive criminal investigations. He was well aware of the need for note taking, and record keeping. The Tribunal expected , particularly once he was in conflict with the

respondent, which began in 2012, if not earlier, that he would have kept some notes or records of significant events and conversations. He did not, or, if he did, he has not disclosed these to the Tribunal. This is particularly relevant in the many instances where he claims to have been given information by others which was purely verbal , and which was then relied upon by him for his protected disclosures. None of these conversations have been documented by the claimant . True it is that the claimant sent extensive emails during the last 4 years of his service, in which he set out , often quite repetitively, the information that became his protected disclosures, but this was often considerably after the event, and in none of this material does the claimant record or recite precisely what he had been told and by whom.

IV 17. This is even more surprising , quite apart from the general expectation that the Tribunal has of a senior and experienced detective, because of the evidence that was before the Tribunal from Tom Elliott, one of his Fed. reps., in answer to questions from the Tribunal (in fact about the meeting at which P C Rothwell was his new Fed. rep. following the suspension of Tom Elliott) that the claimant was regarded as an extensive notetaker, the word “meticulous” being used.

IV 18. Further, the evidence of Kieran Murray in his IPCC witness statement (page 6924 of the bundle) was that the claimant had been advised, as one would expect, by the Federation to “commit to paper” what had been discussed about Operation Nixon . It is also clear from that statement that the claimant and the Fed. sought advice from the Fed.’s solicitors, whom we would also have expected to encourage notes or other record making. This become very significant the further into the process the claimant went, but despite making disclosures about matters which he claims he was told about in 2012, and even in late 2013, the claimant took , or can produce no, notes of the conveying to him of that information.

IV 19. In addition to the matters referred to in the respondent’s Submissions , there was one particular aspect of the claimant’s evidence which caused the Tribunal to have considerable reservations about it. That was in relation to DI Kay Dennison. She was a witness for the respondent, and was referred to by the claimant in his disclosure PD1.9 in which he alleged that she contacted him during the hunt for Dale Cregan to ask him to provide officers to relieve other officers who had been assigned to keep observations outside a property which was associated with Dale Cregan. The details will be considered in the Tribunal’s discussion of that PD, but , Kay Dennison having made reference in para. 3 of her witness statement of 28 July 2021 to some previous professional involvement with the claimant , the claimant then made a second, 49 page, witness statement, undated , but clearly after witness statements had been exchanged, in which at paras. 16 to 18 he stated that when he interviewed her for a post she had applied for in MIT in 2007, she had referenced a case in Manchester City centre, in which she claimed to have had some involvement, but which the claimant , who had been the SIO on the case, stated in his second witness statement that she had not . He, in effect, accused her of lying in that interview. After prolonged cross - examination about this, the claimant accepted that he had been wrong, she had been involved in that operation, and that she had not made any such false claim. This was , in our view, significant, and was an indication of the claimant’s readiness, even at a late stage in the proceedings to make (without any reservation or qualification) serious allegations against a colleague , from which, in effect, he was obliged to back down.

IV 20. There are other instances in the evidence where the claimant was dismissive of any errors in the details of what he had disclosed. Whilst these will be discussed in the course of our consideration of the individual PDs below, a stark example is PD3.3 , where the claimant alleged that ACC Sweeney had "turned out" DCS Shenton to an incident, when it was clear that DCS Shenton was not "turned out" at all.

IV 21. Turning to the second medical report that was submitted on behalf of the claimant, that dated 18 January 2022, this appeared to be evidence upon which the claimant may have been seeking to rely to explain any deficiencies in his evidence, as the instructions given to Dr Appleford on 14 January 2022 were :

"I am contacting you to ask if you are available to provide an urgent further report in relation to Peter Jackson, to answer the following questions based on the material that you have already seen and the conclusions you have reached having interviewed Mr Jackson.

Those questions are as to what impact the identified conditions would have had on Mr Jackson's:

1. ability to concentrate, read and absorb large volumes of information in the period from 2018 to date; and

2. recall that information and otherwise prepare to give evidence in his tribunal claim (where he commenced giving evidence on 1st December 2021)"

IV 22. Dr Appleford goes on to then express an opinion in response to the questions he was asked. This Report, however, is not agreed, and has not been added to the Bundle. Its status is therefore uncertain, and the respondent would object to the Tribunal using it to assess the claimant's credibility. Mr Gorton's Final Submissions, at para.71 (page 13 of that document) in relation to the issue of credibility do refer to the medical reports, and the need to be sensitive to the claimant's vulnerabilities and stress, but he goes no further than that.

IV 23. Further, and perhaps more tellingly, Mr O'Dempsey has not, in his written or oral Submissions sought to refer to , or rely upon, this second Report in connection with how the Tribunal should approach the claimant's evidence. The Tribunal accordingly will disregard it for these purposes. In any event, at its highest, whilst it may negate any inference of dishonesty in the claimant's evidence that the Tribunal may be invited to draw, it does not make any difference to the reliability of the claimant's evidence, it merely provides a possible explanation for any deficiencies in it, as an alternative to a finding of dishonesty. To the extent that the Tribunal would always have to weigh up the evidence, and consider the claimant's explanations for any deficiencies in it, this Report was never likely to be of much assistance to the Tribunal in carrying out that function, and has not, in the event, probably for that reason, been relied upon for this purpose.

IV 24. The Tribunal does not have to be satisfied that the claimant was "making stuff up", merely that he did not have a reasonable belief in what he had disclosed. It is, of course, part of the respondent's case that the claimant was, at least in some of his evidence, doing precisely that. The two are not the same. If, of course, a person has

made something up, and repeats it, they cannot have a reasonable belief in what they then convey. The converse , however, is not the case. One does not have to have invented something to lack a reasonable belief in it. A person may be told something by another person, which is not correct, but does not question it. A person, for example, may be told something , or have a belief about something, that involved three people in wrongdoing, but in fact only two were involved, but some pre-conception or assumption has operated upon the mind of that person, and they have formed this belief. They have not made anything up. In short, whether a belief is reasonable or not is not dependent upon any finding that the claimant made anything up, it will be determined in all the circumstances known to him at the time he made his disclosures.

IV 25. That said, the Tribunal has had to decide whether , in some aspects , the claimant's evidence has not only been unreliable, but that it has been dishonest. That the core facts of the matters that the claimant disclosed were correct is, of course, important, but , as will be seen, that is of little assistance to him in determining whether he had, particularly for the purposes of s.43F, a reasonable belief in the information that he conveyed and each allegation contained in it.

IV 26. The Tribunal has been struck, through the course of the claimant's evidence, and indeed his written communications going back to 2012, by his tendency to dramatise, intensify, and exaggerate matters. At the very outset of his PDR1 document disclosed to the IPCC, for example, he said that the respondent had "failed to investigate" the matters that he had raised, and that "In sum, the issues raised have been ignored". That was, of course, a gross exaggeration. The issues raised had not been resolved to his satisfaction, a number of officers had not been interviewed, but as the "Tracker" document prepared by DSupt. Savill (pages 5339 to 5567 of the bundle) which was provided to the IPCC reveals, the issues had not been ignored. The significant attempts to engage with the claimant about his "disclosures" by , in particular, ACC Copley, among others, are therein set out. This must have come as some surprise to the IPCC when it was received, as the picture painted by the claimant in his PDR documents gave no indication of the respondent's responses to the issues that he had raised.

IV 27. The claimant has been described, although he does not accept this , as being angry, perhaps, of course, with good cause. The Tribunal can accept that he did so present on occasion. The strength of his feelings have been documented in, for example, the observation of Kieran Murray in his witness statement to the IPCC (page 6924 of the bundle) that he wanted to "blow GMP out of the water" , and the references he also made (we find, although he disputed them) to bringing a tsunami down on GMP, and bringing down SLTs. He has also been described, which he would not necessarily disagree with, as being somewhat "black and white" in his views, and to have the view that colleagues were either for him or against him. He has, he would agree , a strong moral compass, and is passionate.

IV 28. The Tribunal considers that , whilst perhaps with mixed intentions, and to advance what he saw as his cause of righting the various wrongs that he considered had been perpetrated all around him , his perceptions and communications have on occasion been influenced by his passion. His sense of injustice in terms of his personal treatment, and in the wider sense , has come with the expense of balanced examination and accurate onward communication of information that he had received. That is a charitable

view, but there is another, which is less benign , and inclines to a conclusion that the claimant, on occasion, has deliberately sought to mislead the Tribunal in some parts of his evidence.

IV 29. We would not go that far, but for a number of reasons, which are set out in more detail in the discussions below, the Tribunal has found that the claimant's evidence on many aspects of his claims is simply not reliable.

IV 30. That is not to say that the respondent's witness evidence is not to be scrutinised, and is to be accepted without demur. This part of the judgment, however, relates to the determination of the issues of whether the claimant made any protected disclosures, as to which his evidence is central. Whilst some of the evidence adduced by the respondent is relevant to these issues, it is much less so, and will be considered at the appropriate junctures below.

ii)The Tribunal's general approach to the protected disclosures.

IV 31. The Tribunal accordingly has taken the approach to the disclosures set out in Chapter III above, and that unfortunately means that it will be necessary to rehearse the totality of what the claimant disclosed in each instance in order to assess whether he has established that any given disclosure amounts to a protected disclosure. This is the only way to assess the totality of the information disclosed in each disclosure, and avoids the need for continual cross – references to different documents. Against that background, the Tribunal will make its findings of fact in respect of the protected disclosures, and then whether the claimant has established that any of his alleged PDs satisfy the tests for protective disclosures. In the ensuing paragraphs, where all 19 PDs are examined, in order to assist navigation, paragraph numbers will be prefaced by the identification of the PD being discussed. Whilst this is a little cumbersome, it avoids ever ascending enumeration, and should make referencing quicker and easier.

Group 1:

1.Protected disclosure 1.1: Corrupt promotion of DCI Scally in early 2011 (and the claimant's information contained in this and other disclosures that the respondent corruptly and cronyistically over – promoted DCI Scally (and in other disclosures DCI Snowball and DCI Worth) ,

i)The pleaded disclosure (with the extracts omitted from the List of Issues added with underlining):

Information disclosed: In early 2011 ACC Sweeney promoted DCI Dominic Scally to the role of Temporary Detective Superintendent (which role included the function of SIO on more critical and serious investigations) within the Force Major Incident Team (MIT) because of favouritism, without the position being advertised or any selection process taking place and notwithstanding the fact that DCI Scally did not have major crime experience or a major crime background. This was cited as one example of a culture of cronyism and corrupt practices, whereby officers were advanced into positions for which they did not have the requisite skills and experience because of close relationships with senior officers (other specific examples are referred to below).

PD 1.1. was set out at paragraphs (viii) to (ix) of PDR1 , under the heading "(B) When 'cronyism goes badly wrong ! Operation Nixon" , which stated as follows:

(viii) Early in 2011 Dominic Scally was a Chief Inspector in GMP when he was promoted into the role of SIO/Temporary Detective Superintendent within the Force Major Incident Team. The position was not advertised and no selection process took place. Mr Scally was placed into the position on account of his close relationship with ACC Sweeney, (who also has a close relationship with DCS Shenton and ACC Heywood. The relationship of these three senior officers is significant to a number of the disclosures made within this report).

(ix) TD/Supt Scally did not have major crime investigative experience and there were other more suitable candidates with relevant investigative backgrounds and experience who did not get the opportunity to apply for the role. TD/Supt Scally had also failed at the first stage of the last two formal promotion processes, which has been suspended since March 2010. Questions have to be asked about how Mr Scally came to be a TD/Supt in the Major Incident Team and why a fair, impartial and transparent selection process was not undertaken.

Para.12 of the List of Issues (page 265D of the bundle) sets out that the claimant says he reasonably believed that this information tended to show (a) that there had been a failure to comply with or one or more legal obligations, namely (i) the duty to protect the public and prevent crime; and/or (ii) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of honesty and integrity; duties and responsibilities and discreditable conduct; and/or (b) that the health or safety of any individuals, namely the general public, had been endangered.

Relevant facts:

PD1.1: 1. Dominic Scally joined GMP in 1992. His full career history up to 2012 is set out at pages 1811 to 1812 of the bundle, and summarised at pages 5595 and 5596 of the bundle in the findings of the IPCC. In summary, by 2003 he had been promoted to Chief Inspector at Salford , where he worked in CID, completed his SIO course, and led two homicide investigations. From 2006 to 2009 he worked as a DCI in the Serious and Organised Crime Group ("SOCG"). He had responsibility for the Force Economic Crime Section, which included Fraud, Money Laundering and Cash Seizure Teams and the Force Drugs Unit. He was one of a number of DCIs within the SOCG. During this period he was chosen to be the Temporary Detective Superintendent for SOCG for 3 months cover for sickness. He was responsible for complex and large scale investigations into organised crime groups, using a wide range of overt and covert policing tactics. SOCG also provided response to kidnaps and crimes in action, as well as critical manhunts. He was SIO for a number of such investigations including the successful manhunt for Lee Amos and Colin Joyce (two notorious gang members). He continued in that temporary rank on Operation Storm . From 2010 to 2011 he reverted to DCI on the Manchester Metropolitan Division. He was responsible for Crime Investigation and Criminal Justice. During this post he was the divisional representative on MAPPA 3 panels for high risk offenders resident on the division. He had some major

crime investigation experience, possibly not as much as the claimant, or other potential candidates, but the claimant was incorrect when he stated that TD/Supt. Scally "did not have major crime investigative experience". The claimant had not seen , and was not aware of, TD/Supt. Scally's career history at the time he made his disclosures to the IPCC.

PD1.1: 2. In January 2010 there was a promotion process for the rank of (substantive) superintendent. The claimant and Dominic Scally both applied , and both were unsuccessful . ACC Sweeney was involved in the process, as a member of the COG, but neither the claimant nor DCI Scally, as he then was, were appointed.

PD1.1:3. The promotion process since 2011, and possibly earlier, had been in a state of flux in recent years as it adapted to the changing priorities, and the changing economic and staffing situation of the Force. The expectations of each rank had continued to evolve, and previous routes to promotion may not have remained pertinent. Most significantly, there had been a considerable reduction in the opportunities available for promotion: this had affected officers at all ranks. As opportunities reduced and expectations changed, there was an expectation that those seeking promotion should continue to develop themselves and adapt to the changing requirements. An officer who was recommended for promotion previously, did not necessarily mean that they would retain that support indefinitely.

*PD1.1:*4. Further, within the Serious Crime Division, there had also been a considerable change in the management levels for major investigations. A few years previously , the role of Senior Investigating Officer was performed by Det/Supts, and there were more such positions to be filled. Since then, the SIO role had been passed to the DCI rank, and the Det/Supt roles have been reduced in number , and they were expected to undertake a wider range of strategic responsibilities. Across the Force, the number of substantive promotion opportunities had reduced considerably, as the overall size of the Force was reduced. Previously there have been frequent and regular assessment processes for substantive promotion. The need for temporary promotion had varied, but had generally been 'occasional' and ad hoc, with selection based on the specific needs of the individual post, e.g. local continuity or specialist experience. Because substantive promotions had been limited until the Force determined the future need and structure, a number of short-term vacancies had built up. There had consequently been a need for a more general process to fill several temporary vacancies. Substantive promotion processes usually involved a written application with line manager recommendation; this acted as a filter stage before progressing to an interview with a selection panel drawn from senior managers from across the Force.

PD1.1: 5. This was the case for the D/Supt expression of interest process that DCI Scally and the claimant both went through in 2010. Before the process, ACC Copley emphasised to divisional and branch commanders that there should be no automatic right of passage for those who wanted to be considered for promotion, and at a time when the available positions were limited and likely to be subject of close competition, commanders should only recommend those that they considered fully ready and of the highest standard.

PD1.1: 6. Applications were then forwarded with the divisional commander's recommendation to ACC Copley. These applicants were then considered against the available opportunities to select those with the most suitable experience to cover each individual position. Some posts required specialist experience, and therefore would not be appropriate for all those who had been recommended by their commander.

PD1.1: 7. This differed from a substantive promotion process, where selection was made by the interview panel to a single pool, from which all the available posts are filled. Being temporarily promoted was not a guarantee of success at a future substantive process, and not being recommended or selected for a temporary promotion this time did not preclude an officer from applying for substantive promotion in the future.

PD1.1: 8. There had also been a drive to reduce the level of bureaucracy attached to the promotion process and annual appraisal system. Previous promotion processes had required the presentation of lengthy accounts of 'evidence' alongside recent appraisal reports. It was difficult to draw comparisons across the wide range of roles and challenges in policing, and whilst a larger volume of reports and appraisals appeared to provide validation that was capable of independent evaluation, they all ultimately relied upon subjective assessment and line manager recommendations. For this process, candidates were required to produce a short account of their suitability for temporary promotion, highlighting their particular skills. This was supported by a short recommendation by their divisional commander. That recommendation was effectively based on overall performance, effectiveness, and experience to date. This method had been used for other selection processes, including temporary promotion, and the respondent's view was that it was an effective and efficient means of allowing an individual to 'express an interest' and for senior managers to make a selection. It was not, however, without its critics.

PD1.1: 9. The same process was applied across the whole Force, and the second stage of the process was intended to ensure that there was moderation and consistency between divisions/branches. An expressions of interest exercise for the role of T/Det Supt. was carried out in July 2011. Five (redacted) application forms are at pages 413 to 437 of the bundle. DCI Snowball and DCI Worth both also expressed interest, and their application forms are at pages 403 to 406 and 408 to 412 of the bundle respectively.

PD1.1: 10. Lesley Kewin, HR Delivery Manager, commented in her report sent to ACO Potts with her email of 2 January 2013 (pages 746 of the bundle, with the report attached at pages 750 to 753, clearly wrongly dated 2 January 2012, when it was 2013):

"There does not currently exist a written policy on selection methods for acting/temporary promotions. This has not been a significant problem in the past, but due to the reduced opportunities and from my recent experience on division , it would be one of my recommendations that a policy/procedural document is produced to assist SLTs in their decision making process and prevent further grievances."

PD1.1: 11. On 21 March 2011 Dominic Scally was appointed Temporary Detective Superintendent in the MIT. He was appointed SIO on Operation Nixon, which was already up and running, the following day. At the time he was working towards his PIP3 accreditation. The process whereby this occurred is not documented. The claimant

accepted in evidence that he did not know who had appointed TD/Supt. Scally, or who had been on any panel, or in any group , that had considered his promotion.

PD1.1: 12. The claimant first raised the issue of the cronyistic promotion of TD/Supt. Scally when he raised a grievance on 25 June 2012 about the failure of DCS Shenton to support him in his application for a temporary superintendent post which was advertised on 26 April 2012 (pages 527 to 536 of the bundle). It was referenced on the third page (page 529 of the bundle) of that document, but the claimant did not mention ACC Sweeney by name at all in that document. What he did say (at page 529 of the bundle) was:

"It is my view, and a view shared by many, that favouritism and cronyism is widely practised within GMP and that it is often the case that the closeness of a person's relationship with an influential senior officer is a more important factor in determining whether one gains promotion than your actual performance, experience, ability and skills. What I believe is of real concern is that the practice of favouritism and cronyism is seeing officers advanced into positions for which they do not have the requisite experience, skills and abilities and as a consequence I believe the Force and the public are being placed at risk."

PD1.1: 13. He then went on to refer to Operation Nixon (i.e the subject matter of PD1.2, to be discussed below) and the failings of T/Supt Scally in that operation, and (page 530 of the bundle) states : *"I think Op Nixon clearly demonstrates the negative consequences which can occur when persons are promoted into positions as a result of favouritism and cronyism rather than on the basis of their experience, skills and ability to perform the role."*

PD1.1: 14. The whole of this grievance relates specifically to DCS Shenton, and the claimant makes no specific linkage of the promotion of T/Supt Scally to ACC Sweeney's influence, nor does he suggest that it was ACC Heywood, as opposed to DCS Shenton, who was standing in the way of his own promotion.

PD1.1: 15. The claimant raised this grievance to Ch/Supt John Rush, on 2 July 2012, but the claimant was concerned that he may not be independent because of his association with DCS Shenton, so it was instead , ultimately, referred , as a Stage 2 Grievance to Ian Wiggett, a Temporary ACC. He met with the claimant on 8 August 2012 to discuss the grievance, and produced an outcome letter on 23 October 2012 (pages 651 to 664 of the bundle). As part of the grievance process T/ACC Wiggett interviewed Det/Supt Barraclough, DCS Shenton, ACC Copley, Justine Godwin (of HR) C/Supt Rush,and C/Supt. Rebekah Sutcliffe.

PD1.1: 16. In this letter ACC Wiggett set out his understanding of the promotion processes, and dismissed the claimant's grievances that he had not been promoted due to the unfair influence of DCS Shenton, in not supporting his application. He also addressed what he regarded as the fifth point made by the claimant in his grievance, the allegation that that there was a culture of cronyism, with DCS Shenton only supporting his favourites for promotion. He rejected that contention.

PD1.1: 17. The claimant appealed this outcome on 8 November 2012. His stage 3 appeal document is at pages 682 to 687 of the bundle. It is a wide – ranging document, which makes reference back to ACC Wiggett's outcome letter. In relation to the absence of a written policy on promotions, he says this (pages 683 and 684 of the bundle) :

"My observations on this are - there is no written policy document which people can refer to which explains the current promotion/selection process. What is clear is that officers have regularly been placed into positions with no EOI or selection process. Officers have also moved from one acting position to another with no EOI or selection process. In a number of cases officers have acted for extremely long periods of time and in some cases this amounts to years. There is no transparency in the process. People do not know how EOI's are marked and what the selection process is. I think I reflect the widely held view across the Force when I say that I have no confidence in the process and that the general perception is as I have said in my grievance report, that 'favouritism and cronyism is widely practised within GMP and that it is often the case that the closeness of a person's relationship with an influential senior officer is a more important factor in determining whether one gains promotion than your actual performance, experience, ability and skills."

At page 695, the claimant says this:

"In respect of T/D. Supt Scally my contention is that his continued support is due to his close relationship with DCS Shenton and other Senior Officers"

PD1.1: 18. On 10 November 2012 CS Caroline Ball, Divisional Commander , Bury, Head of Organisational Learning and Workforce Development ("OLWD") sent an email to a number of parties, headed "Selection of senior posts". She said this (page 693 of the bundle):

"I know most of you know the process and are often involved in working with your ACC in the selection but over the past couple of weeks I have had a number of queries about how we select senior posts.

The main queries relate to specialist or change type posts rather than territorial ones which I think are quite well understood.

Therefore I would be grateful if you could ensure your teams are aware of the process.

Firstly COG [Chief Officers' Group] *decide if they want to fill a vacancy or need to create one because of a business need. In the case of specialist or new we will advertise eg Pegasus and hub.*

The substantive ranks are e mailed first with the advert, which is an agreed position with association and federation. Where there are no successful applicants, COG will then select from the development pools.

As you know everyone in that pool has the support of their commander and ACC.

This keeps the process simple and the pools are refreshed annually in spring so that we can highlight someone who has improved and are ready for development. We know that

there is no guarantee that just because someone is in the pool they will get a temporary job.

Occasionally there will be a specific skill set required and a person not in the pool may be appointed in a temporary rank. As you know Dawn [Copley] *has told us all that this should be rare because we do have wide skill sets in the pools. Additionally she also pledged that where COG do have to do this then they will tell us and why".*

PD1.1: 19. She also sent a covering email (page 702B of the bundle), in these terms:

"Please see my message below which is our process for selection of senior specialist posts.

You must not veer away from this unless Dawn (then Zoe) has authorised it and Dawn is taking to COG next week. I would expect that you bring to me before ACC as you always do so that has not changed.

There have been a lot of issues recently that have caused consternation, confusion and sometimes anger because of differing processes."

PD1.1: 20. CS Ball (now Jones) was in post from early 2011, and found that the promotion processes were erratic for all ranks. She undertook work with ACC Copley, and Emma Bilsbury (the Assessment Centre and Career Progression Unit Manager) to make the process more transparent and fair. She did have issues with how ACC Sweeney managed the promotion processes, and changed them "to suit" as she put it in her witness statement. She went on to say that by this she was referring to his desire to be more pragmatic , and to expedite the process, rather than anything more untoward. She was aware of rumours that he had his favourites, often male officers. She discussed these issues with the Chief Constable, having received approaches from female officers about the DCI promotion process. The Chief Constable told her that he would support her in letting OLWD determine fair and transparent processes, once approved by the COG.

PD1.1: 21. The claimant's Stage 3 grievance appeal was heard by ACO Lynne Potts on 4 January 2013(see pages 755 to 757 of the bundle). There appears to be no reference to ACC Sweeney made during the appeal by the claimant (unless he was the officer named at para.16 of the notes on page 757). ACO Potts' outcome letter of 4 March 2013 is at pages 774 to 782 of the bundle. No mention is made in it of ACC Sweeney.

PD1.1: 22. On or about (for we have no surrounding documentation) 11 June 2013 the claimant made his first disclosure, in PDR1 to the Police and Crime Commissioner (pages 814 to 834 of the bundle) . It is the same document as was disclosed to the IPCC as PDR1 , and hence contains , at paras. (viii) and (ix) the disclosures which relate to ACC Sweeney. That document was updated on or about 20 June 2013, also sent to the PCC around that time , again the bundle contains no documentation relating to its transmission (pages 837 to 856 of the bundle). Three new paragraphs were added, paras. (ixii), (xiiii) and (cxxxvi) .

PD1.1: 23. On 26 September 2013 the claimant met with ACC Copley. The content of that meeting was without prejudice (the claimant having an extant ET sex discrimination

claim), but following it there was open communication between the claimant and ACC Copley. This was part of ongoing communication between them about his grievances, their outcomes, and his previous ET claim, which he had presented in 2012. On 1 October 2013 he wrote to her, to discuss the way forward. There had been a suggestion that the claimant meet with ACC Heywood, who would apologise to him for a delay in notification of his application for the Temporary Supt. role. The claimant set out his views, and his reasoning as to whether he should meet with ACC Heywood. He said this (pages 962 to 964 of the bundle) :

"Unfortunately, I do not feel that the way forward offered to me at our meeting compensates in any way for the detriment I have suffered over the past few years. My career has been unfairly brought to a standstill for reasons that have nothing to do with ability or readiness for promotion. It has however had everything to do with 'cronyism' and not being in the right 'clique' or friendship group. My career has effectively been ended by the vindictiveness of certain senior officers whose integrity and honesty I have questioned. I firmly believe DCS Shenton and ACC Sweeney effectively handed me a 'black spot' and ACC Heywood (who has done a complete 360 degree turnaround in terms of his views on my suitability for promotion) and others have simply sided with their senior colleagues.

In our discussion you rightly highlighted the 'realism' of my situation in that ACC Heywood is, and will continue to be, my Chief Officer and that without his support it makes it difficult for me to progress in the Force. You have said he would apologise for his recent treatment of me regarding the delay In notification of the result of my EOI for the Supt Cadre and I agree I will meet him and accept his apology in an attempt to try to build bridges and move forward.

However In terms of 'realism' I do not see how I can go forward with any confidence or hope of ultimately being supported for promotion when my 'whistle blowing' disclosures have still not yet been addressed.

Whilst I can meet with ACC Heywood and try start to build bridges the question is 'What will happen once my disclosures are investigated?. Again if we apply a dose of 'realism' to the situation we cannot get away from the fact that I have been critical of ACC Heywood in a number of areas of my 'whistle blowing' report, not least re his leadership of Op Dakar and his oversight of Ops Somerville and Mirato. I have alleged that there were many failings in those operations which are detailed in my report , including a failure at senior level to recognise and act upon risks and ultimately it was a combination of failures that saw Nicola and Fiona tragically lose their lives. I was critical of the 'antagonistic' tactics used in relation to Cregan's family re the large number of search warrants executed at their addresses in an attempt to 'flush' him out. I have become aware, only in the last few days since our meeting, of further information which supports my allegations. I understand that Cregan has actually said that the approach taken to his family 'with guns in their faces' caused him to turn his anger towards the police. And he put the blame squarely at the feet of ACC Heywood who he saw leading the investigation and who was initially his intended 'target'. I am aware that he even attended a police station to try to locate him and when realising he would be unable to get to him then put together his evil plan to murder any random GMP Officers).

Clearly this Is a very emotive and sensitive subject but this information supports what I allege in my disclosures. I do not found (sic) it easy making such disclosures however I do feel extremely frustrated as it is true and fair to say that back in June 2012 I warned of the dire consequences of 'cronyism' and the risks presented to the public and the Force by advancing inexperienced individuals into critical decision making positions such as that of SIO. I feel that had an experienced SIO been involved from the outset and had ACC Heywood had the support and counsel of such an experienced SIO, then the outcome may have been different. I feel the Force has got things badly wrong in the past few years and one of the key factors is its lack of recognition of the value of 'experience'.

So, what will ACC Heywood's reaction be when I continue to push for my disclosures to be independently reviewed, to be brought to the attention of the IPCC, the Health and Safety Executive and to the attention of the Coroner. How will he and other senior officers react to all my disclosures? They touch upon a number of different areas and a number of different senior officers, they are extremely serious issues which present real reputational risks both to those senior officers and to the Force:

The 'reality' is that in that context ACC Heywood will never support me, no matter what my performance, no matter how many projects I get involved in, no matter how great my contribution to the Force. I know this, he knows this and despite your best efforts I suspect (if we again apply a coat of 'realism' to the situation), that you would agree with me."

PD1.1: 24. On 6 October 2013 the claimant wrote again to ACC Copley (pages 977 to 980 of the bundle). In the course of this email the claimant says this (page 977 of the bundle):

"Although you say ACC Heywood has offered me an apology, the apology only relates to the delay in the notification of the result of my EOI for the Superintendent cadre. It does not in any way relate to how I have been treated over the past couple of years. It does not explain why he suddenly and without good reason completely changed his view 'overnight' on my suitability for promotion. What is more important than the apology is a proper explanation for the way in which he has treated me. The truth is that neither ACC Sweeney nor DCS Shenton have wanted to see me promoted from the outset: for personal reasons that have nothing to do with ability. I have had it fed back to me from those who have been present in DCS Shenton's company that he has openly talked in strong terms of his 'hatred' for me. I think this is because I am not part of 'his clique' and I have openly challenged him and his 'cronyism'. The difficulty he has had is in squaring his personal feelings with professional judgement and supporting his decisions with evidence. He has never produced any evidence to substantiate anything he has said against me. Unfortunately ACC Heywood, in siding with DCS Shenton has put himself in a difficult position, as in order to support DCS Shenton he has said things which are not evidenced and when examined can be shown to be contradictory to previous views that he has expressed."

He later says this (page 979 of the bundle):

"However the explanation for all of the above is simply 'cronyism'. I am not in ACC Sweeney and DCS Shenton's 'clique' and as a result I am treated negatively whenever I come within their sphere of influence."

PD1.1: 25. The claimant believes that TD/Supt. Scally was a friend and close associate of ACC Terry Sweeney, describing him as one of "Terry's boys". He believes that T/DSup Scally was in a clique with Terry Sweeney, and was promoted by him because of this. The claimant's own previous explanation in his witness statement to the IPCC (see pages 1449 and 1450 of the bundle) for why ACC Sweeney had any animosity towards himself was in relation to his handling (then a Chief Supt., in his role as Head of PSB) of an incident that occurred between his wife and an Inspector about a dog bite that had occurred in May 2007, which resulted , as he put it , in them having "heated words".

PD1.1: 26. The claimant had no source of information for this disclosure other than his own knowledge. He was not aware of the career history of T/D Supt Scally, nor of who had actually promoted him. He accepted in evidence that no ACC would have the power to promote alone, and that the COG , comprising of ACCs, probably the ACO (HR , Lynne Potts) and the DCC , could formally make the decision.

PD1.1: 27. The IPCC investigation concluded (pages 5595 to 5596) that TD/Supt. Scally did in fact have the requisite level of experience to lead Operation Nixon (and by implication, to have been promoted to TD/Sup rank).

Discussion and findings on PD1.1, and, in part, of general application to all the PDs.

What information was disclosed?

PD1.1: 28. Our first task is to determine what information was disclosed. We find that the information disclosed was just as the claimant has pleaded in the List of Issues, set out above, save that this disclosure is made under the heading "When 'cronyism' goes badly wrong! Operation Nixon".

What did the claimant reasonably believe that the disclosure tended to show under s.43B(1)?

PD1.1 29. Applying the relevant tests, the first one is whether the claimant has established that he reasonably believed that this disclosure tended to show that there had been a breach of a legal obligation. The test to be applied to determining this issue has been the subject of much discussion in the caselaw. The first question is whether there has actually to be legal obligation in existence , breach of which the whilstleblower is relying upon for their disclosure. This was considered in ***Babula v Waltham Forest College [2007] ICR 1026*** cited above, where the Court of Appeal, Wall L J, held (at para. 75) that *"provided his [the whistleblower's] belief (which is inevitably subjective) is held by the Tribunal to be objectively reasonable, neither (1) the facts that the belief turns out to be wrong , nor (2) the fact that the information which the claimant believed to be true (and may indeed be true) does not in law amount to a criminal offence, is , in my judgment, sufficient , of itself, to render the belief unreasonable and thus deprive the*

whistleblower of the protection afforded by the statute." The same will apply to breach of a legal obligation. Another aspect, however, is the degree to which, if at all, a whistleblower has to spell out, in the disclosure, the legal obligation breach of which he says his disclosure tends to show. This was considered by the EAT, Linden,J, where he rejected the contention that a whistleblower must make some reference to the legal obligation he relies upon. He said this:

87. This is not to say that the questions whether the worker mentions, for example, criminality or illegality or health and safety in their disclosure, or whether it is obvious that they had these matters in mind, are irrelevant. What they said, and whether the matter is obvious, are relevant evidential considerations in deciding what they believed and the reasonableness of what they believed, rather than these questions presenting an additional legal hurdle, as Mr Nicholls effectively contends. If the nature of the worker's concern is stated - if they say that they consider that the reported information shows criminality or breach of legal obligation or a threat to health and safety - it will be harder to dispute that they held this belief and that the professed belief that the disclosure tended to show the specified matter was reasonable. The point is the same if what the worker thinks is obvious from what they say in the alleged disclosure. Conversely, if the link to the subject matters of any of section 43B(1)(a)-(f) is not stated or referred to, and is not obvious, an ET may see this as evidence pointing to the conclusion that the worker did not hold the beliefs which they claim, or that the information is not specific enough to be capable of qualifying. But what cannot be said is that unless it is stated that the information tends to show one or more of the specified matters, or it is obvious that the concern falls within section 43B(1)(a)-(f), the information is incapable of satisfying the requirements of that section because it cannot reasonably be thought by the worker that it tends to show any of the specified matters."

Thus, this Tribunal concludes that whilst failure by the claimant to mention the specific legal obligations he is relying upon in the text of his disclosures as sent to the IPCC is not fatal, it is relevant to the determination of whether he actually and reasonably held the belief that this disclosure tended to show this particular matter under s.43B(1)(b).

PD1.1: 30. The first legal obligation that the claimant relies upon is that to protect the public and prevent crime. The claimant has not specified the source of this legal obligation. In fact the prevention of crime has been stated to be the first duty of a constable in the Instructions to Constables of 1839. In terms of the common law duties of the Police, the judgment of Lord Toulson in ***Michael v Chief Constable of South Wales Police [2015] UKSC 2*** is a good review of the law. He said:

"29. It has been long established that the police owe a duty for the preservation of the Queen's peace. The phrase has an old-fashioned sound but the principle remains true. Halsbury's Laws of England, fifth ed (2013), Vol 84, para 40, states that the primary function of the constable remains, as in the 17th century, the preservation of the Queen's peace.

*30. In **Glasbrook Brothers Ltd v Glamorgan County Council [1925] AC 270** a colliery manager asked for police protection for his colliery during a strike. He wanted police officers to be billeted on the premises. The senior police officer for the area was willing*

to provide protection by a mobile force, but he refused to billet police officers at the colliery unless the manager agreed to pay for the additional service at a specified rate. The manager promised to do so, but when the police submitted their bill the company refused to pay it on the ground that it was the duty of the police to prove necessary police protection without payment. The police sued the colliery and won.

31. The House of Lords held that the police were bound to provide such protection as was necessary to prevent violence and to protect the mines from criminal injury without payment, but that it was lawful for the police to charge the colliery for extra protection, and that the judge had been entitled to find on the facts that the case fell into that category. Viscount Cave LC stated the nature of the duty of the police at pp 277-278:

"No doubt there is an absolute and unconditional obligation binding the police authorities to take all steps which appear to them to be necessary for keeping the peace, for preventing crime, or for protecting property from criminal injury; and the public, who pay for this protection through the rates and taxes, cannot lawfully be called upon to make a further payment for that which is their right. This was laid down by Pickford LJ in the case of ***Glamorganshire Coal Co v Glamorganshire Standing Joint Committee [1916] 2 KB 206****, 229 in the following terms:*

'If one party to a dispute is threatened with violence by the other party he is entitled to protection from such violence whether his contention in the dispute be right or wrong, and to allow the police authority to deny him protection from that violence unless he pays all the expense in addition to the contribution which with other ratepayers he makes to the support of the police is only one degree less dangerous than to allow that authority to decide which party is right in the dispute and grant or withhold protection accordingly. There is a moral duty on each party to the dispute to do nothing to aggravate it and to take reasonable means of self-protection, but the discharge of this duty by them is not a condition precedent to the discharge by the police authority of their own duty.'

With this statement of the law I entirely agree …"

32. To similar effect Lord Parker CJ said in ***Rice v Connolly [1996] 2 QB 414****, p 419, that it is the duty of a police constable "to take all steps which appear to him necessary for keeping the peace, for preventing crime or for protecting property from criminal injury".*

33. The duty is one which any member of the public affected by a threat of breach of the peace, whether by violence to the person or violence to property, is entitled to call on the police to perform. In short, it is a duty owed to the public at large for the prevention of violence and disorder.

34. Under section 83 of the Police Reform Act 2002 (substituting Schedule 4 of the Police Act 1996) every constable is required to make the following attestation:

"I … do solemnly and sincerely declare and affirm that I will well and truly serve the Queen in the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people; and that

I will, to the best of my power, cause the peace to be kept and preserved and prevent all offences against people and property …"

35. This reflects the common law duty of the police."

PD1.1: 31. Thus, the first legal obligation breach of which the claimant says he believes that this disclosure (and all others where this formulation appears) tended to show is ones that derives from common law. The claimant did not articulate any of this, nor, to be fair, did his counsel, but the caselaw discussed above makes it clear that absence of precise specification of the source of the legal obligation is not fatal to reasonable belief for these purposes. The case law refers to cases where the legal obligation was sufficiently obvious, or was a matter of common sense. It has not been, and could not have been, seriously suggested that the claimant did not reasonably believe that the Police were subject to this legal obligation, as, indeed, as the caselaw cited above shows, they are.

PD1.1: 32. That applies to the first of the two types of legal obligation that the claimant relies upon. The legal obligation in question has been specifically pleaded as being one that arises under Schedule 2 to the Police (Conduct) Regulations 2012. As observed below , the Tribunal cannot see any such legal obligation in those Regulations or in their predecessor, the 2008 Regulations.

PD1.1: 33. The relevant provisions of the 2012 Regulations are as follows:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Police (Conduct) Regulations 2012 and shall come into force on 22nd November 2012.

Interpretation and delegation

3.—(1) In these Regulations—

"Standards of Professional Behaviour" means the standards of professional behaviour contained in Schedule 2

Written notices

15.—(1) The investigator shall as soon as is reasonably practicable after being appointed, and subject to paragraph (3), cause the officer concerned to be given written notice—

(a)describing the conduct that is the subject matter of the allegation and how that conduct is alleged to fall below the Standards of Professional Behaviour;

PD1.1: 34. The Schedule to the 2008 Regulations is the same as is set out in Schedule 2 to the 2012 Regulations, and its provisions are as follows:

SCHEDULE

Standards of Professional Behaviour

Honesty and Integrity

Police officers are honest, act with integrity and do not compromise or abuse their position.

Authority, Respect and Courtesy

Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

Police officers do not abuse their powers or authority and respect the rights of all individuals.

Equality and Diversity

Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.

Use of Force

Police officers only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances.

Orders and Instructions

Police officers only give and carry out lawful orders and instructions.

Police officers abide by police regulations, force policies and lawful orders.

Duties and Responsibilities

Police officers are diligent in the exercise of their duties and responsibilities.

Confidentiality

Police officers treat information with respect and access or disclose it only in the proper course of police duties.

Fitness for Duty

Police officers when on duty or presenting themselves for duty are fit to carry out their responsibilities.

Discreditable Conduct

Police officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty.

Police officers report any action taken against them for a criminal offence, any conditions imposed on them by a court or the receipt of any penalty notice.

Challenging and Reporting Improper Conduct

Police officers report, challenge or take action against the conduct of colleagues which has fallen below the Standards of Professional Behaviour.

PD1.1: 35. The Tribunal has to determine whether, when he made his disclosures the claimant did actually believe that they tended to show a breach of a legal obligation of this nature, and if so, whether that belief was reasonable. He has expressly referred to and relied upon the provisions of these Standards of Professional Behaviour on the basis that there is a legal obligation to adhere to them. There is not, certainly not in this or either version of the Regulations. The claimant has not identified any other basis for the Standards having legal force.

PD1.1: 36. A further telling aspect is that the claimant first identified this species of s.43B(1)(b) disclosure on this basis in his first List of Issues , on or about 15 February 2018. He makes no mention in any of his PDRs to these Standards, unlike, for example, breach of ECHR Article 2, which he does refer to. Rather, he makes generalised allegations of cronyism and corruption, with no reference at all to the Standards. The Tribunal appreciates that there is no requirement that a whistleblower spells out in his disclosure breach of what legal obligation he is alleging his disclosure tends to show, but the caselaw above shows that this can be relevant factor in determining whether he had the requisite belief, and, if he did, whether he reasonably held it.

PD1.1: 37. The Tribunal is driven to the reluctant conclusion that the claimant did not have breach of these Standards , as a legal obligation , in mind when he made his disclosures to the IPCC on 31 January 2014, and so did not actually have that belief when he made all his disclosures. The contention looks like an after the event (and inaccurate) gloss, emerging 4 years later, upon what the claimant thought at the time. Not only is no mention made of these Standards , or the Regulations in the PDRs, but there is no mention of them in any other documentation produced by the claimant in his grievances or any other documents. The Tribunal is therefore not satisfied that the claimant had any such a belief at the time that he made this disclosure at the end of January 2014. He may have believed that the conduct he was disclosing was dishonourable , discreditable and in breach of the standards to be expected of a Police officer. That such conduct was also unlawful, however, is the missing link, in which the claimant, we consider , lacked the requisite belief. It is to be remembered that this was, in any event , repetition of disclosures that he had made as part of his internal grievance, and to the PCC in June 2013, in none of which he had made this assertion.

PD1.1: 38. Even if the claimant did hold this belief that this is what his disclosure tended to show, the Tribunal could not go on to find that any such belief was reasonably held. Whilst it is correct that a disclosure does not have to be right in order to merit protection, in assessing the reasonableness of any such belief the Tribunal is entitled to take into account the circumstances and knowledge of the discloser. The claimant was not only a senior police officer, but also has a law degree. That he should have relied upon an iteration of the Regulations which were not in force at the time of the matters to which this disclosure relates , (and indeed most others) shows a lack of care and attention to

detail, as does his failure to recognise that the Regulations do not actually impose any legal duty to comply with the Standards in the Schedule. They are procedural provisions, designed to ensure that officers being taken through misconduct proceedings are adequately informed of the case against them. Any belief that these provisions, or indeed their predecessors, imposed such a legal duty cannot have been a reasonable one. The claimant has failed to suggest an alternative basis for the Standards having legal effect, and cannot therefore show that he had a reasonable belief that this disclosure tended to show breach of any such obligations, as legal, as opposed to moral, obligations.

PD1.1: 39. This disclosure would therefore, fail at the s.43B(1)(b) stage, were it to be based solely upon this legal obligation for the purposes of that limb of s.43B. **It will be appreciated that this limb is also relied upon in respect of every other disclosure, so this finding will apply to each of the ensuing disclosures that the Tribunal will consider where this limb is relied upon for this reason.**

PD1.1: 40. The Tribunal has, however, found that the claimant could have a reasonable belief in the common law obligation cited by him , so the question then is whether he can show that he had a reasonable belief that his disclosure tended to show breach of this legal obligation.

PD1.1: 41. The disclosure (read as the claimant asks, solely in respect of paras. (viii) and (ix) of PDR1) is that TD/Supt. Scally was promoted because of his friendship with ACC Sweeney, and also DCS Shenton and ACC Heywood. In fact , in the List of Issues, the claimant puts this as a disclosure that "ACC Sweeney promoted DCI Dominic Scally to the role", whereas his PDR1 does not say that in terms. It may, however, be the implication. He says in this disclosure that TD/Supt Scally did not have major crime investigative experience, and that he had failed the first stage of the last two formal promotion processes.

PD1.1: 42. From this, and the alleged closeness with ACC Sweeney, he submits that he reasonably believed that this disclosure tended to show that the respondent had failed (note the tense) to comply with its common law duties to protect the public and prevent crime. He bases this on the alleged lack of experience of TD/Supt Scally, but contends that there were other more suitable candidates who did not get the opportunity to apply for the role. He goes on to question why a fair, impartial and transparent process was not undertaken.

PD1.1: 43. It will be appreciated that there is a considerable leap from asserting that there has not been a fair and impartial selection process , whereby other more suitable candidates have been excluded, to asserting that the improper appointment, of itself, breached the respondent's common law duties to protect the public and prevent crime. That better candidates have been excluded does make the appointment, of itself, one which has breached the common duty relied upon. The claimant has also not used the terminology in s.43B(1) that a legal obligation was being, or was likely to be, not complied with, he has said that the disclosure tended to show that the non – compliance had occurred, i.e by the very fact of the appointment.

PD1.1: 44. Allowing for a moment that the claimant actually believed , which the Tribunal can accept, given the claimant's already poor opinion of TD/Supt Scally, in his lack of fitness for promotion, the Tribunal must question whether the claimant reasonably believed that this tended to show that the appointment , however allegedly corrupt or

cronyistic, had had the effect of putting the Chief Constable in breach of his common law legal obligations. The Tribunal cannot accept that the claimant could reasonably have believed that that was the case. He could have reasonably believed that such an appointment might have this effect, in due course, but a moment's reflection would lead to the conclusion that this was only a possibility, the appointment, of itself, could not reasonably have been believed to have had (i.e in the tense of the disclosure) that effect. The claimant would therefore fail on this limb of s.43B(1)(b).

PD1.1: 45. There is, however, a third limb relied upon, and that is that the claimant had a reasonable belief that his disclosure tended to show that the health and safety of any individuals, namely the general public, had been (again, the same tense is used) endangered. Again, the Tribunal will accept, for the previously stated reasons , that the claimant probably believed that this was the case, but again the Tribunal has to consider the reasonableness of this belief. Again, it cannot be the case that , on reflection, the claimant could reasonably have believed that this disclosure tended to show that the appointment, of itself, had endangered any members of the public. As with the previous limb, the claimant might reasonably have believed that it may in future do so, but not that it already had done. (The Tribunal disagrees with footnote 8 on page 19 of the claimant's submissions – s.43B(1)(d) does not apply in the case where the claimant believes that the health and safety of individuals "is likely to have been put at risk", he must reasonably believe that it has, is being or is likely to be in the future. That may be slightly nuanced, but that is the wording of the subsection.) The disclosure would therefore fail under s.43B(1)(d) as well.

Did the claimant reasonably believe that it was in the public interest to make the disclosure , under s.43B(1)?

PD1.1: 46. As will be discussed in relation to other disclosures below, and touched upon in the discussion above about that tests the Tribunal should apply. Amongst them is what we could call the ***Muchesa*** test *,* which is whether by his conduct in delaying making the disclosure , or by any other conduct, the claimant should be found to have acted incompatibly with holding the requisite beliefs that he must show for s.43B. Whilst this disclosure related to some quite historic matters, it was not of the much more serious and actual instances of actual harm, and even deaths, that are involved in other disclosures. We would not find, therefore that this disclosure fails on the ***Muchesa*** test. For completeness, the Tribunal has also gone on to consider whether the claimant has shown that he had a reasonable belief that it was in the public interest to make this disclosure. The respondent invites the Tribunal, in respect of this and all other disclosures, to find that he did not, but was really pursuing a private agenda, born out of his failure to gain promotion when others around him were succeeding.

PD1.1: 47. The Tribunal does not accept that. As the caselaw cited above makes clear, a disclosure can be made, or reasonably believed to have been made, in the public interest even if it is partly, even largely , motivated by private concerns. Such a disclosure can now even be made in bad faith. Whilst we have no doubt that the claimant did have a highly personal interest in the matters about which he made his disclosures to the IPCC, he did nonetheless believe, and reasonably believe, that to make the disclosures to the IPCC (who, of course, could do nothing to rectify any previously unfair treatment of the claimant) when he did was in the public interest. This disclosure would not, therefore founder on this limb of s.43B.

PD1.1: 48. Again, this is an issue which will have to be considered in respect of each of the protected disclosures, as the claimant has to show this reasonable belief in respect of each one of them. This finding is likely to apply to some of them, but the Tribunal is conscious that it must consider each disclosure from this point of view, and there may be some where a different conclusion will be reached, given the nature or timing of the disclosure in question.

Does the claimant satisfy the s.43F test?

PD1.1: 49. The Tribunal, although it need not do so, in the alternative turns now to s.43F, and the requirement that the claimant must show that he had reasonable belief in the substantial truth of any allegation contained in the disclosure. No issue of aggregation arises in relation to this disclosure, and the only line omitted from para. (viii) of the PDR1 document refers to the relationship between DCS Shenton, ACC Heywood and ACC Sweeney.

PD1.1: 50. The claimant has firstly failed to show why his belief that ACC Sweeney (as opposed to anyone else) corruptly promoted TD/Supt Scally in 2011 was reasonable. The claimant's only information was that ACC Sweeney would have been in the COG, but he would not necessarily have been the chair, and others would be on it. It therefore could not have been ACC Sweeney's sole decision, and the claimant cannot have had a reasonable belief that ACC Sweeney "promoted" DCS Scally. Further, whilst the claimant may not have been aware of it, his belief that DCS Scally did not have major crime investigative experience was not a reasonable one either. He made no enquiries into his experience, but based his belief simply upon his subjective view that he was unaware of DCS Scally as having been involved in major criminal investigations, so therefore he did not have experience. This too was not a reasonable belief. The absence of a process of advertisement and selection was, at the time, the claimant accepted, the norm in GMP for Temporary Supt. posts , and the claimant himself later had gone through a similar process when he was made a temporary superintendent from October 2008 to April 2009. Thus whilst made to look questionable in the disclosure, that factor was, of itself, not unusual, or evidence of any corrupt practices at work.

PD1.1: 51. The claimant rather undermines his own case by the last sentence of para.(ix) of PDR1, where he says "Questions have to be asked why a fair, impartial and transparent process was not undertaken." Firstly, the claimant knew why, that was the process that GMP was using at the time. Secondly, if the claimant claims that he had a reasonable belief in the substantial truth of this allegation, what needed to be investigated? A claimant making tier three disclosures needs to have more than suspicion, even reasonable suspicion, he needs reasonable belief. If further investigation is needed, this further undermines the reasonableness of the claimant's alleged belief.

The culture of cronyism and corrupt promotions – the Sweeeney/Shenton/Scally clique.

PD1.1: 52. Whilst the Tribunal considers that whilst this finding is sufficient to determine whether this disclosure was protected , it is opportune to examine at the same time the claimant's belief that TD/Supt. Scally had been the beneficiary of cronyism , as a result

of his alleged connections with ACC Sweeney, and his alleged "gang" or clique, to which the claimant did not belong. This pervades virtually all of the claimant's disclosures, and at one point it seemed that he may be putting his case on the basis that he only really made one disclosure to this effect, the other beneficiaries of cronyistic over -promotion being TD/Sup Snowball, and TD/Sup Worth, the latter being improperly favoured by ACC Sheard.

PD1.1: 53. The claimant was questioned at some length about the basis for his belief in the existence of this clique, and effect upon promotion. In his (first) witness statement he said this:

"64. It was in the years after Fahy took over that I became more aware of cliques or groups of associates within the senior ranks which heavily influenced attitudes towards promotions. There was a Cheshire clique which operated around the command team level and other cliques linked to ACC and Chief Supt level. I, as did many of my colleagues, perceived officers who were friends of or closely associated to senior officers were being advanced and promoted on the basis of their relationship to senior officers rather than on their skills, ability and experience. This saw a culture develop where people tried to ingratiate themselves with senior officers often trying to get themselves attached to 'projects' they were running. It was a culture that encouraged officers not to challenge upwards for fear of creating ill feeling, despite the terms of the code of ethics encouraging officers to speak out. Officers feared if they spoke out and challenged it would harm their career. At the time a popular phrase used by senior officers was having a 'can do' attitude. This was meant to enthuse officers to perform and have a mindset they could get the job done but in reality, what developed was a 'yes man/woman' and "nodding dog' culture. It encouraged cronyism and sycophants.

65. I was seeing people being promoted who were at times ill-equipped to deal with the challenges of what their promoted role demanded. In short, I was concerned that this culture was seeing officers being placed into what I considered to be critical decision-making roles, without the requisite experience, often at the expense of more suitably qualified colleagues. I am very forthright in saying that this was an era when the 'cronies sycophants and ambitious incompetents flourished'.

66. One such clique which I witnessed was the ACC Terry Sweeney and DCS Darren Shenton clique. It included people such as ACC Steve Heywood. Dominic Scally, Julian Snowball and John Lyons. Sweeney and Shenton had become very close colleagues over the years and were regularly referenced together as 'Sweeney and Shenton' in conversations, almost as though they were a pairing. It was well known in force that Shenton had in 2004. when a Detective inspector, been heavily criticised for the collapse of the high-profile David Barnshaw murder trial by the judge (Judge Penry-Davey) who questioned his integrity and criticised his actions and poor evidence. [please see pgs. 6481-6483] Shenton was removed from the CID following this under what was believed to have been a disciplinary investigation and went to work in uniform with then Ch Supt Sweeney at Rochdale. Shenton subsequently rose to become GMP's most senior detective as Head of the Serious Crime Division, as Sweeney progressed to become the ACC in charge of crime for the force.

67. As a member of MIT, I worked within both Force HQ and the SCD HQ at Nexus House. Working day in day out, attending various meetings, conferences, training days, seeing people interacting. using the canteens and having been in force since 1986 and knowing many people throughout the force. you see and get to know what's happening. You see people interact, have conversations, you get to know who are close to each other and friends, who socialise, who are in cliques."

PD1.1: 54. When pressed for evidence of this alleged clique, and its membership the claimant said (pages 418 to 419 of the transcript) :

Q….a close relationship between Mr Scally and Mr Sweeney, Mr Shenton and Mr Heywood. What was that based on?

A. Again, sorry to sort of explain this. It's difficult because it's just your perception from being in work on a day-to-day basis. When I've tried to explain this before, when you're in an organisation on a daily basis you come to know who are friendly with each other and who are not, and it's difficult to put your fingers on it because it's just from what you see and observe on a day-to-day basis.

Q. Yes, it is your perception. Correct?

A. Yeah. So how do you know anyone at work? When you work in a large organisation you see people and you know how they interact and you see it at conferences and canteens or whatever. You form views on whether people are friends or not. If I walked into a canteen Terry Sweeney would come over, shake my hand, ask me how I'm doing, etc., etc., but if Scally was there or the others, then you would see them chatting away and all the rest of it. So that's how I form my views on people. It's just living and working in an organisation over many years.

PD1.1: 55. The claimant's belief as to the reason for the promotion of officers whom he does not rate has shifted over time. He initially alleged that unsuitable officers were promoted because of sex discrimination (in favour of women). This was the basis of his very first Employment Tribunal claim in 2012, in which he complained of the discriminatory promotion of DCI Worth. This contention has not been maintained in this current claim following the withdrawal of his 2012 sex discrimination claim, and is not referred to in his witness statement. However, the belief has endured insofar as the claimant has maintained his belief that SWIP operated as 'toxic' force in GMP.

PD1.1: 56. The claimant admits he has no first-hand knowledge of promotions which he has alleged to have been the result of cronyism/ corruption. His evidence in respect of cronyistic promotions ranges wider to include the promotions of Mr Rumney, Mr Adderley, Mr Wiggett, Mr Simpson, Ms Rawlinson, Ms Kennedy and Mr Hanson. He alleges that each of these officers were the beneficiaries of cronyism/ corruption notwithstanding his lack of knowledge of the circumstances in which they were promoted.

PD1.1: 57. Serious allegations of cronyism/ corruption – including corruption by Sir Peter Fahy and the corrupt promotion of Ms Sutcliffe in 2010 (described by the claimant as a 'really strong example' of cronyism) are not relied on as disclosures. The allegation that

Sir Peter Fahy was guilty of cronyism/ corruption in relation to the appointment of officers from Cheshire was not put to him in cross - examination. His allegations as to the personnel who are behind the culture of cronyism have changed over time.

PD1.1: 58. There was evidence from Mr Dolan that GMP introduced a policy known as 'churn' whereby officers would be moved across departments to increase the pool of officers with a range of skills. Mr Dolan considered that this was not welcomed by certain officers. Mr Dolan also gave evidence regarding the desire of SLT that those who were promoted would provide a 'united leadership front.' Mr Dolan said that he would at times challenge SLT and he considered that this may have resulted in his lack of support for promotion. Mr Dolan does not allege that this amounted to cronyism or corruption. That there were defects in the system, and the risk of favouritism was clearly present is apparent from the evidence form a number of sources, including Caroline Jones. Her evidence, however, did not support the claimant's view that ACC Sweeney acted in the manner he alleges so as to promote certain officers.

PD1.1: 59. For the claimant Mr O'Dempsey submits that the claimant can rely upon his experience and knowledge of the GMP, and in particular MIT and serious crime, and can be relied upon to recognise these corrupt practices. He also relies upon the views being expressed by colleagues that there was this culture of cronyism at work within GMP. Mr O'Dempsey referred in his Submissions to the claimant identifying cultures , including cronyism and a fear of speaking out, which were recognised by others, including the claimant's witnesses.

PD1.1: 60. The Tribunal has given this much consideration. It is hard not to be struck by the absence of any hard evidence from which the claimant makes these assertions. There is, the Tribunal considers, an element of circularity about them. Unsuitable and inexperienced officers are promoted into senior positions because of cronyism, which is itself evidence that this cronyism exists. In terms of actual observation and hard information upon which the claimant bases this belief , there is very little.

PD1.1: 61. His evidence boils down to his observations of interactions in the canteen and other workplaces, and getting to know who got on with whom. He gives no evidence of these officers socialising together outside work, or in work – related contexts, such as sharing holidays or any other special occasions, or of any other relationships over and above being visible as friends in the workplace. Nor does he give any evidence of being excluded from this supposed clique, save that he was not promoted when others were. Outside those processes, however, other than the brief reference to Terry Sweeney cited above, there is nothing.

PD1.1: 62. Whilst he majors on the Sweeney/Shenton relationship, and there is evidence that others believed that there was such a close friendship between these two officers, where his evidence is much weaker is in the alleged membership of this clique by DCI Scally, and, indeed, DCI Snowball. He has given no evidence of any socialising of Scally with either Sweeney or Shenton, or both of them. The other evidence cited (e.g that of DI Mortimer) was that Shenton was a close friend of Sweeney, and Sweeney was a close friend of Heywood.

PD1.1: 63. The claimant however, in cross – examination considerably expanded his thesis. He brought into it DCS Rumney, DCS Adderley, ACC Wiggett, Gary Simpson, Serena Kennedy, Ian Hanson, and Joanne Rawlinson, although he was unable to say who was involved in these "corrupt" promotions.

PD1.1: 64. The Tribunal also notes how, in his grievance in June 2012, and his grievance appeal, he mentions DCS Shenton extensively, but makes no reference to ACC Sweeney, save in passing or in connection with DCI Worth. He does not in either of these documents allege that ACC Sweeney is part of a clique, or that he "promoted" TD/Supt. Scally. The focus is upon DCS Shenton only. ACC Heywood is only brought into this in the claimant's email to ACC Copley of 2 July 2013 (pages 879 and 880 of the bundle) in which he inaccurately refers back to the content of his grievance of June 2012.

PD1.1: 65. In his email exchanges with ACC Copley in October 2013, and the first mention of any clique is that DCS Shenton had such a clique. ACC Heywood is not mentioned as being in it. True it is that he does later mention "Heywood and Shenton's clique", but in his next email of 6 October 2013, when giving his reasons for not trusting ACC Heywood to support him in the future, he makes reference to the disclosures he had made about him, and makes no further mention of him having any clique.

PD1.1: 66. The Tribunal's conclusion from all the evidence is that all the claimant has established is a reasonable belief in the allegation that ACC Sweeney was a friend of ACC Shenton, and that TD/Supt. Scally was a friend of DCS Shenton. The evidence of DI Mortimer identified a connection between Shenton/Sweeney/Heywood, but was silent about TD/Supt. Scally being part of this set. All that is far from establishing any form of "clique". A person can have two friends, and interact with each of then separately. The two friends may not be particularly friendly with each other, but share a friendship with their mutual friend. That is not a "clique". A clique interacts in concert, as a unit. The claimant has given no evidence of TD/Supt. Scally being in the company of ACC Sweeney, and DCS Shenton, or indeed of any interactions between TD/Supt. Scally and ACC Sweeney from which he could reasonably deduce a friendship strong enough to influence improperly the latter's role in promotions.

PD1.1: 67. That senior colleagues within an organisation who have worked together for some time should become friends is not surprising, in fact it would be surprising if they did not. That is ,of course, of itself, not improper. The alleged (and for these purposes accepted) comment from Julian Snowball himself that he was in "Terry's gang", is not directly relevant to this disclosure, but is relevant evidence for an assessment of whether the claimant had a reasonable belief in the substantial truth of this allegation across the board. It is hardly a basis for such a belief. The claimant gives no context of this remark, and no other evidence , such as seeing Julian Snowball with ACC Sweeney, and/or DCS Shenton, or any other evidence from which his membership of this alleged clique could be discerned.

PD1.1: 68. The existence of a clique at all, of course, even if established , only goes so far. It is, however, a quantum leap to go from establishing friendships or even cliques, to then assert that promotion decisions were made, corruptly, <u>because of</u> these cliques or friendships. The claimant has failed to explain why, if it was ACC Sweeney's desire

to advantage TD/Supt. Scally, he did not do so when , in 2010, along with the claimant, he applied for promotion, a process in which ACC Sweeney would be involved, but he did not assist him to gain that position.

PD1.1: 69. That there were , at the time we are concerned with, promotion processes which were not as rigorous and transparent as they might have been, giving rise to the risk that support from senior officers who were also personal friends may unduly advantage some candidates, does not mean that it did, merely that there was a risk that it might. Not for the only time, as will be seen, the claimant has gone further than to identify a risk of something wrong occurring , he has stated , as a fact, that it did.

PD1.1: 70. The Tribunal's understanding, and accepted by the claimant in cross examination, is that neither ACC Sweeney , nor any other ACC , alone could "promote" DCI Scally or any anyone else, to an acting Superintendent role. That would have to be a decision, if not of the Chief Constable, or the Chief Officers Group. As discussed above, the disclosure that ACC Sweeney promoted TD/Supt. Scally is inaccurate, as he could not have done. This is not, we consider, a matter that is immaterial, or does not detract from the "substantial truth" of this allegation. Implicit in this allegation, it seems to us, is not only that ACC Sweeney unduly influenced or supported TD/Supt. Scally for this promotion (terminology which would have been easier to justify) , but also that in promoting TD/Supt. Scally in this manner, ACC Sweeney went outside the due process for such promotions. That is an added implication, in which the claimant cannot have had a reasonable belief, and is a very material one.

PD1.1: 71. Thus, if the claimant did have this perception, it did not amount to a belief which he could have held on a reasonable basis. It was simply part of his general thesis and view of the Force that this must have occurred, although he had no actual evidence for it. At most he had a suspicion that the promotion of TD/Supt. Scally was the result of cronyism, but that , we find, fell well short of a reasonable belief that it was.

PD1.1: 72. That, however, is not the only information , or allegation, we consider in which the claimant has failed to show he had a reasonable belief. He also disclosed that TD/Supt. Scally lacked major crime investigative experience . He goes on to say that there were other more suitable candidates with relevant investigative backgrounds and experience who did not get the opportunity to apply for the role, in which he would doubtless include himself. He does not, however, confine himself to this comparative exercise, he makes the allegation that TD/Supt. Scally did not have major crime investigative experience. He bases that upon himself not being aware of any such experience, as he had not come across Mr Scally in his own career as a detective. Again, that may have been his perception, but the evidence shows that it was not a reasonable one. TD/Supt. Scally's career history shows he did have some major crime investigative experience, having been, for example in the SOCG for three years. Whilst the Tribunal must focus upon what the claimant knew at the time , the fact that the IPCC investigation, which was fully sighted on TD/Supt. Scally's career history, in a way that the claimant was not, concluded that he had the requisite experience to lead Operation Nixon. Whilst not quite precisely the same issue, nonetheless this is a good indication that , objectively, TD/Sup Scally had the requisite experience for the promotion to TD/Sup. Comparatively, of course, the claimant may well be right, and a disclosure that he had less experience than other potential candidates may well have been one that

could be reasonably have been believed. The claimant , however, did not limit himself to such a comparison, he stated that TD/Supt. Scally lacked major crime investigative experience, without any knowledge of his actual career history.

PD1.1: 73. These two specific allegations made as part of this disclosure are that TD/Supt. Scally's promotion was the result of cronyism, and that he lacked major crime investigative experience . They are serious, and the claimant's lack of reasonable belief in them is fatal to them under s.43F(1)(b)(ii). Regardless of success on any s.43B issues, on this basis alone, this accordingly was not a protected disclosure.

2.Protected disclosure 1.11: corruption in promotion of Scally in 2013 to North-West Counter-Terrorist Unit

Information disclosed: In January 2013 ACC Sweeney appointed TD/Supt Scally to the role of Detective Superintendent in the North West Counter-Terrorist Unit via a corrupt selection process which ACC Sweeney chaired, which resulted in Scally having responsibility for leading investigations to safeguard national security despite him having no major crime or counter-terrorism experience. [CGoC §69]

PD 1.11 was set out in detail at §§ (lxxxiv) - (xciv) of PDR 1,under the heading "(l) Cronyism, corruption and the continuing risks – what next ?!!" which included the following information:

(lxxxiv) In January 2013 ACC Terry Sweeney was the ACC with responsibility for the North West Counter Terrorist Unit. They had vacancies within the unit for a Detective Chief Superintendent, Detective Superintendent and Detective Chief Inspector.

(lxxxv) In such a case one would expect the interview selection processes to be held in rank order, the most senior post being selected first allowing the new incumbent to take part in the interview process for the rank below and so forth. For example, the first interview panel would select a Chief Superintendent, the successful Chief Supt would sit on the interview panel for the Superintendent; the successful Superintendent would then sit on the interview panel for the DCI.

(lxxxvi) However, in this case the first interviews that took place were for the Superintendent position, the second for the Chief Superintendent post and the third for the DCI post.

(lxxxvii) TD/Supt Scally had applied for the substantive Detective Superintendent post. There were 7 candidates, including officers with Counter Terrorism experience.

(lxxxvii) The interview selection panel was chaired by ACC Sweeney. The second panel member was Tony Mole. He was at that time acting in the Chief Superintendent role in the CTU. He had applied for the substantive role and was going to be interviewed the following week by ACC Sweeney, who would again be the panel chair.

(lxxxix) Acting Ch Supt Mole had been tasked to find the third interview panel member who would be the 'independent' member. He made contact a few weeks before the

interviews with a number of senior officers to take on the third interviewing position. Identifying an interviewer and 'back ups' [sic].

(xc) Approximately a week or so before the interviews were to take place however Ch Supt John Rush, a close associate of ACC Sweeney, (and DCS Shenton and ACC Heywood – see final para in this section) was suddenly brought in as the third panel member and the other senior officers cancelled. Apparently the explanation provided by Tony Mole was that applicants had been asked if they knew any of the proposed interview panel and John Rush had been the only suitable candidate.

(xci) Officer 'L', an applicant for the DCI post, can provide evidence that this same question was not asked of the applicants for the DCI vacancy.

(xcii) With Chief Supt Jon Rush in place, ACC Sweeney had the perfect interview panel to enable him to ensure selection of his favoured candidate. He was the Chair, his close associate the second panel member and the third was Tony Mole, who as Acting Ch Supt certainly wouldn't want to do anything to upset 'the apple cart', particularly as it was his interview the following week.

(xciii) However even that was not enough for ACC Sweeney, and just to 'bib and brace' it, he also coached TD/Supt Scally for the interview. Officer 'R' was working with TD/Supt Scally at the time and TD/Supt Scally told him he that was being coached for the interview by ACC Sweeney. This highlights how blatant the cronyism is within GMP. Senior Officers have this air of arrogance, believing they are all powerful and can do as they please. They forget they are public servants and publicly accountable for their actions.

(xciv) The interview process was a sham. It was not fair and impartial. What chance did the other applicants stand? TD/Supt Scally was successful and now holds the substantive post of Detective Superintendent in the North West Counter Terrorism Unit.

As the claimant has referred in para. (xc) to CS John Rush being a close associate of ACC Sweeney and DCS Shenton and ACC Heywood, and has referred to the "final paragraph" in this section, he must mean para. (xcvii) which reads as follows:

(xcvii) The significance of Ch Supt John Rush as a close friend of ACC Sweeney, DCS Shenton and ACC Heywood needs to be briefly explained to understand the dynamics at work. In June 2012 I submitted a grievance against DCS Shenton for his failure to support me for promotion (and later also against ACC Heywood) having become disillusioned at seeing a culture of cronyism in the Force which was seeing less able and less experienced officers advanced into positions for which they were not equipped, as detailed throughout this report.

I had initially approached ACC Heywood and had told him that I also had sensitive disclosures to make which supported my grievance and contentions of cronyism (TD/Supt Scally's dealings on Op Nixon). ACC Heywood had nominated Ch Supt Rush, who he described as 'independent'. Please see e-mail exchanges as at Appendix 'J' and Grievance report that, was dealt with by Ch Supt Rush which provides evidence of

Ch Supt Rush declaring himself to being a close friend outside of work with DCS Shenton. He therefore was clearly not 'independent'. ACC Heywood had know this when he gave my grievance to him. Ch Supt Rush however, despite being a close friend of DCS Shenton not being 'independent, still tried to resolve the matter as can be seen from the e-mails. In sum, he offered to mentor me in terms of improving 'my relationships with senior officers' but although the grievance report contained the disclosures around Op Nixon and warnings that the public and officers would come to harm, he saw nothing in that to warrant any action and ignored the very serious issues I had raised. One has to question why? And was his eagerness to deal with the matter more fuelled by a desire to cover up the issues I was raising? The fact that Ch Supt Rush was also placed onto the interview panel and sent to deal with the misconduct of Snowball (see section 'L') by ACC Sweeney, highlights the links to ACC Sweeney, ACC Heywood and DCS Shenton. It is also of interest that in the wake of Cregan it is Ch Supt John Rush who been nominated to lead on Op Challenger, the investigation into alleged organised crime of the 'G' and North Manchester division."

The Tribunal, whilst the respondent has not included this in the red sections of his Yellow/Red Analysis document which seeks to match the totality of the content of the pleaded disclosures with the List of Issues where there are parts omitted, considers that these allegations too must form part of the information conveyed in this disclosure, and must be considered for the purposes of s.43B and s.43F.

Para. 62 of the List of issues sets out the claimant's case that this information tended to show (a) that there had been a failure to comply with or one or more legal obligations, namely (i) the duty to protect the public and prevent crime; and/or (ii) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of honesty and integrity; duties and responsibilities and discreditable conduct; and/or (b) that the health or safety of any individuals, namely the general public, had been endangered.

Relevant facts:

PD1.11 1. The Northwest Counter Terrorist Unit (NWCTU) is a Unit which is not a Unit within the respondent's Force but is a cross - Force Unit, drawn from all five Police Forces in the North West – Greater Manchester, Cheshire, Cumbria, Lancashire and Merseyside . GMP, however, was the lead force, and the employer. Its staffing was funded externally, by ACPO TAM, but all staff, accommodation, HR and other support functions were managed through GMP.

PD1.11 2. In 2012, T/DCS Tony Mole who had been seconded for the previous two years to the Scottish Crime and Drug Enforcement Agency, was brought back to GMP to temporarily cover the role of Head of NWCTU during the Olympics as the current Head of unit was seconded to another role. In recognition of the complexities of the roles and the cost of training for NWCTU senior investigation officers, DCS Mole agreed with the Chief Constable of GMP that these posts would be substantive and carry a minimum tenure of three years to ensure a return on investment for the ACPO TAM funding. In late 2012 ACC Sweeney was the ACC in the respondent Force with responsibility for that Unit. Vacancies arose at that time for ranks of DCS, DS, an DCI. A statement was

issued (undated, at page 1807 of the bundle) about this process, and how it would be undertaken. DCS Mole as the Head of NWCTU oversaw this recruitment process.

PD1.11 3. TD/Supt. Scally applied for the post of Detective Superintendent, a substantive post, whereas his post in the respondent Force was an acting one. His expression of interest is at pages 708 to 710 of the bundle. It is undated, but has been signed by DCS Shenton on 30 November 2012, and had to be submitted to Workforce Development by 2 December 2012. DCS Shenton supported the application by TD/Supt. Scally.

PD1.11 4. There was no requirement or expectation that posts must be filled in rank order, and the interviews for the D/Supt posts were held on 7 December 2012, one week prior to the interviews for the DCS, Head of NWCTU to be held on 14 December 2012.

PD1.11 5. In terms of the composition of the interview panel for the Superintendent roles, DCS Mole was of the view that as there was the prospect of promoting to a substantive Superintendent rank, a member of the Chief Officer Group, i.e an ACC, the Deputy Chief Constable, or the Chief Constable , should be on the panel. He discussed this with Sir Peter Fahy, who agreed, and, as ACC Sweeney was the Chief Officer in GMP responsible for NWCTU, he was the obvious choice.

PD1.11 6. In relation to the post of Head of NWCTU, which DCS Mole had been carrying out as a temporary posting, but was seeking the substantive post in this exercise, there was no intention that ACC Sweeney would be on, still less chair, this panel. DCS Mole accordingly did not expect that ACC Sweeney would chair or be on his interview panel.

PD1.11 7. DCS Shaun Donnellan told the claimant that he had been asked to be part of a three person panel for the interviews for the D/Supt posts. He also told him that he had then been withdrawn from that Panel a week before the interviews were scheduled , and replaced by C/Supt John Rush. Whilst the claimant asserts that DCS Donnellan also told him that the reason he had been given was that he had previous dealings with TD/Supt. Scally (and had failed him in an assessment) , this is not corroborated by DCS Donnellan, whose witness statement is wholly silent on this disclosure, and the involvement that he is alleged to have had in this process.

PD1.11 8. The panel on 7 December 2012 when TD/Supt Scally was interviewed consisted of ACC Sweeney, T/DCS Mole and C/Supt John Rush. C/Supt. Rush had been asked by ACC Sweeney to sit on the panel. Notes of the interview were taken by each panel member, there were set questions, and a marking guide, and the scores for each question were recorded by each of the panel . TD/Supt. Scally was successful. Whilst this documentation has not be been made available to the Tribunal, it was reviewed by Ms Hill in her review (see below). The evidence of DCS Mole and DCS Rush is that the same process was followed in respect of each of the candidates for the Superintendent role. Their evidence is that in relation to TD/Supt Scally the panel each scored him roughly the same against the questions set in the interview , and that he was the highest scoring candidate.

PD1.11 9. On 14 December T/DCS Mole was interviewed for the DCS Head of NWCTU role by Sir Peter Fahy, Chief Constable of GMP and Stuart Osborne, ACPO TAM, ACC Sweeney was not on this interview panel. T/DCS Mole was successful.

PD1.11 10. The officer 'R' referred to is DCI Graham Brock, who worked quite closely with TD/Supt. Scally at the time. DCI Brock had been told by TD/Supt. Scally that ACC Sweeney was helping him with an interview process. He was not aware of which process this was, and was not aware whether it was for the NWCTU post. He told the claimant that TD/Supt Scally had told him (Brock) that ACC Sweeney was helping him with an interview process. DCI Brock did not tell the claimant , because he did not know, that this process was that for the post in NWCTU.

PD1.11 11.Denise Hill , then Head of Human Resources, conducted a review into the process at the request of Sir Peter Fahy in early 2014. She reviewed the file containing the documentation that the panel had created. She considered that the scoring was consistent with the answers provided by the interviewee. TD/Supt. Scally had scored the highest number of points in the interview. The documents she reviewed, however, have not been located, and are not in the bundle.

PD1.11 12. Denise Hill produced an undated report which is at pages 1803 to 1807 of the bundle. In it, whilst she made recommendations for the future involvement of an external independent panel member for Det Supt. roles, as there had been for the DCS/Head of NWCTU role, she did not consider that there was any evidence that this had been a corrupt or sham process. She did not, however, investigate any of the matters that TD/Supt. Scally had put in his expression of interest form, in terms of whether they were accurate or a fair reflection of his experience and abilities.

Discussion and findings.

The information , the allegations contained in it , and what the claimant reasonably believed it tended to show.

PD1.11 13. The Tribunal finds that the information conveyed by the claimant was as summarised in the List of Issues, plus the additional information identified by the Tribunal above.

PD1.11 14. The claimant's case on what he believed this information tended to show is set out above, by reference to para. 64 of the List of Issues.

Reasonable belief under s.43B(1) in what the disclosure tended to show.

PD1.11 15. The Tribunal must first apply the tests under s.43B to this disclosure. The first issue is whether the claimant believed, and if so, whether he reasonably believed, that this disclosure tended to show , under s.43B(1) that there had been a failure to comply with a legal obligation.

PD1.11 16. The first of the legal obligations relied upon is the duty to protect the public and prevent crime. The Tribunal does not see how the claimant reasonably believed

that this disclosure tended to show that. It is appreciated that the claimant considered that TD/Supt Scally was not up to the job, and his appointment would lead to mistakes being made. This is a point that the claimant makes elsewhere. This particular disclosure does not. It refers to a corrupt process, but it does not say that the result of the allegedly corrupt promotion would be that the respondent was failing in his legal duty to protect the public and prevent crime. The Tribunal cannot therefore accept that the claimant reasonably believed that this disclosure tended to show that, because it plainly did not.

PD1.11 17. The second legal obligation, of course, is the 2012 Police (Conduct) Regulations issues, which has previously been discussed, and discounted.

PD1.11 18. The alternative limb of s.43B(1) relied upon is that the health and safety of any individuals, in this instance, the general public, had been (note the claimant does not rely upon the "is likely to be" limb) endangered. Rather as with the legal duty to protect the public and prevent crime limb, the Tribunal does not see how the claimant reasonably believed that this disclosure , of itself, in the terms in which it is couched, could tend to show any such thing. That the promotion was improper is one thing, but that it had endangered anyone, is another, and this disclosure cannot be read as even tending to show that. This disclosure accordingly fails the s.43B test.

PD1.11 19. Finally, turning to the public interest, the Tribunal, for the same reasons as it did in relation to PD1.1 above, finds that the claimant did believe that it was in the public interest to make this disclosure, and that was a reasonable belief. That is notwithstanding that the claimant , being aware of such allegedly serious failings on the part of TD/Supt. Scally, and the allegation (made elsewhere) that he had committed the offence of misconduct in public office, did not take this to the PSB , or to the IPCC, when he was first aware of it, but instead utilised it in his grievance . This was a curious omission, and one that supports a suspicion that he was more keen to pursue his private interests than any true public interest. That, however, does not preclude a belief that to make such a disclosure cannot also be believed to be in the public interest, and the claimant does use terminology which does relate to the public interest. He satisfies the comparatively low public interest requirements of s.43B(1).

Does the claimant satisfy the s.43F test?

PD1.11 20. If, however the Tribunal is wrong, and this disclosure satisfies the s.43B tests, and survives them, the Tribunal now turns to the next test, that under s.43F, which requires the claimant to have a reasonable belief in the substantial truth of the information and any allegations contained in the information disclosed. That , of course, includes the omitted sections of the paragraphs of PDR1.

PD1.11 21. The information provided in this disclosure contains the following information and allegations:

a) DCS Mole was going to be interviewed a week after he took part in the interview of TD/Supt. Scally by a panel chaired by ACC Sweeney, and would therefore be more unlikely to oppose ACC Sweeney's choice of his preferred candidate TD/Supt. Scally;

b) DCS Donnellan had been removed from the panel to interview TD/Supt. Scally by ACC Sweeney to be replaced by DCS Rush, who was more amenable to ACC Sweeney's views and unlikely to oppose ACC Sweeney's preference;

c) ACC Sweeney had coached TD/Supt. Scally for the interview for which he was going to chair the panel;

d) The whole interview process was a sham, and was not fair or impartial.

PD1.11 22. The Tribunal finds that the claimant has failed to satisfy it that he had a reasonable belief in the substantial truth of any of this information or the allegations contained in it.

PD1.11 23. Firstly, DCS Mole was not going to be interviewed a week after he interviewed TD/Supt. Scally by a panel chaired by ACC Sweeney. That of course, is not fatal to this disclosure, as the claimant only has to have reasonably believed in the substantial truth of this information. He did not, he simply made an assumption. There was no evidential basis for it, he does not claim that anyone told him that , he simply jumped to that incorrect conclusion. He later accepted that the Chief Constable had put ACC Sweeney on the panel for the Superintendent post, and that he (Sweeney) had not been on the panel that interviewed DCS Mole. He suggested, however, that ACC Sweeney could still have wielded some influence over DCS Mole. That was not, the information that the claimant disclosed. The allegation that ACC Sweeney was going to chair the panel which was to interview DCS Mole is one in which the claimant did not have a reasonable belief.

PD1.11 24. Turning to the next allegation, that DCS Donnellan had been removed from the panel to make way for CS Rush, the Tribunal is prepared to accept that the claimant had a reasonable belief that DCS Donnellan had been approached to be a panel member, and then was not required . The suggestion , or any belief on the part of the claimant , however, that a panel member for the Det. Supt. selection process, the then T/DCS Tony Mole, would have been influenced by the (supposed) chair of the panel, ACC Sweeney, as DCS Mole was to attend a forthcoming promotion board on the 14 December 2012, was not a reasonable one.

PD1.11: 25. It is clear that the claimant is greatly exercised by the fact that TD/Supt Scally used in support of this application his leadership of Operation Nixon which the claimant regarded as a disgrace , for which he should have been prosecuted. At the time of his disclosure, of course, he did not know what was in TD/Supt. Scally's application form, but whether he had included that Operation or not, the claimant's view was that he was wholly unsuitable for promotion into the NWCTU role, and that ACC Sweeney, at least, knew that, but pressed on to get his friend appointed to this senior and important position. The claimant's view, which he confirmed in cross examination , was that it was a corrupt process because it ended up with someone who had allowed a paedophile to take a child into a house being appointed to this very significant post.

PD1.11: 26. That is an opinion, and it may be right, but in this disclosure the claimant has sought to allege that ACC Sweeney manipulated the process so as to "rig" the panel

to achieve his desired outcome, and coached TD/Supt. Scally to assist him get the post. The claimant went further, and stated that the interview process was sham, which was not fair or impartial. The claimant's belief in each of those allegations was not reasonable, and is another example of his readiness to construct, or assume, a narrative which fits his pre-conceptions, and to make allegations in which, viewed objectively, he could not have had a reasonable belief. This disclosure accordingly fails on s.43F.

Group 2:

3.Protected disclosure 1.2: decision by Scally not to intervene to protect child.

The pleaded disclosure (with the extracts omitted from the List of Issues added with underlining)

Information disclosed: In the course of an operation (Operation Nixon) in which a high profile violent paedophile was under surveillance TD/Supt Scally deliberately decided not to intervene and safeguard a 13 year old boy when the subject of the surveillance went into a house with the boy, drew the curtains, and remained in the house with the boy for 2 hours. TD/Supt Scally refused to allow any intervention in spite of protests from other officers. As a result of the failure to take any action against the paedophile who was under surveillance, the paedophile later went on to rape a 15 year old boy.

15. PD 1.2 was set out in detail at paragraphs (x) - (xxviii) and (xxxvii) - (xxxviii) of PDR 1. Those paragraphs were worded as follows:

(These paragraphs are set out under the heading "(B) When 'cronyism goes badly wrong! Operation Nixon":)

(x) TD/Supt Scally subsequently became the SIO for Operation Nixon, an investigation into a high profile violent GMP criminal who was a paedophile and high risk MAPPA 3 subject. I shall refer to him as 'Nominal 1'. During the investigation he was the subject of covert surveillance. Staff raised concerns from the outset with the Management Team for Op Nixon (TD/Supt Scally, SIO, T/DCI Dave Warren, Deputy SIO and DI Chris Bridge) about the tactics being employed; believing the strategy of surveilling a paedophile was unduly problematic in that once he was seen to meet with a child it would necessitate intervention to safeguard the child. Officers 'A', 'B' and 'C' made these representations.

(xi) Officer 'C' had initially been directed to provide advice to TD/Supt Scally and the Management Team on covert strategies. As they had decided that the surveillance tactic was to be pursued officer 'C' emphasised the need for written detailed intervention strategies, standard practice in such cases should a situation arise where the SIO is not contactable. T/DSupt Scally however told officer 'C', 'What we can't see, we don't know'. Officer 'C' told him this was not acceptable.

(xii) At a later date, whilst under surveillance 'Nominal 1' was seen to meet with a 13 year old boy and go into a house where the curtains were immediately drawn. Officers observing the address were reporting back what was happening via supervision. They believed that an intervention would take place.

(xiii) DI Bridge was in contact with the teams and telephoned TD/Supt Scally but got no reply. He then contacted officer 'C' who told him that an immediate intervention should take place. He provided details on how this could be achieved, advising that a call be made to the Force Duty Officer (FDO) to create an anonymous FWIN (incident log) reporting a child at risk at the address. The FDO could then ensure the prompt attendance of uniform officers to gain entry and safeguard the boy. This may have also provided evidential opportunities by enabling an interview of the boy, seizing of phones and other potential evidence as well as gaining an account from 'Nominal 1'.

(xiv) Officer 'C' assumed an intervention was to take place. After some time he spoke again with DI Bridge who informed him that he had now spoken with TD/Supt Scally and that TD/Supt Scally had disregarded the advice of officer 'C' and had refused to allow an intervention to safeguard the boy. He had made the decision to 'do nothing'. DI Bridge reported this back to officer 'C', saying that TD/Supt Scally said 'What we can't see, we don't know', the view he had previously expressed to officer 'C' when being given guidance on covert strategies. It is understood that he was more concerned about compromising the investigation than safeguarding the child.

(xv) This decision totally disregarded the rights guaranteed to the boy under Article 2 of the Human Rights Act. What outcry would there have been had this child been murdered when under the control of a violent paedophile; whilst the police looked on and did nothing?

(xvi) Officers engaged on observations on the address became increasingly anxious and angry as they waited for an intervention that was never to come and they continued to helplessly watch as the boy remained in the address for approximately 2 hours.

(xvii) As a result of TD/Supt Scally's failure to act it is understood that the paedophile was allowed to sexually abuse the boy in the house.

(xviii) Case law from 1979 (R v Lytham) established the tenet that the offence of Malfeasance, now 'Misconduct in a public office', included what Public Officials 'DIDN'T do as well as those that were 'DONE', i.e. it covered acts of OMISSION as well as COMMISSION. The defendant in that case, a police officer who stood by and failed to act whilst a bouncer fatally assaulted a man, was convicted of the offence which was upheld at the Appeal Court.

(xix) TD/Supt Scally's failure to act and safeguard the child is behaviour that similarly constitutes the offence of 'Misconduct in a public office'. It is requested that the actions and decisions taken in Op Nixon by TD/Supt Scally and the Management Team should be the subject of an independent investigation and that in light of the potential criminality, that a file should be submitted for consideration by the Crown Prosecution Service.

(xx) Officers 'D', 'E', 'F' and 'G' who were engaged on the operation were enraged and disgusted by TD/Supt Scally's decision not to intervene and made their feelings clear when the surveillance was concluded, complaining to their supervisory officer, Officer 'A'.

(xxi) Officer 'H' also worked on Op Nixon and was 'livid' at what had been allowed to take place.

(xxii) Officer 'A' spent 8 hours on his day off writing a damning report about Op Nixon and what he and fellow officers perceived as the incompetence of the Management Team and flawed strategy of Op Nixon. He handed the report to DI Bridge. It is not known what happened to it.

(xxiii) Officer 'C' who had provided advice to the Management Team and had strongly advised on an intervention when 'Nominal 1' was seen to enter the address, was also disgusted by TD/Supt Scally's failure to intervene. He reported the matter to DCI Creely (now Temp Det Supt) who informed his line manager D/Supt Ian Dudderidge (now retired) who brought the matter to the attention of Detective Chief Superintendent Darren Shenton.

(xxiv) DCS Shenton took no disciplinary or other action against TD/Supt Scally.

(xxv) The day after officer 'C' had complained to his supervision, officer 'J', was summoned to a meeting with D/Supt Dudderidge and TD/Supt Scally. The officer, being junior in rank to TD/Supt Scally, was briefed in a somewhat embarrassing meeting in front of him as D/Supt Dudderidge painfully recounted the events of the previous day. He was informed about the incident that 'should never have been allowed to happen'. A vain attempt was made to try to explain away the serious and criminal failings of TD/Supt Dominic Scally, by reference to him 'not being of this world', which meant that TD/Supt Scally was not an experienced detective, not accustomed to dealing with serious crime investigations and not familiar with the use of covert tactics. It clearly demonstrated that he was 'completely out of his depth'.

(xxvi) In reality no explanation could be given to explain, excuse or account for TD/Supt Scally's failure to act and safeguard the boy. Even the most inexperienced of junior officers would have known what decision should have been made; there should have been an intervention, the boy should have been rescued from the situation.

(xxvii) Officer 'J' was to meet with the Management Team of TD/Supt Scally, T/DCI Warren and DI Bridge and was tasked to work alongside them providing advice on 'covert' investigative tactics. It had been made clear to them all that they had to run any 'scenarios' past officer 'J'. It was clear all the Management Team were inexperienced and did not really know what they were doing. Officer 'A's' report had reflected this fact that. Officer 'J' subsequently had to instruct them on a number of occasions not to pursue a specific tactic or to make them put in place an intervention to safeguard children.

(xxviii) TD/Supt Scally addressed the Op Nixon staff after 'the incident' at a meeting and told them that ACC Sweeney was Gold for the investigation and that he was fully aware of the investigation strategy and events; and the investigation and tactics were to continue. I feel it of paramount importance that ACC Sweeney be asked to confirm or deny this was his position and what facts were known to him when he gave this direction

(These paragraphs are set out under the heading "(C) Review of Op Nixon – A cover up!":)

(xxxvii) No action was taken against 'Nominal 1' as a result of Op Nixon and the investigation was subsequently closed. Alarmingly, a number of other potential victims were also identified during the investigation but no approach was made to them.

(xxxviii) As a result of the failings of Op Nixon the paedophile was able to go on and rape a 15 year old boy at a later date, an offence for which he was arrested and charged. Attempts were eventually made to revisit potential victims identified during Op Nixon at this time but time and the opportunity had passed. The investigation was again poorly led, with further poor decision making on how the children should be approached. As a result they could not gain the co-operation of any witnesses. Officer 'B' is damning in his assessment of how the investigation was managed and feels that vulnerable children were badly let down by GMP. (See Appendix 'B' for copy of a report he has supplied on Op Nixon. See also Appendix 'C for copy of an e-mail from Officer 'C', which is a brief overview of his involvement on Op Nixon and corroborates the information as detailed above).

List of Issues - Para. 17: The claimant contends that he reasonably believed that the disclosure was made in the public interest , and tended to show (a) that a criminal offence, namely misconduct in public office, had been committed by TD/Supt Scally; and/or (b) that there had been a failure to comply with one or more legal obligations, namely (i) the duty to protect the public and prevent crime; and/or (ii) the Respondent's duties under the Human Rights Act 1998 (HRA) and Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) to safeguard the life of the 13 year old boy; and/or (iii) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of honesty and integrity; duties and responsibilities and discreditable conduct; and/or (c) that the health or safety of any individual, namely the 13 year old boy, had been endangered.

Relevant facts:

PD1.2: 1. The Tribunal has been considerably hampered by the lack of the "key" documents that the claimant provided to the IPCC with his PDRs, in which the various persons whom he used in those documents by the use of initials were identified. He was unable during the hearing definitively to recall who was who, so identification by the Tribunal of these persons is somewhat tentative. In these paragraphs of PDR1 the Tribunal's highly speculative view is that Officer 'A' is DS Hull, Officer 'B' is DS Woodhouse and Officer 'C' is DI Mortimer. .

PD1.2: 2. Operation Nixon was an investigation into the activities of Dominic Noonan, a paedophile and MAPPA 3 offender , who was under surveillance in this operation. The Operation had commenced in early February 2011, following the collapse of a prosecution the previous year, and further intelligence being received in January 2011 that sexual offences were being committed by the offender, who was still at liberty. The

Operation was allocated to Syndicate 8 of the MIT . This was simply because it had the best capacity to take it .

PD1.2: 3. The operation command structure was Gold, Silver and Bronze. ACC Sweeney was Gold commander. Initially, DCS Shenton was the Silver commander, although this may have formally been DCI Warren. TD/Supt. Scally , was not, at the time of the inception of Operation Nixon, in post. He had been promoted to that acting rank on or about 21 March 2011 , and then , the next day, was put in role , as OIOC, of this operation. DCI Warren remained the SIO.

PD1.2: 4. The Operation involved the use of covert surveillance , i.e a proactive investigation, as well as a reactive investigation. Previous attempts to secure evidence against Dominic Noonan which could lead to a successful prosecution had not been successful, and the decision had been taken at a very senior level that covert surveillance tactics would be required. These tactics are very sensitive, and when used, their results , and information derived from them, are not often revealed even to other Police officers. They are also somewhat controversial, as they can involve situations where potential offenders are surveilled up to the point where they may be about to commit offences, which would provide good evidence to support a prosecution , but which thereby render potential victims vulnerable to harm if the offence is not stopped before it is committed. Intervention, in such a case, is therefore potentially required, but that runs the risk of revealing that the offender has been under surveillance.

PD1.2: 5. The MIT Syndicate allocated to the operation was not experienced in covert operations of this nature. TD/Supt. Scally was the OIOC, and DCI Warren and DI Bridge were the next most senior officers. They too did not have much specialised covert operational experience.

PD1.2: 6. The potential issues arising out of use of these covert tactics were recognised, and TD/Supt. Scally sent an email (pages 1841 and 1842 of the bundle) to DCS Shenton on 14 April 2011 setting out the potential risks of sexual offences being committed , and discussing the options that would have to be considered in the event that such activity occurred.

PD1.2: 7. DI Rick Mortimer, who had a covert background, and considerable experience of this type of operation, did not have a formal role in the operation, but gave informal assistance. He had concerns at the deployment of an inexperienced MIT team to the operation, and raised them with DCI Creely , of the SOCG. The response was that the decision had been taken at a very high level and would not be changed.

PD1.2: 8. On 17 April 2011, a Sunday, when it was not expected that there would be any relevant activity, and many officers were on a rest day, intelligence was received that the offender was meeting up with a young boy. This proved to be correct , and officers were called in to keep surveillance on a house or flat where the offender was seen to be in the company of two male persons, one a 13 year old boy, the other older, but still a youth, approach and enter the property. The curtains of the flat where the offender and the males were believed to be were then drawn. The amount of time that

the offender and the two males were in the house has been said to be as long as 2 hours.

PD1.2: 9. Officers involved in the operation became concerned about the risk to the younger boy, and some believed that there should be some intervention to safeguard the boy from the risk of sexual assault. DI Bridge, in the absence of DCI Warren, telephoned DI Mortimer , and sought his advice . His view, which he expressed, was that there should be an intervention, and he made a suggestion as to how it may be effected. That advice was then given by phone by DI Bridge to TD/Supt. Scally, who was not on duty. DI Bridge advised that an intervention should take place, but TD/Supt. Scally declined to follow that advice, and decided not to intervene. The 13 year old in due course left the flat, and whether or not any sexual activity had taken place was not, at the time that the claimant made his disclosure, known by him.

PD1.2: 10 . By the time of a meeting on 18 April 2011 TD/Supt. Scally had formally become the Silver commander, replacing DCS Shenton (see page 1846 of the bundle).

PD1.2 11. The claimant had no first hand involvement in this operation. He first learned of it through conversations with DS Joe Hull, and DS John Woodhouse, who had both worked on it. These conversations were around May 2012, over a year after the event. DS Woodhouse told the claimant he had written a report about the handling of the incident, which he had provided to DI Bridge. It does not appear that this document was provided to the claimant at that time. It is dated 24 April 2011, and is at pages 6797 to 6805 of the bundle. Both officers told the claimant that they believed their concerns had been covered up and brushed under the carpet.

PD1.2: 12. The claimant first mentioned this matter in his grievance of 25 June 2012. In his grievance document in Word format (pages 527 to 544 of the bundle) he says this:

"T/D. Supt Scally subsequently became the SIO on Operation Nixon which was an investigation into Damian Noonan, who is a high profile criminal and paedophile. I have become aware that there may have been serious failings on Operation Nixon which saw a child put at risk of sexual assault by Noonan and that T/Det. Supt Scally failed to take action to intervene and safeguard the child.

I am aware that officers engaged on the investigation were disgusted by the actions of the senior management team….

The claimant continued and provided much of the detail that subsequently was contend in his PDR1 document. In particular , he said this:

"…… It appeared T/D. Supt Scally was more concerned about compromising the surveillance operation than the safety of the child. I believe that officers involved on the investigation were extremely upset by his decision to do nothing and could not believe the rationale being given, as surveillance was being carried out on the basis of Noonan being a paedophile and grooming young boys. The officers felt that T/D. Supt Scally allowed the child to be put at risk and I understand that the boy may have been sexually abused by Noonan.

I am aware that this issue was brought to the attention of D/Ch Supt Shenton. I am aware that some form of review has been conducted on Op Nixon. I do not know when this took place but I believe the issue of T.D/Supt Scally not taking action to prevent the boy coming to harm/being sexually abused has not been addressed……..”

And , later :

I believe that the circumstances as related above appear to highlight a serious neglect of duty and I would have thought the investigation and the actions of the SIO and Management Team should have been the subject of independent review. I am concerned as to why no action appears to have been taken.”

PD1.2: 13 The claimant continued to make reference to Operation Nixon during the grievance and appeal process. The claimant’s grievance was dealt with by T/ACC Wiggett, and they met on 8 August 2012 , of which there appears to be no documentary record in the bundle. The outcome was provided to the claimant by T/ACC Wiggett on 23 October 2012 (pages 651 to 664 of the bundle). He rejected the grievance, and declined to look any further into the claimant’s claims that there was a culture of cronyism, and advised the claimant of his right of appeal.

PD1.2: 14 The claimant did appeal, and in his Stage 3 appeal form (there are two versions in the bundle, but they contain the same text) in the concluding box (page 687 of the bundle) the claimant says this:

“ I reiterate that my grievance raises some serious issues for the Force over the management of these investigations and abilities of certain SIOs. I feel the following paragraph from my grievance is highly relevant in light of all of the above:-

'It is my view, and a view shared by many, that favouritism and cronyism is widely practised within GMP and that it is often the case that the closeness of a person’s relationship with an influential senior officer is a more important factor in determining whether one gains promotion than your actual performance, experience, ability and skills. What I believe is of real concern is that the practice of favouritism and cronyism is seeing officers advanced into positions for which they do not have the requisite experience, skills and abilities and as a consequence I believe the Force and the public are being placed at risk. I do not make these comments lightly '

I have been highlighting serious issues about the above cases and certain SIOs since May 2012 when I started this grievance process. I feel the Force has ignored my warnings ands [sic] *nothing has been done. I believe the above issues and investigations need to be addressed and that Op Nixon, Op Somerville, Op Mirato and Op Dakar should be subject of independent review.”*

PD1.2: 15. The claimant’s grievance appeal was heard by ACO Lynn Potts on 4 January 2013. The notes of that meeting are at pages 755 to 758 of the bundle. In the course of the meeting ACO Potts (at para. 7 of the notes) raised with the claimant a suggestion that had previously been made by T/ACC Wiggett that there were other routes that he

could take outside the grievance process to explore the issues that he was raising. The claimant said that he had discussed this issue with the Federation and sought legal advice in respect of this. The advice given was that he had already highlighted his concerns to the Force via this process and did not need to explore these other routes. ACO Potts said that if this was the case, then she needed confirmation from the claimant that he was agreeable to her passing his concerns on to the Professional Standards Branch for them to progress. He agreed with this course of action.

PD1.2: 16. The PSB was then involved, and the claimant's representative was informed of the steps that were being taken. On 15 February 2013 Lesley Kewin HR Delivery Manager sent an email to ACO Potts (page 770 of the bundle) in which she informed ACO Potts of a conversation she had had with the claimant's Fed. Rep. Kieran Murray. Mention had been made of the claimant "getting giddy" in relation to any investigation being carried out by the PSB, and that he had mentioned contacting the IPCC. Kieran Murray had tried to influence him ("keeping him grounded" as it was put) against this.

PD1.2: 17. By letter of 4 March 2013 ACO Potts provided the claimant with the outcome of his grievance appeal (pages 774 to 781 of the bundle). She recited much of what had been discussed in the meeting on 4 January 2013. She also informed the claimant that the matters he had raised had been referred to the PSB. At the end of his investigation, Superintendent Turner had concluded that he could not see any evidence, intelligence or information in the grievance documentation that he had submitted to justify a formal investigation into any officer named. She also told the claimant that if was forthcoming with any evidence to support allegations of wrong doing he would address the issues.

PD1.2: 18. The claimant wrote to Kieran Murray after he had received the appeal outcome on 13 March 2013 (page 785 of the bundle). He described the outcome as a complete whitewash. He sought further advice as to what steps he should take. He said this: *It's staggering that they have tried to sweep the really serious issues under the carpet.*

PD1.2: 19. On 28 March 2013 the claimant , Kieran Murray and DCS Paul Rumney of the PSB met. The notes are at pages 786 to 787 of the bundle, with a typed up version at pages 787A to 787B. In that meeting the claimant's view that the appeal was a whitewash was discussed.

PD1.2: 20 The claimant's Fed. reps. continued to have some dialogue with DCS Rumney , and on 18 April 2013 the claimant wrote to them saying :

"Keiran/ Tom, can we look to escalate now and take it outside Force next week. They still haven't responded to my ET and reply was due other day and Paul Rumney has not responded, he had said mid April and in any event we know likely outcome. Happy to take advice on course of action but I thought PCC askin him to refer to IPCC and we also go to, Health n Safety, Coroner, Keith Vaz and Home Office. I think they've had long enough now and Ch Supt and ACC processes starting so think good time. Your thoughts?"

PD1.2: 21 In or around May 2013, as the claimant was preparing, with the assistance of his Fed. representative, his further grievance in relation to the lack of support from DCS Shenton for his promotion to TD/Supt., he and/or his Fed. rep. approached DS Hull and DI Mortimer about this incident in May 2013. On 27 May 2013 , (page 795 of the bundle) DI Mortimer sent the claimant an email in which he set out an account of the incident. On 28 May 2013 (pages 2025, and 2030 to of the bundle) DS Hull provided the claimant with his report document. The claimant , however, did not obtain a copy of DS Woodhouse's report of 24 April 2011.

PD1.2: 22. In his email DI Mortimer set out how he was contacted by DI Bridge on Sunday 17 April 2011 , and informed of the boy going into the flat. DI Bridge had been unable to contact TD/Supt. Scally , and asked DI Mortimer for advice. He said that there should be an intervention to remove the boy from the flat. He was later told by DI Bridge that when this advice had been given to TD/Supt. Scally he had not actioned it, saying "what we can't see we don't know about". DI Mortimer does not state in this email that the boy was sexually abused, but does go on to recount how he later informed DCI Creely of his concerns, and then saw DS Dudderidge, whom he also informed of his concerns. DS Dudderidge told DI Mortimer that he had told DCS Shenton about the matter, who said he would look into it. DI Mortimer then heard nothing further about the matter.

PD1.2: 23. Nothing in his account in his email contains any further details of the meeting that DI Mortimer had with DSupt. Dudderidge. DI Mortimer's witness statement for these proceedings (his first one, pages 318 to 328 of the open witness statements bundle) makes no mention of TD/Supt. Scally being present when he saw D/Supt Dudderidge.

PD1.2: 24. The Tribunal considers that , whilst it is not totally clear, the reference to any meeting with D/Supt. Dudderidge , at which TD/Supt. Scally may have been present, was with another officer, officer 'J', who is not DI Mortimer. Whilst the absence of the key provided to the IPCC by the claimant does not assist, it appears that this officer must have been one of the officers from the covert side of the operation (hence the reference in para.(xxvii) to him advising the other members of the team on such matters), either DCI Peach or D/Sgt Crook. From the IPCC witness statements that they both gave (pages 7272 to 7279 for the former, and 7182 to 7185 , of the bundle for the latter) the Tribunal's view is that officer 'J' was D/Sgt Crook. In his account to the IPCC D/Sgt Crook, whilst referring to a meeting with D/Supt. Dudderidge, makes no mention of TD/Supt. Scally being present, nor of being embarrassed, nor of any comment being made to the effect that TD/Supt. Scally was 'not of this world'. He was brought in after the event to provide covert advice and assistance. He was asked to "walk through" scenarios with TD/Supt. Scally , and formed the view that D/Supt. Dudderidge would have taken a different view about whether there should have been an intervention on 17 April 2011. The claimant has given no evidence of any communications with D/Sgt. Crook about Operation Nixon, and has not given him as one of his sources.

PD1.2: 25. The claimant first reported this matter in his grievance report dated 25 June 2012 (pages 527 to 536 of the bundle). This 10 page document singles out DCS Shenton for criticism, and allegations of cronyism.

PD1.2: 26. The claimant's allegations about Operation Nixon are at pages 529 to 530. He says that he had become aware that *"there may have been serious failings on Operation Nixon which saw a child put at risk of sexual assault"*. At page 530 of the bundle he said this: *"The officers felt that T/D. Supt Scally allowed the child to be put at risk and I understand that the boy may have been sexually abused by Noonan."*

PD1.2: 27. He goes on to say that he was aware the matter had been brought to the attention of DCS Shenton, and that some form of review was conducted. He was unaware of when this had taken place, he believed that the issue of TD/Supt. Scally not taking action had not been addressed.

PD1.2: 28. That grievance was ultimately dealt with by T/ACC Wiggett on 23 October 2012 (pages 651 to 661 of the bundle). The grievance did not deal specifically with the claimant's allegations about TD/Supt. Scally's failings in Operation Nixon, and, in overall terms, rejected the claimant's grievance.

PD1.2: 29. The claimant appealed, and in his Appeal Form dated 8 November 2012 (pages 682 to 687 of the bundle) at page 686, he reported that as he went on leave on 26 October 2012, he became aware that the target of Operation Nixon had been arrested for the rape of a 15 year old boy. This is the source of his disclosure that the 15 year old boy had in fact been raped. Noonan was indeed arrested for such an offence on 23 October 2012 (see D/Supt. Savill's severity assessment at page 2093 of the bundle).

PD1.2: 30. On or about 11 June 2013 , and repeated in the later version of 20 June 2013 , the claimant in his disclosure document to the PCC (pages 814 to 834 of the bundle) the claimant stated at para. (xvii) that *"it is understood that the paedophile was allowed to sexually abuse the boy in the house."* This remained the terminology used in the disclosure document "PDR1" later sent to the IPCC.

PD1.2: 31. DS Hull made a written account of the incident, dated 28 May 2013, which is at pages 2025 to 2030 of the bundle. He sent a copy to the claimant by email on 28 May 2013. It is clear from his report that he and others in the team had misgivings about the whole approach that was being taken to apprehending and obtaining evidence against this offender, which involved , in the view of some of those involved, unacceptable risks to potential victims. The view had been taken, however, at senior command level that as other tactics to secure evidence and obtain a conviction had proved unsuccessful, these tactics, which involved surveillance in the hope of apprehending the offender in the preparatory acts to an offence, had been sanctioned.

PD1.2: 32. His report details what he learned the following day (he was off duty on the day in question, and was telephoned by DI Bridge) which was that the boy had entered the premises, and had been there for 2 hours. Colleagues expressed concern that they had "potentially watched a serious sexual assault occur". He does not state that the boy had been sexually assaulted.

PD1.2: 33. There was disquiet about the incident, and continued dissatisfaction amongst officers about the whole concept of the use of such covert tactics where there was ,

some perceived, an unacceptable level of risk to vulnerable victims. TD/Supt. Scally , however, whilst noting these concerns, and taking responsibility for the decisions made, informed the team that the operation would proceed in this way, with the endorsement of senior leadership. He goes on to detail the further conduct of the operation, and its ultimate scaling down. He makes no mention of any subsequent rape by the offender of a 15 year old boy.

PD1.2: 34. DI Mortimer, DS Hull, and DS Woodhouse all made statements to the IPCC about the incident. DS Hull's was made on 30 June 2014 (pages 7186 of the bundle), DS Woodhouse made his on 25 June 2014 (pages 7197 to 7212 , with a further statement on page 7213 of the bundle), and DI Mortimer on 11 July 2014 (pages 7240 to 7247 of the bundle).

PD1.2: 35. DS Hull's statement confirms how there was concern on the part of several officers in the team at the use of the covert tactics, and that this MIT Syndicate was being deployed, which had extensive reactive experience, but little or no covert experience. He details how these concerns were raised by him to DI Bridge, and how he was told that these decisions had been taken by ACC Sweeney as Gold commander and TD/Supt. Scally. He was told, but not directly by ACC Sweeney, that this decision had been ratified by ACC Sweeney. He details the events of 17 April 2011, and its aftermath.

PD1.2: 36. DS Hull also states (page 7196 of the bundle) how he wrote his report of May 2013 after an approach from the claimant (whom he does not identify, but he must be the DCI who was "writing a report on officers being inappropriately promoted putting the public at risk"), and provided his report to the claimant .

PD1.2: 37. DS Woodhouse's statement echoes the concerns felt about the use of covert tactics, and the lack of experience of the MIT Syndicate in covert work. He was tasked with looking at potential recall of the offender, who was on licence following his last release from prison. He considered this to be a potentially good way to remove the offender from the streets, and prevent further offending, but this was not pursued by the management of the operation. He had grave misgivings about the whole operation, and the way in which covert tactics and reactive tactics were being deployed by the same team. He refers to TD/Supt. Scally coming into the team, and making the decision, which he agreed with, to split the reactive and covert sides of the team. He was not on duty on 17 April 2011. He wrote a report at the time, intending to send it to ACC Sweeney, which is likely to be that at pages 6797 to 6805 of the bundle, but in the end it may never actually have reached him. There is no suggestion that he provided this report to the claimant.

PD1.2: 38. In his IPCC witness statement , made on 11 July 2014 (pages 7240 to 7249 of the bundle), DI Mortimer explains how he did not have a formal role in Operation Nixon, but advised the management team on covert tactics. He expresses his concern at the fact that this operation was given to an MIT team without covert experience, and how when he voiced these he was told that this had been decision that was already made. He says he raised his concerns with TD/Supt. Scally as to what safeguarding would need to be in place to prevent the risk of harm to any vulnerable potential victims,

and say that TD/Supt. Scally told him “what we can’t see, we don’t know”. He recounts how he became aware of the events of 17 April 2011 from his wife, another serving Police officer , who was working on Operation Nixon. He was then called by DI Bridge , who had been trying to contact TD/Supt. Scally , because a young boy and another adult male had been seen to enter the premises where Noonan was, and then the curtains in the room where they were believed to be were drawn. DI Bridge said he did not know what to do, and DI Mortimer advised him that an intervention was required to extract the vulnerable potential victim from the house. He advised of a method of doing this, regardless of whether a strike team had been deployed.

PD1.2: 39. DI Mortimer went on to recount how, on checking later that day with DI Bridge what had happened, he learned that no intervention had taken place, and that TD/Supt. Scally had spoken to DI Bridge, repeating what he had previously said about what they could not see they did not know.

PD1.2: 40. DI Mortimer’s account then details what occurred the following day, and how he saw DCI Creely.

PD1.2: 41. DI Mortimer exhibited to this statement three documents – a “timeline”, a signed witness statement, and an email to the claimant, presumed to be that of 27 May 2013 (page 795 of the bundle). The other two of these documents are not before the Tribunal.

PD1.2: 42. DI Mortimer’s witness statement to the Tribunal in these proceedings makes no mention of TD/Supt. Scally being present when he was giving an account of the events of 17 April 2011 to D/Supt Dudderidge, and it seems more likely that this was D/Sgt Crook, whom the Tribunal believes is probably the Officer ‘J’ referred to.

PD1.2: 43. The report of Officer ‘A’ referred to is that of DS Woodhouse, and is at pages 6797 to 6805 of the bundle, dated 24 April 2011. The claimant describes this as “damning” and refers to what “he and fellow officers perceived as the incompetence of the Management Team and flawed strategy of Op Nixon” . Reading that report, however, reveals that DS Woodhouse does not anywhere in this report suggest that TD/Supt. Scally , or indeed any other member of the management team was incompetent. He, and others , whose views he represented in this report, disagreed with the tactics and strategy of the operation, but he does not suggest that there was incompetence.

PD1.2: 44. DCS Rumney subsequently conducted an investigation, and delegated completion of a severity assessment to D/Supt. Savill. He completed a draft in early November 2013, but this is not before the Tribunal. By email of 5 November 2013 ACC Copley informed the claimant of the progress of the investigation, and that she had received a draft severity assessment from D/Supt. Savill. She informed him that it was considered that the CPS should be consulted , and she sought the claimant’s consent to share his disclosures with the CPS , to which he agreed by return email the same day (page 2063 of the bundle). This duly occurred. Ms Potter with supplied with the report and the statements from DI Mortimer and DS Hull that had been provided to the claimant , and D/Supt. Savill then met with Ms Potter.

PD1.2: 45. From the witness statement provided to the IPCC by Janet Potter of the CPS (pages 7257 to 7259 of the bundle) there was a meeting between Ms Potter and D/Supt. Savill on 12 December 2013 to discuss a potential charge of misconduct in public office against TD/Supt. Scally. Her conclusion was that the high threshold for a charge of misconduct in public office was not met. She considered that at worst TD/Supt. Scally's decision on 17 April 2011 was an error of judgment, where the protection of the public had to be weighed against the chances of conviction of an offender. She recognised that there may be differing opinions on this , but the threshold for a prosecution was not met. She informed D/Supt. Savill of her conclusion by email of 20 December 2013 (page 2065 of the bundle). Her actual advice, however, was contained in a separate document, an "MG3", which has not been included in the bundle. The Tribunal considers, however, that its contents are likely to be the same as the evidence she gives in her IPCC witness statement, as to the reasons why she did not consider that the conduct of TD/Supt. Scally would meet the threshold for a charge of misconduct in public office.

PD1.2 46. On the morning of 30 January 2014 the claimant with his Fed. rep. Tom Elliott met with DCS Rumney. He informed them of the CPS advice that had been received that the circumstances fell well short of misconduct in public office on the part of TD/Supt. Scally. He also told them that he was going to serve notices on TD/Supt. Scally in relation to his conduct. In this meeting, Tom Elliott commented that consideration should be given to action for unsatisfactory performance , as TD/Supt. Scally's actions may well have been a poor decision made in a complex environment. Notices could be served upon TD/Supt. Scally if his account was required. This account of the meeting was confirmed in an email of that date (page 2072 of the bundle) from DCS Rumney to ACC Copley.

PD1.2 47. The claimant , soon after this meeting, at 12.53, sent an email to ACC Copley, in which he set out an account of the meeting. He referred to being told the view of the CPS that there was no basis for a prosecution of TD/Supt. Scally . He said this:

"I expressed concerns as follows;.

1. I don't think GMP should have investigated themselves on this matter (given the serious nature of the allegations, involvement of senior officers up to Chief Officer level and allegations of a 'cover up' by senior officers).

2. 1 don't know how CPS could form an opinion about the conduct of D/Supt Scally in Op Nixon as none of the witnesses who have evidence to provide, as I have referenced in my 'Whistleblowing report', have been spoken to and statements have not been taken. In all my service within GMP and extensive experience as an SIO I have never known CPS give formal advice without receiving a full file. How can they form a view without assessing all the evidence?

3. I have said that I believe if GMP continues with its intended course of action that they will be frustrating the course of justice. (In fact I believe that the Force may already have done this by their actions and inaction to date.)

4.I believe the Force has sought, and continues to seek, to cover up the failings in Op Nixon.

In my experience allegations involving criminal conduct always proceed as follows - secure available evidence, interview witnesses, obtain statements, interview the persons believed responsible, submit full file to CPS for a decision.

This has not happened - why?

Why has there been a real reluctance and resistance by GMP to speak with the witnesses? Police Officers who were there, involved, had conversations with D/Supt Scally, expressed concerns, know what went on? How can this not be regarded as relevant? How can CPS form a view when they only have D/Supt Scally's version of events. I have alleged a 'cover up' of the actions and failings in Op Nixon by senior officers, officers who had oversight of Op Nixon including a Chief Officer who was Gold for the operation.

There is no explanation for the manner in which GMP have handled this. I can only form the view that the Force doesn't want to investigate the matter thoroughly and secure all the evidence because they know it will support the allegations contained within my 'Whistle-blowing' report."

PD1.2 48. The claimant made his disclosures to the IPCC the following day , 31 January 2014, at 9.00 a.m. when he handed his three PDR documents to the IPCC investigators DSI Linton and Investigator Doodson at the Police Federation office at Progress House, Reddish (see pages 1088 and 1088A of the bundle).

Discussion and findings.

The information and the allegations contained in it .

PD1.2 49. The Tribunal finds that the information conveyed by the claimant was as summarised in the List of Issues. As , however, the information appears under the heading "(B) When cronyism' goes badly wrong! Operation Nixon" , this also repeats the information and allegation contained in PD1.1 that TD/Supt. Scally had been promoted as a result of cronyism.

It also includes:

Information that TD/Supt. Scally had been a part of the Management Team from the outset of Operation Nixon, and other officers had raised their concerns about the operation to him;

An allegation that the 13 year old boy in the house had been sexually abused;

An allegation that TD/Supt. Scally had refused to allow an intervention;

An allegation that Officer 'J' had been 'summoned' to a meeting with DCS Dudderidge at which TD/Supt. Scally was also present, and required to repeat his account of the incident in front of TD/Supt. Scally , to his embarrassment ;

An allegation that TD/Supt. Scally had been guilty of criminal failings;

An allegation that TD/Supt. Scally not an experienced detective, not accustomed to dealing with serious crime investigations , and was completely out of his depth;

Information that DS Woodhouse's report stated that he and fellow officers perceived that the management team were incompetent.

Reasonable belief under s.43B(1) in what the disclosure tended to show.

i)s.43B(1)(a) : a criminal offence had been committed;

PD1.2 50. The Tribunal must first apply the tests under s.43B to this disclosure. The first issue is whether the claimant believed, and if so, whether he reasonably believed, that this disclosure tended to show , under s.43B(1)(a) that a criminal offence, misconduct in public office, had been committed. This part of the claimant's PDR1 document, which is at paras. (xvii) to (xix) of the document, has not been recited in the List of Issues, but it contains this information. The claimant clearly makes disclosures that state that TD/Supt Scally was guilty of the offence of misconduct in public office. Whilst he requests an investigation, and reference to the CPS, he precedes that with a clear statement that TD/Supt Scally's conduct constituted that offence. The identification of what the claimant believed this disclosure tended to show confirms that this is one of the limbs of s.43B(1) upon which the claimant is relying.

PD1.2 51. Whilst subsequently CS Savill of PSB, and Tom Elliott , the claimant's Federation representative , in evidence, both agreed that TD/Supt. Scally's actions , or lack of them, were, or could be, a judgment call, and an error of judgment, that would not preclude the claimant from believing that his disclosure tended to show that his conduct amounted to a criminal offence, even if , ultimately it was not considered to be. The test approved in ***Babula v Waltham Forest College [2007] ICR 1026*** by Wall LJ was:

"…. the 'reasonable belief' identified in s.43(1) applied to both the facts which formed the basis of the disclosure, and the relevant failure which the worker relied upon. In other words, a worker made a qualifying disclosure if he disclosed facts, which in his reasonable belief tended to show that a criminal offence had been committed, or that a legal obligation existed which bound the college. He did not lose his protection, simply because he was wrong about the criminal offence or legal obligation, or because he named a criminal offence or legal obligation which either did not exist or which, whilst in existence, might not be made out on the facts."

" In my judgment, the position is the same if a whistleblower reasonably believes that a criminal offence has been committed, is being committed or is likely to be committed. Provided his belief (which is inevitably subjective) is held by the tribunal to be objectively

reasonable, neither (1) the fact that the belief turns out to be wrong – nor, (2) the fact that the information which the claimant believed to be true (and may indeed be true) does not in law amount to a criminal offence – is, in my judgment, sufficient, of itself, to render the belief unreasonable and thus deprive the whistle blower of the protection afforded by the statute."

PD1.2 52. That, the Tribunal acknowledges , means that it can be comparatively easy for a whistleblower to satisfy this requirement. All the circumstances , however, need to be considered, including the claimant's own experience and knowledge, and what, at the time he made the disclosure, he reasonably believed that it tended to show. The problem for the claimant , the Tribunal considers, is that he had been informed in the meeting on 30 January 2014 that the CPS had been consulted and had advised that the conduct of TD/Supt. Scally did not meet the threshold for a charge of misconduct in public office. It is appreciated that he then responded to that in his email of 12.53 that day, in which he queried the advice given and in particular whether the CPS had been provided with "the file" , and why the GMP had "investigated itself". The points he made, however, are irrelevant. It is clear that Janet Potter had been provided with the claimant's disclosures and the evidence which had been provided to him by DI Mortimer and DS Hull, and probably other material about Operation Nixon. That was, in the Tribunal's view, and doubtless that of Janet Potter herself, the "prosecution case" at its highest. There was no need for a more extensive investigation, or even any account from TD/Supt. Scally (who had not been asked for one) , as Janet Potter clearly took the view that there was , and would remain, insufficient basis upon which to bring a prosecution for misconduct in public office.

PD1.2 53. The claimant's submissions on this PD are rather terse. At para. 81 of the Submissions , Mr O'Dempsey says this:

"C reasonably believed that the information disclosed, and the allegations contained in it, were substantially true. By the time C made disclosures to the IPCC he had not been provided with information by R which would have rebutted either the information or the allegations. He had been met with an assertion that PSB having consulted with CPS did not believe that MIPO as a criminal offence had taken place. The CPS, as the IPCC witness statement of Potter (o 7257 @ 7259) bears out, do not advise on internal disciplinary matters. The severity assessment that had been carried out was, by Mr Savill's own admission, incomplete, (and he was the source of information for Ms Potter (o 7258)) so there was no information provided to C which would have been properly capable of undermining the views he had already reached on the basis of the information which had been made available to him by sources which cannot properly be impugned by R as to the substance of what is being said."

(To be clear, Mr O'Dempsey did accept that term "incomplete" in relation to the severity assessment was not strictly accurate, it was not finalised because the Appropriate Authority needed to make a decision as to how to proceed before it could be finalised).

With respect , this submission misses the point. The claimant was told, as was the case, that the CPS had advised that it did not believe that a criminal offence had taken place. The information provided to the CPS was perfectly adequate, there was no more to say.

What might be termed the most damning accounts, the claimant's document, and the evidence from the two officers who were his two sources of information , had been provided to the CPS, who took the view that this was not enough to merit charging. The reference to the CPS not advising on internal matters is irrelevant, the claimant is relying upon limb (a) of s.43B(1), that a criminal offence had been committed. There is no question of whether the claimant's sources could be impugned, the CPS advice was not based upon any issues as to the sufficiency of the evidence, it was based upon the nature of the conduct that was being alleged, regardless of whether it could be proved. The facts were not in dispute, TD/Supt. Scally did not intervene when a 13 year old boy was seen to enter a flat with a paedophile It was clear this was a controversial decision. That was recognised by the CPS, but they did not consider it met the threshold for misconduct in public office. The claimant did not agree with that view, and thought that more should be done, but it terms of whether he could continue to maintain that he reasonably believed that this disclosure tended to show that a criminal offence had been committed, once made aware of that advice, he could no longer have reasonably so believed. The claimant's Fed. rep., Tom Elliott, did not appear to share the claimant's view, and in the meeting with DCS Rumney he acknowledged that the issue may be one of performance rather than conduct.

PD1.2 54. The Tribunal therefore does not see how, in the light of that legal advice as was relayed to him on that meeting on 30 January 2014 the claimant could any longer (assuming he originally did) reasonably hold the belief that this disclosure tended to show that the offence of misconduct in public office had been committed. The claimant, unfortunately, did not pause, consider, or temper his disclosure, he made it, unaltered, to the IPCC the very next day.

PD1.2 55. The Tribunal considers therefore that this disclosure does not satisfy limb s.43B(1)(a) of the ERA.

b). failure to comply with a legal obligation;

PD1.2 56. In terms of the other elements of s.43B(1), the next relied upon is that the disclosure tended to show breach of three legal obligations, the first being that to be protect the public and prevent claim, the common law duty that the Tribunal has discussed above, and which the Tribunal has previously referred under PD1.1. To the extent that the claimant reasonably believed that the disclosure tended to show that the actions of TD/Supt. Scally gave rise to a risk to the public, or that a crime may be committed, the Tribunal will accept the claimant in this disclosure had a reasonable belief that his disclosure tended to show that the respondent had failed in his legal duty to protect the public and to prevent crime.

PD1.2 57. In terms of the second legal obligation, that is alleged to arise under the Human Rights Act, and Article 2 of the Convention, this is the first PD where this alleged legal obligation is relied upon. It requires some analysis.

PD1.2 58. The starting point is the European Convention on Human Rights (the "ECHR"), which was incorporated into UK domestic law by the Human Rights Act 1998. Whilst not expressly spelt out by the claimant (or his counsel in his Submissions) the

claimant is presumably relying upon the provision at s.6 of the Act which provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. The respondent is a public authority. The Convention rights are set out in the ECHR in Articles. The first of these is Article 2, which is in these terms:

RIGHT TO LIFE

1.Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2.Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Thus, the legal obligation that the claimant has referred to, and relies upon, is in relation to the right to life, under Article 2. Article 2 does not relate to the right not to be harmed, or suffer from any criminal act. It expressly relates to the right to life, and only that right. There was no suggestion in this disclosure that the boy's life was in danger, the Tribunal cannot accept that any belief that the claimant had that this disclosure tended to show breach of this obligation was a reasonable one. Whilst the claimant did make reference to Article 2 in this disclosure, at para. (xv) he did raise the issue as a hypothetical one. There was, however, no risk to life, and the claimant cannot have reasonably believed that this disclosure tended to show that the respondent had failed to comply with any legal obligation under Article 2.

PD1.2 59. In relation to the third legal obligation, the observations about the claimant's lack of reasonable belief that the disclosure tended to show failure to comply with the 2012 Police Conduct Regulations, as determined above , apply.

PD1.2 60. The claimant also relies upon limb (d) of s.43B(1), that the health and safety of the 13 year old boy had been endangered. The Tribunal accepts that the claimant did believe that this disclosure did tend to show that this was the case .

PD1.2 61. There is, however, another aspect of this disclosure that the Tribunal considers is highly relevant to whether it can be satisfied that the claimant had the requisite reasonable belief that it tended to show any of the matters prescribed in s.43B(1).

PD1.2 62. The claimant was first aware of the alleged serious failings by TD/Supt. Scally in Operation Nixon in May 2012, when he claims that he was told about Operation Nixon verbally by DI Mortimer and D/Sgt Hull. He clearly knew about it by the time he raised

his grievance on 25 June 2012. The matter was, of course, already a year old at that time. He did not, however, then take the matter outside the Force, but raised it as part of his grievance. He continued in that way, despite being invited, firstly by T/ACC Wiggett (it seems) in July 2012, and again by ACO Potts in January 2013 in the grievance appeal, to consider other routes for raising these matters. The claimant declined to do so, but it is clear from the conversation that ACO Potts had with Kieran Murray in February 2013, and from the claimant's communications with his Fed. reps. in April 2013 that he was considering taking the matter to the IPCC, albeit firstly approaching the PCC, which he did . He did not, however, take these matters to the IPCC until the end of January 2014.

PD1.2 63. The Tribunal has considered the significance of this delay. In certain instances, it can be relevant as to whether the claimant actually held the reasonable belief that his disclosures tended to show any of the prescribed matters in s.43B(1). In ***Muchesa v Central & Cecil Housing Care Support [UKEAT/0433/07]*** it was held that it was relevant to consider , when assessing whether a worker held a reasonable belief in the truth of what was disclosed and what it tended to show, how the worker would have been expected to have behaved if they genuinely held such beliefs. The worker's conduct in that case was incompatible with her having such a belief, and the EAT upheld the dismissal of her claims on the grounds that she had not satisfied the test for reasonable belief. Similarly, in ***Simpson v Cantor Fitzgerald Europe [2021] ICR 695*** the Court of Appeal upheld the EAT's dismissal of an appeal where the worker's failure to act upon what were allegedly very serious breaches of financial regulatory requirement for about a month was found to be relevant to the issue of whether he genuinely believed that his disclosures tended to show any serious wrongdoing.

PD1.2: 64 Whilst the circumstances of this case are not , at first blush similar to the very stark facts of the two cases cited above, there is another aspect to this case, not present in the cases cited. The claimant was being advised by his union, and then by solicitors and was clearly keen to take the matters outside the Force from early 2013, and kept threatening to do so. The Tribunal would not from the delay in itself, in these circumstances, conclude that the claimant lacked the necessary reasonable belief in what the disclosures tended to show, but the fact that the claimant also continued to raise these matters by way of his grievances is very curious, and he was cross – examined on why he did this. That the trigger for his referral to the IPCC in January 2014 was his lack of success (in contrast with the success of DCI Worth) in the recent Superintendent promotion process, a matter wholly omitted from his comprehensive first witness statement, leads the Tribunal seriously to doubt that the claimant had the necessary belief that this disclosure tended to show the very serious failures that he relies upon. His conduct in this delay, and raising the matter through an internal grievance, was inconsistent and incompatible with such a belief, especially when his belief, , as he repeated in evidence , was that there had actually been sexual abuse of a 13 year boy. The Tribunal therefore concludes that this disclosure fails the s.43B test.

PD1.2: 65. Turning to the public interest test , in the alternative, the Tribunal, however, does also consider that the delay, and the grievance appeal being used to first raise these issues can also be relevant to the issue of whether, at the time of making the disclosure, the claimant had a reasonable belief that it was in the public interest to make

this disclosure . It seems to us that the same considerations apply, and the same matters referred to above which prevent the claimant succeeding on s.43(1) by reason the incompatibility of his conduct with the necessary reasonable belief also apply to the requirement for him to show a reasonable belief that it was in the public interest to make the disclosure.

Does the claimant satisfy the s.43F test?

PD1.2 66. This disclosure thus does not satisfy the s.43B tests. If, however, the Tribunal were wrong , and this disclosure survives them, the Tribunal now turns to the next test, that under s.43F, which requires the claimant to have a reasonable belief in the substantial truth of the information and any allegations contained in the information disclosed. That , of course, includes the omitted sections of the paragraphs of PDR1 expressly pleaded, but not fully recited, in the List of Issues.

PD1.2 67. The claimant's disclosure also contains allegations that:

The 13 year old boy in the house had been sexually abused;

TD/Supt. Scally had refused to allow an intervention;

Officer 'J' had been 'summoned' to a meeting with DCS Dudderidge at which TD/Supt. Scally was also present, and required to repeat his account of the incident in front of TD/Supt. Scally , to his embarrassment ;

TD/Supt. Scally had been guilty of criminal failings, and had committed the offence of misconduct in public office;

TD/Supt. Scally was not an experienced detective, was not accustomed to dealing with serious crime investigations , and was completely out of his depth;

TD/Supt. Scally (alone) refused to permit an intervention and made this error because of his lack of experience, which was because he had been overpromoted.

DS Woodhouse's report stated that he and fellow officers perceived that the management team were incompetent.

PD1.2 68. It is clearly right that a number of officers had concerns about the way in which TD/Supt. Scally handled the incident, and two of them in particular shared those concerns with the claimant , albeit only in writing some considerable time after the event. The claimant , the Tribunal accepts, had a reasonable belief in much of the information that he was receiving, as it had come from what he could , and did, reasonably believe were reliable sources. That said, it is equally clear, e.g. from DI Mortimer's email to the claimant of 27 May 2013, that it was not only TD/Supt. Scally who was considered to lack the necessary experience of covert investigations. DCI Warren, and DI Bridge are also identified as lacking this experience.

PD1.2 69. In DI Mortimer's IPCC statement (page 7242 of the bundle) he makes reference to the inexperience of the MIT Syndicate 8 team, which was a reactive team, in covert operations, and he had raised this with his superior officer, DCI Creely, but was told that the decision to deploy that team had already been taken. That view is also reinforced by DS Hull's report, which shows that there was disagreement by many in the team with the strategy that was being deployed in the operation from the outset. His report records that the team were told that the decision to use it had been taken by senior officers, including ACC Sweeney. He makes no reference to any alleged incompetence, although there was clearly disagreement with the strategy.

PD1.2 70. The respondent has taken the Tribunal through the various iterations of the information that the claimant disclosed about this incident. Central to the respondent's submissions is the theme that the claimant intensified his allegations , so that when they appeared in the PDR1 document they included allegations that the boy in the house had been sexually abused, and that Dominic Noonan had gone on to rape a 15 year boy.

PD1.2 71. The claimant's responsive Submissions address comprehensively the issues in relation to this disclosure at paras. 102 to 142. Intensification is denied, and it is contended that the claimant had a reasonable belief in the substantial truth of what he disclosed. The claimant's submissions seek to contend that whether the claimant was disclosing that the 13 year old boy had actually been sexually abused, or that there was a risk that he had been, the claimant had reasonable belief in the substantial truth of these allegations, based on , largely , what he was told by DI Mortimer.

PD1.2 72 We propose to start with two aspects of what the claimant disclosed, the first is in relation to what happened to the 13 year old boy , and the second is in relation to the alleged subsequent rape of another boy, aged 15. 73.Turning to the 13 year old boy in the flat, we agree again that the claimant has changed his account, and , as put by the respondent, has intensified this allegation. The simple facts are that at no time prior to his making his disclosures to the IPCC on 31 January 2014 did the claimant have information from which he could reasonably have believed either that the boy in the house on 17 April 2011 had actually been sexually abused, or that another boy had actually been raped by Noonan.

PD1.2: 74 Had he merely alleged that the failings he identified had led to the risk that such offences may have taken place, that would be something in which he could have a reasonable belief. The claimant , however, went further than that, and made the allegations that they had. That was not something in which he had a reasonable belief. The basis for that belief was not anything that DI Mortimer or DS Hull had told him. DI Mortimer's email did not state that the boy had been sexually abused, and makes no mention of any subsequent rape of a 15 year old boy.

PD1.2: 75. Much is made of whether the claimant could, without being expressly told by DI Mortimer that there had been a sexual assault inside the flat , nonetheless have deduced from DI Mortimer's horrified reaction to what he had learned that abuse had taken place. We do not agree. The issue here is reasonable belief that a sexual assault had been committed, not reasonable suspicion. This type of deduction may be enough for the latter, it is not, in our view, enough for the former.

PD1.2: 76. Whilst the distinction between whether there had been a sexual assault, or that the boy was put at risk of a sexual assault are downplayed by the claimant and reliance is placed on the "core truth" of the disclosure, we cannot regard these as minor and immaterial matters. Both are allegations contained in the disclosure. Both are allegations of the seriousness of the consequences of the failings on the part of TD/Supt. Scally, and are more than minor, or trivial, they are highly material .

PD1.2: 77. The position is perhaps best summed up by Mr O'Dempsey in para.142 of his Responsive Submissions, where he says this:

"It is submitted that neither R nor C can assert either that the minor was abused or not. However the question is whether C had objective and reasonable grounds to believe in the substantial truth of the information disclosed to the IPCC and relied upon as a pd and any allegation made in that information. It is submitted that from the information disclosed by Mr Mortimer alone in writing to DC (above) concerning his reaction to contact with the confidential unit, C had reasonable grounds to believe in the substantial truth of the allegation that the child was exposed to risk and may have been abused. In either case that was information tending to show one of the relevant wrongdoings."

That is correct, in relation to s.43B(1), but the issue here is s.43F. It is a concession, in effect, that the claimant had reasonable grounds to believe in the substantial truth of the allegation that the child was exposed to risk and may have been abused . Had that been the limit of the claimant's disclosure, he would satisfy s.43F. It was not, he went further and disclosed that the child had been abused. He did not, we find have a reasonable belief , again, as opposed to a suspicion, that this had occurred.

PD1.2: 78. Additionally, there is the allegation in para. xxxviii, that the offender was then able to go on to rape a 15 year old boy, an allegation that the claimant repeats in para. (xcv) of PDR1, although not as part of that disclosure.

PD1.2: 79. The claimant first made the allegation in his grievance appeal that the offender had been arrested for rape of a 15 year old boy, but to the IPCC on 23 January 2014 (page 1085 of the bundle) and in his PDR1 document, in three places, this becomes an allegation that there had been such a rape. The claimant in his cross - examination accepted that he changed his language according to his audience, and that he did see the difference between alleging that a person had been arrested for rape and that a rape had actually taken place.

PD1.2: 80. Whilst the claimant has, in para. 167 of his witness statement , tried to suggest that an email from Supt. Turner at page 759 of the bundle suggests that there had been a rape, this is, with respect , a red herring. Firstly it is unclear from that email which incident is being referred to, that on 17 April 2011, or the subsequent incident which led to the arrest of the offender. Secondly, as the claimant himself says, this information was not known to him at the time he made his disclosure. The only source of this allegation is the claimant's awareness that Noonan had been arrested for such an offence.

PD1.2: 81. The claimant's Submissions on this aspect of this PD are not extensive. They appear at par. 131, where this is said:

"At 2417 R's xx then deals with the allegation that N1 went on to rape a 15 year old boy. He is taken to o818, o827 and o833 and it is put to him that he wrote in his PDR1 that N1 actually raped a boy when in fact it was an allegation (IPCC at 1469). C says his PDR1 is what he believed when he wrote it based on the information he had at the time that he had been arrested and charged for the rape of a 15 year old boy. SG seems to think the fact N1 was charged and not actually tried and convicted means he shouldn't have definitely said he did rape the boy."

He goes on to refer to the claimant's response to the cross – examination by the respondent , in which he accepted that there was a difference, in analytical terms, between being arrested and charged , and being convicted, but all he was doing was flagging up, or highlighting, that there was evidence to arrest and charge, so that was evidence of an offence taking place.

PD1.2: 82. The claimant does not actually give any evidence in his witness statements about learning about the arrest of Noonan for rape. The only reference to this is in the claimant's grievance appeal document. It is important to look at what precisely the claimant said, which was that he had learned that Noonan had been arrested for rape of a 15 year old boy. He did not mention that he had been charged. Mr Gorton's questions, however, slipped into that terminology, but it is not what the claimant said in this document, and therefore all he knew was that there had been an arrest. For completeness , it did transpire (see D/Supt. Savill's severity assessment at pages 2075 to 2100 of the bundle) that Noonan was in fact charged, but the prosecution was later discontinued. The arrest had been on 23 October 2013 , so there may or may not have been a charge around that time. The claimant, however, did not say (possibly because he did not know) that Noonan had been charged, only that he had been arrested.

PD1.2: 83. Whilst the claimant may see little distinction between saying that there had been an arrest (therefore there was reasonable suspicion) for an offence of rape, and that a rape had been committed, the Tribunal does not agree. As an experienced senior Police officer, he well knew the difference. We find that the claimant did not have the requisite reasonable belief in this allegation that there had actually been a rape of a 15 year old boy by Noonan, which was what he disclosed.

PD1.2: 84. Nor can the Tribunal consider that this is a minor matter, which does not affect his belief in the substantial truth of what the claimant disclosed. Firstly, as s.43F makes clear, it is not the totality of the information disclosed that matters, it is any allegation contained in it. This was an allegation, a piece of information, that there had been a rape, when there had only been an arrest for such an offence. This matters, because this allegation is made in the context of the claimant's contentions that TD/Supt. Scally had committed a serious dereliction of duty, of which this is said to be a consequence. As referral to the IPCC could (and as we have seen, did) lead to misconduct proceedings against officers, the consequences of their alleged misconduct are highly relevant. Overstating those consequences, therefore, is not a minor matter. The Tribunal is accordingly satisfied that the claimant's lack of reasonable belief in the

allegation that Noonan had actually raped a 15 year old boy is fatal to this disclosure under s.43F , so this is not a protected disclosure.

PD1.2: 85. The disclosure, however, also includes information (indeed, probably also an allegation) that TD/Supt. Scally had been a part of the Management Team from the outset of Operation Nixon, and other officers had raised their concerns about the operation to him. He had not, and the covert strategy was already in place when he was appointed to the MIT role. TD/Supt. Scally was not a member of the management team on Operation Nixon from the outset. Syndicate 8 had been allocated the operation since early February 2011, and TD/Supt. Scally was not promoted until early March 2011, and this operation was his first posting as an MIT officer, some 6 weeks into the Operation. He had not, therefore, been part of the management team from the outset, and did not formally become Silver Commander until 18 April 2011.

PD1.2: 86. It is appreciated that the claimant may not have known this, but his sources would have. That he was prepared to make this inaccurate statement, without checking, shows, not for the only time, his propensity to make bald assertions without a sound basis, rendering his belief in what he is asserting unreasonable. This may seem a minor matter, and , standing alone it may not have been fatal to this disclosure under s.43F, but it undermines the confidence that the Tribunal can have in the reasonableness of his belief in the substantial truth of the information that he disclosed, and any allegations contained in it, as a whole.

PD1.2: 87. These are not the only allegations, or information, in the substantial truth of which we consider the claimant lacked a reasonable belief.

PD1.2: 88. A central , and clear allegation, is that TD/Supt. Scally was guilty of the offence of misconduct in public office. This is an allegation in which the claimant must show atthe time he made his disclosure to the IPCC which was 31 January 2014 he held a reasonable belief.

PD1.2: 89. For the reasons given above in relation to the test for s.43B(1)(a), in respect of this allegation, it must follow that if the claimant fails to satisfy that test, he will also fail to satisfy the more stringent test under s.43F. It is to be remembered that the claimant's disclosure pulled no punches - para.(xix) of PDR1 states in terms that his conduct *"constitutes Misconduct in public office"*. It is true that he then calls for an investigation, but he has already made the allegation, and has not qualified it. There is no requirement under s.43F in relation to believing that the disclosure "tended to show" any matter under s.43B(1). The claimant has to show a reasonable belief in the information and any allegation contained in it. The timing is crucial. The claimant made his disclosures to the IPCC on 31 January 2014. He did not amend or qualify the PDR1 document, or add anything further to reflect what he had been told on 30 January 2014. He maintained, therefore this allegation, in which the Tribunal finds he had no reasonable belief.

PD1.2: 90. Additionally, but of less significance, is the allegation which relates to the meeting that D/Sgt Crook (by deduction) had with DSupt. Dudderidge, where the claimant states that TD/Supt. Scally was present. D/Sgt Crook has never said that he

was. . It may be a rather less material allegation , but it again seeks to paint a picture of further impropriety, implying undue pressure being put on D/Sgt Crook, when there was no basis for the claimant reasonably to believe that was the case. The claimant has never explained what the source of this information was, for it does not appear to have been D/Sgt Crook.

PD1.2: 91. Additionally, there is the information disclosed by the claimant that DS Woodhouse's report referenced a perception of incompetence of the management team. A proper and careful reading of it, however, does not support this as a reasonable interpretation of what it says. Whilst critical, and disagreeing with the strategy, DS Woodhouse does not suggest anywhere that the problems in Operation Nixon were due to any incompetence in the SLT. The claimant, who had not seen the report, however, presents this as part of the information that he disclosed. The claimant has given no evidence of what he was told by DS Woodhouse about what he had written, so his belief that it contained this information cannot have been a reasonable one. Again, whilst not the most critical part of the information conveyed, it is nonetheless another assertion made by the claimant in which, not having seen the report, he could not have had a reasonable belief.

PD1.2: 92. Finally, we have come to the conclusion also that the claimant lacked a reasonable belief (though we will accept that he actually held it) that TD/Supt. Scally's failings in this operation were because he lacked major crime experience , or had been over-promoted due to cronyism. The claimant's two main sources of information for this disclosure were DI Mortimer (from whom the Tribunal heard), and DS Hull (from whom it did not). It is clear from the witness statement that DI Mortimer gave to the IPCC (pages 7240 to 7247 of the bundle, at page 7242) that he had issues from the outset with how Operation Nixon was to be conducted, which he raised with DCI Creely (not, be it noted, TD/Supt. Scally) , but was told that the decision had already been made.

PD1.2: 93. He was surprised that TD/Supt. Scally and an MIT team would run the covert and the reactive sides of the operation despite them, i.e as a team, having no skill set to run a covert operation. He goes on to say that he had never known a reactive team run a covert operation before. He had, of course, voiced similar concerns in his email to the claimant of 27 May 2013 referred to above.

PD1.2: 94. Thus, in that email, and in whatever conversations may have taken place between the claimant and DI Mortimer it is clear that DI Mortimer would be explaining that the lack of experience was not merely that of TD/Supt. Scally as an OIOC, but of the whole team , including the other two senior officers, who lacked covert investigation experience. That is not how the claimant puts it, the allegation in this disclosure is that TD/Supt. Scally made this serious error because he lacked experience generally, not just because he lacked covert investigation experience, as did his entire team.

PD1.2: 95. DS Hull's evidence, and, to a lesser extent , that of DS Woodhouse, also supports the view that the issues in Operation Nixon were strategic, and derived from the frustration of the Force that previous attempts successfully to prosecute Noonan had failed, leading to a readiness to accept , unwisely in the view of some, a higher degree of risk than the potential for successful evidence gathering perhaps warranted. This had

nothing to do with, and could not reasonably have been believed to have had, any lack of major crime investigative experience on the part of TD/Supt. Scally .

PD1.2: 96. The claimant , however, chooses to focus solely upon TD/Supt. Scally . That the claimant realised that this was unlikely to have been solely the responsibility of TD/Supt. Scally is implicit in para.(xxii) , where he refers to what fellow officers perceived to be "the incompetence of the Management Team and flawed strategy of Op Nixon". That confirms that the claimant was likely to have been aware that not only did TD/Supt. Scally lack covert experience, other senior officers in his team did, and, more importantly, that the issues went higher than TD/Supt. Scally , they were strategic. As the claimant knew, or ought to have known, either from what he was told by DI Mortimer, or from his general awareness of the command structures in GMP, the strategy was not a decision made by solely TD/Supt. Scally , it was made by Gold command, and before he was even appointed to the MIT Syndicate. This is clear from DI Mortimer's evidence, because he challenged it.

PD1.2: 97. The Tribunal also finds it of note how DI Mortimer came to send his email of 27 May 2013, and DS Hull his of 28 May 2013, which was as a result of being approached by the claimant or the Fed. on his behalf. This was in the lead up to the claimant's further grievance, which he raised on 2 July 2013 , and in which, he pressed this issue. That grievance , of course, was about DCS Shenton's failure to support him for promotion, but in it the claimant ranges far and wide with allegations, many of which have been included in the PDR documents, and some of which have been maintained as protected disclosures, about the failings of other officers, of whom TD/Supt. Scally is but one, whose failings are alleged to be evidence of their cronyistic over – promotion.

PD1.2: 98. The Tribunal concludes that the purpose of the approach to DI Mortimer was to obtain more information , ammunition, for the claimant to use in his continuing grievance. He was looking for evidence of the failings of TD/Supt. Scally. That does not make his disclosure in bad faith, or not in the public interest, but we consider it highly relevant to the reasonableness of his belief in the substantial truth of any of the allegations that he made in it. A reasonable belief requires a balanced and open approach to information that one receives. As a Police officer the claimant, of all people, would know that. An officer in making operational decisions on arrests and charging must take into account all the information, including any exculpatory information. The Tribunal is quite satisfied that from the email that DI Mortimer sent to him, and any conversations that he may have had, in which DI Mortimer's view of the lack of covert experience of the whole MIT team would be bound to have been apparent, the claimant could not then have reasonably believed that the failure to intervene in Operation Nixon was solely the responsibility of TD/Supt. Scally, or was a product of his lack of experience as an SIO, as opposed to his lack of covert experience, or was the result of any cronyistic over -promotion. That lack of reasonable belief was compounded by exaggeration of the consequences of TD/Supt. Scally's alleged failings in terms of what actually had befallen two potential victims, which was exaggerated without a reasonable foundation in two aspects.

PD1.2: 99. In short, to maintain the scattergun metaphor, this disclosure is itself riddled with the holes of lack of reasonable belief under. S.43F The upshot of all this is that

whilst this disclosure has not passed the s.43B tests, by the time it was made on 31 January 2014 , on any one of the above issues, the claimant's lack of reasonable belief would also be fatal to this disclosure, which the Tribunal therefore finds was not a protected disclosure under s.43F of the Act.

4. Protected disclosure 1.3: cover up of failure to safeguard child.

The pleaded disclosure (with the extracts omitted from the List of Issues added with underlining):

Information disclosed: A review of Operation Nixon was undertaken by ACC Sweeney and DCS Shenton but the terms of reference did not include the incident involving TD/Supt Scally and the 13 year old boy, which was covered up by ACC Sweeney and DCS Shenton.

20. PD1.3 was set out at (xxix) to (xxxiii) of PDR1, which were worded as follows:

(xxix) ACC Sweeney and DCS Shenton commissioned a review of Op Nixon but the 'Terms of Reference' did not include the incident with the 13 year old boy and the Review Team were not made aware of the incident.

(xxx) The questions that have to be asked are; 'Why were the Review Team not made aware of the incident with the boy?' and 'Did ACC Sweeney and DCS Shenton deliberately divert the Review Team away from TD/Supt Scally's failings and misconduct by not informing them of the incident?'

(xxxi) Officer 'K' of the review team can provide evidence to confirm that they were not briefed about 'Nominal 1' taking a 13 year old boy into a house that was under police observation nor did their 'Terms of Reference' refer to the actions of that day. None of the officers engaged on the operation were interviewed as part of the review process.

(xxxii) The commissioning of this review outwardly gave the impression that officers' concerns had been acted upon and addressed. The Review Team subsequently delivered a favourable report which effectively gave tacit approval to the investigation; however the actual issue at the heart of everyone's complaints, TD/Supt Scally's failure to safeguard a child, had clearly not been addressed.

(xxxiii) The actions of ACC Sweeney and DCS Shenton amount to a 'cover up' of TD/Supt Scally's actions; on a point of law if this were proven then they may have conspired to pervert the course of justice and it is requested that their actions should also be subject of an independent investigation and again a file should be submitted for consideration by the Crown Prosecution Service.

Para. 22 of the List of Issues pleads that the claimant reasonably believed that this disclosure was made in the public interest and tended to show (a) that one or more criminal offences, namely perverting the course of justice and/or misconduct in public office, had been committed; and/or (b) that there had been a failure to comply with one or more legal obligations, viz (i) the duty to protect the public and prevent crime; and/or (ii) the standards of professional behaviour set out in Schedule 2 to the Police (Conduct)

Regulations 2012, in particular the standards of Honesty and Integrity, Duties and Responsibilities and Challenging and Reporting Improper Conduct; and/or (c) that this information had been deliberately concealed.

Relevant Facts.

PD1.3: 1. A review of Operation Nixon by the Force Review Officer (from the MCRU) was requested by Detective Superintendent (Silver) , and by ACC (Crime). Terms of Reference were set on 24 May 2011 , and the Review was due to be completed by 23 July 2011. The completed Review is at pages 1867 to 1941 of the bundle. It is undated, but presumed to have been completed at or around the proposed completion date. Operation Nixon was still a live investigation at this time.

PD1.3 2. Para. 2.1 of the Review states :

"2.1 The Detective Superintendent (Silver) sought the assistance of the Force Review Officer to conduct a review of Operation Nixon and the review has been sanctioned by the Assistant Chief Constable (ACC) Crime. The review is being conducted to ensure that the Investigation:

• *Identifies and exploits investigative opportunities*

• *Is thorough and proportionate*

• *Identifies opportunities to convert Intelligence Into evidence*

• *Conducts appropriate risk assessments*

• *Implements appropriate safeguarding and control measures.*

3 Purpose of the review

3.1 The purpose of the review be to support both the proactive and reactive elements of the investigation. The review will inform the Investigation team' and GMP command of strengths, weaknesses, opportunities and threats to the Investigation and/or reputation of GMP. It will identity good practice and learning opportunities and will report to the commissioning officer and the ACC Crime.

4 ,Terms of Reference

4.1 Terms of reference for the review were agreed by the ACC Crime on 22nd May 2011. Three key areas were Identified.

Command and control
Main lines of enquiry
Risk assessment

Full Terms of Reference are provided at Appendix 1"

PD1.3: 3. Who the individuals referred to were is not immediately apparent, as no names are given, but from tracking back through the policy notes and minutes of Nixon meetings, the Tribunal is satisfied that Gold, was ACC Sweeney, the ACC Crime. In terms of who the "Silver" was, however, whilst DCS Shenton (or possibly DCS Rumney at one point) had been the Silver commander, by 18 April 2011, that had changed, as TD/Supt. Scally became the Silver commander, as recorded in his policy note at page 1846 of the bundle. That is further confirmed by the notes at page 1864 of the bundle on 15 May 2011, when TD/Supt. Scally is again referred to as "Silver".

PD1.3: 4. Thus when, on 24 May 2011 , at page 1922 of the bundle , the Terms of Reference were agreed, whilst they were sent to DCS Shenton (amongst others, doubtless because he had been Silver previously, and was Head of SCD) the Gold and Silver commanders were ACC Sweeney and TD/Supt. Scally respectively. The Terms of Reference were initially drafted by Dave Pinder of the MCRU (see the email from Martin Bottomley to the IPCC at pages 2140 and 2141 of the bundle) and agreed by ACC Sweeney, but also, probably various other senior officers involved in Operation Nixon.

PD1.3: 5. DCS Shenton may or may not have had any involvement in agreeing the Terms of Reference, but this is unclear.

PD1.3: 6. Those Terms included the following (page 1923 of the bundle) :

"*3. Risk assessment*
An assessment of potential risks associated with covert tactics employed by the investigation. This element of the review is Intended to enable the SIO to develop and enhance existing dynamic risk assessment strategies. This will include the provision of risk awareness and advice Inputs to the SIO and Investigative team and the development of a menu of potential disruption tactics specific to the Investigation.(This element of the review to be conducted by the Force Operational Security Officer)".

PD1.3: 7. The review team was Martin Bottomley, David Pinder and DS Rocque Fernandes. The claimant alleges that Roque Fernandes (Officer K referred to in this part of the PDR) told him that the terms of reference did not include the incident on 17 April 2011, and that the review team "were not told" about the incident on 17 April 2011.

PD1.3: 8. The claimant believed , but he does not say that this is what he was actually told by DS Fernandes or anyone else , that this was deliberate, in order to cover up TD/Supt. Scally's failings.

PD1.3: 9. It is true that the Terms of Reference do not include any reference to the events of 17 April 2011, but they also do not contain reference to many other aspects of this investigation. This was, the evidence demonstrated, a review of the nature that is generally carried out in major operations. It was not a reactive review, prompted by the events of 17 April 2011, even if some of the officers involved thought that there should be such a review.

PD1.3: 10. The claimant did not see the Terms of Reference, nor the Review report after it had been completed. The Review document is at pages 1867 to 1941 of the bundle. Reference was made in it (para. 8.6 page 1892 of the bundle) to the sexual grooming of a 13 year old boy, which was a reference , without being express, to the incident of 17 April 2011.

PD1.3: 11. The incident on 17 April 201 1 was the subject of a covert tactic and para. 8.14.2 of the Review document (page 1902 of the bundle) states:

"Because of the highly sensitive nature of the work undertaken by the proactive investigation reference to specific covert tactics in this report is minimal."

PD1.3: 12. The Review is a substantial document. It was not "favourable" to the investigation, it made four recommendations (pages 1919 and 1920 of the bundle), having reviewed, in general terms, the investigation, its aims and methods.

PD1.3: 13. The claimant made the allegation of a cover - up , for the first time in his grievance of 25 June 2012 (pages 527 to 544 of the bundle) , where he said this (page 530):

"I am aware that this issue was brought to the attention of D/Ch Supt Shenton. I am aware that some form of review has been conducted on Op Nixon. I do not know when this took place but I believe the issue of T.D/Supt Scally not taking action to prevent the boy coming to harm/being sexually abused has not been addressed. I believe that none of the officers involved on the operation have been spoken to about this incident. I think Op Nixon clearly demonstrates the negative consequences which can occur when persons are promoted into positions as a result of favouritism and cronyism rather than on the basis of their experience, skills and ability to perform the role."

The claimant had become aware of the Review, the Tribunal considers either around the time that he learned of the events in Operation Nixon, for the first time, around May 2012, or shortly afterwards. In terms of any cover – up, the claimant said that officers involved in Nixon expressed to him their concerns that they had not been interviewed, and that the events of 17 April 2011 had not been included in the scope of the Review. He had not seen the Review at the time he raised the matter in his grievance, and had not seen it by the time he made his disclosure to the IPCC in January 2014. After the claimant had raised it again in June 2013, in the document that he submitted to the PCC , and in his email of 2 July 2013 to ACC Copley (page 879 of the bundle) , DCS Paul Rumney , Head of the PSB was asked to look into the claimant's allegations about Operation Nixon.

PD1.3: 14. He started to do so, but the claimant considered that these matters should be investigated outside the Force, and were taking too long. ACC Copley maintained that DCS Rumney was the right person to carry out this investigation, and told the claimant that. His severity assessment was expected by September 2013, but was not ready for then. The claimant became increasingly concerned at the delay in its preparation. D/Supt. Savill completed a draft in early November 2013, but this is not before the Tribunal. His assessment was produced on 4 February 2014 (pages 2075 to

2100 of the bundle). This is a comprehensive document. It too came to the view that there were insufficient grounds for any charge against TD/Supt. Scally with misconduct in a public office.

PD1.3: 15. In the course of D/Supt. Savill's severity assessment, he considered the claimant's allegation that there had been a cover up, which he enumerated as allegation (x). He established that David Pinder, who was involved in the review, had been told of the incident. Further, TD/Supt. Scally's policy book , a core document for the Review, was provided to the Review team. The incident on 17 April 2011 is documented in that book, which sets out the rationale of TD/Supt. Scally for not intervening (page 5537 of the bundle).

PD1.3: 16 D/Supt. Savill in his severity assessment records this (pages 2090 and 2091 of the bundle):

"The MCRU had access to the sensitive notes referred to above at the start of their review see x below). None of the parties has raised concerns of misconduct or crime, which if not part of a cover-up tends to suggest that SCD management and MCRU did not recognise the failure to intervene as criminal.

x. This was part of a cover up, which included a failure to make the MCRU team aware of the incident of the 17th April and include it specifically within the review and as such it was not addressed

[This was a summary of what the claimant's allegation was understood to be set out at paras. (i) to (xii) of the assessment at pages 2077 and 2078 of the bundle]

There is no evidence of cover up; Mr Pinder in the third paragraph on the second page of his response to DCS Rumney states:-

'Detective Superintendent SCALLY utilised a sensitive Policy Book during the NIXON investigation which has not been typed onto HOLMES. I've not had access to that document in preparing this report. However two extracts from the document which specifically address sensitive policy decisions and supporting rationale between the 15th and 20th April 2011 were made available to the MCRU review team at the start of the review."

Moreover the entries, made by the deputy SIO on the 17th April 201 1 , in the SIO's policy book is clear that "During obs at both unit and flat seen in company of young male, 12-15 and another male 16 years" The policy book continues by recognising that the younger male is possibly [redacted] *and discusses the associated safeguarding responsibilities.*

This information was available to the MCRU and it is unclear why they do not discuss the decision making of the 17th April 2011 in the report. It may be because it was product of a covert tactic that was not thought appropriate for the review report's readership."

PD1.3: 17. Martin Bottomley told the IPCC , in an email of 12 May 2015 (at pages 2140 and 2141 of the bundle, as noted in para.573 and 574 of the IPCC Poppy 2 report, page 5559 of the bundle) that he was aware of all the covert activity, and due to the sensitive nature of the operation, and Ian Foster's (the OPYS) specific role in the Terms of Reference for the review , the narrative of the final Review report would not seek to expose covert tactics. He also said (in the email referred to) that TD/Supt. Scally had detailed the incident of 17 April 2011 to him, and at no time had he been "steered away" from any aspect of the operation. He could not reveal covert tactics in a report over which, once released, he would have no control. He stated that Recommendation 13 in the Review report related to the investigative opportunities arising from the incident.

PD1.3: 18. The Terms of Reference refer to the assessment of potential risks associated with covert tactics being dealt with separately by the Force Operational Security Officer, who at that time was Ian Foster. In his witness statement to the IPCC, on 27 April 2015 (pages 7306 to 7313 of the bundle), he expresses the view that it was unusual for an MIT team to undertake such a proactive investigation, and details his involvement in conducting of risk assessments. He does not mention, however, whether he did in fact conduct the part of the review that was to be carried out by him.

PD1.3: 19. The claimant's evidence that there had been a cover up was that he had been told that officers working on Operation Nixon believed that there had been, because they had not been interviewed for the Review, and expected any Review to comment upon the incident on 17 April 2011. None of them, however, had seen the Review either. They had been told that one had been carried out, as it had, and "all was fine". This cannot be how the Review would be categorised. As is clear from reading it (and indeed any similar reviews carried out in major investigations) the function of the Review was to "*inform the Investigation team' and GMP command of strengths, weaknesses, opportunities and threats to the Investigation and/or reputation of GMP. It will identify good practice and learning opportunities".* A Review is therefore not like an Ofsted inspection. The most that could have been said is that it did not identify any issues which required further action, but its function, of course, would not be disciplinary.

PD1.3: 20. The claimant bases his disclosure largely on what he was told by D/Sgt Fernandes, who worked on the Review. The Tribunal accepts that he told the claimant that "he had not been informed" about the circumstances of the events of 17 April 2011 during the Review. That, together with what he had been told by officers on Operation Nixon was the evidence upon which he based his disclosure.

PD1.3: 21. D/Sgt Fernandes made a witness statement to the IPCC (pages 7279 to 7301 of the bundle). In it he gives no indication of any cover up taking place, and confirms what material the MCRU team could access. David Pinder , a review officer, also made a witness statement to the IPCC (pages 7302 to 7305 of the bundle) . Whilst more generalised, it makes no mention of any suggestion of any cover up, but it does stress how certain covert material could not be commented upon.

Discussion and findings.

The information disclosed.

PD1.3: 22. Our first task is to determine what information was disclosed. We find that the information disclosed went a little further than the summary set out in the List of Issues. It did indeed include the information that the Terms of Reference of the Review did not refer to the incident on 17 April 2011, but it also included (particularly when reading in the omitted, but pleaded, paragraphs of PDR1 relied upon) information or allegations that:

ACC Sweeney and DCS Shenton deliberately sought to divert the Review from the incident by not informing the Review Team of it;

The Review Team delivered a favourable report which effectively gave tacit approval to the investigation;

ACC Sweeney and DCS Shenton covered up the actions of TD/Supt. Scally in the incident.

The commissioning of this review was deliberately intended to outwardly give the impression that officers' concerns had been acted upon and addressed.

PD1.3: 23. Indeed, in paras. 82 and 83 of his Submissions Mr O'Dempsey expressly directs the Tribunal to have regard to what the claimant actually put forward in the disclosure as pleaded in the List of Issues. He says the wording is significant, and refers to (but then omits) paras. (xxix) to (xxxiii) of PDR1. The Tribunal does so.

The s.43B tests.

PD1.3: 24. Those then are the relevant facts. The Tribunal will carry out the s.43B tests first.

PD1.3: 25. It is first contended that the claimant reasonably believed that this disclosure tended to show that a criminal offence had been committed , under s.43B(1)(a), that offence, firstly, being perverting the course of justice. The claimant has never explained why he considered that this disclosure tended to show that this offence had been committed, or by whom. As his disclosure was that ACC Sweeney and DCS Shenton commissioned the review it is presumably they whose commission of this offence he believed this disclosure tended to show. That is rather reinforced by para.(xxx) of this disclosure (one of the parts omitted from the List of Issues) in which he asks (which the Tribunal considers not to be a genuine enquiry, but a re-statement of the allegation made in the previous paragraph) "Did ACC Sweeney and DCS Shenton deliberately divert the review team away from TD/Sup Scally's failings and misconduct by not informing them of the incident?"

PD1.3: 26. The Tribunal struggles to understand, and the claimant has not addressed in his evidence (nor in his submissions) why he believed that this disclosure tended to show commission of the offence of perverting the course of justice by ACC Sweeney and DCS Shenton. The Review was not a criminal investigation, it was not likely to lead to any charges or a prosecution. It was an internal review of an investigation , conducted

by the MCRU. It would have no bearing upon any criminal prosecution that may follow from the investigation, if successful. Covering up TD/Supt. Scally's alleged failings may have been improper, immoral, or unethical, but how could it amount to perverting the course of justice ? More to the point how could the claimant reasonably have believed that this is what this disclosure tended to show? The Tribunal does not know, and the claimant has not explained this. The Tribunal can find no further reference to PD1.3 in the claimant's Responsive Submissions , nor was it addressed in Mr O'Demspey's oral submissions.

PD1.3: 27. The next alleged criminal offence which it is alleged that the claimant reasonably believed this disclosure tended to show is misconduct in public office. That begs the (unanswered) question , by whom? Presumably, again, ACC Shenton and DCS Shenton. How are they alleged to have committed this offence, by commissioning the Review? By commissioning it without directing the attention of the reviewers to the incident of 17 April 2011? As the claimant was already aware from the advice of the CPS as to the conduct of TD/Supt. Scally in the incident itself, the threshold for such an offence is a high one, and the Tribunal cannot see how he could reasonably have believed that this disclosure tended to show that the offence of misconduct in public office had been committed by anyone.

PD1.3 28. An alternative ground relied upon is that the disclosure tended to show breach of the legal duty to prevent crime and protect the public. Again it is unexplained how the claimant contends that he reasonably believed that this disclosure tended to show that. This was a purely internal matter. How would the Review , had it been directed to the events of 17 April 2011, thereby have furthered the prevention of crime and protection of the public? Put another way, how was allowing it to proceed as it did a failure to comply with this duty ? We are not told. The argument one could (but should not have to) construct may be that a properly commissioned review would have been likely to bring to the attention of the respondent the alleged failings of TD/Supt. Scally , and something may have been done about it. That was, however, unnecessary. As the claimant himself disclosed, the limitations of TD/Supt. Scally (and others, it is clear) in covert work were immediately addressed on this Operation by the immediate increased involvement of DI Peach (assigned to Nixon from 18 April 2011), and D/Sgt Crook, who did have the specialist background in this field. Any other outcomes would be longer term learning, and the Tribunal has no evidence that TD/Supt. Scally was not acutely aware of the difficult decision he had had to make, and how controversial it had been.

PD1.3 29. The other legal obligation relied upon, the 2012 Regulations has been considered and discounted previously.

PD1.3 30. Another alternative relied upon is , it seems, under para. (d) of s.43B(1), that information tending to show either a criminal offence or breach of a legal obligation had been or was likely to be deliberately concealed. The criminal offences , or breach of legal obligations referred to are presumably on the part of TD/Supt. Scally, and are those relied upon for PD1.2 The problem with that for the claimant is that we have already determined in PD1.2 that we are not satisfied that the information in question that was allegedly being concealed tended to show any such wrongdoing on the part of TD/Supt.

Scally . The claimant cannot therefore have had the requisite belief that that this disclosure tended to show that any such matter was being deliberately concealed.

PD1.3 31. Thus, this disclosure fails on the first limb of s.43B(1).

PD1.3 32. Whilst , in the light of the previous findings, not necessary, the Tribunal turns to the issue of whether the claimant's conduct in the manner in which he delayed presenting this disclosure, and used the grievance process to do so, renders this disclosure unprotected pursuant to the ***Muchesa*** principle, discussed in PD1.2 above.

PD1.3 33. Whilst this disclosure relates to an alleged cover-up of the alleged failures of TD/Sup Scally in Operation Nixon, it is clear that the claimant was disclosing that TD/Sup Scally's tenure as SIO posed a serious risk to the public, and this disclosure was that this was being covered – up by senior officers. That , to us, is just as serious, and we can see no reason to distinguish between PD1.2 and PD1.3 in this regard. The Tribunal considers therefore that the claimant's conduct in relation to this disclosure too was incompatible with a reasonable belief that it tended to show the serious matters that he contends it does, and it fails under s.43B .

PD1.3 34. Turning , finally, for completeness, to the public interest, and whether the claimant reasonably believed that it was in the public interest to make the disclosure when he did. The Tribunal , in the light of its finding above cannot accept that the claimant did reasonably believe that it was in the public interest to make this disclosure at the time that he did in January 2014.

The s.43F test.

PD1. 35. Whilst not necessary, given the Tribunal's findings on s.43B, the Tribunal will consider the s.43F test. To recap the allegations in this PD in the substantial truth of which the claimant must show he reasonably believed are:

ACC Sweeney and DCS Shenton deliberately sought to divert the Review from the incident by not informing the Review Team of it;

The Review Team delivered a favourable report which effectively gave tacit approval to the investigation;

ACC Sweeney and DCS Shenton covered up the actions of TD/Supt. Scally in the incident.

PD1.3 34. Mr O'Dempsey's submissions (para. 87) repeat the assertion that the Review was commissioned by ACC Sweeney and DCS Shenton. Mr Gorton's submission is that it was TD/Supt. Scally. They are both partially right. ACC Sweeney , Gold on Nixon, and Head of Crime, certainly was involved, and agreed the Terms of Reference. There is doubt, however, as to whether DCS Shenton did . He had ceased to be Silver commander by 18 April 2011. He had not been in that position for over a month when the Review was commissioned. There is an unsigned, and undated, witness statement from him at pages 2128 to 2132 of the bundle . It is unclear if this is complete. Whilst it

details the appointment of TD/Supt. Scally , and aspects of Operation Nixon, it does not go on to deal with the Review.

PD1.3 35. It looks, therefore, as if TD/Supt. Scally was the other commissioning officer, not DCS Shenton. The claimant , however, has clearly made a disclosure which alleges that DCS Shenton was involved in setting Terms of Reference which deliberately sought to cover up wrongdoing by TD/Supt. Scally, when he may not have done. Does that matter? The claimant's response in relation to these matters has been that it does not. He would say that it was all part of the culture of the respondent, and a minor error on his part which should not vitiate this disclosure.

PD1.3 36. The claimant , of course, only has to show a reasonable belief in the substantial truth of this allegation. Has he done so? The Tribunal's view is that he has not. He has, as he has in other disclosures, leapt to the assumption that DCS Shenton was involved in setting the Terms of Reference. He has told us nothing of the details of the conversation with DS Fernandes, and nothing in the latter's witness statement to the IPCC suggests that he told the claimant that DCS Shenton was involved. The claimant accepts that he had not seen the Terms of Reference, nor the Review document before he made his disclosure, so he had very little upon which to base his belief. He made no enquiries as to who agreed the Terms of Reference , at the time, he just jumped to that conclusion. This matters, of course, because the claimant alleges that these Terms of Reference were deliberately set so as to conceal the events of 17 April 2011.

PD1.3 37. It is also of note, the Tribunal considers, that the claimant pleaded case omitted recital of paragraphs (xxx) and (xxxiii) in which he said this:

(xxx) The questions that have to be asked are; 'Why were the Review Team not made aware of the incident with the boy?' and 'Did ACC Sweeney and DCS Shenton deliberately divert the Review Team away from TD/Supt Scally's failings and misconduct by not informing them of the incident?'

And:

(xxxiii) The actions of ACC Sweeney and DCS Shenton amount to a 'cover up' of TD/Supt Scally's actions; on a point of law if this were proven then they may have conspired to pervert the course of justice and it is requested that their actions should also be subject of an independent investigation and again a file should be submitted for consideration by the Crown Prosecution Service.

PD1.3 38. The only reference to ACC Heywood and DCS Shenton in connection with the review of Nixon appears in para. 204 of the claimant's first witness statement, where they are said to have informed staff that the review had been carried out and all was fine. That falls way short of showing that he believed that they had both commissioned the review in a manner which had deliberately sought to keep the events of 17 April 2011 from the review team.

PD1.3 39. The claimant relies heavily for this disclosure upon what he was told by DS Fernandes. He has not called DS Fernandes. A major factor in the issue of his

reasonable belief is what, precisely , he was told by this reviewing officer. There is a world of difference between the review specifically not being told about the incident on 17 April 2011, in order to cover it up, and it not forming part of the Terms of Reference. The Tribunal can accept that DS Fernandes may well have told the claimant that the Terms of Reference made no mention of the incident on 17 April 2011, because they did not. Equally , they did not mention many other specific aspects of the operation, as MCRU reviews of this nature would not do so. The remit of the Review was broad. It was not instigated as a response to the events of 17 April 2011, although some officers either thought it had been, or should have been.

PD1.3 40. The claimant has given no evidence of how this conversation with DS Fernandes came about, and, in particular whether DS Fernandes volunteered this information. The Tribunal has noted already how he approached DI Mortimer and DS Hull in May 2013 to provide their accounts about the incident for use in his further grievance, and it may be that any such comments from DS Fernandes were similarly solicited. This is particularly so when the Tribunal reads DS Fernandes' witness statement to the IPCC (pages 7297 to 7301 of the bundle).He made it clear in that document that he was not aware of anything being deliberately covered up. As that was the very matter that the IPCC was investigating , it is most unlikely that even in January 2015, allowing for the passage of time, he had a different view at the time.

PD1.3 41. The relevance of that is that if that was his view, it is most unlikely that he would have told the claimant anything different. Further, whist it is one thing to say that the Terms of Reference did not mention the incident on 17 April 2011, it is another to say, as the claimant has said in this disclosure, that ACC Sweeney and DCS Shenton deliberately did not inform the Review team of the incident. It is true that it was not mentioned in the Terms of Reference, but that is not surprising, as the claimant , who would have seen many MCRU reviews, would know. Para. (xxix) however of PDR1 goes further and alleges that the Review Team were not made aware of the incident. That was not correct, and the claimant had no basis for so asserting.

PD1.3 42. As a full reading of the Review makes clear , there was no concealment of the events of 17 April 2011 from the Review Team. TD/Supt. Scally's policy book was disclosed to them, in which it was referred to. Whilst the specific incident is not mentioned, the issues raised, such a safeguarding , formed areas which the Review was to examine. That the Review did not specifically enquire into the events of 17 April 2011 does not mean that they were covered up. As Martin Bottomley explained to the IPCC, these issues related to the covert side of the operation, and for that reason the Review did not specifically address them.

PD1.3 43. In his cross – examination the claimant included Martin Bottomley , the Force Review Officer, in this alleged cover up (pages 2547 to 2549 of the transcript) , and said that he believed that Terry Sweeney and Darren Shenton , the senior officers were involved with him. He referred to his knowledge of the kind of interactions that were going on and the closeness of the relationships, but proffered no evidence in support of this.

PD1.3 44. Further, (transcript pages 2553 to 2557) the closest that the claimant comes to giving any evidence in support of this belief in Sweeney and Shenton being involved in a cover up is when he says that they had been made aware that the Terms of the Reference did not include the incident, and that other officers thought there had been a cover up. When pressed in cross – examination what his evidence was against Sweeney and Shenton , he replied that this was because all the officers involved in the incident were disgusted and angry about what had happened, which was a really serious incident, and they thought there had been a cover up , as nothing had happened. Sweeney and Shenton had been made aware of the terms of the review.

PD1.3 45. That, then, is the totality of the claimant's basis for his reasonable belief in the substantial truth of this serious allegation against two senior officers. It is clearly a highly material part of the disclosure. The Tribunal cannot accept he had a reasonable belief (accepting that he may have had a subjective belief) in the substantial truth of this allegation. The absence of any reference to the incident of 17 April 2011 from the Terms of Reference is one thing, and is entirely regular. Even if it was not, however, it is another quantum leap to allege from that these two officers then sought to keep the incident from the Review Team, because the evidence is that they did not. It will be appreciated that these are two different things. Omission from the Terms of Reference is one thing, but the claimant goes much further, and alleges that these two officers (and he is specific, not, be it noted including TD/Supt. Scally in this) then actively withheld information about the incident from the Review Team, and tried to steer them away from it. The claimant has laid no evidential basis for this whatsoever. He does not say that DS Fernandes told him that, or that anyone else did. As is clear, by the time the Review was being carried out DCS Shenton had ceased to be involved directly in the Nixon command structure.

PD1.3 46. That , however, is not the only issue. This disclosure is based upon the contention, in which the claimant could have had a reasonable belief, that the Terms of Reference for this Review did not "include" as it is put, a specific reference to the events of 17 April 2011. Other officers took from this, and some other circumstances, the implication that the Review was a cover up. That may have been their suspicion, or even their belief. They, however, were not making disclosures to the IPCC, the claimant was. Their belief did not have to be reasonable, the claimant's did. He cannot simply parrot their beliefs and say that he believed they were reasonable. These officers may have had an expectation of a review dealing specifically with the incident on 17 April 2011, but that may have been due to their lack of understanding of that process. As it was, despite their strongly held and documented criticism, none of them took the matter any further, for example , by taking it to PSB. Even DS Woodhouse who wrote the lengthy report referred to took the matter no further when no action appeared to be being taken.

PD1.3 47. The claimant's lack of a basis for any reasonable belief is starkly demonstrated by the fact that he had not , at the time of his disclosure to the IPCC, even seen the Terms of Reference or the Review report. Had he done so he would have seen that they were in very wide terms, and would touch upon issues around safeguarding and risk assessments, the very issues raised by the incident of 17 April 2011. Had he seen the Review report , he would have seen how, far from covering up the events of 17 April 2011, the Review was provided with material which related to the events of 17

April 2011, including TD/Supt. Scally's rationale in his policy book, for his decision not to intervene.

PD1.3 48. The claimant's disclosure also contained information that the report was "favourable" and "gave tacit approval to the investigation". It was not, and it did not. Its function, as that of any MCRU Review was, was to review the investigation, and make recommendations for its future conduct. It was not a report card, and it was not there to give approval or disapproval, it was to make recommendations, which it did, some four in total. As a senior detective with personal experience of MCRU reviews of this nature, the claimant was aware of that. The claimant also says in this disclosure that the commissioning of this review outwardly gave the impression that officers' concerns had been acted upon and addressed. He is alleging , the Tribunal considers, that this was deliberate. That cannot be something that the claimant reasonably believed. It would be hard for him to have any reasonable belief about the Review when he had not seen it. As it was, ironically, perusal of the Review would not give the impression that any officers' concerns about the incident on 17 April 2011 had been acted upon and addressed , for the very reasons that the claimant relies upon.

PD1.3 49. The claimant , therefore lacked a reasonable belief in several parts of the information conveyed, and in several of the allegations contained in it. This, therefore was not, even if it did satisfy.43B(1) a protected disclosure when considered under s.43F.

5.Protected disclosure 1.4 : Scally allowed to retain position and critical role

The pleaded disclosure (with the extracts omitted from the List of Issues added with underlining) as set out in the List of Issues is:

24. Information disclosed: Following the cover-up of TD/Supt Scally's failings in Op Nixon, he was allowed to retain his position in the Major Incident Team and to continue to take the role of Senior Investigating Officer in high-risk critical investigations.

25. PD 1.4 was set out at § (xxxix) of PDR 1 which was worded as follows:

(xxxix) Despite knowing about TD/Supt's Scally's serious failings on Op Nixon, his real lack of credibility, experience and ability as an SIO; and also being aware of the concerns expressed by officers engaged on Op Nixon about his decision making, ACC Sweeney, DCS Shenton and ACC Heywood still allowed him to continue in his acting role as a 'Temporary Detective Superintendent' in the Serious Crime Division and continue to take on the role of SIO in high risk, critical investigations. Their decision making has to be the subject of real scrutiny given what was to later happen which is detailed in this report.
This disclosure was made under the heading "(C) Review of Op Nixon – A cover up!"

Para. 27 of the List of Issues sets out the claimant's case that he reasonably believed that this disclosure was made in the public interest, and tended to show (a) that there had been a failure to comply with or one or more legal obligations, namely (i) the duty to protect the public and prevent crime; and/or (ii) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police

(Conduct) Regulations 2012 and in particular the standards of honesty and integrity; duties and responsibilities and discreditable conduct; and/or (b) that the health or safety of any individuals, namely the general public, had been endangered.

Relevant Facts:

PD1.4: 1. TD/Supt. Scally , it is an agreed fact, after Operation Nixon , was not demoted or removed from his position in the MIT. He was subsequently appointed SIO for Operations Somerville and Mirato (the operations referred to in this disclosure, but not by name) , a point made elsewhere in the claimant's disclosures, and para. 209 of his first witness statement.

PD1.4: 2. This disclosure is linked to and consequent upon PD1.1 and 1.2 . The premise behind it is the alleged lack of experience and ability of TD/Supt. Scally , who had been promoted cronyistically into this position in MIT. The relevant facts relating to Operation Nixon are set out in our findings under PD1.2. The claimant states that the source of his information for this disclosure was his own knowledge and observations from working in the SCD.

The information conveyed.

PD1.4: 3.This is fairly simple, and amounts to information that TD/Supt. Scally was allowed, by the three named senior officers, to remain in post , to carry out the role of an SIO, and retain the temporary rank of TD/Sup, in the SCD. It also contains allegations that he lacked credibility, experience and ability as an SIO, and that other officers had expressed their concerns to the three named senior officers about TD/Supt. Scally's decision making in Operation Nixon.

The s.43B tests.

PD1.4: 4.The Tribunal will start with the s.43B issues. Whilst the claimant has only to satisfy a low threshold of what he believed the disclosure tended to show in terms of the prescribed matters in s.43B(1), the Tribunal is hesitant that the claimant could satisfy even that. It must , however, separate the test under s.43B from that under s.43F. Starting with s.43B(1) , and leaving aside the 2012 Regulations issue (which the Tribunal determines the same way it did for PD1.1) , the Tribunal will accept that the claimant reasonably believed that this disclosure did tend to show that the common law duty to protect the public and prevent crime was likely (not that it had, which is how he has pleaded it) to be breached. That is because this was after Operation Nixon, and the claimant , rightly or wrongly, reasonably or not, did believe that TD/Supt. Scally had made a serious error in that Operation, and that this disclosure therefore tended to show that having him in such a position was a failure of the legal duty to protect the public and prevent crime. He therefore satisfies limb (b) of s.43B(1).

PD1.4: 5. That would not, however, be its conclusion in respect of s.43B(1)(d), as we do not consider that the claimant could reasonably have believed that this disclosure tended to show that the health and safety of any individual had been endangered by the retention of TD/Supt. Scally in his role in MIT. Whereas the effect of TD/Supt. Scally's

alleged deficiencies as stated in this disclosure upon his ability to protect the public and prevent crime could be seen to be a consequence of his retention in post, actual harm to the health and safety of any person would not necessarily be so. Much would depend upon what investigations he was to lead, and the circumstances of them. In particular, as will be seen, an important facet of Operation Nixon was its covert side. That does not, of course, matter, as if any one of s.43B(1) conditions is satisfied , that will suffice.

PD1.4: 6.Turning , however, to the ***Muchesa*** point, this may seem less clear than in other instances. The disclosure here was that TD/Sup Scally was left in post. That is not an obvious "one -off" event, it was a continuing state of affairs. It is thus less clear from what point one could say that the claimant acted incompatibly with having a reasonable belief that this disclosure tended to show one of the prescribed matters. We consider, however, that we cannot treat this disclosure any differently from PD1.2 and PD1.3. Context is important, and this particular disclosure comes under the heading in PDR1 "Review of Op Nixon – A cover up!", and immediately follows para.(xxxviii) in which the allegations are made that a paedophile had raped a 15 year boy. This disclosure also expressly refers to TD/Sup Scally taking on the role of SIO in "high risk, critical investigations". The claimant goes on (although this is omitted from the pleaded disclosure) in the final sentence to refer to "what was to later happen", as detailed in the "report", by which the claimant means Operations Somerville, Mirato and Dakar. He thus clearly highlights the risks, as he saw them, in TD/Sup Scally being allowed to remain in post. That was, in terms of time, from the moment that the issues with Operation Nixon arose, and the subsequent Review which is the subject of PD1.3 above. In other words these were also matters the claimant knew of in May 2012, or at the latest June 2012. He knew TD/Sup Scally remained in post, and indeed of his subsequent appointment as SIO on the Cregan investigations . The claimant's conduct in relation to this disclosure, therefore we consider , is indistinguishable from that in respect of PD1.2 and PD1.3, and logic dictates that we must come to the same conclusion in terms of the ***Muchesa*** test. This disclosure is thus not a protected one.

PD1.4 7. Turning finally, if unnecessarily, to the issue of reasonable belief that it was in the public interest to make this disclosure, as with the other disclosures relating to Operation Nixon , we find that he did not have the requisite belief in the light of the foregoing finding.

The s.43F test.

PD1.4: 8. Whilst this disclosure fails on s.43B, we will turn now to s.43F. The Tribunal has, of course, already found that the claimant lacked reasonable belief in the previous disclosure at PD1.1. It cannot therefore find that the claimant had the requisite reasonable belief in the substantial truth of these allegations in this disclosure.

PD1.4: 9. There is no evidence that the claimant has adduced which supports his allegation that Dominic Scally was allowed to retain his position and critical role because of any form of cronyism, or improper influence or protection by ACC Sweeney, or anyone else.

PD1.4: 10. Indeed, this is a major issue for the claimant in this disclosure, he has made these allegations against three persons. These three individuals appear frequently in his disclosures, and in this one are all alleged to have been involved in this particular act of impropriety, but a moment's reflection raises questions as to how all three of these officers "allowed" TD/Supt. Scally to retain this position. Two officers, of course, were ACCs, and hence outranked the third, DCS Shenton. ACC Sweeney, of course, was (in some of the claimant's disclosures in these proceedings, but not always consistently) alleged to be at the centre of the alleged clique, and to have been responsible for the corrupt promotion of TD/Supt. Scally in the first place.

PD1.4: 11. It is unclear what precise roles the two ACCs , Sweeney and Heywood, had at the time in question, which appears to be from 2011 , when Operation Nixon was in progress , and May 2012 when Operation Mirato was instigated. By June 2012 ACC Heywood was Head of Serious Crime and Vulnerable People (see , for example, page 545 of the bundle) , and at this time ACC Sweeney , as he told the IPCC (page 5436 of the bundle) was Chief Officer for Crime Operations, and "ACC Crime". It is possible that either one of them would have the ultimate authority to demote TD/Supt. Scally back to DCI. The question , however, is on what basis does the claimant have a reasonable belief that ACC Heywood as opposed to ACC Sweeney , or vice versa, was involved in the retention of TD/Supt. Scally in the SCD? Other than the association with Sweeney and Shenton, the claimant has done nothing to show why he had a reasonable belief that either ACC Heywood or ACC Sweeney were involved in any way with the "retention" in this post by TD/Supt. Scally . This is a flimsy and unreasonable belief, based upon mere speculation and supposition, and the claimant's tendency to link these three officers together with no real evidential basis. Of the three, ACC Heywood, when Head of Crime , was probably the most likely to have been in the position to remove TD/Supt. Scally from his temporary rank, or from the SCD. Indeed, on the claimant's case on PD1.1 it was he who had "promoted" him into this position. This is, however, pure speculation. The most significant aspect of this disclosure is that DCS Shenton, despite his junior rank, was allegedly involved in this decision. The claimant has proffered no basis for any reasonable belief that it was all three of these officers who kept TD/Sup Scally there, and in particular, that DCS Shenton played any role in this .

PD1.4: 12. There are, however, other aspects. As we have already found, the claimant did not have a reasonable belief that TD/Supt. Scally lacked major crime investigative experience, and we consider that would also apply to his lack of experience as an SIO. Additionally, also as we have found, the claimant could only reasonably have believed, at most, that he lacked covert operational experience, but that would not , of itself, justify a reasonable belief that to leave him at the rank and in the posting that he held in the SCD would lead to any further instances of breach of the common law duties, or endangerment of the public or police officers. The same goes for his alleged lack of ability , which appears to be based solely upon the claimant's incomplete awareness of TD/Supt. Scally's career history , and of Operation Nixon itself.

PD1.4: 13. There are, we appreciate, two basic allegations in the information disclosed, TD/Supt. Scally being allowed to retain his position, and being appointed to Operation Mirato. Contained in it, however, are these other allegations, which are serious. They suggest that there were specific serious consequences of the alleged failings of

TD/Supt. Scally for other potential victims, and that all three named senior officers were responsible for this.

PD1.4: 14. The claimant lacked the requisite reasonable belief in these allegations, particularly that all three named officers were involved in this wrongdoing, and this alone is fatal to the disclosure under s.43F. That there are other allegations effectively repeated from the previous disclosures , also found (or to be) not to satisfy s.43F, adds weight to the conclusion this was not a protected disclosure.

Group 3:

6. Protected disclosure 1.5 : release of Dale Cregan on bail

The pleaded disclosure (with the extracts omitted from the List of Issues added with underlining):

29 Information disclosed: Following the murder of Mark Short on 25 May 2012, TD/Supt Scally was appointed Senior Investigating Officer for the investigation into his murder (known as Operation Somerville). Dale Cregan was declared a suspect in Operation Somerville and arrested on 12 June 2012 but subsequently released on bail without any application having been made to the Magistrates for a warrant of further detention. This led to a fatal sequence of events, including the murder of Mark Short's father David Short by Dale Cregan and Anthony Wilkinson on 12 August 2012 (and other events set out below) [CGoC §§13 and 31].

30. PD 1.5 was set out in detail at § (xli) to (lv) of PDR1. The words used in relation to the release of Dale Cregan on bail and the murder of David Short were:

(xli) On the evening of Friday 25 th May 2012 Mark Short was shot and killed in the Cotton Tree public house in Droylsden. Three others were shot and wounded at the same time. The murder was set against a background of two criminal families involved in a long running dispute, with a 'high risk' of further violent actions between the opposing factions. The investigation had been managed during the weekend by DCI Denise Worth, with the assistance of other senior officers.

(xlii) On Tuesday 29 th May 2012 I attended a Serious Crime Division SLT meeting at Nexus House. After the meeting D/Supt Barraclough called an impromptu meeting of the Major Incident Team DCIs who were present. DCI Worth and TD/Supt Scally were not present. He provided a brief update of Op Somerville and said that TD/Supt Scally would be taking over the investigation and that he would be mentoring him. He referred to things having not run smoothly over the weekend.

(xliii) It was clear that the requirement for TD/Supt Scally to be mentored reflected a lack of confidence in his ability as an SIO and unlike other DCIs who were proven SIOs and able to lead high profile and critical investigations on their own, it was felt that D/Supt Scally still needed extra support and guidance.

(xliv) The question that needs to be answered by ACC Sweeney (former ACC Crime), DCS Shenton (Head of Serious Crime Division) and ACC Heywood (ACC Crime) is;

'Why was an officer who required mentoring placed in charge of such a high risk investigation?'

(xlv) Not surprisingly the investigation did not run smoothly.

(xlvi) Dale Cregan was declared a suspect and arrested on 12th June 2012, on his return to the UK from Thailand where he had fled shortly after the murder of Mark Short. However he was released on bail at an early stage, without any application having been made to magistrates for a warrant of further detention. This is highly unusual in a case such as this as an SIO, having made a decision to arrest, would want to keep him in custody for as long possible to maximise the opportunities to gain sufficient evidence to at least meet a threshold test for a charge, which could be authorised by CPS in the anticipation and expectation of further evidence. This would then allow him to be remanded in custody and reduce the risks and threats to life.

(xlvii) The media were ultimately to question Cregan's release on bail, an issue that will no doubt be visited by investigative reporters post trial. It is interesting to note that the Chief Constable defended this decision, being quoted in the press on 18'h September 2012 as saying it was 'absolutely normal' for him (Creagan) to be bailed. He explained further that 'suspects have to be released on bail as there are strict time limits covering how long suspects can be held in custody without charge'. A spokesman for the Force being cited as saying 'officers could hold a suspect for a total of 96 hours, if magistrates grant permission'. Significantly when questioned the spokesman 'would not disclose how long Cregan was held for before being bailed' (see Appendix 'D' for sample press cutting re above).

(xlviii) GMP has a long history of dealing with murders that occur between criminals, one perennial consideration is always how 'the other side' will react and will they seek to take revenge. In this case the risk and emotions become febrile as the murder victim's father David Short had been present when the shooting occurred and he had cradled his dying son in his arms. A violent man himself, revenge would become his clear obsession. This type of situation causes a further and problematic dynamic for SIOs leading on such investigations; for as well as trying to gather evidence to identify and prosecute the offenders they also have to carefully manage any intelligence which would indicate that a person's 'life was at risk'. In such cases a 'threats to life warning' should be issued to the person in question. It necessitates very careful consideration and evaluation of any such information before a warning is issued; because the delivering of such a warning can (ironically) create another dynamic, whether it is in their interests to retaliate first.

(xlix) At the time of Cregan's release back into the community threats to life warnings had been issued by the police to his family. It is interesting to note that Cregan's co-accused and close associate Anthony Wilkison has said 'It was a case of kill or be killed'. (See Appendix 'E' for press report of trial)

(l) The release of Cregan on bail was to ultimately lead to a disastrous and fatal sequence of events and the lowest point in GMP's history.

(E) Operation Mirato - A second murder!

(li) On 10th August 2012 Cregan went with Anthony Wilkinson to the home of David Short on Folkestone Road, Clayton and shot him, throwing a hand grenade onto his body.

(lii) Cregan had 'acted first' and killed David Short as he believed Short would try to avenge the death of his son and kill him and members of his family.

(liii) Cregan and Wilkinson then attended another address in Droylsden where they threw another grenade at a house, thankfully with no casualties. Their actions being caught on CCTV cameras. They both then went 'on the run'.

(liv) Questions have to be asked about TD/Supt Scally's decision making and arrest strategy for Dale Cregan. Had he given consideration to the timing of the arrest? What was the evaluation of the evidence against Cregan at that time and what was the potential for further evidence being obtained once he was in custody? Did he fully evaluate the risks? Questions have to be asked about why Cregan was bailed? Could the threshold test have been met for charging? What discussions were had with CPS? And what and when did any further evidence come to light after Cregan's release on bail? As an experienced SIO I call these thought processes 'consequential thinking', as one always has to apply thought to the consequences of any actions to be taken.

(lv) If the investigation of the murder of Mark Short had been led from the outset by a more experienced SIO, who better understood the investigation process, tactics and the evaluation of risk and threats to life, then the murder of David Short may have been able to have been prevented. It is clear from actions which I detail later in this report (see section 'H'.) that TD/Supt Scally clearly did not understand the 'risks' in this investigation.

The reference to "section 'H' means that the matters contained therein become part of the information disclosed by the claimant for the purposes of this disclosure, so the Tribunal must consider those allegations as well. They consist of paras. (lxxv) to (lxxxiii), under the heading "Further evidence of the failure to understand risk". These paragraphs were pleaded as constituting PD1.7, but that has been withdrawn as a separate protected disclosure (para. 40 of the List of Issues wrongly refers to paras. (lxvi to lxxiii), but the List then sets out extracts from paras. (lxvi) to (lxxxiii)). Paras. (lxxv) to (lxxxiii) which form section H therefore , must, perforce, be set out in full, here, in the context of this disclosure , as follows:

(H) Further evidence of the failure to understand risk

(lxxv) I can personally provide evidence to highlight the lack of understanding of risk by TD/Supt Scally. On Tuesday 14th August 2012 I was on afternoon duty in the Major Incident Team when I received a telephone call at approx 8.00 p.m. from T/DI Kay Dennison who was working on Op Mirato under TD/Supt Scally and DCI Rawlinson (Dep SIO). She requested that I send two officers from my team to relieve two of her officers who were sat in a car on the road outside an associate of Cregan's by the name of 'Hadfield'. Hadfield had been arrested earlier that day for the murder of Mark Short (Op Somerville) and she said there was a firearms briefing taking place and they were going

to execute a search warrant with firearms officers at Hadfield's address to look for Cregan and Wilkinson and search for firearms/grenades and evidence for the Somerville/Mirato investigations. She said she was making the request on behalf of T.D/Supt Scally who had gone home. The firearms briefing had been going on for a long time and she wanted to release her officers who had been on a day shift. She said she wanted my officers to take over, wait until the warrant had been executed and then tell Hadfield's girlfriend, who would be at address that she had to go and stay elsewhere that night but to get the details of where she was going. Once she had been sent away and the house cleared and made safe, the address was to be kept overnight and would be searched the day after for firearms, grenades and evidence re Somerville / Mirato. Uniform guards would be placed overnight at the address. I queried this and discovered that it was to be divisional officers not firearms officers who would stand outside the house.

(lxxvi) My response was to tell her I was not happy sending my staff to sit outside/near an address where it was believed Cregan may be or might come back to. I queried what risk assessments had been completed and why were MIT detectives sat outside when a firearms briefing was going on at another location' as my understanding was that Cregan blamed the police for his predicament and that any police officers he encountered would be a likely target.

(lxxvii) I felt that that they were placing uniform staff at risk by asking them to stand guard at the house overnight. I suggested they should do the warrant early in the morning with firearms, at a time when it could be searched with a continued firearms presence and once complete they could then all safely withdraw.

(lxxviii) I also said that the girlfriend should not be sent on her way and should be taken to a police station for questioning/debrief, as in the circumstances she may be able to provide information about the Somerville and Mirato investigations, Hadfield's involvement and possible locations/telephone numbers etc re Cregan and Wilkinson. I advised her to take this action rather than 'send her away'. I also said that it was better to have staff that were working on the investigation, and who knew all about the job, speak with her.

(lxxix) I reiterated that I didn't approve leaving unarmed uniform officers on guard overnight, one back and front, and said I believed they were putting them at risk as this was an address Cregan may go to and they would be targets. Throughout the conversation T/DI Dennison's voice was cracking and she was near to tears and breaking down. She was clearly very stressed and said she was only 'Acting' and she shouldn't have been left by DCI Rawlinson (Dep SIO) and TD/Supt Scally to deal on her own. I told her she needed to challenge them about this. The call was then interrupted by an incoming phone call to DI Dennison which she said she thought was from the firearms team and the conversation was ended. She rang me back about 10 minutes later and told me that my staff were not required and everything was in hand.

(lxxx) As well as highlighting the lack of understanding of the risks in this case, the placing officers at risk of harm, I also felt this incident demonstrated the poor leadership and decision making in the investigation, potential opportunities to gain information were clearly being missed and it demonstrated TD/Supt Scally inexperience as an SIO.

(Ixxxi) I later brought this incident to the attention of D/Supt Barraclough who was providing support as a Tier 4 Advisor to the Op Mirato, Somerville and Dakar investigations. I was very vocal in expressed my concerns about way the investigations were being run. I also expressed concerns regarding the media strategy. I felt that Cregan should have been regarded as Britain's 'Most wanted man' and that his face should have been on front page of all the national papers and on the national news. I said everyone was talking about the likelihood of another Raoul Moat incident and questioned whether officers in other Forces would be aware of the situation and the threat he presented. I felt it a distinct possibility that any officer throughout the country could encounter Cregan in their normal every day duties. I highlighted that as a 'one eyed man', he would be very distinctive.

(Ixxxii) I am also aware that Inspector 'T ' whilst working on the North Manchester division dealt with another request by TD/Supt Scally for staff to be deployed to an address associated to Cregan. The officer had responded in similar fashion to myself and queried what risk assessments has been completed. TD/Supt Scally was unable to provide an answer and again the officer refused the request. TD/Supt Scally stated that 'Silver control' would deal with the issue. However it was another example of TD/Supt Scally not appreciating risk.

(Ixxxiii) In conclusion my view is sadly that due to the inexperience and poor leadership demonstrated throughout, the deaths of Nicola and Fiona were sadly almost inevitable, and were not in fact the fault of any kind of master criminal, they were as a result of the failure of GMP.

Para. 32 of the List of Issues sets out the claimant's case that he reasonably believed that this disclosure was made in the public interest and that this information tended to show (a) that there had been a failure to comply with one or more legal obligations, namely (i) the duty to protect the public and prevent crime; and/or (ii) the Respondent's duties under the HRA and Article 2 of the ECHR to safeguard life; and/or (iii) his common law duty of care to GMP officers and staff; and/or (iv) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of duties and responsibilities; discreditable conduct; and/or (b) that the health or safety of any individuals, namely the general public and GMP officers and staff, had been endangered.

Relevant facts:

PD1.5 1. On 25 May 2012 Mark Short was shot and killed in the Cotton Tree pub in Droylsden Manchester by Dale Cregan. The investigation that was commenced was Operation Somerville. Initially DCS Kelly was the SIO. DCI Worth was involved in the initial stages of the investigation, attending the scene, but by 27 May 2012 she had been appointed the SIO , and she held a briefing at Ashton Police Station at 9.30 that morning (see page 3724 of the bundle). Initially a suspect was identified (not Dale Cregan) , and DCI Worth co-ordinated the actions to be taken to further the investigation. A Ford Focus vehicle , believed to have been the vehicle which took the offenders to the scene of the shooting , had been recovered in a burnt out state, shortly after the shootings in the Hollingworth area.

PD1.5 2. On 29 May 2012 DCI Worth held a briefing with TD/Supt. Scally , D/Supt. Barraclough, DCI Tonge, and DI Wood. It is recorded in the SIO Policy Book (page 3746 of the bundle) that this was to take into account that DCI Worth was going on leave on Friday 1 June 2012. It is noted that the investigation was in full flow, and required a new SIO. On Tuesday 26 May 2012 TD/Supt. Scally took over as SIO. D/Supt Barraclough was, the same day, about 30 minutes later, appointed PIP4 adviser to the Operation. DCI Worth was not removed from the Operation because of concerns over her handling of it, she was unavailable to continue as SIO because she was due to take leave from 1 June 2012.

PD1.5 3. On 29 May 2012 the claimant was present at a meeting held by D/Supt. Barraclough with other DCIs from the Major Incident Team. D/Supt Barraclough announced that T/Det Supt. Scally, who was not present, was taking over as the SIO for the investigation. D/Supt. Barraclough did not inform the meeting that he was going to mentor TD/Supt. Scally , he informed it that he was appointed PIP4. Both appointments are noted in the SIO Policy Book (page 3746 of the bundle), TD/Supt. Scally as SIO from 16.00 that day, and D/Supt. Barraclough as PIP4 from 16.35 that day.

PD1.5 4. The Tribunal does not accept that D/Supt. Barraclough made any criticism of DCI Worth's tenure as SIO over the preceding weekend.

PD1.5 5. The Short family were known to the Police, and had an extensive criminal history, and were likely to use violence. Consideration was given to issuing "Threats to Life" notices, and how to progress the investigation without giving information to the Short family which might lead to retaliation. The investigation continued during the week ending 1 June 2012, with DCI Worth providing assistance before she commenced her leave.

PD1.5 6. By 1 June 2012, but not initially, Dale Cregan had been identified as a suspect for the shooting. The investigation continued with TD/Supt. Scally as SIO until 11 June 2012 when DCI Tonge took over whilst TD/Supt. Scally took a period of leave. By then a decision had been made to arrest Dale Cregan , Luke Livesey, and a third suspect , Gorman , and preparations for this were made. The Police learned that Cregan and another suspect, Luke Livesey, had travelled to Thailand on 2 June 2012, on a pre-booked holiday, and were due back on 12 June 2012.

PD1.5 7. DCI Tonge first made contact with Rebecca McCauley Addison of the CPS on 8 June 2012, initial contact with the CPS having been made on 6 June 2012 to get a prosecutor allocated to the case.

PD1.5 8. Dale Cregan and Luke Livesey were arrested upon their return to Manchester Airport on 12 June 2012. Cregan and Livesey were due to arrive back at Manchester Airport at 07.25 that morning (see the Operational Orders at pages 3855 to 3863, and 3864 to 3873 of the bundle). It is unclear what time the arrests were carried out, but at 09.25 that morning, probably after the arrests , TD/Supt. Scally met with Rebecca McCauley - Addison of the CPS. The third suspect , Gorman, was arrested at 10.00 that morning. All three remained in custody during 13 June 2012.

PD1.5 9. Upon arrest suitcases being carried by the suspects were searched , and addresses linked to them were also searched . A vehicle belonging to a third person arrested was also searched and examined. At that time further evidence was being awaited in relation to mobile phone data, gunshot residue evidence and DNA from the burnt out vehicle to link it to the offenders. On 13 June 2012 there was a briefing held by DCI Tonge, which is noted in TD/Supt. Scally's SIO Policy book , (pages 3776 and 3777 of the bundle). The following is recorded :

"We have completed all the relevant interviews at this time. There are clearly substantial further enquiries that need to be completed which we would be unlikely to finish even with a WOTD."

This appears just after an entry recording that Dale Cregan was at 19.19 hrs that day released on bail, to re-attend the Police Station on 14 August 2012. The other two suspects were similarly bailed to the same date. "WOTD" is a misprint for WOFD, which stands for "warrant of further detention".

PD1.5 10. It is perhaps helpful at this juncture to rehearse the legal position in terms of arrests, bail and warrants of further detention. This is best done by the Explanatory Note to the Police (Detention and Bail) Act 2011, which says this:

Section 1 amends provisions in Part 4 of PACE which relate to the detention of suspects prior to charge and after charging. Sections 34 to 45A of PACE, which set out the rules governing detention and bail prior to charge, provide that once a person is arrested and brought to a police station that person must not be detained for longer than 96 hours without being charged with an offence (separate rules, as set out in section 46 of PACE, govern continued detention post-charge). The detention of a person within the overall maximum permitted 96-hour period is subject to various safeguards which require an on-going detention to be subject to periodic review and for continued detention to be subject to a further authorisation, by a police officer of at least the rank of superintendent after the initial 24 hours, and by a magistrate after the initial 36 hours.

PACE is the Police and Criminal Evidence Act 1984.

PD1.5 11. Applications for WOFDs are made under s.43 of PACE. The requirements for an application are that it is made on oath by a constable, and supported by an "information" to a Magistrates' Court . If the Court is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified, it may issue a warrant of further detention authorising the keeping of that person in police detention. A Court may not hear an application for a warrant of further detention unless the person to whom the application relates (a) has been furnished with a copy of the information; and (b) has been brought before the Court for the hearing. The person to whom the application relates is entitled to be legally represented at the hearing and, the hearing of the application can be adjourned for that purpose. Thus, as the Tribunal was told in the hearing, such applications can result in the detained person being put on notice of the lines of enquiry being pursued, and of potential weaknesses in the prosecution case.

PD1.5 12. Section 43(4) provides:

(4)A person's further detention is only justified for the purposes of this section or section 44 below if—

(a)his detention without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;

(b)an offence for which he is under arrest is an indictable offence ; and

(c)the investigation is being conducted diligently and expeditiously.

Section 43(14) also requires that any information submitted in support of an application under this section shall state:

(a)the nature of the offence for which the person to whom the application relates has been arrested;

(b)the general nature of the evidence on which that person was arrested;

(c)what inquiries relating to the offence have been made by the police and what further inquiries are proposed by them;

(d)the reasons for believing the continued detention of that person to be necessary for the purposes of such further inquiries.

PD1.5 13. TD/Supt. Scally prepared a document (pages 4817 and 4818 of the bundle) entitled "Dale Cregan Charging Decision – Sequence of Events" dated 20 September 2012. In it he sets out how he sought advice from the CPS at various stages as to whether there was enough evidence to charge Dale Cregan (or either of the others in custody). The advice on 12 June 2012 was that there was not, and in the interviews conducted the following day no new evidence emerged , hence the decision was taken to release all three arrested men on bail, to return on 14 August 2012. One of the issues which was affecting the progress of the investigation was the need for forensic evidence to link any suspects to a burned out car that was linked to the offence, and for DNA evidence. None of this was yet available (i.,e it had not been processed, not that it had not been obtained), and the CPS did not consider there was enough to charge anyone at that stage.

PD1.5 14. A file was prepared and submitted to the CPS on 6 July 2012. TD/Supt. Scally met with another CPS lawyer on 13 June 2012. The advice was that the charge threshold may have been met, but there was still a lot of work to do, and charging too early may present risks for the preparation for trial within the required timetable, and of retaliation by members of the Short family. The decision was to re-arrest before the bail date of 14 August 2012, and to review charging in early August (see pages 4817 and 4818 of the bundle).

PD1.5 15. TD/Supt. Scally then sought further advice from the CPS on 3 August 2012 to review whether there was enough evidence to charge. By then he had decided to re-arrest the suspects on 7 August 2012, and would then ask the CPS to make a decision on charging.

PD1.5 16. On 7 August 2012 Luke Livesey and the third suspect Gorman were re – arrested, but Cregan could not be found. The CPS then gave authority to charge the arrested men.

PD1.5 17. On 10 August 2012 David Short, the father of Mark Short, was shot and killed. A hand grenade had also been used in the killing. A new investigation , Operation Mirato, was initiated, with TD/Supt. Scally as the SIO.

PD1.5 18. Dale Cregan and Anthony Wilkinson were identified as suspects for this murder. Dale Cregan went on the run, and a new operation, , Operation Dakar, was instigated on or about 10 August 2012. TD/Supt. Scally was not the SIO on that Operation, where it appears there may have been two DCIs jointly appointed , (possibly because it was a 24/7 operation) , one of whom was DCI Rick Jackson . Whilst the first two operations were reactive, to investigate the murders of Mark Short, and David Short respectively, Dakar, whose purpose was to locate and apprehend Dale Cregan, was proactive. The GMP structure at this time was that all three Operations were under one Silver Commander, C/Supt. John O'Hare, and a Gold Commander.

PD1.5 19. On 14 August 2012 the claimant allegedly received a telephone call at approximately 8.00 p.m. from T/DI Kay Dennison who was working on Operation Mirato under TD/Supt Scally and DCI Rawlinson (Dep SIO). She requested that he send two officers from his team to relieve two of her officers who were sat in a car on the road outside an associate of Cregan's by the name of 'Hadfield'. (This is the subject matter of PD1.9, and the full facts will be rehearsed there). In short, the claimant did not agree to this request , and in due course, this did not happen.

PD1.5 20. The hunt for Cregan continued, and other arrests were made in connection with the murders of the Short family members. Cregan remained at large from 10 August 2012. More facts in relation to this Operation will be considered in respect of PD1.8.

PD1.5 21. On 18 September 2012 Dale Cregan shot and killed PC Nicola Hughes and PC Fiona Bone. He then surrendered himself at Hyde Police Station, was arrested, charged, and then remanded in custody until his trial in February 2013. The circumstances of the murder of the two officers were that they had been lured to an address in Hattersley by Cregan , who made a false telephone report of a burglary. They were unarmed, and were ambushed by him, with a gun and hand grenades. They had not been sent to sit outside a property as part of any operation to apprehend him, but were responding to the report of a burglary.

PD1.5 22. The claimant's only identified source of knowledge about what had taken place in Operation Somerville was DCI Graham Brock, whom he called as his witness. In para. 16 of his witness statement DCI Brock said this:

"I ended up running the Mark Short murder investigation but was not on duty at the time of Dale Cregan's arrest. As I recall Dale Cregan was arrested coming off a plane, interviewed and then a decision was made to release him on bail. I discussed this with Pete after the event and thought that the inexperience of Temp Det Supt Dominic Scally, the SIO, had meant Scally had not appreciated the implications of having, potentially, an additional few days of investigation time available. I thought there was no way

Cregan should have been released so quickly. More time should have been secured to get as much evidence as you could rather than let him out, he was after all suspected of being a murderer, a very dangerous man and one who would be a marked man in light of the identity of the person he was alleged to have killed. The way I saw it was that you would not want to answer to family members if you had released a suspect in those circumstances who then murdered another member of their family, as you had not retained them in custody for as long as possible to seek to secure appropriate evidence to charge and keep him in custody."

PD1.5 23. DCI Brock was not, however, involved in Operation Somerville at the time of the arrests in June 2012, not joining the Operation until August 2012 . He did know what the rationale of TD/Supt. Scally for the arrests, or the release on bail, was. He did not know when the CPS were first instructed. He did not identify any particular steps that TD/Supt. Scally could or should have taken at the time. His view, as was that of the claimant, was that he would have done everything (the claimant's own phrase was "throw the kitchen sink") he could to keep Cregan in custody for as long as possible. He did not know what the evidential gaps were at the time of the arrests, but he believed that the suspects should have been kept in custody longer in order that the Force could use its resources more efficiently and effectively than was done at the time.

PD1.5 24. The claimant had no knowledge of whether TD/Supt. Scally had or had not previously applied for any WOFD, or whether he had actually applied for one in the Cregan case. He had not done so in the Cregan case.

PD1.5 25 The claimant first raised these specific matters referred to in his PDR1 document of 11 June 2013, the later version dated 20 June 2013 adding no further allegations relied upon as protected disclosures in this regard.

PD1.5 26. The claimant had, in his grievance appeal of 12 November 2012 (pages 682 to 687 of the bundle) made specific reference to his dealings with D I Dennison on 14 August 2012 (the subject matter of PD1.9) in relation to the Dale Cregan manhunt , but, other than to make general comments that (along with others) Operations Somerville , Mirato , and Dakar should be the subject of independent review, he made no other disclosures of this nature as to the specific failures that he later went on to identify in this, and other, disclosures.

Discussion and findings.

The information and the allegations contained in it .

PD1.5 27. Whereas the List of Issues only recites paras. (xlvi) in its entirety , (xlix) in part, (l) and (li) in their entirety , it states, at para. 30 that PD1.5 "was set out in detail at paras. (xli) to (lv) of PDR1". Whilst the List of Issues says that the words then recited were the words used in relation to the release of Dale Cregan on bail, para. 29 which precedes it states , as part of the information disclosed, "This led to a fatal sequence of events, including the murder of Mark Short's father David Short shot by Dale Cregan and Anthony Wilkinson on 12 *(sic : it was 10 August 2012)* August 2012 (and other events set out below)." By the "other events set out below" the Tribunal understands the

claimant to mean those referred to in para. (l), which is expressly pleaded in the List of Issues, and refers to the murder by Dale Cregan of PCs Bone and Hughes.

PD1.5 28. The Tribunal considers that the claimant cannot limit the scope of the Tribunal's determination of what information was conveyed as part of this disclosure by selecting ("filleting" Mr Gorton might say) out from these 14 paragraphs only the recited passages of text that have been referred to in the List of Issues. As it is, whilst the specific disclosure relates to the release of Dale Creegan on bail, under the heading "(D) Operation Somerville – The Murder of Mark Short" , and in relation to para.((li) "(E) Operation Mirato – A second murder), the preceding and succeeding paragraphs in each section form part of the information that the claimant conveyed, and are pleaded to do so. Whilst some contain solely narrative, others are more pertinent, as they convey information and make allegations which are supportive of the claimant's disclosure that the release of Dale Cregan on bail was a serious mistake made by TD/Supt. Scally , because he lacked experience, and he failed to appreciate risk.

PD1.5 29. Further, as it is expressly referred to in para.(lv) of the disclosure under Section E, the whole of Section H, paras.(lxxv) to (lxxxiii) must form part of the information conveyed in this disclosure. The Tribunal has accordingly set out in full the passages from PDR1 recited above.

Reasonable belief under s.43B(1) in what the disclosure tended to show.

PD1.5 30. The Tribunal must first apply the tests under s.43B to this disclosure. The first issue is whether the claimant believed, and if so, whether he reasonably believed, that this disclosure tended to show one of the matters prescribed under s.43B(1).

PD1.5 31. In terms of what the claimant reasonably believed that this disclosure,which must be taken as a whole, as set out above, tended to show within s.43(1), his case is put, firstly on the basis of breach of a legal obligation, namely, (in the alternative):

(i) the duty to protect the public and prevent crime; and/or

(ii) the respondent's duties under the HRA and Article 2 of the ECHR to safeguard life; and/or

(iii) his common law duty of care to GMP officers and staff; and/or

(iv) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of duties and responsibilities; discreditable conduct;

PD1.5 32. In relation to the first, the Tribunal can accept that the claimant reasonably believed that this disclosure tended to show that in releasing Cregan when he did, or not having an adequate arrest strategy, through TD/Supt. Scally the respondent was potentially breaching his common law duty to protect the public and prevent crime. The Tribunal can accept that, on its face, the claimant did reasonably believe that this disclosure had such a tendency.

PD1.5 33. In relation to the second, the alleged duty under the HRA and the ECHR , the Tribunal will consider this with limb (d).

PD1.5 34. In relation to the third, this is in effect the duty of care, breach of which gives rise to actionable negligence. It is noted that this is in relation to the respondent's officers and staff, and not the wider public, and to that extent the claimant again can, we consider, show a reasonable belief that such a breach of duty is what this disclosure tended to show.

PD1.5 35. As to the fourth, the Tribunal has already ruled in overall terms , applicable to all the disclosures , how the 2012 Regulations cannot found such a belief.

PD1.5 36. In the further alternative, the claimant relies upon limb (d) of s.43B(1) that the health or safety of any individuals, namely the general public and GMP officers and staff, had been endangered. Again, the Tribunal can accept that the claimant had a reasonable belief that this disclosure did tend to show that the health and safety of the public, or GMP officers and staff, had been endangered. To the extent, therefore that this overlaps with endangerment of the health and safety of the public, where that is to the extent of the risk of loss of life, the Tribunal can see that Article 2 is engaged, and that such disclosure can reasonably be believed also to tend to show that there was breach of a legal obligation by virtue of the ECHR, and the legal duty placed upon the respondent under it, as in this instance, there was loss of life.

PD1.5 37. There is ,however, a further issue we have to consider. As observed in our findings in relation to PD1.2 above at paras.PD1.2 64 to 65 , we have to consider the significance of this delay, and the claimant's conduct , as it can be relevant as to whether the claimant actually held the reasonable belief that his disclosures tended to show any of the prescribed matters in s.43B(1) as held in ***Muchesa v Central & Cecil Housing Care Support [UKEAT/0433/07]*** which we have discussed above. The worker's conduct in that case was incompatible with her having the belief that she professed to have, and the EAT upheld the dismissal of her claims on the grounds that she had not satisfied the test for reasonable belief. Whilst the Tribunal would not find such incompatible behaviour from the mere fact of the delay in itself, in these circumstances, there are concerning issues in the claimant's conduct in how and when he first raised these concerns.

PD1.5 38. On the claimant's allegations contained in this disclosure there was a litany of failures in the conduct of the hunt for Dale Cregan. The claimant was aware of these failings , or many of them, at , or around , the time that they occurred in summer and autumn of 2012. It is one of his repeated allegations that these failings lead to the deaths of PCs Bone and Hughes. These are the most serious of allegations. The claimant , however, other than to raise the issue of DI Dennison's request to him, which he considered highlighted a lack of understanding of risk, in a grievance appeal did not make this particular disclosure internally , or to the PCC, until June 2013, some 9 months later, and then to the IPCC a further 6 months later. Thus, having highlighted the very serious risks that he considered were being underestimated or ignored , despite , on his case, this actually leading to the tragic consequences that he later highlighted, and

about which he says he had been warning the respondent, the claimant did not see fit for another 9 months to raise these issues , and even then did not take them to the IPCC.

PD1.5 39. That, together with the circumstances surrounding his unsuccessful promotion exercise , when DCI Worth was successful, which we have previously noted, leads the Tribunal seriously to doubt that the claimant had the necessary belief that this disclosure tended to show the very serious failures that he relies upon. His conduct was inconsistent with such a belief. The Tribunal therefore concludes that this disclosure fails the s.43B test.

PD1.5 40. . Finally, we come to the public interest test. The claimant in this disclosure does target TD/Supt. Scally, with whom he had issues, and arguably also DCI Worth, similarly someone of whom he had a low opinion, and who had been promoted when he had not. He could therefore be seen to have at least mixed motives in making this disclosure, particularly given its timing. We have considered whether the matters we have considered in the context of incompatible conduct under the ***Muchesa*** test could also apply to the public interest test. Rather as with PDs1.2, 1.3 and 1.4 above, we do not see how, having concluded for the reasons that we have that the claimant lacked to reasonable belief in what this disclosure tended to show , we could then nonetheless conclude that the claimant had the requisite belief that it was in the public interest to make it when he did. Whilst academic, this disclosure would fail the public interest test too.

Does the claimant satisfy the s.43F test?

PD1.5 41. This disclosure thus does not satisfy the s.43B tests, but the Tribunal now nonetheless moves to consider the s.43F test.

PD1.5 42. The information conveyed and the allegations contained in it in this disclosure, was:

a) D/Supt. Barraclough had been appointed to mentor TD/Supt. Scally because he was inexperienced and required mentoring;

b) This requirement for mentoring reflected a lack of confidence in the ability of TD/Supt. Scally as an SIO to be placed in charge of a high risk investigation;

c) TD/Supt. Scally had released of Dale Cregan on bail at an early stage , without applying for a warrant of further detention;

d) He had done this through inexperience;

e) He had done this because he had failed to appreciate risk;

f) The release of Dale Cregan on bail had led to the murder of David Short on 10 August 2012, and “ultimately” to the murders of PCs Bone and Hughes on 18 September 2012;

g) The deaths of PCs Bone and Hughes were the result of the failings of the GMP, in the form of the inexperience and poor leadership of TD/Supt. Scally.

PD1.5 43. This last allegation was , in essence, also made in PD1.7, which the claimant withdrew. By referencing Section H, (which he does in this disclosure and PD1.6) and expressly referring to it in para.(l) the claimant has made this allegation in this disclosure, as it appears at para. (lxxxiii) in Section H .

PD1.5 44. We must therefore examine whether the claimant has satisfied us that he had a reasonable belief in each of these allegations.

PD1.5 45. By way of introduction, in this disclosure, as in PD1.16, there is an implication that DCI Worth was removed as SIO on Operation Somerville because she was not considered to be up to the role, and had been out of her depth. This , indeed, is the evidence that the claimant gave (e.g. paras. 87 and 88 of his first witness statement), and what in PD1.16 was pleaded as being the information that was disclosed in that PD. As will be seen , the Tribunal will deal with that PD when it comes to it, but for the purposes of examining this PD, the Tribunal does not find that this was information that the claimant actually disclosed as part of this PD, nor is it pleaded to have been.

PD1.5 46. That said, however, in his evidence the claimant has gone further than that, and has asserted that he had been told that DCI Worth was removed as SIO, because she had been difficult to contact, was struggling to lead the investigation , and was overwhelmed. The claimant said this was what was meant by the remark by D/Supt. Barraclough that things “had not gone well over the weekend”. Examination of the SIO policy book entries, however, reveals that there was discussion about her being replaced as SIO because she was due to commence leave on 1 June 2012. It was her who raised the issue, and there is no evidence of there being any other reason. In terms of her actions over the weekend, when she was SIO, the policy book entries show her involvement, her actions and her decisions. Nothing has been identified to the Tribunal which supports the claimant’s evidence that she had been “struggling”. Further, D/Supt Barraclough’s evidence was that his only issue was that he was disappointed that she was not taking the opportunity to take on a murder at that stage of her career, which would have been valuable for her career development and aspirations. He volunteered in his evidence that he thought she was going on leave, and this was the reason for the change in SIO. Thus , whilst not an allegation which forms part of this PD as such, it is one for which the claimant , save for his already unfavourable view of DCI Worth’s abilities (she was one of his comparators in his sex discrimination claim presented in July 2012), has no real basis. He has adduced no evidence, in any form, from any other officers who allegedly told him about this. As, however, the information disclosed in relation to DCI Worth’s implied removal from Operation Somerville does not, in the Tribunal’s view, tend to show any of the matters prescribed in s.43B, there is no need for the Tribunal to consider whether the claimant had a reasonable belief in these allegations, as the Tribunal does not consider that he actually makes them in this disclosure.

PD1.5 47. Turning , then, to the first of the matters set out above, the allegation that D/Supt. Barraclough was mentoring (or had said he was) TD/Supt. Scally because he

was inexperienced and required it for Operation Somerville , there is a dispute of fact as to what was said. The claimant was present on this occasion, in Nexus House, and this was part of an informal meeting. The claimant was not involved in Operation Somerville, which was at the time the only relevant operation. The evidence , in the form of the Policy Book, supports the contention that D/Supt. Barraclough was not appointed a mentor to TD/Supt. Scally , but PIP4 to the Operation. The evidence of D/Supt Barraclough was that he did not say he was mentoring TD/Supt. Scally , for the simple reason that he was not. he would not use the terms interchangeably, a PIP4 role was very specific. Whilst it may involve some element of being a "critical friend", it went beyond that, and was not the same as mentoring. The claimant , as an experienced officer , would , or should, have known the difference, so has either misheard, misunderstood or misrepresented what was said. In para. (lxxxi) of PDR1 , set out above, the claimant refers to D/Supt. Barraclough as providing "Tier 4" support on Operation Mirato, which although technically a separate Operation, was being run alongside Somerville with TD/Supt. Scally the SIO. This is inconsistent with the suggestion that he was "mentoring" TD/Supt. Scally . Suffice it to say that the Tribunal is not satisfied that D/Supt. Barraclough did say that he was mentoring TD/Supt. Scally, nor did he consider that he needed mentoring. Consequently, if the claimant had no reasonable belief that TD/Supt. Scally was being mentored, he could have no reasonable belief in the substantial truth of para.(xliii) of PD1.5, that this reflected a lack of confidence in his ability as an SIO, or in para.(xliv) which , although in the form of a question, asserts that TD/Supt. Scally should not have been placed in charge of such a high risk investigation.

PD1.5 48. Turning to b), c) and d) , which are all linked to the release of Cregan on bail, it is important to understand what this allegation amounts to. The claimant puts the disclosure in these terms:

" …… However he [Cregan] was released on bail at an early stage, without an application having been made to magistrates for a warrant of further detention."

PD1.5 49.. It is unclear what the claimant means by "at an early stage". It cannot be at an early stage in the investigation, as the murder of Mark Short was on 25 May 2012, and the arrest of Cregan was not until 12 June 2012. Given the ensuing reference to the failure to apply for a WOFD, it must be in the context of the time spent in custody. Was the release "at an early stage" ? The evidence, to which, of course, the claimant did not have access, shows that the arrest was on 12 June 2012, and that it was planned, as it was known that Cregan and Livesey would be returning to Manchester Airport from Thailand. The time of the arrests is not apparent from the papers before the Tribunal, but it seems likely to have been before 09.25, as at the time TD/Supt. Scally met with a CPS lawyer, Rebecca McCauley Addison , to discuss the case. The intention, documented in the Operational Orders, was to arrest Cregan as he returned on a flight due into Manchester Airport at 07.25 that morning.

PD1.5 50. This is important, as under PACE, there is a custody time limit of an initial 24 hours. That can be extended to 36 hours, if authorised by an officer of at least Superintendent rank. Thus, when Cregan was released at around 19.00 on 13 June 2012, he had probably been in custody since early on 12 June 2012. By the time

TD/Supt. Scally met with the CPS at 09.25 , it is likely that Cregan had been arrested. Thus, even taking that as the latest time of his arrest, the Police could detain him following his arrest until no later than 09.25 on 14 June 2012. It seems likely therefore, that by the time of his release on bail, Cregan had been in custody for around 36 hours, the maximum possible without a WOFD, which must have been authorised by a Superintendent. His release, therefore , could not be considered as “at an early stage” in terms of the custody clock. The claimant, however, had no knowledge of the actual time that Cregan spent in custody.

PD1.5 51. He was not, however, questioned about what he meant by “at an early stage”, and the real nub of his disclosure was that Cregan had been released without any application being made for a WOFD. He did not, however, know whether or not one had been applied for. If one had been successfully applied for, its effect would have been, at most, to justify the continued detention of Cregan until , at the latest, early on Friday 16 June 2012, a further two and a half days.

PD1.5 52. The claimant called one witness in support of this PD, DCI Graham Brock. Although he was assigned to Operation Somerville, it transpired that this was not until after the arrest and release of Cregan on bail. He was unable to give any evidence which could support the reasonableness of the claimant’s belief in what TD/Supt. Scally did or failed to do, and accepted that it was speculation on his part that more could and should have been done to keep Cregan in custody . Whilst he clearly shared the claimant’s low opinion of TD/Supt. Scally’s experience and abilities, he was unable to provide any evidence of how they impacted upon the Operations to capture Cregan.

PD1.5 53. At the time that the claimant made this disclosure, he did not know:

Whether TD/Supt. Scally had given due consideration to the timing of the arrest of Cregan

Whether TD/Supt. Scally had previously ever applied for a WOFD

Whether he had in fact applied for one in the Cregan case

What basis there was upon which an application for a WOFD could have been made

When the CPS had been approached for advice

What advice the CPS had given

What evidence had been obtained against Cregan at the time of his arrest

What more evidence could have been obtained had his detention been extended to 96 hours

Whether there would then have been enough evidence upon which to charge Cregan

PD1.5 54. The claimant's lack of knowledge is perhaps best illustrated by para.(liv) of this disclosure, which begins *"Questions have to be asked ……."*. He sets out in this paragraph some pertinent questions. In this paragraph, unlike some others in his PDRs, the Tribunal accepts that the claimant was indeed asking questions, not making allegations. What these questions reveal, however, is what the claimant did not know when he made this disclosure. The answers are now available. In general terms they are that:

Consideration had been given to the timing of the arrests, and a strategy to arrest upon Cregan's return to the UK had been devised and approved

The CPS were involved from an early stage, and advice was sought on the very day of the arrests;

Their advice was that there was not enough evidence to charge, and a premature charge would potentially create difficulties;

Cregan had already been detained for up to 36 hours, the maximum possible without a WOFD;

The possibility of obtaining a WOFD was considered, and the view was taken that it was unlikely that any more evidence would be obtained if detention was extended;

The nature of the further evidence that would be required to warrant charging was forensic, rather than evidence that was likely to be obtained from any other sources whilst the suspects were in custody, or because they were in custody;

Further evidence was obtained upon arrest , and further searches were carried out, but they revealed nothing which would justify charging or further detention.

PD1.5 55. The answer to the question "why was Cregan bailed ?" is obvious. He had to be, as there were no lawful grounds to continue to detain him, nor to justify an application for a WOFD. The claimant questions whether TD/Supt. Scally had an arrest strategy , and the answer is that he did. The claimant is critical of the timing of the arrest, but it is to be noted that the evidence is that Cregan left the country soon after the murder on 25 May 2012. He was accordingly arrested upon his return , which was the first opportunity, and which was taken.

PD1.5 56. The claimant has his answers, but the point is that he made this disclosure without them. As the authors of *Whistleblowing Law and Practice (4th Edition)* point out (para.6.82) *"By contrast* [i.e with s.43B] *for the purposes of section 43F (and 43G and 43H), the worker cannot merely say the information disclosed tends to point in the direction of a relevant failure, and needs further investigation. The worker must reasonably believe that the allegations are substantially true".* This disclosure was based upon little more than the claimant's basic knowledge of the arrest and the period spent in custody, and his belief that TD/Supt. Scally was inexperienced , and likely therefore to make mistakes. The frustration that the claimant , and DCI Brock perhaps too, felt that Cregan had to be released was doubtless shared by others, and is

doubtless not uncommon when a suspect whom the Police have had in custody goes on to commit serious offences after release on bail. When those offences include three further murders, a strong feeling of "if only .. " is understandable. As most senior Police officers know, that is , sadly, not an uncommon situation, and the natural desire to do as much as possible to keep such offenders in custody is natural. That this could not be achieved in this case, however, does not mean, as the claimant appears to have jumped to the conclusion that it must, that this was due to the inexperience or incompetence of one officer.

PD1.5 57. The upshot of this is that the claimant did not have a reasonable belief in the substantial truth of the allegation that TD/Supt. Scally had failed to apply for a WOFD due to inexperience , or because he failed to appreciate risk. He did not apply for one because the view was taken (and doubtless discussed with the rest of the team) that no further evidence was likely to be secured if a WOFD had been obtained assuming, of course, that such an application would have been successful.

PD1.5 58. The claimant's own evidence also highlights that such a process is not straightforward, or without risk . Under s.43 of PACE , as set out above, the detained person has to be present for the application , and can be represented, as the claimant refers to in his evidence of his own experience of such applications. The applicant for such a warrant also has to explain what enquiries have been made, and what further enquiries are required. The Tribunal can immediately see how this may sometimes be unattractive to investigators, as they will be required to "show their hand", which, if the application is not granted, may then prejudice rather than progress the investigation. That is, however, something of an aside. The fact is that TD/Supt. Scally did not apply for a WOFD , which may have been for a number of reasons, but there was no basis for the claimant believing that this was because of inexperience or lack of awareness of risk.

PD1.5 59. There is however another allegation made in this disclosure (f) above, which also has to be considered. That is that this failure led to the murders of David Short, and then PCs Bone and Hughes. A moment's thought shows how this is not an allegation in which the claimant can have had a reasonable belief.

PD1.5 60. Firstly, and most obviously, none of these further acts of homicide were committed by Cregan during the period in which he would have been further detained had a WOFD successfully been applied for. The claimant's case therefore has to be that he reasonably believed that, had a WOFD been applied for, it would have been granted, and in the extended period of detention – 60 hours - further evidence would then have been obtained to warrant charging Cregan, which would then have occurred, and he would then have been remanded in custody, thereby preventing the tragic events of 10 August and 18 September 2012. Mere recital of that hypothesis, and the chain of events upon which it must be based, immediately reveals its improbability. That, however, must be what the claimant believed. That cannot be a reasonable belief.

PD1.5 61. The Tribunal has already found that TD/Supt. Scally's failure to apply for a WOFD was not the result of his inexperience, nor because he did not appreciate risk, and that the claimant had no reasonable belief in that allegation. It is therefore not

necessary for us to consider here the extent to which the claimant had a reasonable belief in the allegations made in Section H, save for para. (lxxxiii) which we have dealt with. As this Section is also relied upon for PD1.6, it will be considered there.

PD1.5 62. This disclosure therefore fails the test under s.43F as the claimant has not established that he had a reasonable belief in the substantial truth of the information that he disclosed and any allegation contained in it.

7.Protected disclosure 1.6: significant failings in Operations Somerville, Mirato and Dakar

The pleaded disclosure (with the extracts omitted from the List of Issues added with underlining):

34. Information disclosed: TD/Supt Scally was placed in charge of the investigation into David Short's murder (Operation Mirato) and a further operation to find Dale Cregan (Operation Dakar). There were significant failings in relation to Operations Somerville, Mirato and Dakar including (a) a lack of leadership and direction; (b) a failure to co-locate all staff on the three investigations to Force HQ until 18 days after the murder of David Short (c) 'silo'-working leading to a lack of coordination between the three investigations, with the Dakar team withholding information from the other investigation teams; (d) a lack of continuity of leadership; and (e) a failure to properly and promptly follow up lines of enquiry. [CGoC §§ 63].

35. These operational failings were described in detail in paras. (lix) to (lxi) of PDR1.

The information disclosed was set out in the following passages:

("F) Operation Dakar - The failed search for Cregan."

(lix) Whilst the reactive murder investigations of Op Mirato and Op Somerville were taking place a separate investigation to find Dale Cregan, Anthony Wilkinson and their associates was launched, named Operation Dakar which was to be run predominantly by staff from SOCG (Serious and Organised Crime Division).

(lx) Unfortunately there were significant failings in the investigations Op Dakar, Somerville and Mirato, and in particular in the search for Dale Cregan, as detailed below. Officers, in addition to myself, who can provide evidence of the failings include 'O', 'P', 'Q', and 'R'.

(lxi) Failings included: (the Tribunal has added the numbering as the claimant's bullet points are not numbered)

(1) • lack of leadership and direction; in terms of having an OIOC (Officer in Overall Command) who took control and had an overview of all three investigations, a role that is believed to have been performed by ACC Heywood who was the Force Crime lead, but staff were and remain to this day confused as to who was actually 'in charge'

(2) • there was lack of leadership and direction in terms of putting in place structures and processes to manage the proactive search for Cregan and his associates, alongside the reactive murder investigations Op Somerville and Op Mirato

(3) • lack of leadership and direction resulted in the failure to co-locate all the staff engaged on the 3 investigations to Force HQ until 28th August 2012, 18 days after Cregan and Wilkinson had launched their gun and grenade attack on David Short

(4) • significantly the initial 'silo' working with investigations based at different locations, had contributed significantly to poor communication and lack of exchange of information between the Op Dakar and Ops Somerville and Op Mirato investigation teams, one team did not know what the other was doing,

(5) • even when all 3 teams were eventually co-located the communication remained poor and in fact information was being deliberately withheld by the pro-active Dakar team from the reactive murder investigation teams as there was a lack of trust between the teams, the distrust increased as the number of unsuccessful raids at addresses where it was believed Cregan was hiding increased, officers started to think there was a 'leak'

(6) • this may have had more to do with the failings in the systems and processes used for the handling and dissemination of intelligence and in particular the speed with which intelligence was processed and acted upon, leading to unnecessary delays – officer 'N' telling me how one of the (many) SIOs (DCI Rick Jackson) became very excited about some 'new' intelligence, the officer having to inform him that he had submitted this 'new' intelligence a week previously

(7) • the Dakar team were using the CLIO system to record intelligence, the reactive murder investigations were using the HOLMES system. The two systems are not compatible and difficulties arose as the investigations became protracted (this also created really serious issues for disclosure at court during the subsequent trial). There was no leadership or direction to grip the problem

(8) • there were significant failings in continuity of leadership in Op Dakar, with a large number of SIOs operating on a 'rota' basis, with almost every officer of Detective Inspector rank and above within SOCG taking a turn as SIO, with 'SIOs' changing on an almost daily basis

(9) • the consequences of this were a lack of continuity; lines of enquiry were not properly followed up and not seen to conclusion, new SIOs unaware of previously tasked out actions set new ones of their own, it led to confusion.

(10) there was significant interference in all three investigations from ACPO/Senior Officers, including ACC Heywood, ACC Shewan, DCS Shenton, who did not have the level of knowledge of the officers running the different investigations and they were ordering SIOs to conduct actions that they did not necessarily agree with in terms of arrests etc; leading to e-mails being pasted into policy books by SIOs who wanted to evidence decisions that were not of their own making

(11) • there was a sense of panic at times within the Command team, demonstrated when ACC Heywood suggested at one point that they should go public with a 'Name Your Own Price' reward for information to secure the arrest of Cregan. This would clearly have been a desperate measure which would have caused enormous embarrassment to the Force, but it highlights the feelings of desperation

(12) • ACC Heywood was GMPs Crime Lead, but in reality he is inexperienced in leading high profile investigations and the negative consequences of cronyism were highlighted again as he was unable to draw on much support from a Command Team recruited predominantly from a rural (Cheshire) Force, with little experience of dealing with such high profile Metropolitan criminal investigations

(13) • in sum GMP's leaders had effectively run out of ideas in trying to trace Cregan and Wilkinson and they did not know what to do next

(14) • this was highlighted in staggering manner when the Chief Constable suggested to a room full of senior detective that he knew a 'bright young neighbourhood sergeant' who may be able to help out, the offer was not well received, regarded as insulting and declined

(15) • problems arose around the strategy in relation to the Cregan family and other suspect families, in particular what was viewed as an antagonistic approach taken to the Cregan family with a large number of search warrants executed by TAU and firearms teams without success, alienating the family and increasing the ill feeling of Cregan towards the police. This approach was reflected in a message sent out to the Force by ACC Heywood via the GMP Intranet website on 29/08/12 when he said; 'Public safety demands that we visit Dale Cregan's family and friends regularly until he reappears' (copy at Appendix 'F'). It was also released to the media (see Appendix 'G'). There was real danger in this 'tactic', yes it is fine to execute a firearms warrant at an address when you have good intelligence that the person is hiding up there but it is a totally different story to repeatedly call at relatives and friends addresses without any information, particularly as it is a tactic that is oft used by police to flush out 'wanted criminals' by becoming an annoyance to their families, however it is not a tactic to be used when the person sought is an 'out of control' killer armed with firearms and hand grenades. In such a case there is a real danger that the tactic will unduly antagonise him and thereby hugely increase the risks to police officers.

(16) • There were significant failings in the understanding of risk by TD/Supt Scally, including the lack of risk assessments both for his investigation team officers and divisional officers. There are examples on two separate occasions of him wanting to deploy officers to properties connected to Cregan with his requests being refused by myself on one occasion and a Inspector due to the risks and lack of risk assessment (see section 'H')

(17) • there were significant failings in the understanding of risk by Force Command, including the lack of risk assessments both for the investigation teams and in particular the lack of understanding of risk in regard to other police staff not directly involved in the

investigation, including the failing to identify and assess risk in terms of how the G division conducted its daily business, the introduction of patrol plans to mitigate risks, and the assessment of calls received and the response to incidents;

(18) • other failings included the media strategy and in particular the national media strategy, it is believed that more could have been done to gain attention and warn officers and the public of the dangers presented by Cregan, a one eyed man who was on the run with hand grenades and firearms having killed two people. What thought was given to the article 2 rights of the public and police officers?

The officers referred to as "O", "P", "Q" and "R" are not necessarily the same officers to whom the claimant has referred by those initials in other parts of his PDRs, but "R" is Graham Brock , who gave evidence to the Tribunal.

Para. 37 of the List of Issues sets out the claimant's case that he reasonably believed that this disclosure was made in the public interest and that this information tended to show (a) that there had been a failure to comply with one or more legal obligations, namely (i) the duty to protect the public and prevent crime; and/or (ii) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of duties and responsibilities; discreditable conduct; and/or (b) that the health or safety of any individuals, namely the general public and GMP officers and staff, had been endangered.

The information disclosed.

PD1.6 1.As in other instances, whilst the claimant pleaded in the List of Issues that the failing were described in detail in paras. (lix) to (lxi) of PDR1, in the List of Issues only parts of those paragraphs have been recited. Whilst the first two paragraphs are introductory, some 11 further bullet points are omitted from this recital , but must form part of the information disclosed under this PD, and they are underlined above. They also , where reference is made to other parts of the PDR, such as Section H, must include that information as well, by incorporation. In the interests of space the Tribunal has not repeated these sections here, as in some instances they are set out in other PDs. Where , however, the terms of these parts of the PDRs are relevant to the determination of whether the tests for protected disclosure are met, they will be expressly referred to.

PD1.6 2. Further, the 15th bullet point – *"problems arose around the strategy in relation to the Cregan family and other suspect families ……"* is PD1.8 , and will therefore be considered separately. The 10th bullet point – *"there was significant interference in all three investigations from APCO/Senior Officers ……."* was PD1.10, but that has been withdrawn as a separate PD. It remains, however, part of this one.

The relevant facts.

PD1.6 3. The Tribunal firstly refers to the facts it has found in relation to PD1.5 above as background to this disclosure , and to the establishment , staffing and management of the three Operations in question.

PD1.6 4. As has been recorded in the findings relating to PD1.5 above, the respondent initially established two Operations, the first Somerville, which investigated the murder of Mark Short, and then Mirato, which investigated the murder of his father David Short.

PD1.6 5. Operation Mirato came into being on or about the day of the murder of David Short on 10 August 2012. Operation Dakar was also instigated after that murder, when Dale Cregan went on the run. The purpose of Operation Dakar was to apprehend Cregan. To that end it was not an investigative operation, to secure evidence to then pursue prosecutions, its sole purpose was the arrest of Dale Cregan. Operations Somerville and Mirato therefore were reactive, but Operation Dakar was proactive, i.e covert. Operation Dakar was instigated on 13 August 2012, and given the name Dakar on 14 August 2012. It was assigned DCI Rick Jackson as the SIO, so at that stage it had a separate SIO.

PD1.6. 6. DI Kay Dennison , as she then was, was approached by D/Supt Tonge to work on Mirato. At that time she and her team were based in Middleton. He initially asked her to move her team out, due to the murders that had been committed involving grenades. She did so, and it would seem that she, and any other members of her team assigned to Mirato, then worked from Nexus House, Ashton – under – Lyne, where Operation Somerville was based.

PD1.6 7. The Tribunal has heard much in the course of this hearing about the differences between these two types of operation, the reactive and the pro-active. The latter involves predominantly covert enquiries and operations. Covert operations of this type are very sensitive, and there was often, as the Tribunal heard in other contexts during the hearing, some tension between covert operations and reactive investigations. It was not uncommon for information not to be shared between the two different types of operations. In her evidence Kay Dennison referred to how on the covert policy side there would be a desire for a ”sterile” corridor to prevent information emerging which should not.

PD1.6 8. She worked on Mirato for approximately three weeks, when she was in Nexus House on a daily basis. Her evidence was that there was a conduit into the covert side , and the Operations were able to pass addresses back and forth, and action plans for the day were shared to ensure that there was no “stepping on toes” by one Operation on another. She did not consider that there was a communications difficulty.

PD1.6 9. A further feature of the two different types of operation was that they each used a different computer system , the reactive operations using the HOLMES system, and the proactive using the CLIO system. The decision was made to use the CLIO system for Operation Dakar , because it was the nationally recognised system predominantly used for crimes in action , and fast flowing proactive investigations (as found by the H & S Review, see page 4968 of the bundle) . This was the reason that two different systems were used across these three Operations.

PD1.6 10. The Operations were initially located in different buildings, with Somerville and Mirato at Nexus House, Ashton – under - Lyne. This remained the case until 28 August 2012, when they were all co-located at Force HQ, known as Central Park, Northampton Road, Newton Heath, M40 5BP.

PD1.6 11. The structure of the operations followed the Gold Silver and Bronze ("GSB") structure generally used in operations by the GMP. The structure and staffing of these Operations was as follows.

A.Somerville:

Gold Commander from c.3 June 2012 : ACC Heywood

Silver Commander : initially D/Supt Evans , then DCS O'Hare

PIP4 from 29 May 2012 : D/Supt. Barraclough

SIO from 26 May 2012 to 27 May 2012 D/Supt. Kelly

SIO from 27 May 2012 to 29 May 2012 : DCI Worth

SIO from 29 May 2012 : TD/Supt. Scally

D/SIO from 30 May 2012 : DCI Tonge

(then SIO 5 June 2012 to 11 June 2012 whilst TD/Supt. Scally on leave, when TD/Supt. Scally then resumes as SIO)

DCS Shenton – role unclear, but attended Gold meeting on 10 July 2012

C/Supt Adderley ; chaired Gold meeting on 31 July 2012

PD1.6 12. On 10 August 2012 , the day of the murder of David Short, at a briefing at Nexus House, (see page 3893 of the bundle) it was agreed that there would be a new operation to investigate this further murder, Operation Mirato and another to hunt for Cregan , this became Operation Dakar.

B.Mirato

Gold Commander : from 10 August 2012 – ACC Shewan

Gold Commander from 13 August 2012 – ACC Heywood

Silver Commander – DCS O'Hare

PIP4 – DCS Doyle

SIO from 11 August 2012 : (newly promoted) D/Supt.Tonge

SIO from 13 August 2012 – TD/Supt. Scally

DSIO from 13 August 2012 – DCI Rawlinson

C.Dakar

Gold Commander – ACC Heywood

Silver Commander – DCS O'Hare

PIP4 – DCS Shenton

SIO from 13 August 2012 – DCI Rick Jackson

PD1.6 13. In terms of co-locating the Operations in Force HQ , the evidence of Kay Dennison was that this was not something that could be done quickly, as it would require the freeing up of space , and making other allied arrangements. She considered that the fact it happened by 28 August was "no mean feat".

PD1.6 14. On 4 September 2012 TD/Supt. Scally recorded that he was to be OIOC , and referred to all three Operations. He made this entry in the SIO policy book (see pages 3914 and 3915 of the bundle) :

"My role will be to ensure that both investigations progress in tandem , whilst co-operating and combining resources, together with Op Dakar, where appropriate."

PD1.6 15. There is no other reference to the OIOC position, and no evidence that ACC Heywood was ever OIOC. The Mirato Gold meetings held from 11 August 2012 were chaired initially by ACC Shewan, until 13 August 2012 then they were then mostly chaired by ACC Heywood, until 18 August 2012, when ACC Shewan chaired another two. The Health and Safety Review (pages 4938 to 5086 of the bundle) explains (page 4958) how ACC Shewan was initially appointed Gold Commander, but then ACC Heywood took over.

PD1.6 16. The claimant identified two of the other persons referred to by initials as Roy Storey and Sgt. Jimmy Grey. The Tribunal has no evidence of what their roles were in any of the Operations, nor of what they told the claimant , or when. To be clear, the officer 'N' referred to in bullet point 6 in para. (lxi) of PDR1 is not Officer N , who gave evidence for the claimant. His evidence was that he first spoke to the claimant about his experience on Operation Dakar when he and the claimant were working together on Operation Leopard, in 2016. This was after the claimant made his disclosure to the IPCC.

PD1.6 17. The claimant first raised these allegations in his PDR1 document of 11 June 2013, which was provided around that time to the PCC. They are not mentioned in any other document prior to that date.

The s.43B tests.

PD1.6 18.. Our next task is to determine whether the claimant satisfies the Tribunal that he had the requisite reasonable belief that the disclosure tended to show one, or more, of the matters specified in s.43B(1).

PD1.6 19. The matters relied upon are that this information tended to show (a) that there had been a failure to comply with one or more legal obligations, namely (i) the duty to protect the public and prevent crime; and/or (ii) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of duties and responsibilities; discreditable conduct; and/or (b) that the health or safety of the general public , and GMP officers and staff, had been endangered.

PD1.6 20. The first of these, under s.43B(1)(b), breach of legal obligation, must relate to the common law duty previously discussed. Whilst the respondent's case is that the claimant was, at most, voicing criticisms of sub – optimal investigations, the Tribunal can accept that the claimant reasonably believed that , if true, the disclosures he made in this disclosure did tend to show that the respondent was in breach of his legal duty to protect the public and prevent crime.

PD1.6 21. The 2012 Regulations issue has already been addressed.

PD1.6 22. Similarly , in relation to s.43(B)(1)(e) the claimant contends that this disclosure tends to show that the health and safety of the general public had been endangered. Rather like the s,43B(1)(b) issue, the Tribunal can accept that the claimant reasonably believed that this disclosure, if true, did tend to show that the health and safety of the general public , and GMP officers and staff, had been endangered.

PD1.6 23. There is ,however, a further issue we have to consider with this PD, as we did with PD1.5 . The claimant did not raise these matters until his PDR1 document of 11 June 2013. We can see no difference in this PD to the position that we have found in relation to PD1.5 It fails on the basis of ***Muchesa v Central & Cecil Housing Care Support [UKEAT/0433/07]*** for the same reasons that PD1.5 does , as we have discussed above. *PD1.6* 24. Finally, in terms of belief that it was in the public interest to make the disclosure , we note that it was first made in the claimant's PDR1 document which was submitted initially to the in or about June 2013, and then to the respondent or the PCC. Again, whilst academic, for the same reasons as we did in PD1.5 above, we cannot see how , having found that the claimant lacked the necessary belief in what the disclosure tended to show , we could nonetheless find that he reasonably believed that it was in the public interest to make it when he did.

The s.43F test.

PD1.6 25. Whilst this disclosure does not survive s.43B(1) , we must nonetheless now consider s.43F. For that purpose we must look at the information and any allegation contained in it.

PD1.6 26. This is a wide ranging disclosure containing information in which the claimant makes a plethora of allegations of failings of various descriptions. It is not the Tribunal's

intention to go through each of them , but there are a number where the Tribunal will examine whether the claimant had a reasonable belief in them.

PD1.6 27. They can be considered together as follows:

A.Lack of leadership and direction

This is a common theme, and is alleged to have caused (adopting the enumeration of the bullet points above):

(1) The lack of an OIOC for all three Operations, which the claimant believes was a role performed by ACC Heywood;

(2) Failure to put in place structures and processes to manage the proactive search for Cregan alongside the reactive investigations of Somerville and Mirato;

(3) Failure to co-locate the 3 investigations to Force HQ until 28 August 2012;

(7) The Operations using different intelligence recording systems;

(8) There were failings in the continuity of leadership of Operation Dakar, with a high turnover of SIOs;

(9) Lines of enquiry were not properly followed up and not seen to conclusion, new SIOs unaware of previously tasked out actions set new ones of their own, it led to confusion

B.A lack of trust between the reactive and proactive operations

(5) Information was being deliberately withheld by the pro-active Dakar team from the reactive murder investigation teams as there was a lack of trust between the teams, the distrust increased as the number of unsuccessful raids at addresses where it was believed Cregan was hiding increased, officers started to think there was a ‘leak’

C.Interference in all 3 Operations by ACPO/Senior Officers

(10) ACPO/Senior Officers ACC Heywood, ACC Shewan and DCS Shenton interferring in all three Operations.

D. ACC Heywood was inexperienced in leading high profile investigations.

(12) ACC Heywood was inexperienced in leading high profile investigations, and had a Command Team with little experience of dealing with such high profile metropolitan criminal investigations.

PD1.6 28. The Tribunal must examine what was the source and quality of the claimant’s belief in :

ACC Heywood being the OIOC

ACC Heywood being inexperienced in major investigations

There was a lack of trust between the Operations

There was a high turnover of SIOs on Operation Dakar

There was a lack of continuity, with the result that lines of enquiry were not properly followed up and not seen to conclusion, new SIOs unaware of previously tasked out actions set new ones of their own, and this led to confusion.

There was significant interference in all three investigations from ACPO/Senior Officers, including ACC Heywood, ACC Shewan, DCS Shenton.

(This latter item was a separate disclosure , PD1.10 , but it was withdrawn on 21 December 2021. It remains, however, part of this disclosure, and so will be considered accordingly. The evidence relating to this allegation was before the Tribunal, and the respondent has made submissions upon it as a separate disclosure. The claimant , however, has not addressed these allegations in his Submissions, possibly because they have been withdrawn as a PD, but overlooking the fact that they live on in PD1.6. That said, reference is made to these allegations in para. 128 of the claimant's Submissions, so the claimant was aware that they were still live allegations for the purpose of PD1.6, even though they were withdrawn as a separate PD.)

PD1.6 29. The evidence of Kevin Brock, called by the claimant , did not support the claimant's reasonable belief in any of this information , or the allegations contained in it, save for one (not more, as the claimant actually disclosed) instance of an unidentified officer cutting and pasting into a policy book an email to demonstrate that their actions were on instructions from a senior officer, a decision with which they disagreed. Kevin Brock did not work on Operation Dakar, and did not identify any of the three named individual senior officers referred to by the claimant , and did not give any other evidence of any other instance of "interference" into the three operations as alleged by the claimant. In fact , despite being on Operation Somerville (although he never actually referred to that Operation by name, only that it was the investigation into the death of Mark Short, so it must have been) DCI Brock's evidence was devoid of any reference to the types of difficulties that the claimant sets out at length in this disclosure. At best he gives one example of one person disagreeing with an instruction from a senior officer, and recording it by cutting and pasting an email to demonstrate that he or she was only following orders.

PD1.6 30. Officer N, called by the claimant, was engaged on Operation Dakar, the covert side, whose purpose was the arrest of Cregan. Note that he is not the same officer 'N' referred to in bullet point no. 6. Whilst he gave evidence relevant to PD1.8 (and bullet point 15 in this disclosure) , he would have been , the Tribunal would expect, in a position to give some evidence in support of the claimant's other criticisms of the way that the three Operations were handled, or at least Operation Dakar to which he was assigned. He did not. It is appreciated that he was not at a senior level and may not have been privy to some of the interactions and issues of which the claimant speaks, but , whatever the position, save for the one issue which is confined to the PD1.8 issue, his evidence does not assist the claimant to establish his reasonable belief in the considerable amount of information and the allegations contained in this disclosure.

Further, as he first spoke to the claimant about his experiences on Operation Dakar in 2016, the information he conveyed was then over three years old.

PD1.6 31. On some of these issues the Tribunal also had the benefit of the evidence of Kay Dennison, who was on Operation Mirato. She was asked about the issues that the claimant had raised in this disclosure about the failings of these three Operations, in terms of structure, location and communications.

PD1.6 32. Her evidence, which the Tribunal found clear and compelling, was significant. She did not recognise the problems that the claimant referred to. In particular she pointed out that co-locating the operations in one building was not a quick, simple or easy exercise. In terms of any lack of trust between the reactive and proactive operations, she experienced no such problems, and was mindful of the need for a "sterile corridor" between the two. This accorded with other evidence which the Tribunal heard in other contexts (such as Operations Nixon and Leopard) , where the proactive and reactive aspects of operations did sometimes conflict, with some tension between the two. That, however, was for quite common and proper organisational and operational reasons, not because of any distrust between the respective operations, and there is no reason to suppose that the position was any different in the case of these operations . The claimant has provided no basis for any such belief in this disclosure.

PD1.6 33. So the position is that none of the three witnesses called, two by the claimant, and one by the respondent , who were actually engaged in the Operations to which this disclosure refers , gave any evidence that begins to back up the claimant's contention that he had a reasonable belief in much of the information and allegations contained in these 18 bullet points.

PD1.6 34. In terms of the reasonableness of the claimant's belief in the substantial truth of this information, and any allegations contained within it , the starting point has to be his sources. He had no first hand knowledge of any of this, save for one incident where he was allegedly asked to supply relief officers at a particular location (which is PD1.9). In terms, however, of the structure, systems and organisation of these three Operations, he had no more knowledge than was publicly available, or was imparted to him by others second hand , and after the event. He did not have any first hand knowledge or experience of how the investigations were managed or progressed.

PD1.6 35. The Command Teams on Operations Somerville , Mirato and Dakar were, it is true, not easy to identify from the evidence before the Tribunal. The claimant, however, at the time he made his disclosures, was also clearly unaware of what they actually were. As he was not, of course, engaged upon those Operations himself, there was no reason why he should be, but he made his disclosures in ignorance of the true position. As the H & S Review makes clear, however, there was a crucial position common to all three operations, that of Silver Commander. That was occupied by DCS O'Hare, who carried out all three roles at Central Park, were all three operations were, by 28 August 2012, located. The H & S review records at para. 3.1.15 (page 4961 of the bundle):

"Bringing the Silver Control function together with Operations Somerville Mirato and Dakar in a bespoke command and control suite at Central Park established immediate

and effective lines of communication. This allowed the Silver Commander to effectively become the 'gate keeper' maintaining the delivery of the Gold strategy and ensuring that day to day policing did not compromise the activities of the operation."

PD1.6 36. Further, whilst it is alleged in the claimant's disclosure that these failings were caused by a lack of leadership and direction, a moment's reflection, and his own knowledge of the Force , would make it obvious that this was not a reasonable belief in several respects. Firstly, the claimant has adduced no evidence as to why the alleged delay – 18 days – in co-location of the three teams in Force HQ was due to lack of leadership or direction. There would obviously be logistical issues, and the claimant has adduced no evidence whatsoever of why he believed that this delay was due to these failings. The evidence of Kay Dennison was that this was not an unreasonable delay.

PD1.6 37. Secondly, the claimant doubtless knew that there were two computer systems in use within the Force, and that covert teams used CLIO, whereas reactive investigations used HOLMES. Even if he did not, this was a historical fact. This was perhaps unfortunate when combining these operations in this way, but it is the situation with which the respondent was faced. Whatever the position, the claimant has laid no foundation at all for his belief that this was a failing attributable to lack of leadership or direction, which, if not expressly stated , is the implication of his bullet point no. (7) .

PD1.6 38. Turning to the reference to the OIOC role, the claimant rather confusingly contends that there was no OIOC, but then suggests (bullet point 1 in para. (lxi) of PDR1) that it was believed that ACC Heywood had this role. In para. (lvii) under Section E , however, he says:

"a decision was made that TD/Supt. Scally would take on the role of OIOC (Officer in Overall Command) of both the Op Somerville and Mirato murder investigations."

And, at para. (lviii):

"… Serious questions have to be asked about whether he [TD/Supt. Scally] had the ability and experience to become OIOC on these investigations, particularly as he would be playing a key role in the hunt for the two suspects Cregan and Wilkinson (Operation Dakar – see section 'F' below), ….."

PD1.6 39. As it was , ACC Heywood was not the OIOC at the time , although he did chair Gold meetings in Operation Mirato. So did ACC Shewan, in the early stages.

PD1.6 40. Further, in relation to the allegation that the claimant makes that ACC Heywood was inexperienced in leading major high profile investigations , this is the only time across the whole of the three PDRs submitted by the claimant that he makes any such allegation. He has provided no basis for it.

PD1.6 41. The officers whom the claimant has identified in Section M of PDR1 (pages 854 and 855 of the bundle) as having been recruited from the Cheshire Force, and thereby inexperienced in such investigations, are Paul Rumney, Nick Adderley, Ian Wiggett and Gary Simpson. ACC Heywood is not one of them, nor is TD/Supt. Scally.

PD1.6 42. Turning to the allegation of interference in the Operations, the claimant refers to the ACPO as having done this. This is a curious allegation, and one that is not evidenced in any way. The ACPO is the Association of Chief Police Officers. It is, therefore, not an agent of the respondent, but an external body. It has no legal obligations which could fall within s.43B, although it is conceivable that the claimant could bring any disclosure about it as falling within s.43B(1)(f). Regardless of that, the claimant has simply given no evidence of his belief that this body interfered in these Operations.

PD1.6 43. In relation to the allegedly high turnover of SIOs on Operation Dakar, the claimant has adduced no evidence upon which he could sustain a reasonable belief in this allegation. It must have come from one or more of his sources. Neither of his witnesses , one of whom was relied upon as a pre-disclosure source, gave any evidence to that effect, nor has he in his own evidence given any details of who told him about this, and what they said.

PD1.6 44. Similarly, in relation to the alleged lack of continuity resulting in lines of enquiry not being properly followed up, or any confusion as to actions taken by SIOs, the claimant has given no examples, and there is no evidence from him upon which he based his belief.

PD1.6 45. There was , the Tribunal concludes, some considerable hyperbole in these disclosures. The most stark are that SIOs on Operation Dakar changed on an “almost daily basis” , and that SIOs disagreed with instructions they were given by senior officers, and indicated this by cutting and pasting emails into their policy books, when there is only evidence of this occurring on one occasion. He has painted a generalised picture of three chaotic and under-performing operations, Dakar being his focus, with no evidence to support his beliefs. The claimant has , save for Kevin Brock and Officer ‘N’ called no other witnesses as to these matters, nor has he given any substantial account of just what he was told, by whom, and when. His witness statement largely merely repeats the terms of the disclosures he made. At para. 218 he says that he became aware of the information because it was being discussed throughout the MIT teams, and he was meeting people on a daily basis who were expressing their disquiet and concerns at what was happening. He referred to the “climate of fear” as explaining why he only identified these people by initials. By the time, however, he made his disclosure to the IPCC, he had identified them by initials and had provided to the IPCC a key to their identities, which has never been provided to the Tribunal.

PD1.6 46. That may be so, but this was all some ten years ago, and just as it did not hinder two witnesses whom the claimant did call, it is hard to see why at this distance there should be any lingering concerns for such potential witnesses. Be that as it may, the Tribunal decides cases on the evidence it hears, not what it does not hear. That means, however, that there is (save for the two cited instances) simply no evidence save for that from the claimant himself from which the Tribunal can assess the reasonableness of his belief.

PD1.6 47. In Submissions, para. 128 , Mr O’Dempsey seems to invite the Tribunal to overlook this lacuna in the evidence by accepting, in effect, that the claimant probably did have such conversations with persons whom he regarded, and the Tribunal should

accept his evidence as coming from reliable witnesses with genuine concerns that they passed on to him. That is not, with respect , an approach to which the Tribunal can accede. Firstly, honesty is not the issue, reliability is. A person making an allegedly protected disclosure cannot simply rely upon the fact they were merely passing on what they were told, they have to have a reasonable belief in what they were told, especially when s.43F is in play. That requires some detail of what precisely they were told, and an explanation from the claimant of why he considered it reasonable to rely upon what he was told. The problem here is that we do not have that detail, or anything like it, and all we know is that the claimant received some vague information , as he put it in his IPCC witness statement "from disgruntled officers" (page 1466 of the bundle). That they may have been disgruntled can be accepted, but that does not make them right. It is not uncommon in hierarchical organisations for the "lions" to consider that they are being led by "donkeys". It is not reasonable to accept at face value their generalised criticisms of the actions of their superiors (for the claimant has not suggested any of his sources were of such seniority that they were privy to matters of policy and direction for any of the Operations) as being evidence of serious failings on their part. Secondly, as we have seen, the claimant has a tendency not only to rely upon and repeat what he has said he has been told, but to add to it. That has happened with this disclosure. His disclosure has gone further than the evidence of his witnesses warrants. The Tribunal , regrettably, cannot rely upon him simply to repeat what he has been told, whatever that may have been, but must be wary of his tendency to exaggerate. Thirdly, the claimant's main issue was with the appointment of TD/Supt. Scally as the SIO (in his eyes) of the three Operations. To some extent, therefore, these issues were not of primary importance to him, but were symptomatic of this fundamental, and early, major error (or worse) by the respondent in the appointment of TD/Supt. Scally to that rank, and as an SIO . At para. 134 of the Submissions, it is stated that all of the matters that the claimant was being told about were reasonable evidence of his primary contention that things went wrong because of the over - promotion of TD/Supt. Scally, who was operating as the OIOC. That may explain why he was less than detailed in his examination of them. That too, however, does not withstand scrutiny, as highly strategic decisions such as where to locate the teams , and which computer systems to use, are highly unlikely to have been a matter solely within the remit of TD/Supt. Scally, given the involvement of two ACCs in the Command structures.

PD1.6 48. The respondent makes the point that what the claimant was really doing in this PD was asking the IPCC to investigate. That is, to some extent confirmed by the claimant's own Submissions, where , at para. 128 he says:

"C identified four officers in addition to himself who could provide information to the IPCC. He indicated corroborating officers, and this indicates, it is submitted, that his belief came from sources which were reliable.- He did so in the expectation that he and they would be interviewed about the information he was disclosing."

And later :

"It can be seen that Mr Scally was actually the OIOC. Given the issues of his inexperience and the size and risk of the offending, his failings as identified in Op Nixon and evidence of witness such as Graham Brock C submits that any independent investigation would have questioned this appointment."

PD1.6 49. The Submission goes on to cite para.(lxii) of PDR, just after the paragraphs relied upon in the List of Issues , where the claimant says:

"(lxii) It is suggested that there should be an independent review of the management and leadership of the Somerville, Mirato and Dakar investigations and that any review must involve the interviewing of officers involved in the investigations in order that the truth be found and people can fully understand what went wrong."

And at para. 131, the claimant submits:

"It was put to C that he was simply speculating when he gave his warnings about what might happen as a result of his concerns not being addressed. Those concerns were about putting people into positions of critical decision making when they did not know what they are doing; the prediction he made was that harm would happen. The ET is asked to accept that C did have reasonable sources for the information which was given to him and that he was not speculating without a source as was suggested (tx 2004 ff). C had identified individuals who had provided the information and gave those disclosures in the expectation they would be interviewed and matters investigated. This is not speculation. Those officers could have been interviewed to corroborate what he was saying. It is highly unlikely that he would be identifying individuals who could support what he was saying if he did not have a reasonable belief in what he was saying. The IPCC did not investigate this and some of other disclosures. They returned them to R. This effectively denied C the opportunity seeing those people interviewed and his disclosures being corroborated. R did not engage with C concerning those matters returned to it. R did not interview any of C's sources. This does not detract from the fact that C made disclosures in full anticipation that witnesses he was identifying would be spoken to, and on the basis of a reasonable belief that the information he had been given tended to show the wrongs he was pointing out. <u>The whole point of making the disclosure was to try to have the information investigated and conclusions based on evidence reached."</u> (our emphasis)

PD1.6 50. The respondent cites the passage from Whistleblowing Law and Practice, at para. 6.82(g) , which reads:

"The differing considerations which are likely to apply to a disclosure under section 43F are indicated by the fact that the phrase 'tends to show', which appears in section 43B, does not appear in section 43F (or 43G or 43H). As discussed in Chapter 4, the phrase is important in the context of section 43 B. It accommodates the possibility that the worker may only have access to part of the evidential picture. As such, it might be premature to require, prior to making a disclosure to the employer (or other first tier disclosure), that the worker hold a reasonable belief that the allegation is substantially true. It might he sufficient that the worker has come across, and disclosed, information which tends to show a relevant failure, even though it is possible that on further investigation the full evidential picture may show this not to be the case. By contrast, for the purposes of section 43F (and 43G and 43H), the worker cannot merely say that the information disclosed tends to point in the direction of a relevant failure, and needs further investigation, the worker must reasonably believe that the allegations are substantially true."

PD1.6 51. The Tribunal considers, as with PD1.5 above, that this is very much the position here. The claimant did not know, or reasonably believe, most of what he disclosed in this disclosure, which accounts for why it is vague, unevidenced, and at times exaggerated. He had virtually no first hand knowledge, and has adduced very little evidence of what information he was provided with by his sources, save for two, whose evidence falls way short of supporting a reasonable belief on the part of the claimant in the substantial truth of the information that he disclosed , and any allegation contained in it. This disclosure is thus not protected under s.43F, and fails.

8.Protected disclosure 1.8: strategy of executing repeated warrants on Cregan family

44. Information disclosed: Senior GMP officers including ACC Heywood employed the strategy of having numerous unsuccessful repeated search warrants executed at the home addresses of members of the Cregan family which alienated Cregan and his family, increased the ill-feeling of Cregan towards the Police and hugely increased the risk to Police officers. [CGoC para. 66]

(lxi) Failings included:….

• *problems arose around the strategy in relation to the Cregan family and other suspect families, in particular what was viewed as an antagonistic approach taken to the Cregan family with a large number of search warrants executed by TAU and firearms teams without success, alienating the family and increasing the ill feeling of Cregan towards the police. This approach was reflected in a message sent out to the Force by ACC Heywood via the GMP Intranet website on 29/08/12 when he said; 'Public safety demands that we visit Dale Cregan's family and friends regularly until he reappears' (copy at Appendix 'F'). It was also released to the media (see Appendix 'G'). There was real danger in this 'tactic', yes it is fine to execute a firearms warrant at an address when you have good intelligence that the person is hiding up there but it is a totally different story to repeatedly call at relatives and friends addresses without any information, particularly as it is a tactic that is oft used by police to flush out 'wanted criminals' by becoming an annoyance to their families, however it is not a tactic to be used when the person sought is an 'out of control' killer armed with firearms and hand grenades. In such a case there is a real danger that the tactic will unduly antagonise him and thereby hugely increase the risks to police officers.*

The information disclosed.

The claimant pleaded this as a specific and individual disclosure in the List of Issues. The Tribunal, however, does not consider that the claimant can be so selective, and take this disclosure in isolation. It forms part of his disclosure under the heading "F Operation Dakar – The failed search for Cregan". This particular disclosure is extracted and repeated from PD1.6, discussed above, and has been taken out of it as an allegedly separate and discrete disclosure. The claimant therefore invites us to deal with it separately.

We do not consider it can or should be, it must be put into context, and we must look at the totality of the information disclosed. Whilst it is the 15th bullet point under this heading, it is followed by the 16th, in these terms:

(16) • There were significant failings in the understanding of risk by TD/Supt Scally, including the lack of risk assessments both for his investigation team officers and divisional officers. There are examples on two separate occasions of him wanting to deploy officers to properties connected to Cregan with his requests being refused by myself on one occasion and a Inspector due to the risks and lack of risk assessment (see section 'H')

Section (H) is headed : "Further evidence of the failure to understand risk". In it, after reiterating in slightly more detail allegations of failure to understand risk on the part of TD/Supt. Scally , the claimant at para.(lxxxiii) says this:

(lxxxiii) In conclusion my view is sadly that due to the inexperience and poor leadership demonstrated throughout, the deaths of Nicola and Fiona were sadly almost inevitable, and were not in fact the fault of any kind of master criminal, they were as a result of the failure of GMP.

Section H was also referred to in PD1.5, discussed above. It was expressly referred to in para. (lv) of PDR1 , which we have held was part of this disclosure.

Para. 47 of the List of Issues sets out the claimant's case that he reasonably believed that this disclosure was made in the public interest and that this information tended to show (a) that there had been a failure to comply with one or more legal obligations, namely (i) the duty to protect the public and prevent crime; and/or (ii) the Respondent's duties under the HRA and Article 2 of the ECHR to safeguard life; and/or (iii) his common law duty of care to GMP officers and staff; and/or (iv) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of duties and responsibilities; discreditable conduct; and/or (b) that the health or safety of any individuals, namely the general public and GMP officers and staff, had been endangered.

<u>The relevant facts.</u>

PD1.8. 1. The Tribunal firstly refers to the facts it has found in relation to PD1.5 above as to background to this disclosure , and the establishment and staffing of Operation Dakar, to which this disclosure relates.

PD1.8 2.The decision was taken at Gold level on Operation Dakar in relation to Cregan to keep pressure upon him to give himself up. This tactic was known as "disruption". That was not, however, its only purpose, as Cregan was the head of an OCG, and these tactics were also designed to disrupt the activities of that OCG, and prevent Cregan from accessing any funds, or other support from, OCG sources.

PD1.8 3. The GMP accordingly did obtain and execute a number of (mostly) search warrants between 10 August 2012 and 18 September 2012, as set out in a table at

pages 6874 to 6876 of the bundle. Some of these were at the home addresses of Cregan's mother, his girlfriend , his sister and a property owned by him. In some cases it is not clear whether the warrant was executed. There are 49 in total, with up to 4 not being executed for one reason or another. Some warrants were of the "multi – entry" variety, which authorised the Police to enter on more than one occasion, without obtaining a further warrant.

PD1.8 4. On 13 September 2012 a firearms warrant and a s.8 (PACE) search warrant were executed on the address of Cregan's sister, and on 17 September 2012 further warrants of the same type were executed.

PD1.8 5. During July and August 2012 daily Gold Command meetings were held, chaired by ACC Heywood.

PD1.8 6. The claimant , by the time he made his witness statement to the IPCC on 1 December 2014, was aware that the GMP had been advised by Dr Adrian West, a clinical psychologist as to how Cregan may react to various tactics to be deployed in his capture. The claimant, however, was not aware of this at the time he made this disclosure to the IPCC. This was initially summarised to other senior members of Command by TD/Supt. Scally in an email of 13 August 2012 (pages 4009A and 4009B of the bundle).

PD1.8 7. Dr Adrian West prepared a briefing Note for D/Supt Barraclough (the PIP4 on Mirato) dated 30 August 2012, following a meeting with him (see pages 4621A and 4621B of the bundle). His advice was not that there should be no approaches to members of Cregan's family or associates, rather that, as someone seeking to evade capture Cregan was likely to feel pressure the more he was aware of overt search activity, which could lead to increased risk taking, and possibly making mistakes. He was not asked specifically about any tactics of executing warrants or similar actions.

PD1.8 8. On 1 September 2012 Operation Intrepid was launched by D/Supt Evans. Its aim was to contribute to the successful conclusion of Operation Dakar by encouraging the Cregan family to provide information that may lead to an arrest. It had three objectives, noted in a briefing document from D/Supt Evans (page 4640 of the bundle) thus:

"Objectives

• Build a rapport with key members of the Cregan family in order to encourage them to provide information that will assist in facilitating the arrest of Dale Cregan and/or secure their support in urging Dale to give himself up.

• Undertake activity that disrupts the daily operation of the Cregan organised crime group, making it difficult for it to operate and difficult for its members, family and associates to benefit from the proceeds of its criminality.

• Provide reassurance to the local community through the arrest of Dale Cregan and by demonstrating our ability to effectively tackle and disrupt organised criminals and the lives of their families and associates who benefit from the proceeds of that activity or who acquiesce to its commission

NB The pursuance or otherwise of the second 2 objectives will depend on the level of success of the first."

PD1.8 9. The tactic of disruption was that of executing search warrants and other interventions for the purposes described in this briefing document . Operation Intrepid was noted in a Gold meeting on 2 September 2012 (page 4650 of the bundle), where it is described as a "disruption strategy".The use of this tactic is well documented in meeting notes and 3 September 2012 (page 4800 of the bundle). On 17 September 2012 in the Gold meeting minutes of that meeting ACC Heywood is recorded as stating that he had received "positive feedback" that individuals were unhappy with the disruption visits, and that they would continue.

PD1.8 10. During this period the GMP continued to receive intelligence reports in relation to Cregan. These are known as "5x5x5 Information Intelligence Report Forms", and there are number of them in the bundle. In some instances they are reports of sightings, of other information, in others they provide information from associates of Cregan.

PD1.8 11. In one, which is undated, but appears to have been received no later than 14 September 2012 (page 4795 of the bundle) among the information provided is that Cregan had no intention of giving himself up, would go down "in a blaze of glory" and would have no hesitation in shooting or injuring any Police officers who attempted to detain him. In none of these 5x5x5 reports in the period leading up to 18 September 2012 is there any intelligence that Cregan was being antagonised by the Police disruption tactics.

PD1.8 12. Cregan set up an ambush for , and murdered, PCs Bone and Hughes on 18 September 2012. He then handed himself in to Hyde Police Station. An account of what happened there , and what he said is to be found in the witness statement of PC Snelson (pages 4819 to 4825 of the bundle), who was on duty when Cregan handed himself in at Hyde Police Station, and who records Cregan as having said ""You were hounding my family so I took it out on yous". The claimant , at the time that he made his disclosure to the IPCC was unaware of this.

PD1.8 13. The claimant had , at some point between 26 September 2013 and 1 October 2013 when he sent an email to ACC Copley (page 962 of the bundle) , seen a document which was a record of an interview with Cregan in Prison. In this email the claimant said:

"I have become aware, only in the last few days since our meeting, of further information which supports my allegations. I understand that Cregan has actually said that the approach taken to his family 'with guns in their faces' caused him to turn his anger towards the police. And he put the blame squarely at the feet of ACC Heywood who he saw leading the investigation and who was initially his intended 'target'. I am aware that

he even attended a police station to try to locate him and when realising he would be unable to get to him then put together his evil plan to murder any random GMP Officer(s)"

PD1.8 14. The claimant's sources of information for this disclosure were not identified as any individuals, save that he referenced the same persons as he did for PD1.6, Roy Storey and Jimmy Grey, but referred to his own knowledge and interactions with officers working on the investigations.

PD1.8 15. He received some information from Officer N (i.e the one that he called as a witness) , but this was not until they were both working together on Operation Leopard, which was not until 2016, and hence after the claimant made his disclosures. His evidence to the Tribunal did not make any reference to the repeated execution of warrants, but to other issues, such as the reaction of Cregan's mother to female personnel sent to talk to her, and what he regarded as bullish and antagonistic tactics being deployed.

The s.43B tests.

PD1.8 16. Our first task is to determine whether the claimant satisfies the Tribunal that he had the requisite reasonable belief that the disclosure tended to show one, or more, of the matters specified in s.43B(1).

PD1.8 17. The matters relied upon are that this information tended to show (a) that there had been a failure to comply with one or more legal obligations, namely (i) the duty to prevent crime and to protect GMP officers; and/or (ii) the respondent's duty under the HRA and Article 2 of the ECHR to safeguard the lives of GMP officers and/or (iii) the respondent's common law duty of care to GMP officer; and/or (iv) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of duties and responsibilities; discreditable conduct; and/or (b) that the health or safety of any individual , namely GMP officers, had been endangered.

PD1.8 18. The first of these, under s.43B(1), breach of legal obligation, must relate to the common law duty previously discussed.

PD1.8 19. The 2012 Regulations issue has already been addressed.

PD1.8 20. Similarly , in relation to s.43(B)(1)(e) the claimant contends that this disclosure tends to show that the health and safety of GMP officers had been endangered.

PD1.8 21. This disclosure is pleaded as a separate and distinct disclosure which should be considered in isolation, and upon the expressly pleaded and limited wording on its face. On that basis , if this is correct, then there is, in our view , a fundamental issue with the determination of this disclosure.

PD1.8 22. That is the fact that the Tribunal has never been provided with its full terms. The full extent of the information conveyed has not been placed before the Tribunal because Appendices F and G are not before it.

PD1.8 23. This is a feature which has struck the Tribunal from the outset of this case. Notwithstanding that the claimant in his PDR documents makes reference to 10 Appendices, A through to J , not one of them has been produced to the Tribunal. Not one appears in the bundle in the form that it was appended to the claimant's PDR documents as he submitted them to the IPCC on 31 January 2014.

PD1.8 24. It is appreciated that the basis of the disclosures to the IPCC was the PDR documents that the claimant had submitted to the PCC in 2013, and then the respondent , and his case is that PDR1 and PDR2 were exactly the same, including these Appendices, as he had submitted to the PCC and the respondent. The Tribunal, however, has not been provided with the documents in the form that they were presented to the IPCC, which are the disclosures actually relied upon in the claims.

PD1.8 25. In some instances, the lack of any particular Appendix has not been of any consequence for any particular disclosure, as they have mostly been peripheral, explanatory, or the information likely to have been contained in them has been conveyed by the claimant in his own words .

PD1.8. 26. In this instance, however, the content of each of the missing Appendices is integral to the disclosure made. The claimant says:

"This approach was reflected in a message sent out to the Force by ACC Heywood via the GMP Intranet website on 29/08/12 when he said; 'Public safety demands that we visit Dale Cregan's family and friends regularly until he reappears' (copy at Appendix 'F'). It was also released to the media (see Appendix 'G')."

The disclosure accordingly incorporates those documents, the recipient is invited to look at them. The Tribunal, therefore, cannot discern what, in totality, the claimant disclosed, without seeing them. There may be no more in them than the claimant has summarised, but there also might be. Failure to include them in the evidence therefore is just the same as a whistleblower seeking to rely upon a letter or email that he wrote as amounting to a protected disclosure but with parts omitted or redacted which were not so omitted or redacted when disclosed.

PD1.8 27. The Tribunal therefore does not see how the claimant can satisfy the Tribunal of his reasonable belief in any of the matters required by s.43B unless it has sight of the whole of his disclosure. The burden is upon him to satisfy the Tribunal of these matters, and if he does not provide the full terms of the information conveyed, which must include these two documents, the Tribunal cannot determine what the claimant believed that this disclosure tended to show, nor the reasonableness of any such belief.

PD1.8 28. This issue , whilst not addressed in either party's submissions, has been ventilated in the hearing. On 10 March 2022, when the Tribunal was putting its questions to the claimant , he was taken through the disclosures made to the IPCC, and the Appendices, and there was discussion as to whether the documents referred to were in

the bundle. The claimant was unsure, and could not take the Tribunal to where they may be, but believed that they probably would be.

PD1.8 29. This discussion followed the Tribunal making an Order for third party disclosure from the IPCC, and there was discussion as to whether these Appendices may have been included in that disclosure. They were (it transpired) not.

PD1.8 30. There was discussion between counsel and the Tribunal as to whose responsibility it was to disclose these missing documents, which it appeared the claimant no longer had. For the claimant it was submitted that the respondent will have had these documents, and should therefore disclose them, and for the respondent it was submitted that they were originally part of what the claimant disclosed to the IPCC, so he had the burden of disclosing them.

PD1.8 31. It is a curious feature of this case that whilst the bundle contains three (maybe more) iterations of PDRs 1 and 2, in no iteration are the Appendices attached. The claimant did, it is true, attach Appendices (or at last appeared to) to the documents when he disclosed them to the PCC . As set out in the background facts recited in Chapter 2, precisely what was sent to the PCC, and when, is unclear. Whilst the claimant's original PDR1 and PDR2 documents were first produced in June 2013, the disclosed documents in the bundle do not reveal the full details of the process whereby they were submitted to the PCC. The claimant had a number of meetings with the PCC (or Russell Bernstein of his office), and the documents may have been handed over in such a meeting. What is clear is that they were not, at that time, also provided to the respondent. There was between June and September 2013 considerable email communication between the claimant and Russell Bernstein of the PCC's office, and ACC Dawn Copley. The claimant was also having meetings with Dawn Copley during this period. From her undated file note at pages 893 to 895 of the bundle, she met with the claimant on 24 July 2013, after he had approached the PCC. She refers to Russell Bernstein sending to her part of the claimant's "report", She also notes how Russell Bernstein had confirmed to her that whilst she had all the reports, she did not have all of the statements and list of the officers or pseudonyms used. She therefore, she noted, only had part of the information. She notes that the claimant had been asked what he would allow her to see, but had not at that time, given her full and unfettered access to the disclosures that he had made to the PCC. He was to revert back to her on that.

PD1.8 32. The claimant and ACC Copley met again on 10 September 2013. Following that meeting , the claimant sent her an email the following day, 11 September 2013 (page 839 of the bundle), in which he referred to the fact that he had checked with Russell Bernstein, and it seemed that the only items that she was missing were the Appendices. He said he would collect the file, and provide copies of the missing documents to ACC Copley's PA. There is no record of his ever having done so. It is thus unclear whether the respondent was ever in fact provided with the Appendices to the PDR documents.

PD1.8 33. The disclosure relied upon, however, is not the disclosure to the PCC, it is to the IPCC. The Tribunal, therefore, is entitled to see the disclosures relied upon in the form that they were made, or to at least see evidence from which it could determine, on a balance of probabilities, what the terms, the full terms, of those disclosures were. That

could have been by reference to an earlier document, with the claimant confirming that this was the document that he attached to his IPCC document, without producing a further, contemporaneous as it were, copy. The claimant has not, however, done so, and the two documents that he has referred to as an integral part of this disclosure are not before the Tribunal.

PD1.8 34. Whilst arguments as to whether the respondent could and should have made disclosure of these documents may have merit, the fact remains that the claimant has the burden of proving that he made protected disclosures, and right from the start (which was 29 July 2014 when these claims were first made) he needed to be in a position to prove what he actually disclosed, which included these Appendices. If he could no longer do so, because he no longer had copies, but the IPCC or the respondent did, it would have been a simple matter to seek orders, if necessary, for their disclosure.

PD1.8 35. Be that as it may, the position that the Tribunal is faced with is that, without these Appendices, it does not have before it the full terms of the information that the claimant conveyed in this disclosure, so it cannot determine what the claimant reasonably believed this disclosure tended to show, and it must fail on s.43B.

PD1.8 36. If, however, the Tribunal should not take this narrow approach, and did go on to look at the disclosure as part of the wider disclosure under PD1.6, the Tribunal would find that in that context the claimant probably can satisfy the requirements of s.43B , and that he does satisfy the low threshold for s.43B(1). The terms of the disclosure as a whole , when taken as part of PD1.6 reveal that the claimant could reasonably have believed this disclosure tended to show was that the respondent was in breach of its duty to protect the public and prevent crime, and/or that the health and safety of GMP officers had been endangered.

PD1.8 37. Turning to the issues under ***Muchesa*** the Tribunal again is struck by the delay in the claimant making this disclosure. Whilst the timescale may be shorter than in other Cregan – related disclosures, at the latest the claimant was aware of these matters by 1 October 2013, because he referred to them in his email to ACC Copley (see para. PD1.8 13 above) . That , however, is in relation to the evidence that the claimant had then discovered of what Cregan had allegedly said in an interview. The claimant, however, has also made reference to the message from ACC Heywood on 29 August 2012 in which he referred to the “demand” to visit Cregan’s friends and family regularly. It thus seems to us that the claimant was aware of the use of the tactics to which this disclosure (largely but not exclusively) relates from 2012, The information about what Cregan said interview, therefore was nothing new, in terms of the disclosure that the claimant was making, it was, in his eyes, merely evidence which corroborated it. We therefore , again, as with all the Cregan - related disclosures, find that the claimant, despite being aware from 2012 of the most serious, indeed fatal, failings in Operation Dakar, and related operations, did not, save in respect of the matters raised in PD1.9, raise these matters internally or to the PCC until June 2013, and to the IPCC in January 2014. That, in our view, is again incompatible with a belief that they tended to show the serious matters that he now relies upon, and this disclosure too fails on that basis.

PD1.8 40.For completeness , in terms of belief that it was in the public interest to make the disclosure , for similar reasons, the Tribunal would have serious reservations whether, given its alleged seriousness , the claimant waited until January 2014 to make this disclosure, the claimant truly believed that it was in the public interest to make this disclosure when he did. The Tribunal is not satisfied that at the time that he made it, having waited so long to make it, the claimant still, assuming he previously did, had the belief that it was in the public interest to make it.

The s.43F test.

PD1.8 41. Whilst this disclosure falls at s.43B(1) , we will, in the alternative, consider s.43F. For that purpose we must look at the information and any allegation contained in it. This will also be on the basis of treating this disclosure as part of a wider disclosure which is really part of PD1.6, and includes Section H by the process of reference and incorporation we have explained above.

PD1.8 42. Starting with it in its narrow , self – contained form, that the respondent was executing a number of warrants at premises connected to Cregan, his associates, and his family members is quite clear. The claimant , however, has not produced any evidence from which the Tribunal could be satisfied that he believed, as opposed to suspected, that this was excessive, or that it was creating risks. He had, at the time he made his disclosure, of course, no knowledge of Dr. Adrian West's advice.

PD1.8 43. That, however, is not the only information that he disclosed. He also stated that these warrants were executed "without success, alienating the family and increasing the ill feeling of Cregan towards the Police".

PD1.8 44. The claimant has established no basis for this contention. He has not told the Tribunal what his sources told him, and that the warrants were executed "without success" is merely an assumption by him. Cregan was not located in the course of execution of the warrants, but that does not mean that no evidence which may have been of assistance to any prosecution was recovered. Further, to the extent that the purpose was also disrupt the activities of Cregan's OCG, on what basis can the claimant say that this was unsuccessful? Further, whilst he talks later in this disclosure about the "danger" and "risk" that this tactic involved, in the first sentence he states, as a fact, that this was "alienating the family and increasing the ill feeling of Cregan towards the Police". That goes further than saying there was risk of these two things occurring , the claimant states as a fact that they actually did.

PD1.8 45. In terms of the former, the Table at pages 6874 to 6876 shows only 4 entries where warrants were executed at addresses of the claimant's family, at his mother's , at his girlfriend's and at his sister's. It is noted that some warrants would permit multi-entry, but it is unclear (even now, and would have been no more clear at the time the claimant made his disclosures) how often this occurred.

PD1.8 46. In terms of Cregan's alleged ill feeling , the claimant bases this upon a remark made by Cregan when he surrendered himself into custody after he had murdered PC Bone and PC Hughes on 18 September 2012. He did not , however, know about this at the time he made his disclosure. All he knew, as he stated in his email to ACC Copley

on 1 October 2013 (page 962 of the bundle) was that Cregan was blaming ACC Heywood for the approaches to his family "with guns in their faces".

PD1.8 47. It was put to the claimant that he was in effect relying upon the word of a psychopathic killer to support his disclosure, an allegation that the claimant found upsetting and distasteful. That is understandable, but it is, in reality , the position. The claimant is seeking to establish that his belief that the disruption tactics and execution of warrants on his family was antagonistic and increased the risk to GMP officers was a reasonable one. In order to do so, he is citing what Cregan said upon his arrest or in an interview as the basis for that belief.

PD1.8 48 As with any other source of information, the claimant , if he is to support his contention that his belief in the information he disclosed was reasonable, has to consider whether it was reasonable to accept the information from that source at face value. Cregan was a criminal who had killed at least four people. His description of the Police approaching his family "with guns in their faces" was likely to have been exaggerated. Armed Police may have been involved, but the claimant had no information as to whether , and in what circumstances, they drew their weapons. Further, Cregan , as the claimant accepted , would have every reason to try to turn round the blame for the deaths of two PCs onto the Police. Reliance upon Cregan's assertion that the blame lay squarely (and by implication , therefore, exclusively) on ACC Heywood was not reasonable.

PD1.8 49. On that topic it is important to bear in mind that the claimant's witness , Officer N (not the same Officer N referred to in PD1.6) did not give the same evidence. Whilst he did criticise the tactics used, and considered them too bullish (and the respondent would agree , as noted, that they were to be "robust") he did not make the association between the use of the tactics and Cregan's killing of the two PCs. It is also to be remembered that he gave the claimant no information until they were working together in Operation Leopard, in 2016, long after the disclosures were made.

PD1.8 50. The Tribunal must also turn again to Section H, and this allegation contained in it:

(Ixxxiii) In conclusion my view is sadly that due to the inexperience and poor leadership demonstrated throughout, the deaths of Nicola and Fiona were sadly almost inevitable, and were not in fact the fault of any kind of master criminal, they were as a result of the failure of GMP.

PD1.8 51. A moment's thought shows how this is not an allegation in which the claimant can have had a reasonable belief. He accepted in the course of his evidence (page 1707 of the transcript) that the sole person responsible was Dale Cregan, and no one else. That is not what he said in this disclosure. That the claimant's real belief was that he would have made a better SIO than TD/Supt. Scally , and would have prevented these tragic events is revealed by the evidence of his Fed. rep. Kieran Murray to the IPCC (pages 6923 to 6924 of the bundle) where he says (the claimant being "the whistleblower):

"ACC COPLEY asked the whistleblower straight out if he was the SIO would the two police officers still be alive? The whistleblower said that yes, they would be alive if he had been in charge of the investigation."

With all due respect to the claimant's confidence in his own (doubtless well – established) abilities, this is a telling revelation of the reasonableness of his belief in this aspect of his disclosure. In short, the claimant did not have a reasonable belief in the substantial truth of this information in Section H, and regardless of whether it fails under s.43B, this PD, at 1.8, was not a protected disclosure which satisfies s.43F.

9.Protected disclosure 1.9: placing two unarmed officers outside the house of an associate of Dale Cregan

49. Information disclosed: TD/Supt Scally placed two unarmed police officers at risk by instructing them to sit in a car outside the house of an associate of Dale Cregan where it was believed Cregan may have been staying, whilst firearms officers prepared to execute a warrant at that address (a matter of which the Claimant became aware when asked to send two unarmed officers from his team to relieve the relevant officers). [CGoC §67]

50. PD 1.9 was set out at § (lxxv) of PDR1 , under the heading "(H) Further evidence of the failure to understand risk" , in the following words:

(lxxv) I can personally provide evidence to highlight the lack of understanding of risk by TD/Supt Scally. On Tuesday 14th August 2012 I was on afternoon duty in the Major Incident Team when I received a telephone call at approx 8.00 p.m. from T/DI Kay Dennison who was working on Op Mirato under TD/Supt Scally and DCI Rawlinson (Dep SIO). She requested that I send two officers from my team to relieve two of her officers who were sat in a car on the road outside an associate of Cregan's by the name of 'Hadfield'. Hadfield had been arrested earlier that day for the murder of Mark Short (Op Somerville) and she said there was a firearms briefing taking place and they were going to execute a search warrant with firearms officers at Hadfield's address to look for Cregan and Wilkinson and search for firearms/grenades and evidence for the Somerville/Mirato investigations. She said she was making the request on behalf of T.D/Supt Scally who had gone home. The firearms briefing had been going on for a long time and she wanted to release her officers who had been on a day shift. She said she wanted my officers to take over, wait until the warrant had been executed and then tell Hadfield's girlfriend, who would be at address that she had to go and stay elsewhere that night but to get the details of where she was going. Once she had been sent away and the house cleared and made safe, the address was to be kept overnight and would be searched the day after for firearms, grenades and evidence re Somerville/Mirato. Uniform guards would be placed overnight at the address. I queried this and discovered that it was to be divisional officers not firearms officers who would stand outside the house."

Whilst this is the pleaded disclosure, we do not consider that this paragraph can be read in isolation, given that involves allegations that are also made elsewhere in PDR1, and the claimant's evidence comprises of other parts of PDR1 being repeated and adopted

. Firstly, it must be read with bullet point 16 in para. (lxi), under the heading "Failings included", where the claimant said this:

(16) • There were significant failings in the understanding of risk by TD/Supt Scally, including the lack of risk assessments both for his investigation team officers and divisional officers. There are examples on two separate occasions of him wanting to deploy officers to properties connected to Cregan with his requests being refused by myself on one occasion and a [sic] *Inspector due to the risks and lack of risk assessment (see section 'H')*

This PD is part of Section H. Further, we consider that more of the ensuing paragraphs must, also be read with ((lxxv) above, as they make it clear what the claimant believed that para.(lxxv) tended to show, and the consequences of the alleged failings on the part of TD/Supt. Scally .

They are:

(lxxvi) My response was to tell her I was not happy sending my staff to sit outside/near an address where it was believed Cregan may be or might come back to. I queried what risk assessments had been completed and why were MIT detectives sat outside when a firearms briefing was going on at another location' as my understanding was that Cregan blamed the police for his predicament and that any police officers he encountered would be a likely target.

(lxxvii) I felt that that they were placing uniform staff at risk by asking them to stand guard at the house overnight. I suggested they should do the warrant early in the morning with firearms, at a time when it could be searched with a continued firearms presence and once complete they could then all safely withdraw.

(lxxviii) I also said that the girlfriend should not be sent on her way and should be taken to a police station for questioning/debrief, as in the circumstances she may be able to provide information about the Somerville and Mirato investigations, Hadfield's involvement and possible locations/telephone numbers etc re Cregan and Wilkinson. I advised her to take this action rather than 'send her away'. I also said that it was better to have staff that were working on the investigation, and who knew all about the job, speak with her.

(lxxix) I reiterated that I didn't approve leaving unarmed uniform officers on guard overnight, one back and front, and said I believed they were putting them at risk as this was an address Cregan may go to and they would be targets. Throughout the conversation T/DI Dennison's voice was cracking and she was near to tears and breaking down. She was clearly very stressed and said she was only 'Acting' and she shouldn't have been left by DCI Rawlinson (Dep SIO) and TD/Supt Scally to deal on her own. I told her she needed to challenge them about this. The call was then interrupted by an incoming phone call to DI Dennison which she said she thought was from the firearms team and the conversation was ended. She rang me back about 10 minutes later and told me that my staff were not required and everything was in hand.

(lxxx) As well as highlighting the lack of understanding of the risks in this case, the placing officers at risk of harm, I also felt this incident demonstrated the poor leadership and decision making in the investigation, potential opportunities to gain information were clearly being missed and it demonstrated TD/Supt Scally [sic] *inexperience as an SIO.*

And:

(lxxxiii) In conclusion my view is sadly that due to the inexperience and poor leadership demonstrated throughout, the deaths of Nicola and Fiona were sadly almost inevitable, and were not in fact the fault of any kind of master criminal, they were as a result of the failure of GMP.

Para. 52 of the List of Issues sets out the claimant's case that he reasonably believed that this disclosure was made in the public interest and that this information tended to show (a) that there had been a failure to comply with one or more legal obligations, namely (i) the duty to protect the public and prevent crime; and/or (ii) the Respondent's duties under the HRA and Article 2 of the ECHR to safeguard life; and/or (iii) his common law duty of care to GMP officers and staff; and/or (iv) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of duties and responsibilities; discreditable conduct; and/or (b) that the health or safety of any individuals, namely the general public and GMP officers and staff, had been endangered.

<u>The relevant facts.</u>

PD1.9 1. The Tribunal firstly refers to the facts it has found in relation to PD1.5 and PD1.6 above as to background to this disclosure , and the establishment and staffing of the three Operations in question.

PD1.9 2. In August 2012 the hunt for Cregan was being carried out by Operation Dakar. TD/Supt. Scally was not the SIO on that Operation on 14 August 2012 , that was DCI Tonge. Further, Operation Dakar was a 24/7 operation. TD/Supt. Scally was the SIO on Operation Mirato on 14 August 2012.

PD1.9 3. In August 2012 T/DCI Kay Dennison was working in MIT based at Middleton when she was asked to join Operation Mirato by DCI Tonge on or about 10 August 2012. She did so, and went to work in Nexus House on the Operation. Her main responsibility was to ensure that officers conducting searches were not cross – contaminating the scenes . She had little contact with TD/Supt. Scally , and dealt mainly with DCI Joanne Rawlinson, who was the Deputy SIO.

PD1.9 4. On 14 August 2012 the claimant claims that he received a telephone call from T/DCI Dennison, in which she asked if he could provide two officers to relieve two officers who were stationed outside a property where Cregan was believed either to be in hiding, or to which he was likely to return.

PD1.9 5. The terms of that conversation are rehearsed in paras. (lxxvi) to (lxxix) of PD1.9, set out above.

PD1.9 6. In terms of his first witness statement, he says this in paras. 230 to 232:

"230. I set this out at para (lxxv) – (lxxxii) of PDR1 ….. and detailed my concerns as at paras [47 – 52] of this statement, which arose from my direct experience.

231. I was requested to place two of my own staff outside a house where it was believed that Cregan might be staying to relieve two other MIT detectives from another MIT team. The detectives were keeping an eye on the property and had a search warrant for execution at the address. The request had been made by a D.I. Dennison who was working on the Dale Cregan investigations on Dominic Scally's team and had been left to manage the situation during the evening by Det Supt Scally. They were waiting whilst firearms officers were being briefed in another location at the Openshaw Police Complex and who would be attending the address to gain entry, search and secure the address. There was clearly a high degree of suspicion and intelligence to suggest Cregan might be at the address as a search warrant had been sworn out at the magistrates court and a firearms team was going to execute the warrant. I regarded having two unarmed detectives sat in a car in close proximity to an address where a dangerous man, believed armed man with a firearm and grenades, who might encounter the officers leaving or attending the address, placed the officers at risk of serious harm.

232. I was so concerned that I wasn't prepared to put my own officers at risk in such a situation and had challenged the decision during the telephone call, highlighted the risks and lack of risk assessment. I believed it breached the legal obligations in terms of health and safety and duty of care to place police officers in such a position of risk and that it was a job that armed police officers should have been deployed to do. DI Dennision was an acting DI and I feel she had been left to manage a situation that evening which she was uncomfortable with, other senior officers on the investigation, including Scally having retired from duty for that day. The failure to manage risks I regarded as a public interest issue. I think it is noteworthy that after my raising of this issue 'further safety precautions' were implemented on the team with officers instructed to do checks on nominals and addresses prior to deploying and to notify firearms if there were any perceived risks, with firearms control stating that they would arrange for firearms officers to rendezvous with the officers at or near the address. [See para 128 and page 4511]."

PD1.9 7. The claimant first made reference to this incident in his grievance appeal document dated 8 November 2012, in which he said (page 686 of the bundle):

"Similarly on 14th August 2012 when I was on afternoon cover I was contacted in respect of providing staff for a job on Op Mirato by a DI Dennison at the request of T/D.Supt Scally. I refused to supply the staff because they were required to sit outside on the street of an address connected to a key player when a briefing was ongoing re the execution of a warrant with firearms entry. I refused to send them as I felt they were being put at risk and I had a lot of concerns over the way in which the operation was being managed. These concerns echo those expressed in my grievance report re the SIOs on Op Somerville and subsequently Op Mirato ."

PD1.9 8. Whilst he does not do so in any of his witness statements, the claimant in paras. (lxxvi) to (lxxxi) of PDR1 gives more detail of this conversation, in which he says he told her that he was not happy sending his staff to sit outside/near an address where it was believed that Cregan might be or might come back to. This was the address of one Ryan Hadfield , who had been arrested for the murder of Mark Short on Operation Somerville. The claimant also says that he "queried what risk assessments had been completed". He does not say what the response of T/DI Dennison was.

PD1.9 9. T/DI Dennison , in preparation for these proceedings, made enquiries and, whilst she could not retrieve her own Day Book, or other records from Operation Mirato, she accessed the Day Books of DS Matthew Findell and ISO Tony Halliwell, the only two people on her team who she believed could be the officers involved. When she reviewed the book of DS Findell it revealed that he met up with the firearms team at a rendezvous point, Tameside General Hospital, where they had a discussion and then the firearms team went to execute the warrant. She had no information that suggested that any officer was sitting outside of Hadfield's house. She believed this was around 18.45. she could not recall the time after that that DS Findell went to the rendezvous point , but it was recorded then that the firearms team executed the warrant. The next action that DS Flindell took was to try to speak to the female occupant, but she was not there. Kay Dennison could not imagine that she had people sitting outside of the address. To have officers in the area when a warrant is about to be executed would not necessarily be unusual.

PD1.9 10. In terms of any risk assessment that had been carried out in respect of that address at that time, she said that to suggest there was no risk assessment when there was a firearms team involved was highly unlikely. There has to be a significant risk assessment about deploying people who have firearms. She could not say that such a risk assessment would have included the two officers she had referred to.

PD1.9 11. The claimant claimed in his evidence before the Tribunal that he had verbally raised this incident and his concerns with D/Supt. Barraclough, but he has no recollection of this , and the claimant took no further steps to raise his concerns at or around the time.

PD1.9 12. On 23 August 2012 T/DI Dennison sent an email (pages 4511 and 4512 of the bundle) to all involved in the Cregan Operations in these terms:

"All,

Further to yesterdays e-mail regarding intelligence checks of individuals and addresses we are visiting can I draw your attention to some further safety precautions.

The G division are dealing with threats to life and have prepared a matrix which I have access to as well as DS Wood and DS Mulvihill. The matrix will now be checked in conjunction with approval to visit addresses and nominals from the intelligence cell.

Again the nominals and addresses will be checked following the morning briefing prior to staff deploying.

If a nominal or address feature on the threats to life matrix then the team concerned will be asked to contact firearms control on [XXXXXXXX] they will if deemed appropriate and necessary make arrangements to RV with officers at or near the address.

If you research your actions and feel there is a threat or you feel vulnerable in making your enquiries you can also contact this number and request the assistance of a firearms patrol.

Please remember to protect yourselves and ensure you have a radio to communicate with and that you use your PP equipment."

PD1.9 13. T/DI Dennison did not send this email as a result of the events of 14 August 2012, and the claimant had not seen it at the time the made this disclosure to the IPCC.

PD1.9 14. The Tactical Firearms Commander ("TFC") Ian Palmer was asked about risk assessments, and gave evidence about how and when they would be carried out. He explained how , given the nature of the demand across GMP and normal daily business, compared to the availability of resources, it was simply not feasible, however desirable, to have had firearms officers attend every job or accompany unarmed officers on every scene linked to the Somerville and Mirato investigations. Every deployment of an armed firearms officer for a warrant or otherwise required a threat assessment from a TFC with advice provided by a firearms tactical advisor. Unarmed officers would have been included as part of that threat assessment and it was perfectly legitimate to have unarmed officers carry out observations on an address, if it was assessed as safe to do so, ahead of the arrival of armed police.

PD1.9 15. It is a fact that no written risk assessment has been produced which relates specifically to the deployment of the two officers in question on 14 August 2012.

PD1.9 16. In paragraph 26 of T/DI Dennison's statement she says *"the fact that a particular task carries risk (for example, standing outside a property connected to a known criminal) does not mean it should not be done, as long as that risk is appropriately managed and where possible mitigated".*

PD1.9 17.The claimant and T/DI Dennison had previously had some dealings with each other in the course of their respective careers. T/DI Dennison refers to them in her witness statement. In particular, she refers (in para. 3) to being interviewed by him for a Detective Sergeant post in MIT in 2007. She was unsuccessful, and made a comment in her statement that he had answered his phone several times during the interview, and had been late for it.

PD1.9 18. In his second witness statement (para. 17) the claimant responds to this evidence, and makes a counter allegation that T/DI Dennison had, in the course of this interview, referenced her role in an investigation in which he had been the SIO, which he considered at the time , and when making this second witness statement, was untrue.

PD1.9 19. Whilst a side issue, this was explored in the evidence before the Tribunal, and the claimant did then agree that T/DI Dennison had indeed carried out some work on that investigation, and he did subsequently accept her onto his team. She had not, therefore, he conceded, in fact been untruthful in the interview that he had conducted with her.

Assessment of the facts relevant to this PD.

PD1.9 20. Central to this PD is the factual issue as to whether the conversation relied upon by the claimant occurred, and , if it did, what, precisely , was said in it. The claimant has been very specific in this PD, stating the date, 14 August 2012, and the approximate time, 8.00 p.m.. He has produced no record of the telephone call.

PD1.9 21. Kay Dennison does not say that no such conversation took place, but she has no recollection of it. It follows that she has no recollection of what was said in it. She did, however, doubt that she was close to tears as the claimant describes, and she disagreed with the detail of what she is alleged to have said. In particular she considered it was unlikely that she would have deployed uniformed officers to go and sit outside an address, and she "certainly would not" have been asking the claimant for uniform officers. That was not, however, what the claimant says she asked him to do.

PD1.9 22. She gave her evidence having undertaken some enquiries into the events of the night in question. Whilst she could not, despite her efforts to do so, recover her own Day Book, or any other records of her own involvement at the time, she has been able to access the Day Books of DS Findell and ISO Halliwell, who were on duty that evening.

PD1.9 23. The claimant has no note or other record of his conversation with Kay Dennison, or this incident at all. Whilst he said (but had not previously in his witness statements) that he had raised his concerns with D/Supt. Barraclough, he has no recollection of this, and the claimant accepts he did not follow it up. His first reference to this incident was in his grievance appeal document , dated 8 November 2012 , under the section "Additional Information", where he says (page 682 of the bundle):

"Similarly on 14th August 2012 when I was on afternoon cover I was contacted in respect of providing staff for a job on Op Mirato by a DI Dennison at the request of T/D.Supt Scally. I refused to supply the staff because they were required to sit outside on the street of an address connected to a key player when a briefing was ongoing re the execution of a warrant with firearms entry. I refused to send them as I felt they were being put at risk and I had a lot of concerns over the way in which the operation was being managed. These concerns echo those expressed in my grievance report re the SIOs on Op Somerville and subsequently Op Mirato ."

PD1.9 24. The claimant makes no further mention of this allegation until his PDR1 document in June 2013.

PD1.9 25. In the claimant's first witness statement , he deals with this PD at paras. 230 and 231.In para. 230 he refers to paras. (lxxv) to (lxxxii) of his PDR1, which , he says, arose from his direct experience.

PD1.9 26. That is not, strictly speaking, accurate. Para. (lxxixi) relates to another person, Inspector 'T', and how he or she similarly declined such a request , made in fact by TD/Supt. Scally , for similar reasons that the claimant had. The claimant has given no evidence of this , or how or when he was made aware of this, and it remains simply an assertion in this PDR.

PD1.9 27. In his second witness statement, at para. 29, where he responds to the witness statement of Ian Palmer, the claimant makes reference to the request relating to a firearms briefing to execute a warrant at an address where Cregan was believed to be staying, and that officers were planning a surprise raid if he was there. This goes further than the terms of the disclosure, which were confined to the address being that of an associate of Cregan's.

PD1.9 28. Our conclusion is that we do not find the claimant's account of the detail of what was said on 14 August 2012 to be reliable. Some considerable time elapsed (over 7 months) between when he first, briefly, mentioned it in his grievance appeal document to the the time when he gave the very full and detailed account in his PDR1 document in June 2013, which runs to some five paragraphs in terms of the conversation that he had. The claimant's account also varies from (in para. (lxxvi of PDR1) him "querying what risk assessments had been carried out" to "challenging the lack of risk assessment". The claimant has also shown that in relation to his previous dealings with T/DI Dennison, where in his second witness statement he alleged that she had acted untruthfully, but then resiled from that suggestion when pressed upon it, his recollection could not be relied upon. This further undermined the Tribunal's confidence in his reliability of his account of this interaction between them.

The s.43B tests.

PD1.9 29. Our next task is to determine whether the claimant satisfies the Tribunal that he had the requisite reasonable belief that the disclosure tended to show one, or more, of the matters specified in s.43B(1).

PD1.9 30. Before going any further, it is important to analyse just what the claimant is advancing in this PD. There is, the Tribunal considers, an element of this disclosure which has perhaps caused some confusion. There were really two issues being raised by the claimant. One, the one that did involve him was the request for him to deploy his officers for the purpose that T/DI Dennison required them. The other, quite separate, issue, which did not involve the claimant was the deployment , after the execution of the warrant by the firearms team, of uniformed officers to stand guard at the property. This is a different issue, which did not involve the claimant , but upon which he has commented in this disclosure.

PD1.9 31. In the definition of the information disclosed at para. 49 of the List of Issues, however, the claimant puts his case as :

"TD/Supt Scally placed two unarmed police officers at risk by instructing them to sit in a car outside the house of an associate of Dale Cregan where it was believed Cregan may have been staying, whilst firearms officers prepared to execute a warrant at that

address (a matter of which the Claimant became aware when asked to send two unarmed officers from his team to relieve the relevant officers).”

PD1.9 32. That does not, therefore, include the proposed subsequent deployment of other, uniformed, officers to stand guard at the property after the warrant was executed. That is therefore not part of this disclosure, which is confined therefore to the request for unarmed plain clothes officers to be provided by the claimant .

PD1.9 33. In terms of what the claimant says he reasonably believed that this disclosure tended to show under s.43B(1),he says it was :

(a) that there had been a failure to comply with one or more legal obligations, namely:

(i) the duty to protect the public and prevent crime; and/or

the Respondent’s duties under the HRA and Article 2 of the ECHR to safeguard the lives of GMP officers; and/or

(iii) the Respondent’s common law duty of care to GMP officers; and/or

(iv) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of duties and responsibilities; discreditable conduct;and/or

(b) that the health or safety of any individual, namely GMP officers, had been endangered.

PD1.9 34. The first of these, under s.43B(1), breach of legal obligation, relates to the common law duty previously discussed, that of protecting the public and preventing crime. The Tribunal struggles to see how the claimant could reasonably believe that the placing of unarmed officers at or near the address in question tended to show that the Police were failing in this duty. There may be other issues, but, of itself, how can that show that this duty had been broken? Their presence , if detected , may well have had the effect of preventing crime, as any potential perpetrators may have been wary of committing any crimes when under observation. Similarly, in terms of protecting the public, the presence of such officers, if detected, would be more likely to deter the potential offenders from harming any members of the public. If, of course, they were undetected, these observations have even greater force.

PD1.9 35. In terms of the HRA, this has previously been discussed, and is not applicable, and no actual loss of life occurred in relation to the officers in question .

PD1.9 36. The 2012 Regulations issue has also already been addressed in general , and , in any event, the Tribunal cannot begin to see the standards of professional behaviour are engaged in this instance in any event . The claimant has not explained the basis for this contention.

PD1.9 37. Contention (iii) overlaps with the s.43(B)(1)(e) ground, that the claimant contends that this disclosure tends to show that the health and safety of GMP Officers

had been endangered, as if it has been, there was likely to have been a breach of the common law duty of care that the respondent owed to is officers.

PD1.9 38. At this stage, of course, the claimant need only believe the disclosure "tended to show" any of these things. In relation to (iii) and s.43B(1)(e), we are satisfied that the claimant reasonably believed that, if true, this disclosure would tend to show either or both of those matters. The claimant would satisfy this low threshold for s.43B(1).

PD1.9 39. We next have to consider the significance of the delay in the claimant raising this as a protected disclosure. This is the point from the case of ***Muchesa v Central & Cecil Housing Care Support [UKEAT/0433/07]*** first discussed under PD1.2, and other PDs above. In that case it was held that it was relevant to consider , when assessing whether a worker held a reasonable belief in the truth of what was disclosed and what it tended to show, how the worker would have been expected to have behaved if they genuinely held such beliefs. The worker's conduct in that case was incompatible with her having such a belief, and the EAT upheld the dismissal of her claims on the grounds that she had not satisfied the test for reasonable belief. Similarly, in ***Simpson v Cantor Fitzgerald Europe [2021] ICR 695*** the Court of Appeal upheld the EAT's dismissal of an appeal where the worker's failure to act upon what were allegedly very serious breaches of financial regulatory requirement for about a month was found to be relevant to the issue of whether he genuinely believed that his disclosures tended to show any serious wrongdoing.

PD1.9 40. The claimant was cross – examined about the delay. Whilst he claims to have raised the issue with D/Supt. Barraclough , who denies that, he accepts that was not led to believe that any follow up action had been taken. The claimant, therefore, on his own account left the matter at the time, without following it up, notwithstanding that he was very concerned that officers could be put at risk due to the failure on the part of TD/Sup Scally to appreciate risk. The claimant first raised the issue in his grievance appeal of 8 November 2012, when it was relatively fresh, and the deaths of PCs Bone and Hughes, to which the claimant links this alleged failure to appreciate risk, were still very much uppermost in the minds of all members of the GMP. The claimant, however, makes no further mention of it until his PDR1 document of 20 June 2013. He does so then in great detail, and he includes another, linked disclosure that the placing of unarmed, uniformed, officers to guard the address after execution of the warrant was also dangerous, and indicative that there had not been a full appreciation of risk. That is not, however, relied upon as part of this disclosure. Notwithstanding that the claimant had included this disclosure in what he submitted to the PCC in or around June 2013, it was not until January 2014 that the claimant took this very serious allegation to the IPCC.

PD1.9 41. When the claimant was asked about this delay he said that he had raised it with T/DI Dennison for her to take further, and that he had also verbally mentioned it to D/Supt Barraclough. He denies this, but , even if it was correct, it does not explain why, if this was such a serious matter that the claimant truly considered to be in the public interest to disclose in January 2014, he did not do raise it for over 16 months from when the request to him had occurred, and 15 months after the most tragic consequences of the whole Cregan episode.

PD1.9 42. The claimant has made reference to an email sent by T/DI Dennison shortly after the events of 14 August 2012 (page 4511 of the bundle), in which she does raise some safety issues, and gives advice, but the claimant was unaware of this until disclosure in these proceedings, and hence it cannot explain his failure to make this disclosure earlier than he did. In any event, it does not address what the claimant contends was the core issue, the failure of TD/Supt. Scally to understand risk.

PD1.9 43. The Tribunal is therefore not satisfied that the claimant actually did believe , or reasonably believed that this disclosure tended to show the matters he now relies upon. He acted incompatibly with such a belief, and this disclosure must fail. To make this disclosure when he did, some 16 months after the event, when the Operations to which it relates were long finished, also raises considerable doubts in our minds as to whether he believed it was in the public interest to make it. For the reasons we have cited in other PDs where the claimant has failed on the ***Muchesa*** test, he must we consider, although this is academic, also fail the public interest test.

PD1.9 44. For these reasons, this disclosure fails the s.43B test at this stage.

The s.43F test.

PD1.9 45. Whilst this disclosure falls at s.43B(1) , we will, in the alternative, consider s.43F. For that purpose we must look at the information and any allegation contained in it.

PD1.9 46. The detail of the conversation between T/DI Dennison and the claimant matters, because there is a world of difference between asking for unarmed officers (uniformed or otherwise) to be deployed outside a property (the word “house” or “address” is actually not present in second sentence of para. (lxxv) , but it is implicit) whilst a firearms briefing was being held, and being deployed nearby. The former involves a risk of being detected by any occupants of the property, the latter does not. The implication of the claimant’s disclosure is that they would be sat in a car outside the house, although this is a little ambiguous. It is more probable that the claimant was referring to the property, as this would be why he considered it dangerous, and why he declined the request.

PD1.9 47. That there is some uncertainty as to what, precisely, the claimant was being asked to provide is indicated by the wording of para. (lxxvi) which follows the cited paragraph which is relied upon for this disclosure. In it the claimant says:

“My response was to tell her I was not happy sending my staff to sit outside/near an address where …..”

PD1.9 48. This begs the question, what was the request? As indicated there is a difference and an important one.

PD1.9 49. T/DI Dennison, however, has done research which reveals that it is unlikely that she had deployed any officers to sit in a car outside a property, so any request she may have made for relief of those officers would not have been for their replacements to sit outside a property. Her evidence, based on research is that it is highly unlikely that she would have made such a request in those terms.

PD1.9 50. In any event, this disclosure goes further than what is in para. (lxxv), as set out above, but even in that the claimant says that this is an example to highlight "the lack of understanding of risk by TD/Supt. Scally". The allegation that the claimant makes, therefore, is that TD/Supt. Scally lacked an understanding of risk. Under s.43F, therefore, he must have a reasonable belief in the substantial truth of that allegation.

PD1.9 51. He has provided no basis for that. Even in the disclosure itself (when one reads, as the Tribunal considers it must, down to the next paragraph) the claimant says he queried what risk assessments had been completed . He says no more, and does not say what the response was. The claimant , however, presents this as either that none had been completed, or, that if they had TD/Supt. Scally had a lack of understanding of any such assessment.

PD1.9 52. Upon what does he base this belief? No more, it seems, than the fact that unarmed officers were placed in the positions that they were. As observed above, that itself is unclear, and the claimant acknowledges in para. (lxxvi) that it could have been near, and not outside the address in question. He has no basis (for he does not say that T/DI Dennison told him) for believing that no risk assessment had been carried out. So it is mere speculation that none had been carried out. The thrust of his disclosure is that TD/Supt. Scally lacked an understanding of risk . He may, of course, fully have understood the risks involved, but decided to take them. That is not, however, what the claimant disclosed.

PD1.9 53. There is no basis, therefore, other than the claimant' speculation, and his propensity to see everything connected to TD/Supt. Scally as likely to be tainted by his alleged lack of experience and ability, for the claimant's belief. It cannot have been reasonable.

PD1.9 54. As is clear from the evidence of T/DI Dennison, it is likely that the officers that had previously been deployed were not stationed outside the address in question, but nearby, and at a rendezvous point with the firearms team. The level of risk would therefore have been rather lower, and they were not uniformed officers.

PD1.9 55. Speaking of which, the other issue , that of officers to be left guarding the address after the execution of the warrant is something of a red herring, as that is not what the claimant says was the information that this disclosure contained. Even if it was, and should be examined as such, the claimant has no firmer basis for the allegations he makes in this regard as he does for the primary ones that he makes.

PD1.9 56. Also of note (and again not relied upon as part of this disclosure, but arguably part of it) the claimant had adduced no evidence at all in support of his contention in para. (lxxxii) about another Inspector 'T', having similar issues, in fact in dealings directly with TD/Supt. Scally.

PD1.9 57. Finally, there are also the issues which are common to other disclosures, where the claimant has , by reference and incorporation, included another part of Section H in this disclosure, namely this :

(lxxxiii) In conclusion my view is sadly that due to the inexperience and poor leadership demonstrated throughout, the deaths of Nicola and Fiona were sadly almost inevitable, and were not in fact the fault of any kind of master criminal, they were as a result of the failure of GMP.

PD1.9 58. As found previously, this was not an allegation in which the claimant had a reasonable belief, and it therefore fails the s.43F test, and is fatal to this disclosure. Given that there are also other aspects of the information and the allegations contained in it in the substantial truth of which the claimant cannot show he held a reasonable belief, this disclosure fails to merit protection under s.43F.

Group 4:

10. Protected disclosure 1.12 :unlawful use of bugging devices by CI Snowball

Information disclosed: After being promoted to Acting Superintendent at Wigan by ACC Sweeney, CI Julian Snowball placed bugging devices in the offices of the Divisional Commander, Chief Superintendent Sean Donnellan, and another SLT member, DCI Howard Millington, and listened to their private conversations without authority. [CGoC §70, 71]

PD 1.12 was set out at §§ (cxxiii) to (cxxvi) of PDR 1 in the following words (with the omitted text in the List of Issues restored and underlined):

(cxxiii) Chief Inspector Julian Snowball, who I know from Stockport has admitted to me in conversations that he is 'one of Terry's gang', meaning ACC Terry Sweeney. He failed the last formal promotion assessment process at Stage 1 . Ch Inspector Snowball was later sent acting superintendent on the North Manchester division. A senior officer told me it took months for the division 'to recover' after his exit. When he was reverted he then went to work for ACC Sweeney at Nexus House, as his 'bagman'. He described it to me in conversation as a 'non job'.

(cxxiv) ACC Sweeney then arranged for him to be posted as Acting Superintendent in uniform at Wigan.

(cxxv) Whilst on the division Chief Inspector Snowball placed 'bugging devices' in the Divisional Commander's office (Chief Superintendent Shaun Donnellan) and also in the office of another SLT member, DCI Howard Millington. He recorded the conversations that took place in those offices, including private conversations they had with staff over personal issues and telephone calls made with family members. This involved him unlawfully obtaining keys to surreptitiously enter the offices to place the device, re-charge batteries and ultimately remove the covert listening devices.

(cxxvi) He had no right or authority to 'bug' the offices. Only one person can authorise this activity - The Chief Constable and then only for lawful purpose.

List of Issues - Para. 67: The claimant contends that he reasonably believed that the disclosure tended to show (a) that a crime, namely misconduct in public office, had been committed and/or (b) that there had been a failure to comply with one a legal obligations,

namely the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of honesty and integrity; duties and responsibilities and discreditable conduct

Relevant facts.

PD 1.12 1. CI Julian Snowball joined GMP on 16 January 1996. His initial role was mainly as a uniformed officer. In 2009 and 2010 he worked with the claimant at Stockport. In 2011 he undertook the Force SIO Development Course, and the Management of Serious Crime module. He was then attached to the MIT, but shortly after that he was posted to Wigan Police Station on a temporary promotion to Superintendent in April 2012 . There is no evidence in the bundle as to how this came about. The claimant states (para. 248 of his witness statement) that he that he was aware that Mr Snowball had failed his past promotion assessment process at Stage 1, but that he was then ”offered” a T/Supt. position on the North Manchester Division. He states that he then went to work for ACC Sweeney at Nexus House, as his assistant, and that ACC Sweeney then “arranged” for him to be posted as T/Supt. at Wigan in or about April 2012. It is correct that he was working at Nexus House under ACC Sweeney, but again there is no evidence in the bundle (or in the testimony of any of the witnesses) as to how , and by whom , he was then promoted to the T/Supt. role at Wigan.

PD 1.12 2. Mr Snowball’s superior officer at Wigan was DCS Shaun Donnellan, the Divisional Commander. Beneath him was DCI Howard Millington. Mr Snowball became concerned about the treatment by these two officers of him, which he considered to be bullying . He wanted to secure evidence to establish this . He therefore, on or about 28 September 2012, purchased listening devices, and covertly placed them in their respective offices , so that he would be able to know what they were saying about him.

PD 1.12 3. This came to light on or about 19 November 2012, when DI Snowball approached DCS Rebekah Sutcliffe, , and confessed to her that he had done this. PSB were informed of this by her the next day, 20 November 2012.

PD 1.12 4. He was taken off the Division, for his own welfare, and an investigation was begun. The ensuing matters fall within PD1.13.

Discussion and findings.

The information and the allegations contained in it .

PD 1.12 5. The Tribunal finds that the information conveyed by the claimant went further than that as summarised in the List of Issues. The claimant disclosed not only that CI Snowball had acted in a criminal manner which breached the standards of professional behaviour, but also that ACC Sweeney, because of cronyism, had arranged for him to be posted as T/Supt in uniform at Wigan, and had given him a “non – job”.

Reasonable belief under s.43B(1) in what the disclosure tended to show.

PD 1.12 6. The Tribunal must first apply the tests under s.43B to this disclosure. The first issue is whether the claimant believed, and if so, whether he reasonably believed, that this disclosure tended to show , under s.43B(1)(a) that a criminal offence, misconduct in public office, had been committed.

PD 1.12 7. The claimant overlooks in his submissions, and his evidence, that in the information which forms this disclosure, he make allegations not only about DCI Snowball, in respect of which the Tribunal accepts he can show that he reasonably believed that his disclosure tended to show that DCI Snowball had committed a criminal offence , or otherwise breached a legal obligation, but also about ACC Sweeney. Whilst the disclosure is headed "Unlawful use of bugging devices by CI Snowball" , it is not confined to his misconduct alone. These allegations are contained in the last section of para. (cxxiii), which was omitted from the List of Issues, but has been restored above.

PD 1.12 8. The claimant also omitted the word "then" from para. (cxxiv).

PD 1.12 9. The claimant's belief that his disclosure tended to show that DCI Snowball had committed a criminal offence, or otherwise breached a legal obligation, was clearly reasonable, and this disclosure satisfies the s.43B test on that basis, although that was not, the Tribunal considers what the claimant wanted to draw attention to in this disclosure, as will be discussed below .

PD 1.12 10. The previous observations about the 2012 Regulations cited above apply.

PD 1.12 11. We have considered whether this disclosure falls on the grounds of the ***Muchesa*** test , as others have. We do not consider that it does. The matters disclosed did not involve any alleged serious risks to members of the public, or of any potential harm to other officers that those relating to Operation Nixon and the Cregan operations did. These were matters of internal misconduct, and the alleged failures of senior officers to deal with these matters correctly. Delay, in these circumstances was less critical, and not, in our view necessarily incompatible with a reasonable belief that the disclosures tended to show the conduct alleged. Whilst debatable, we would not, on balance, find that the claimant would fail in respect of this disclosure on the ***Muchesa*** test.

PD 1.12 12. Finally, turning to the public interest, the Tribunal, the disclosure not having failed the ***Muchesa*** test, and for the same reasons as it did in relation to PD1.1 above, finds that the claimant did believe that it was in the public interest to make this disclosure, and that was a reasonable belief. The claimant did not have any particular issues with DCI Snowball himself, and even if he was partly motivated by a desire to criticise the conduct of ACC Sweeney, that does not, in our view, mean that the claimant did not reasonably believe that it was in the public interest to make this disclosure.

Does the claimant satisfy the s.43F test?

PD 1.12 13. This disclosure thus satisfies the s.43B tests, and survives them, in relation to the conduct of CI Snowball in bugging his SLT colleagues.

PD 1.12 14. The information and allegations contained in it, however, go further than that. Firstly, it is not to be overlooked that this disclosure is made under the heading "(L) Cronyism, misconduct and more cover ups!". It forms (as does the ensuing PD1.13) part of Example 2 in this section. Of note, by way of context are paras.(cxvi) and (cxvii) which precede the examples that the claimant then sets out, which read:

"(cxvi) Detailed below are further examples of cronyism and how senior officers have used their power and influence to cover up the failings of their 'favoured' friends and associates.

(cxvii) These examples also highlight how in these austere times, with cutbacks and promotion development opportunities at a premium, officers with influential senior officer friends are able to secure multiple consecutive temporary promotion positions."

PD 1.12 15. This disclosure, therefore, also contains information and allegations that:

a) CI Snowball had failed his last formal promotion process at Stage 1;

b) He had been posted to North Manchester following which the comment was allegedly made about the division needing 6 months to recover, suggesting that he had performed poorly;

c) He was then given a job, when he reverted back to CI, by ACC Sweeney, as his assistant, as a sinecure, because of cronyism;

d) ACC Sweeney then arranged for his posting to Wigan as a T/Supt., thereby promoting him , again because of cronyism.

PD 1.12 15. The claimant , in our view, has to demonstrate a reasonable belief in the substantial truth of this information and these allegations. In relation to (a), CI Snowball failing his last promotion assessment at Stage 1, he mentions this in para. 248 of his witness statement, but does not say how he was aware of this. He also makes this allegation on page 7 of his IPCC witness statement (page 1450 of the bundle), but does not say there either how he knows this.

PD 1.12 16. In relation to (b), the claimant does not mention this in his witness statement to the Tribunal. Nor does he in his IPCC witness statement. It remains an unattributed alleged comment from an unidentified third party.

PD 1.12 17. In relation to (c) it appears that the claimant is relying upon what CI Snowball himself has said to him, at least in terms of what the job entailed. He gives no details, however, of the alleged conversation, when it occurred, or what exactly was said.

PD 1.12 18. Most significantly, in relation to (d), he has provided no evidence at all of the source of this belief. There is no evidence in the bundle to which the Tribunal has been referred that shows or suggests that ACC Sweeney was involved in the temporary promotion of CI Snowball to Wigan, but this is again alleged to have been cronyism. As previously noted in PDs which allege corrupt promotions, it was not possible within GMP

for any one officer (save perhaps for the Chief Constable) alone to promote anyone. The claimant has adduced no evidence of the source of his belief that ACC Sweeney was involved in this promotion of Mr Snowball. It is hard not to conclude that this is again simply the claimant's assumption, or the result of gossip (which he denies). The respondent's responsive submissions (paras. 96 to 99) highlight the cross – examination of the claimant on this issue, and the omissions in the claimant's evidence. The effect of this, the Tribunal considers, is that the claimant has not demonstrated that he had a reasonable belief in the substantial truth of this allegation.

PD 1.12 19. The Tribunal appreciates that, perhaps, taken singly, each allegation could be argued to be a *de minmis* issue, of the nature that Mr O'Dempsey has invited us to discount if the thrust or the core of the disclosure is not affected by such defects. Were there only to have been one such matter, item (b), perhaps , as the most minor, there may be force in such a submission. That is to ignore, however, as the List of Issues rather diverts the Tribunal away from , that this disclosure is not only about the wrongdoing of CI Snowball, it is another disclosure primarily about , and indeed is expressly said to be , an example of, cronyism, and hence misconduct on the part of ACC Sweeney. Lack of reasonable belief in allegation (d) alone, we consider, is fatal to this disclosure, and our conclusion is that this disclosure fails the tests under s.43F of the Act.

11.Protected disclosure 1.13: failure to impose appropriate disciplinary sanction on CI Snowball

Information disclosed: ACC Sweeney oversaw the subsequent investigation into CI Snowball's conduct, which resulted in CI Snowball receiving a written warning, when a finding of gross misconduct and/or disciplinary offences relating to Honesty and Integrity and Discreditable Conduct, would have been the correct finding. Because CI Snowball was a friend of ACC Sweeney, the latter then arranged for CI Snowball to move to a DCI role at Stockport despite his having no investigative experience, thereby placing the people of Stockport and the officers who police that division at risk of harm because the most senior detective did not have the skills and experience required to perform the role. [CGoC § 71 - 73]

PD 1.13 was set out §§ (cxxviii) to (cxxxvi) of PDR 1, which were worded as follows (with omitted text restored with underlining) :

(cxxviii) Rather than a formal discipline process being immediately commenced, which would involve actions to ensure the immediate securing of any potential evidence, the issuing of discipline notices, gathering of witness statements and interview to follow etc – Chief Inspector Snowball was instead taken away for a protracted 'de-brief' session about his actions.

(cxxix) It is understood that Snowball first revealed what he had done to Ch Supt Rebekah Sutcliffe who was his mentor and is the partner of Paul Rumney, Acting Head of Professional Standards. Rumney raised it with the Deputy Chief Constable Hopkins who met with Snowball and told him how such behaviour was totally unacceptable.

(cxxx) ACC Sweeny [sic] *was made aware and became involved in dealing with the matter. He apologised to the Divisional Commander and to DCI Millington.*

(cxxxi) Chief Superintendent John Rush was then dispatched to Wigan to investigate the matter (again being called upon by ACC Sweeney). He conducted interviews with the Senior Leadership team at Wigan, in the process making the 'victims' feel more like the offenders.

(cxxxii) ACC Sweeney, given the circumstances, could not prevent Snowball from being reverted back to Chief Inspector but once he had returned to his previous division at Stockport, and despite having no investigative experience, he was given the position of Detective Chief Inspector, a role that he had always coveted.

(cxxxiii) Mr Snowball was subsequently given a written warning for breaching the discipline offence of 'respect for authority'. A mere slap on the wrists, considering his conduct. He is buoyed by the fact that he can return to the promotion stakes within a year.

(cxxxiv) He did not receive a final written warning, considered by many as the most 'lenient' form of disciplinary action that he could expect in the circumstances, others strongly believing it was a clear case of 'gross misconduct' and should have been dealt with more harshly.

(cxxxv)The punishment delivered has left people across the Force open mouthed in astonishment. Questions need to be answered about why he wasn't he dealt with for the far more appropriate discipline offences of honesty and integrity' and 'discreditable conduct'. Did his backer, ACC Sweeney sort it for him? In order to put some distance between himself and the dispensing of punishment, the task of serving Mr Snowball with his written warning was left to the new incumbent on the Command Floor, Temporary ACC Zoe Sheard. ACC Heywood ultimately concluded the matter, yet again showing the closeness ACC Sweeney and ACC Heywood enjoy.

(cxxxvi) It has also left Julian Snowball as the DCI at Stockport, the most senior detective on the division. An officer who will have to lead and give advice on the most serious investigations, and grant authority for a variety of tactics. This is an officer with no investigative background or experience to draw upon. An officer whose integrity and honesty are tainted. An officer who will be working on a division that has for 2 decades been associated with arguably the most infamous criminal and Organised Crime Group in the Force, and who continue to present a danger though their criminal activities to the Force. An officer whose only qualification for the role is being a friend of an ACC, 'one of Terry's gang' as he admits himself. The people of Stockport and the officers who police that division are being placed at 'risk of harm' as the most senior detective on the division does not have the requisite skills and experience to perform the role.

Para. 72 of the List of Issues sets out the claimant's case that he reasonably believed that this disclosure was made in the public interest and that this information tended to show (a) that there had been a failure to comply with one or more legal obligations, namely (i) the duty to protect the public and prevent crime; and/or (ii) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to

the Police (Conduct) Regulations 2012 and in particular the standards of Honesty and Integrity and Reporting Improper Conduct and/or (b) that the health or safety of any individuals, namely the people and police officers of Stockport , had been, or was likely to be endangered.

Relevant facts.

PD 1.13 1.Following the revelation by Mr Snowball on 20 November 2012 (it is also in places said to have been on 19 November 2012, but it seems more likely to have been 20 November 2012) of his actions in bugging two officers in the SLT at Wigan, CS Sutcliffe referred the matter to PSB. DCS Paul Rumney was the Head of the PSB, and on 20 November 2012 he called Paul Savill, the Head of the Counter Corruption Unit ("CCU"), which sits within the PSB. DCS Rumney informed him of what Mr Snowball had done, and how he planned to speak to him in a few days. At the suggestion of Paul Savill , the recordings made by Mr Snowball were provided to the CCU, with Mr Snowball attending CCU that day to hand over the devices and the recordings. He was spoken to that day (though not, it would seem in a formal interview) primarily from a welfare perspective.

PD 1.13 2. The CCU set about playing and transcribing the recordings until on 23 November 2012 D/Supt. Paul Rumney of PSB then ordered the CCU to stop this process, after taking legal advice.

PD 1.13 3. A meeting was held by D/Supt. Turner (it seems) and DI Flindle and with Mr Snowball on 23 November 2012. This was not a formal interview, nor was it under caution. It is noted in D/Supt. Turner's policy book (pages 3028 to 3029, with a typed up version at page 3072A of the bundle). It is also noted in the IPCC Poppy 3 report at para. 85 (page 5678 of the bundle) . Later on Friday 23 November 2012 D/Supt Turner discussed the case, and noted (page 3037 of the bundle, in typed - up form) that papers (i.e a Reg. 15 notice) would not be served until the following week as Mr Snowball was undergoing a welfare assessment which would not be completed until the following Monday.

PD 1.13 4. In relation to the conduct of Mr Snowball in placing the bugging devices, a formal PSB investigation was commenced on 27 November 2012, with ACC Copley , initially, as the Appropriate Authority. She appointed ACC Sweeney as the investigating officer (see page 2996 of the bundle), D/Supt. Peter Turner as the assistant investigating officer, and DI Julian Flindle as an assistant investigator.

PD 1.13 5. Because Mr Snowball had claimed that he had taken this action because he was being subjected to bullying, an investigation was launched into whether there was any bullying behaviour occurring at Wigan. That investigation was to be conducted by DCS Jon Rush, at the request of ACC Sweeney. This was not a formal investigation, as one was being carried out by the PSB, but was designed to ascertain whether there were wider issues of bullying by senior management at Wigan.

PD 1.13 6. The remit of that investigation was agreed on 27 November 2012 between DCS Rush and ACC Sweeney, and was recorded in a document which is at page 3013

of the bundle (and is the result of previous communications on pages 3006 to 3012 of the bundle). The remit document expressly set out that DCS Rush would not be investigating the placing of listening devices in the offices of his superiors by Mr Snowball, nor would he consider any material obtained as a result of it.

PD 1.13 7. On 29 November 2012 an announcement was made by T/ACC Sheard that Mr Snowball would be posted to Stockport and reverted to Chief Inspector with effect from 3 December 2012 (see page 707 of the bundle).

PD 1.13 8. D/Supt Turner completed a severity assessment on 30 November 2012, pages 3019 to 3021 of the bundle. In it D/Supt. Turner states that it has been completed following meetings with CC Fahy and ACC Sweeney, and taking into account legal advice from Sandra Pope, Force Solicitor, a debrief of DCI Riley and DSgt Graham-Cummings and emails from redacted persons, but almost certainly DCS Donnellan and DCI Millington.

PD 1.13 9. The assessment goes on to set out the circumstances of the case, and T/Supt. Snowball's explanation for his actions. There ensues (on page 3020) a redacted section, but D/Supt. Turner then goes on to set out his views on the matter under the heading "Considerations". It is worth setting out this section in full.

"Considerations;

The breach of the privacy of these officers and others is serious. This Is compounded by the seniority of T Supt Snowball and the fact that his role would require the evaluation of applications under the RIPA Act where the necessity and proportionality of such acts needed consideration by him. His actions are a course of conduct which makes it more serious. He has researched the legality of following these actions, purchased a device at considerable expense and deployed it to two offices covertly and then after a delay listened to the contents.

The deployment cannot be justified even if his fears were proven. In addition to this there Is no evidence that he tried to seek advice or support regarding the alleged bullying nor instigated the bullying grievance policy in line with usual protocols. This may jeopardize any whistle blowing defence he may have wished to rely on for deploying the device.

The lack of justification behind taking the action gives an imperative that action is taken to discourage any future similar activity by other parties. As such formal action should follow and this could be raised as gross misconduct.

However, T Supt Snowball has raised the issue with a senior officer. Whilst it could be argued that he did so in confidence and therefore did not intend for it to be raised formally in the manner it has , he has surrendered to the CCU offices and submitted himself to a full debrief. He did this knowing that be was in jeopardy of facing a misconduct investigation and has apparently outlined as fully as possible what he has done. He has been described a broken man and his welfare has been required to attend welfare for an assessment . He has been tearful and his account was disjointed

and difficult to obtain giving evidence of a man that was not thinking straight. He has surrendered all of the files he recorded.

Contact has been made with [DSC Donnellan] and [DCI Millington]. Whilst they are angry at the invasion of their and others' privacy, they are willing to accept the approach the Branch takes to resolve this matter. In fact, whilst they would provide evidence to support any process, they have indicated that they do not want to pursue any criminal process and want to minimize embarrassment to staff caught up in this inadvertently and protect the Force reputation.

T Supt Snowball has lost his temporary status and has been returned to Stockport Division as part of this process and due to Command having lost confidence in his ability to make decisions at Superintendent level. The Chief Constable has indicated that he does not feel that dismissal is a necessary outcome for this breach of the code of conduct.

Decision

Taking into account the Chief Constables view, the views of [DCS Donnellan] and [DCI Millington] the openness of T Supt Snowball on the debrief, and willingness to surrender the material, the impact on him immediately , and likely impact over the short to medium term on his career , against the course of conduct he embarked upon, papers should be served at misconduct level.

[Redacted]

This severity assessment will be reviewed periodically and if circumstances change that may require it to be changed, then the reasons why will documented prior to any decision to change it."

PD 1.13 10. Sir Peter Fahy did not recall being asked, or expressing, his view on what action should be taken against T/Supt. Snowball, but does accept that Supt. Turner may have spoken to him about T/Supt. Snowball. The Tribunal accepts that if Supt. Turner has referred to the Chief Constable's view, he believed, for one reason or another, that he had such a view. Sir Peter Fahy's view was that the conduct of Mr Snowball was very serious, describing it as "absolutely outrageous and reprehensible". His concern was to ensure that procedure was followed, and that the victims were re-assured that a proper process was being followed. He did not wish to interfere, and was unclear on the legal position of what Mr Snowball had done. He agreed that it did look like gross misconduct, and that it could be said that any mitigation should have been considered at the hearing stage, not at the initial stage. He did, however, defer in this to the experience of D/Supt Turner in PSB matters.

PD 1.13 11. Mr Snowball was served with a Reg. 15 notice on 30 November 2012 (pages 3016 to 3018 of the bundle).

PD 1.13 12. On 11 January 2013, CS Julie Cooke wrote to T/ACC Sheard , who had by now replaced ACC Copley as the appropriate Authority , on behalf of T/Supt. Snowball,

seeking leniency for him , and requesting that the matter was dealt with by way of management action (pages 3073 and 3074 of the bundle).

PD 1.13 13. On 22 January 2013 DCS Rush completed his report (pages 3075 to 3082) into the bullying allegations made by Mr Snowball at Wigan. His conclusion was that these were not made out, and his report to this effect was sent to ACC Sweeney.

PD 1.13 14. On 30 January 2013 ACC Sweeney prepared his report on Mr Snowball for the conduct proceedings (pages 3084 to 3090 of the bundle) . Although it was signed on his behalf by DCS Turner, it seems likely that it was DCS Turner who prepared it, as the email traffic on 4 and 5 February 2013 (page 3082 of the bundle) shows. The conclusion of the report was that Mr Snowball had a case to answer for misconduct, in the form of breaching professional standards in relation to authority , respect and courtesy, and should face a misconduct meeting. A notice (undated, but probably the same day) was prepared to that effect (page 3083 of the bundle). T/ACC Sheard, who was by now responsible for the PSB, agreed with the report (referring to D/Supt. Turner's rationale) and that T/Supt. Snowball should face a misconduct meeting, and endorsed the report to that effect (page 3091 of the bundle).

PD 1.13 15. A misconduct meeting was convened for 20 March 2013. It was chaired by ACC Heywood. No minutes or other notes of that meeting are included in the bundle, but it would seem (from the IPCC Poppy 3 report) that DCI (as he then was) Snowball was present, and was represented by DCS Julie Cooke who had written on his behalf to ACC Sheard.

PD 1.13 16. Mr Snowball accepted that his conduct amounted to misconduct, and he was given the penalty of a final written warning (see pages 3093 to 3094 of the bundle). the Tribunal notes that Mr Snowball had also been reverted in rank back to CI, which had in fact occurred with effect from 3 December 2012.

PD 1.13 17. The claimant's view is that this penalty was unduly lenient. He is not alone in that, as , for example, Paul Savill considered that Mr Snowball had been very fortunate, Sir Peter Fahy considered he had committed serious misconduct, and Jon Rush considered that he had been very lucky.

PD 1.13 18. Mr Snowball remained at Stockport as a CI, and was initially given project work to do, in uniform, as there was no actual vacancy for a chief inspector. His ultimate line manager was DCS Sykes, with Supt. Phillips as his immediate line manager . In March 2013, when a T/DCI left to take up another posting, DCS Sykes assigned CI Snowball to the role of DCI, a substantive move, which was agreed with the Chief Officers Group. There is no documentation about this in the bundle, save for references which are made in the IPCC Report into Poppy 3 (page 5861 of the bundle). As this was a finding of the IPCC, which probably had the supporting documentation available to it, the Tribunal has no reason to doubt this factual account.

PD 1.13 19. There is no other evidence of what happened with Mr Snowball from November 2012 to March 2013 . There is no evidence of ACC Sweeney having any involvement in his appointment to DCI at Stockport in March 2013. The claimant's

witness statement does not say anything about why he believed that ACC Sweeney was responsible for Mr Snowball getting appointed as a DCI after he had gone back to Stockport.

PD 1.13 20. In due course, Mr Snowball went on to lead Operation Oakland, the subject of the claimant's disclosure no. PD.3.1. At the time that the claimant first wrote PDR1, 20 June 2013, that Operation had not yet taken place, and hence nothing contained in this disclosure can be based upon those events .

PD 1.13 21. This matter formed part of the matters investigated by the IPCC in Poppy 3. It recorded that Mr Snowball's career with the respondent commenced in January 1995, and was mainly in uniform, until 2011, when he attended the Force SIO Development Course and took the SIO Management of Serious Crime module. He was attached to the SCD in January 2011 (possibly in MIT, as the IPCC Poppy 3 Report records) , until his appointment to Wigan in April 2012. He and the claimant had worked together when they were both posted to Stockport in 2009. Its conclusions were (at paras. 351 to 361 , pages 5714 to 5716 of the bundle) that there was no evidence that the investigation into Mr Snowball's conduct did not comply with the Police Reform Act 2002. Whilst there was some discussion of the legal technicalities of a notice served upon Mr Snowball, the view was taken that there had been no irregularity , and that the decision to deal with the matter at the level of misconduct was one which was taken at the appropriate level and was within the range of reasonableness , and could not be challenged.

PD 1.13 22. Those then are the relevant facts. It has to be remarked that the Tribunal's fact - finding task has not been made any easier by the redactions in many of the documents which relate to this disclosure. The Tribunal expects that they were made from the viewpoint of any FOIA requests being made, or to protect third parties from repetition of serious allegations that were not proven, but they are, the Tribunal considers, largely irrelevant, pointless, and inconsistent. Names that are redacted in one document (usually the victims of the bugging by DCI Snowball) then openly appear in another. To the extent that they have hampered the Tribunal's fact – finding, and to the extent that the respondent may not have provided clear and intelligible evidence on all the relevant factual matters, it will be the respondent, as , presumably, the party who carried out the redactions, who will have to accept any consequences of this obscuring of what might be relevant evidence.

The s.43B tests.

PD 1.13 23. The claimant contends that he reasonably believed that the disclosure tended to show (a) that there had been a failure to comply with one or more legal obligations, namely (i) the duty to protect the public and prevent crime; and/or (iii) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of honesty and integrity; duties and responsibilities and discreditable conduct; and/or (b) that the health or safety of any individual, namely the people and Police officers of Stockport, had been endangered.

PD 1.13 24. The Tribunal does not see how the claimant could reasonably have believed that this disclosure tended to show that the respondent was failing to comply with his legal obligation to protect the public and prevent crime. It is, of course, to be remembered that the claimant was not disclosing the fact that Mr Snowball had broken any legal obligation (although he could well have had a reasonable belief that it tended to show that he had) , but is saying that this disclosure tends to show that the respondent was failing to comply with these particular legal obligations by reason of his (in the persons of ACC Sweeney and ACC Heywood) failure to discipline Mr Snowball adequately , and/or the decision to appoint him the DCI role in Stockport.

PD 1.13 25. The problem for the claimant is that what a disclosure tends to show, and hence what a whistleblower can reasonably believe that it tends to show, must, to a large extent be apparent from its face. This disclosure is not about how good or bad a police officer Mr Snowball was, it is about how he was treated for an act of wrongdoing which had nothing to do with his abilities as an investigator. It had everything to do with his conduct in relation to his colleagues, which was highly improper. It did not, however, involve any public - facing police activity, or investigation. The claimant's view, of course, of Mr Snowball was that he was an inadequate detective who lacked experience. That is the lens through which he viewed Mr Snowball, but the Tribunal cannot see how he can reasonably have believed that this disclosure, of itself, tended to show that by inadequately punishing him for this transgression, the respondent thereby was in breach of this legal obligation to protect the public and prevent crime. The claimant's thesis is that by allowing him to go to Stockport and become a DCI the respondent thereby would breach this legal obligation.

PD 1.13 26. The same applies to the alternative basis relied upon in relation to the health and safety of anyone , be it public or police officers, had been , or was likely to be, endangered. This disclosure relates to the inadequate sanction imposed upon Mr Snowball for bugging his colleagues. Their health and safety was not endangered by that, nor was anyone else's. The Tribunal simply fails to see how the claimant could reasonably have believed that this disclosure (which is not the same as that relating to the actions of Mr Snowball on Operation Oakland) tended to show that the failure to discipline Mr Snowball endangered anyone.

PD 1.13 27. In relation to the other limb of the legal obligation ground, breach of the Regulations, the Tribunal's previous findings apply.

PD 1.13 28. Whist this disclosure fails the s.43B(1) tests in terms of what the claimant reasonably believed that it tended to show, we have considered whether this disclosure also falls on the grounds of the ***Muchesa*** test. We do not consider that it does, for much the same reasons that we so found in respect of PD1.12 above. The matters disclosed did not involve the same level serious risks to members of the public, or to other officers, as the disclosures relating to Nixon and the Cregan investigations did . Whilst the claimant did make reference to 'risk of harm', he did use those inverted commas, and the risks he was referring to were considerably lower scale than those involved in Nixon and the Cregan investigations, where, on his case, they had come to fruition. Further, the timescale is less stark, in that the conduct proceedings against Mr Snowball were not concluded until March 2013, making the period in question shorter. Delay, in these

circumstances was less critical, and not, in our view necessarily incompatible with a reasonable belief that the disclosures tended to show the conduct alleged. Again, the matter is debatable, but we are not satisfied that the claimant would fail on this disclosure on the basis of the ***Muchesa*** test.

PD1.13 29. Turning to the issue of reasonable belief that it was in the public interest to make this disclosure, we are satisfied that the claimant would have shown, notwithstanding that he may also have a strong personal interest in making it, and it has a lot to do with his view of ACC Sweeney, and virtually anything he did, that he did have a reasonable belief that it was in the public interest to make it. That is, however, an academic finding.

The s.43F tests.

PD 1.13 30. If, however, the Tribunal were wrong about the s.43B issues, and this disclosure does survive those tests, it also has to be considered under s.43F. The claimant makes a number of allegations in this disclosure, and has to establish a reasonable belief in the substantial truth of each of them. That T/Supt. Snowball bugged SLT officers is not in issue, nor is the claimant's reasonable belief that he did so. Many of the other allegations made, however, are much more contentious.

PD 1.13 31. Again, the fact that this disclosure is made as an example, under section L of PDR1 is important, because the whole thrust of the claimant's disclosure is to highlight the alleged cronyism practised by ACC Sweeney.

PD 1.13 32. The claimant makes these allegations:

a) Mr Snowball was "taken away" for a protracted de-brief, rather than an immediate investigation being instigated and evidence gathered;

b) Chief Superintendent Jon Rush conducted interviews with the Senior Leadership team at Wigan, in the process making the 'victims' feel more like the offenders;

c) ACC Sweeney gave Mr Snowball the position of Detective Chief Inspector at Stockport;

d) T/Supt. Snowball had no investigative background or experience;

e) ACC Sweeney had "sorted out" the punishment of Mr Snowball, and had involved ACC Sheard in the administration of his written warning to divert attention from the fact that he had been involved in protecting Mr Snowball;

f) ACC Heywood had been complicit in the unduly lenient punishment of Mr Snowball because of his close relationship with ACC Sweeney;

g) Mr Snowball's "only qualification" for the role of DCI at Stockport was being a friend of ACC Sweeney, one of "Terry's gang".

PD 1.13 33. The Tribunal considers that he has not established that he had a reasonable belief in any of these allegations. Accepting that he may have subjectively held a belief in some of them, not least because of his pre-disposition to see impropriety in anything relating to ACC Sweeney, it is the objective reasonableness of these beliefs that the Tribunal cannot accept.

PD 1.13 34. Starting with (a), the claimant has established no basis for a reasonable belief that Mr Snowball was "taken away" for a protracted de-brief, instead of an immediate investigation being started, and evidence gathered. In fact, the evidence is that upon Mr Snowball informing CS Sutcliffe of what he had done on 20 November 2012, she that day informed the PSB. Evidence in the form of the recordings was gathered because that day Mr Snowball attended CCU and handed over the recordings. He was served with a Reg.15 notice on 30 November 2012, some 10 days later, the delay being attributed to the need to consider his welfare. The claimant seeks to suggest that there was some special treatment of Mr Snowball in all this, because of his association with ACC Sweeney. There is nothing about this in paras. 247 to 251 and 252 to 262 of his first witness statement, nor in any of his subsequent witness statements, nor in his evidence to the Tribunal . He was taken to para.(cxxix), omitted from the List of Issues, but part of this disclosure, in which he makes reference to DCC Hopkins speaking to Mr Snowball, but it is unclear whether this is what the claimant means by a "protracted de-briefing", which he implies was improper, and was not the procedure that should have been followed. He has laid no evidential foundation for this belief, and it is not a reasonable one.

PD 1.13 35. In respect of allegation (b) which has been wholly overlooked in the claimant's submissions, it is wholly absent from his witness evidence. The claimant does not mention this in his witness statement to the Tribunal, nor to the IPCC , nor, of course, has he adduced any evidence from Shaun Donnellan or Howard Millington to establish this allegation. He identifies those officers, however, as his source of information for the whole of PD1.13.

PD 1.13 36. In respect of allegation (c) the claimant has adduced no evidence in support of why his belief that ACC Sweeney was responsible for Mr Snowball becoming a Detective Chief Inspector in Stockport. The evidence is that DCS Sykes was responsible for that, and the decision went through the Chief Officer Group, as was the process. Other than his general suspicion that ACC Sweeney was behind everything that related to Mr Snowball, the claimant has provided no evidence upon which this belief can be considered reasonable.

PD 1.13 37. In relation to allegation (d), this again is simply not correct, and the claimant could not reasonably have believed that it was. Mr Snowball had been on the SIO training , and had been posted to the SCD. He may only have had limited experience, as he was moved to Wigan after a few months. That may not be a lot of investigative background or experience, but it is a total exaggeration to say that he had none. That , of course, is not the test, it is whether the claimant reasonably believed in the substantial truth of the allegation. We do not consider that he did. He made no enquiries about Mr Snowball's experience, and for a time between 2011 and 2012 the claimant and Mr Snowball would both have been members of the SCD (see the claimant's posting

history at page 1808 of the bundle) . That alone means that he was, or should have been, aware that Mr Snowball had some, if not extensive, investigative background and experience. If he was not aware, then his assertion that he had none, was not a reasonable one.

PD 1.13 38. In relation to allegation (e) , whilst the claimant framed this part of his disclosure in question form, we do not consider that the claimant was raising a genuine question, he was making an allegation, as is apparent from the remainder of paragraph (cxxxv). He confirmed that in his cross – examination (page 2252 of the transcript) that he stood by this allegation .The claimant had no evidential basis for this belief. Whilst it was correct that ACC Sheard did serve the written warning upon Mr Snowball , she was the Appropriate Authority, as can be seen from the letter sent to her by CS Julie Cooke on 11 January 2013. The claimant's allegation, however, is that ACC Sweeney "left" this to her, implying that he had some influence upon this, and did so to in order to distance himself from the punishment. The claimant has adduced no evidence for this. In fact, as can be seen, by January 2013 T/ACC Sheard was the ACC responsible for the PSB, and would be the natural person to carry out this function. The claimant has failed to explain upon what basis he has made the allegation that ACC Sweeney engineered this situation to distance himself from the process.

PD 1.13 39. This whole paragraph is based solely on his view of the ACC Sweeney and his supposed close relationship with Mr Snowball, a relationship which Mr Snowball himself in his written response to the IPCC's questions (page 16 of the document, page 5758 of the bundle) actually strongly refutes. Regardless of this, other than supposition and pre-conception of the likely conduct of ACC Sweeney, the claimant has established no reasonable basis for this belief.

PD 1.13 40. In relation to allegation (f) , whilst the claimant is correct that ACC Heywood concluded the matter, other than the alleged relationship between him and ACC Sweeney, the claimant had no evidential basis for the allegation that he too was involved in the allegedly unduly lenient punishment of Mr Snowball.

PD 1.13 41. Finally, in relation to allegation (g), a moment's thought reveals the hyperbole of this assertion. Mr Snowball had been a Chief Inspector , and an acting Superintendent. He had undergone SIO training, and had been in the SCD. He had, he accepted (see his written responses to the IPCC), limited experience as a detective leading covert operations, but that is not the same as him having no qualifications. Whilst he had may, in the eyes of the claimant , have been inadequately qualified for the post of DCI at Stockport, Mr Snowball's alleged friendship with ACC Sweeney cannot reasonably have been believed by the claimant or anyone to have been his sole "qualification" .

PD 1.13 42. This is an example of the exaggeration , or perhaps figurative speech, used by the claimant in his disclosures , which Mr O'Dempsey in his submissions, and the claimant in his evidence, sought to downplay, so as to avoid the strict requirements of s.43F for the claimant to establish that he had a reasonable belief in the substantial truth of the information he conveyed and any allegation contained in it. The Tribunal does not consider that such attempts can succeed. The claimant used the terminology that he did

in this disclosure, and the Tribunal is entitled to consider it all, and whether the claimant has established that he had a reasonable belief in what he disclosed.

PD 1.13 43. The claimant has cited (in the table compiled from his answers to the Tribunal's questions about the sources of his belief for each of his protected disclosures on 10 March 2022) only Shaun Donnellan and Howard Millington as his sources of belief for this disclosure. The former, of course, made a witness statement , which was before the Tribunal, though he was not called, in which he makes no mention of these matters whatsoever, and the latter gave no evidence. We are left, therefore, solely with the evidence of the claimant as to his beliefs, and the basis for them. He has not satisfied us that in these several crucial respects he had a reasonable belief in the substantial truth of the information he conveyed , and each allegation contained in it. This disclosure accordingly fails on the s.43F tests.

Postscript: PDs1.12 and 1.13.

PDs 1.12 and 13 1. The Tribunal would add this. Whilst it has adhered to the List of Issues, in which the claimant split the disclosures that he made in Example 2 under Section L of PDR1, the Tribunal considers that this is a very arbitrary and inappropriate way of characterising as two disclosures what is , in essence, only one. The thrust of the disclosure, as the heading of Section L , along with its introductory paragraphs (cxvi) and (cxvii) makes clear, is that ACC Sweeney put Mr Snowball into favoured positions, orchestrated the administration of a very lenient penalty after the bugging incident, and then put him into a DCI role at Stockport. The information and allegations contained in paras. (cxxiii) to (cxxxvi) of PDR1 should, as the claimant in fact drafted them, be read as a whole, not bifurcated in the way the claimant has since pleaded them.

PDs 1.12 and 1.13 2. That probably makes no difference, but, if we are wrong in our conclusions as to the effects of s.43F on either one of these two PDs separately, if they were to be taken together, then the absence of reasonable belief in any of the matters we have identified above would, of course, be fatal to the combined disclosure if read as a whole.

12. Protected disclosure 3.1: DCI Snowball oversaw an operation whereby police were ordered to stand by and watch as criminals put on balaclavas in a car park and then armed themselves with baseball bats before committing an armed robbery at a pub in the Stockport area.

The information disclosed, with the omitted wording from the List of Issues restored reads:

"DCI Snowball recently led an investigation into a team of armed robbers at Stockport. He oversaw an operation whereby police were ordered to stand by and watch as criminals put on balaclavas in a car park and then armed themselves with baseball bats before committing an armed robbery at a pub. Yes, he had police officers stand by and watch and do nothing. It has many similarities to Op Nixon; a senior officer advanced through cronyism failing to protect the public.

DCI Snowball allowed this to happen because of flawed and hugely incompetent decision making. He wanted to see where the robbers would take their stolen goods; alcohol and cigarettes and prioritised this above the risks presented to the landlord and landlady. What would have happened if someone had been killed? Hit over the head with a baseball bat?

And we all know the impact that violent crime can have on victims. Even a young probationary constable knows that. We know how lives can be shattered and victims can be left traumatised after being subject to a violent crime. What effect has this attack had on the victims in this case? I wonder how they would feel if they knew the criminals could have been stopped and arrested in the car park before they had even entered their pub. Have they been told? The actions of officers such as DCI Snowball make the Force liable for any suffering or harm that befalls the victims.They could have been protected but were not.

DCI Snowball had been placed in this 'critical decision making position' because of cronyism, because he had friends in high places even though he didn't have the experience or the skills as I had highlighted. He wasn't dealt with properly for the discipline offences he committed at Wigan. His senior officer friends sorted it for him. He was given just a written warning and then allowed to take on the position of DCI on a division where he lived. And he crashed and burned in that position, exactly as I had predicted."

List of Issues - Para. 102: The claimant contends that he reasonably believed that his disclosure was made in the public interest , and that this information tended to show (a) that a criminal offence, namely misconduct in public office, had been committed by DCI Snowball; and/or (b) that there had been a failure to comply with one or more legal obligations, namely (i) the duty to protect the landlord/licensee and the members of the public who were present in the public house and to prevent crime; and/or (ii) the Respondent's duties under the HRA and Article 2 of the ECHR to safeguard the lives of the landlord/licensee and members of the public; and/or (iii) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of duties and responsibilities; discreditable conduct; and/or (c) that the health or safety of individuals, namely the landlord/licensee and the general public, had been endangered.

Relevant facts:

PD 3.1 1. Operation Oakland was a divisional investigation into a series of commercial burglaries and business robberies involving a crime group of several individuals. In the main, burglaries were being committed overnight at dwelling houses in order to steal motor vehicles; false number plates attached, and they were then used in burglaries or robberies.

PD 3.1 2. The primary target of the offenders was cigarettes and cash. A number of burglaries were committed on mainly commercial premises such as off licences and supermarkets. In addition, during some of the robbery offences weapons were

threatened, for example a hammer and also a brick. More than 40 crimes were linked together.

PD 3.1 3. Mr Snowball appointed himself as the SIO on this investigation within the Stockport Division. The Operation Oakland team liaised with other police forces regarding crimes in other force areas by the same OCG. The objective of the operation was to conduct covert surveillance of the subjects and their home addresses; prepare a lifestyle package; corroborate intelligence relating to their movements and suspected criminality; in order to prevent / detect offences burglary / robbery across the relevant divisions; and provide a trigger point for the Dedicated Surveillance Unit (DSU).

PD 3.1 4. On 5 October 2013, Mr Snowball made a policy decision (documented in his Policy Book at pages 2291 to 2302 of the bundle) that “no actionable intelligence will be allocated unless it demonstrates a risk of physical harm or threat to life.” He also documented that “Operation Oakland... .is an investigation which currently has no intelligence or evidence of activity that could be classed as a significant threat of harm to individuals”.

PD 3.1 5. It was also recorded that “by acting on the intelligence a piece at a time you provide the nominal an opportunity to enter an early guilty plea and receive a substantially lower punishment from the courts. This will not achieve our overall objective of keeping people safe for the medium to long term”.

PD 3.1 6. On 18 October 2013 Mr Snowball documented his rationale in allowing the offences to "run''. His belief was that this would enable him to secure lengthy custodial sentences for the suspects and also to identify those involved in handling and distributing stolen goods.

PD 3.1 7. The decision was taken to carry out three nights of surveillance starting on 22 October 2013. A robbery took place that night, which was linked, it was believed, to the gang targeted by Operation Oakland. This was later confirmed.

PD 3.1 8. During the evening of 24 October 2013 four unidentified nominals were observed in one of the previously identified dwellings in a subject vehicle. They were later seen at the Dog and Partridge public house in Stockport , around 10.45 p.m. One of the men who got out and went into the public house had a baseball bat.

PD 3.1 9. The robbers were and remained under observation. An officer was able to observe some of the events through the pub window as they occurred and provide updates by radio. Once inside one of the males asked for the manager and directed the manager up to the office to where the safe was kept. Money was taken from the safe, including ice cream tubs containing coins. Notes were also taken from the tills . One of the males stole watches from two of the customers.

PD 3.1 10. Mr Snowball discussed with DSgt D’Souza regarding a possible intervention/arrest now the offence was taking place. His overriding concern was whether the offenders would use the baseball bat, and whether any of the customers

would try to be a 'have a go hero'. DSgt D'Souza advised not to attempt to arrest, and to evidence the commission of the offence.

PD 3.1 11. Mr Snowball agreed, and gave the order (which was documented at page 2314 of the bundle) not to arrest, to gather intelligence and take evidence of the commission of the offence. This incident was reported to senior command, and in due course a decision was later taken to arrest the perpetrators in a subsequent operation.

PD 3.1 12. The incident was referred to DCS Shenton, and DCS Russ Jackson who was then taking over from him as Head of Crime.

PD 3.1 13. Mr Snowball had been appointed as DCI at Stockport by DCS Sykes around March 2013, a decision which was, the IPCC found, and the Tribunal accepts , approved by the Chief Officer Group. There is no evidence, the claimant accepted , that ACC Sweeney had any role in that appointment.

Discussion and findings.

The information and the allegations contained in it .

PD 3.1 14. The Tribunal finds that the information conveyed by the claimant was indeed as summarised in the List of Issues, but, crucially, it was not confined to that, it went on, as expressly pleaded, in the final cited paragraph, to make allegations about how he was appointed into the position of DCI at Stockport, which is alleged to have been by reason of cronyism , on the part of "friends in high places".

Reasonable belief under s.43B(1) in what the disclosure tended to show.

PD 3.1 15. The Tribunal must first apply the tests under s.43B to this disclosure. The first issue is whether the claimant believed, and if so, whether he reasonably believed, that this disclosure tended to show , under s.43B(1)(a) that a criminal offence, namely misconduct in public office, had been committed. There is no doubt that the offence of misconduct in public office by DCI Snowball is the relevant criminal offence. That there was also a criminal offence being committed by the perpetrators of the robbery is not what the claimant was disclosing. He also contends that it tended to show that the safety of members of the public had been endangered. He also claimed that he had a reasonable belief that it tended to show that the respondent failed in his legal obligation to protect the public, and prevent crime. The disclosure does tend to show both these things, and his belief that it does is reasonable. Whether the claimant reasonably believed that this disclosure tended to show misconduct in public office is, in our view, much more questionable. The claimant was well aware (from Operation Nixon, see PD1.2) from 30 January 2014, the day before he made these disclosures to the IPCC, of the high threshold for charging such a criminal offence, and if T/DSupt Scally's conduct in Operation Nixon did not meet that threshold, it seems obvious that the operational decisions of Mr Snowball would equally fall well short of that threshold.

PD 3.1 16. The Tribunal's previous observations on Article 2 of the ECHR , and the Police Conduct Regulations apply, but they are of no consequence, as the claimant has satisfied the tests under s.43B(i)(a) and (d) for the reasons stated.

PD 3.1 17. We do not consider that any ***Muchesa*** issues arise in respect of this disclosure. The timescale is much shorter, given that the events in question were in October 2013, and the disclosure to the IPCC was make at the end of January 2014. Given also that the claimant made this disclosure to the IPCC, expressly referring to the risk to the public that this incident involved , notwithstanding any personal axe to grind that he may have had, the Tribunal does accept that he also had a reasonable belief that it was in the public interest to make this disclosure. This disclosure therefore does satisfy s.43B.

Does the claimant satisfy the s.43F test?

PD 3.1 18. Whilst this disclosure thus satisfies the s.43B tests on at least one of the prescribed grounds, the Tribunal has to go on to decide whether he held the requisite belief in the substantial truth of the information and any allegations made in it for the purposes of s.43F.

PD 3.1 19. The problem for the claimant is that this disclosure is not limited to disclosure of Mr Snowball's poor decision making , and its risks to the victims of an armed robbery, it contains allegations about his promotion into the position that he held. That is omitted from the description of the information disclosed at para. 99 of the List of Issues, but it is clearly, on the claimant's own case, part of the information conveyed.

PD 3.1 20. Again, as with PDs 1.12 and 1.13 discussed above , the claimant has made allegations that "friends in high places" had put Mr Snowball into the DCI role in Stockport, due to cronyism. These friends are unspecified , but doubtless, given how the claimant has put his whole case, and the allegation that Mr Snowball was one of Terry's boys, they included ACC Sweeney. The evidence, however, is that DCS Sykes, and the Chief Officer Group, were responsible for his appointment to this position. The claimant , of course, may not have known that, but neither did he know who had actually been involved in his appointment. In short, he made, an assumption, based on his preconceived view of the relationship between Mr Snowball and ACC Sweeney, and nothing else. The claimant has adduced no evidence that ACC Sweeney had any involvement in that appointment, nor, more importantly, any evidence from which he could have formed a reasonable belief that this had been the case. The making of this allegation in his disclosure to the IPCC was not reasonable, it was reckless.

PD 3.1 21. That, again, as with PDs 1.12 and 1.13, is fatal to this disclosure, and it is not a protected disclosure.

13.Protected disclosure 3.2: Failure to impose appropriate disciplinary sanction on CI Snowball.

List of Issues : Para. 104: No disciplinary action was taken against DCI Snowball for allowing the robbery to take place, or for falsifying details on a warrant in the investigation, because of his friendship with ACC Sweeney and other senior officers.

The information disclosed, including the parts of the paragraphs in PDR3 that are omitted from the List of Issues , with underlining, was as follows:

And the 'horror story doesn't end there; I also understand that he may have falsified details on a search warrant. Doesn't this constitute a criminal offence? Is this misconduct in a public office? I also wonder how the disclosure issues in this case have been dealt with. I fear they may not have been.

So, what action has been taken against DCI Snowball? Has there been an internal investigation? It is my understanding that no formal action has been taken against him and that he has been granted a career break by the Force. He is off to New Zealand for a few years; rumour has it to try to join the police over there. He had his leaving do this week. Is this so the heat can die down? A compromise to resolve a difficult situation for the Force? Have senior officers sorted it for him again? Has there been another cover up? If he chooses to return in a few years perhaps people will have moved on and he can resume his career untarnished.

I feel the circumstances surrounding DCI Snowball need to be independently investigated alongside the other issues detailed within my 'whistle-blowing' reports. He is closely associated to senior officers and his misconduct and failings have been covered up. Senior officers also have to be held responsible for his failings, they placed him there. CS Rumney as Head of PSB will have again have had oversight of this latest incident. DCI Snowball's actions have exposed the public to unnecessary harm and violence. I predicted this. As I predicted the failings of D/Supt Scally prior to last summer's tragedies. Why will the Force not listen? GMP are repeatedly placing the public at risk.

Para. 107 of the List of Issues sets out the claimant's case that he reasonably believed that this disclosure was made in the public interest and that this information tended to show (a) that there had been a failure to comply with one or more legal obligations, namely (i) the duty to protect the public and prevent crime; and/or (ii) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of Honesty and Integrity and Reporting Improper Conduct and/or (b) that the health or safety of any individuals, namely the general public, had been or was likely to be endangered.

The relevant facts.

PD 3.2 1. Following arrests made after the robbery on 24 October 2013, search warrants were obtained in order to search for stolen property. Mr Snowball did not personally complete the paperwork for the application, but when the "warrants" (for they were in fact not truly warrants, but were applications for warrants) were issued he noticed that they revealed sensitive intelligence which was not to be disclosed to the arrested person, but would be if they had sight (as they would have been entitled to) of the

warrants as granted by the Magistrates. The precise details of this chain of events is set out in paras. 178 to 202 of the IPCC report for Poppy 3, and need not be rehearsed in full here.

PD 3.2 2. Suffice it to say that Mr Snowball did redact from the face of these "warrants" the sensitive material. He noted this in his Policy book (page 2326 of the bundle, although this appears to relate to the warrant not being accompanied by a particular form). An application was then made to a District Judge to determine the legality of the warrants, and this was confirmed, so they were executed.

PD 3.2 3. Following the events of 24 October 2013 Operation Oakland was reviewed on two separate occasions. The first was by Marin Bottomley, Force Review Officer, in a report dated 15 November 2013 (pages 2352 to 2354 of the bundle). This is also referred to as a review by the Major Crime Review Unit.

PD 3.2 4. Martin Bottomley's conclusions (page 2354 of the bundle) were:

"The aim of the operation, to arrest upwards of 12 core nominals and handlers, with only sparse divisional resources with DSU support allocated to it, was clearly highly aspirational, if not unachievable.

It is my view that the SIO's decision making and rationale, as expressed in the policy book, is flawed, dangerous and exposes GMP to reputational risk. It demonstrates a lack of empathy with potential victims, poor Judgement of risk and harm, lack of a focused Investigative mindset and an understanding of achievable operational objectives. I shared this view with the SIO during my discussions with him. My concerns on an initial reading of the policy book were not allayed during these discussions, indeed they were compounded. Whilst accepting full responsibility for his decisions and actions, during detailed debate around hypothetical scenarios it became clear that he did not believe his decisions were in any way flawed; nor was he able to demonstrate a good understanding of the investigative and evidential processes.

I have shared this report with DCI Heslop and he is in full agreement with my observations.

It is not my belief that the Issues arising from this review lie within the arena of misconduct. Indeed this review was initiated with a view to promoting individual learning and development. However, following discussion with Detective Chief Superintendent Jackson and our shared concerns, I am of the opinion that such is the level of risk which was attached to this operation by virtue of policy decisions around it and the failure to spot these at an early stage, further discussion should be held with the SIO's line manager and/or Divisional Commander to ensure he receives appropriate development and that management and oversight issues are addressed."

PD 3.2 5. On 20 November 2013 Supt Savill was requested by DCS Rumney , Head of PSB , to conduct a misconduct severity assessment in relation to Mr Snowball's policy and decision making In Operation Oakland. This arose from concerns expressed by DCS Russ Jackson, as Head of Crime.

PD 3.2 6. D/Supt Savill accordingly undertook a review of Operation Oakland. His 19 page report, which was submitted on 24 December 2013 (pages 2358 to 2375 of the bundle), provided a detailed, chronological assessment of Mr Snowball's decision making and actions. He concluded his report with a misconduct severity assessment of Mr Snowball's actions in relation to the professional standards of behaviour expected of police officers.

PD 3.2 7. In his conclusions D/Supt. Savill said this (pages 2374 to 2375 of the bundle):

"From a misconduct perspective the identified weaknesses in the understanding and Implementation of a covert Investigation plan, flawed risk assessments and the failure to maximise evidence recovery must be set against the fact that Operation Oakland has secured charges against six subjects in two violent robberies. DCI Snowball has led this investigation and taken responsibility for the decisions he has made in discussion with Mr Bottomley and whilst flawed and dangerous the intervention by theForce means that the actual harm arising from the policy was limited to unrecovered stolen property.

Moreover, the organisation has placed the officer in a DCi's post with responsibility for operations of this type without a substantive detective background and even more limited experience of covert investigation into conflict offences such as robbery.

The appointment was made In the wake of misconduct Investigation YD 255/12. DCI Snowball received a final written warning for placing a covert listening device in two private offices ; disregarding the collateral intrusion Into operational and personal matters to secure evidence to support a view he was being bullied

The aspirational objectives DCI Snowball set for the operation reflect similar naivety and the organisation should accept a part of the responsibility for the reputational risks DCI Snowball's policies In Oakland created.

The Stockport Division should also reflect upon the support provided to DCI Snowball and Operation Oakland. The lack of operational focus was apparent from the DSA granted or authorised by both Superintendents. The viability of surveillance against that number of subjects should have triggered further questions that would have exposed the flaws in the operational aims and associated risks. Similarly a governance structure would have similarly identified the risks the operation sought to carry.

Taking the successes of Operation Oakland, in the context of DCI Snowball's inexperience, the shared responsibility of Force and Division in deployment and support for the officer and balancing this against flaws in investigative reasoning, practice and risk assessments I do not consider that DCI Snowball has committed misconduct. Rather that the organisation should either appoint the officer to a role for which his experience is more suited or put in place a development plan with a mentor to ensure DCI Snowball's experience and decision making accords with GMP and the public's expectations of a senior detective.

Having spoken with Chief Superintendent Sykes I am aware that the Stockport area continues to suffer from high levels of crime of the type committed by the Oakland subjects. The division would benefit from an operational debrief of Oakland; chaired by a detective with experience of covert investigation. The debrief could focus on best practice and learning from the operation and consider any requirements for analytical and Investigative support to address the on-going challenges."

PD 3.2 8. On 19 November 2013 Mr Snowball submitted an application to undertake a four year career break, to commence on 15 May 2014. It is not in evidence who authorised that career break, when, or why.

PD 3.2 9. Mr Snowball began a period of leave ahead of that career break in January 2014, but before he did so, C/Supt Sykes met with him on 8 January 2014. In this meeting they discussed the performance Issues raised as a result of the two reviews completed on Operation Oakland, with specific regard to his decision making. This meeting apparently (from the IPCC report into Poppy 3) resulted in a letter dated 7 March 2014 being sent to Mr Snowball setting out D/Supt. Sykes's view on his conduct, and what steps may need to be taken upon his return to the Force. This document is not in the bundle for these proceedings.

PD 3.2 10. The IPCC investigated these aspects of the claimant's disclosures in Poppy 3. The ensuing report is at pages 5661 to 5734 of the bundle. Its conclusion was that Mr Snowball did not have a misconduct case to answer in relation to the warrants issue. It was accepted that the initial mistake had not been his, and his actions in redacting the warrants, and then seeking legal authorisation , were open and taken in good faith.

PD 3.2 11. The IPCC , however, took a different view in relation to Operation Oakland. There, the investigator considered (pages 5729 to 5731 of the bundle)

"446. It is the lead Investigator's opinion that the actions of Mr Snowball pertaining to the aspects outlined in this investigation were not criminal. There is clear indication that Mr Snowball was targeting a relevant organised crime group within the division and sought to obtain a positive outcome by gathering significant evidence. His decisions were transparently recorded in his policy book and acted in good faith. Even where the decisions made were poor, they were rationalised and reasoned.

Misconduct

447. As has been outlined within the policy and procedure section of this final report misconduct is defined as a breach of the standards of professional behaviour, whereas gross misconduct is a breach of the standards of professional behaviour so serious that, if proven, dismissal would be justified.
……

449. Prior to his Involvement in Operation Oakland, Mr Snowball's experience lay predominantly as a reactive senior detective divisional leader. Notwithstanding this Mr Snowball was not an officer of junior rank; he had recently been promoted to temporary superintendent. In the Investigator's opinion, an officer of this rank should at least be

able to demonstrate an awareness of the risk factors associated with undertaking a covert investigation, coupled with an awareness of their own capabilities. If Mr Snowball had felt he was working outside his own capabilities then he undoubtedly should have raised this with a more senior officer and sought advice and support from an appropriate source. The inclusion of a GSB command structure would also have provided Mr Snowball with additional support and oversight from a senior officer who could have undertaken regular reviews of the investigation and identified the appropriate 'tipping point' for intervention.

450. Mr Snowball had completed the Silver Commander module and would have been aware that such structure, while designed for the management of critical incidents, was often used in a wider capacity.
……

452. Although no-one was injured it is difficult to quantify the impact the actions of the OCG had on the psychological well-being of their victims, and this should not be under-estimated as mere collateral damage. Members of the public should be entitled to have confidence and trust in the police service to protect them from organised crime by bringing offenders to justice. This needs to be combined with high levels of public satisfaction, and reassurance , particularly the victims of crime.

453. In the Investigator's opinion based on the evidence, Mr Snowball demonstrated naivety with his arrest strategy and placed his focus on securing lengthy custodial sentences for members of the OCG, and on enabling the wider OCG to be dismantled. However, he appeared to have lost sight of the importance of ensuring the safety of members of the public, to alternative options such as disruption techniques, or to arresting the offenders in order to prevent further crime. In addition, despite there being an intervention team assigned to the investigation, there is no reference to a specific plan on the tactics they would be required to undertake.

454. More concerning, following his removal as SIO of Operation Oakland he stood by his original decision making, which was highlighted by Mr Bottomley as being of concern since Mr Snowball did not believe his decisions were in any way flawed. At this point in time Mr Snowball had the benefit of hindsight and should have been able to reflect on his performance as SIO on a more informed basis. Mr Bottomley concluded Mr Snowball was not able to demonstrate a good understanding of the Investigative and evidential processes; a failing exacerbated by his lack of experience in the relevant area of policing.

455. As a senior police office Mr Snowball should have been aware of his inexperience and shortcomings in leading such an investigation. He [sic] *decision to continue leading Operation Oakland and the limited evidence that he sought out supervision or assistance identified his poor judgement .*

456. I have therefore/considered the evidence and in my opinion, with regard to the standards of professional behaviour, and more specifically, duties and responsibilities, Mr Snowball has a case to answer for Misconduct."

PD 3.2 12. He went on, at para. 457, (pages 5731 – 5732 of the bundle) however, to list mitigating factors which the Appropriate Authority could wish to consider, namely:

- *Mr Snowball had been subject of a misconduct investigation and was considering his resignation from the force. He was also of the opinion that he had been undermined by both colleagues and senior officers in his previous post. This brought various Issues.*

- *With the exception of the bugging incident there are no previous misconduct findings against Mr Snowball. The evidence indicates that Mr Snowball was a dedicated police officer, with his strengths primarily lying in the managerial side of policing.*

- *Mr Snowball's immediate senior management team in the Stockport division did not raise any concerns about his policing competence; neither did the members of the original Operation*

The reviews and Investigation into Mr Snowball identified his decision making had transparency and, while flawed, appeared to have been undertaken in good faith."

PD 3.2 13. The respondent, after the IPCC had returned the matter to GMP, instigated conduct proceedings against Mr Snowball. He was served with a Notice of Referral to a Misconduct Meeting in early 2017, and responded to it on 13 February 2017 (pages 2379a to 2381 of the bundle).

PD 3.2 14. The misconduct hearing was held on 31 March 2017 by D/Supt. Emily Higham. Her written decision is at pages 2402 to 2405 of the bundle. She (or rather the Panel) found that Mr Snowball had been naïve, and his decision making poor, but found that his actions in relation to Operation Oakland did not amount to misconduct, and was to be treated as a performance issue.

Discussion and findings.

The information disclosed.

PD 3.2 15. Whilst the pleaded case is that the information disclosed is that no disciplinary action was taken against DCI Snowball "for allowing the robbery to take place or for falsifying details on a warrant" in the investigation, because of his friendship with ACC Sweeney and other senior officers, the Tribunal is not sure that this is the information conveyed. Again, the claimant has chosen to plead this as a separate , and discreet , disclosure, despite it being part of a narrative in PDR3 under one heading "3. Warnings proved right – further failings!". Unlike PDRs1 and 2, the claimant has not utilised paragraph numbers in this PDR.

PD 3.2 16. One issue that the Tribunal has had to consider is whether the claimant actually did convey information, and what, if any, allegations he made in it. That is because the framing of this disclosure is ambiguous, as parts of it are posed in interrogatory terms.

PD 3.2 17. In the full paragraphs in this part of PDR3 disclosure the claimant says:

I also understand that he may have falsified details on a search warrant. Doesn't this constitute a criminal offence? Is this misconduct in a public office? I also wonder how the disclosure issues have been dealt with. I fear they may not have been.

And:

So, what action has been taken against DCI Snowball? Has there been an internal investigation? It is my understanding that no formal action has been taken against him and that he has been granted a career break by the Force. He is off to New Zealand for a few years; rumour has it to try to join the police over there. He had his leaving do this week. Is this so the heat can die down? A compromise to resolve a difficult situation for the Force? Have senior officers sorted it for him again? Has there been another cover up? If he chooses to return in a few years perhaps people will have moved on and he can resume his career untarnished.

And:

I feel the circumstances surrounding DCI Snowball need to be independently investigated alongside the other issues detailed within my 'whistle-blowing' reports. He is closely associated to senior officers and his misconduct and failings have been covered up. Senior officers also have to be held responsible for his failings, they placed him there. CS Rumney as Head of PSB will have again have had oversight of this latest incident. DCI Snowball's actions have exposed the public to unnecessary harm and violence. I predicted this. As I predicted the failings of D/Supt Scally prior to last summer's tragedies. Why will the Force not listen? GMP are repeatedly placing the public at risk.

The underlined sections of text were omitted from the recital in the List of Issues. The Tribunal apologises for repeating what it has previously set out above in the introduction, but it is important to highlight what was and what was not included in the pleaded case as to what was disclosed. In the Tribunal's view, as previously discussed, it is the Tribunal's task to determine what information was conveyed, and whether the disclosure was a protected disclosure, and it cannot be confined to consideration only of the information upon which the claimant wishes to rely.

PD 3.2 18. The terms of the information conveyed are ambiguous. Whilst the disclosure is pleaded to have been that no disciplinary action was taken for these two specific alleged acts of wrongdoing, parts of this disclosure do not actually make any such assertion. Rather, the claimant poses a question. He asks what action has been taken against Mr Snowball? It does not link that question to either of the two preceding alleged instances of failings on the part of Mr Snowball. That is compounded by the fact that it is also unclear, because the interrogatory form has been used here as well, whether the claimant was making an allegation that Mr Snowball had falsified details on a search warrant.

PD 3.2 19. It appears to have been accepted, however, by both sides that the claimant is conveying information and/or making allegations that no investigation action was taken against Mr Snowball , and the claimant's "understanding that no formal action has been taken against him" does , the Tribunal accepts , amount to an allegation that no formal action was taken , when it should have been. But that leaves the question of "into what"? The Tribunal can see how it may be Operation Oakland, but is the claimant also saying that there should have been formal action over the alleged falsification of a warrant? Is he actually alleging that Mr Snowball had falsified a warrant?

PD 3.2 20. In our view, and even on the basis of the claimant's more limited pleaded case, the claimant was making such an allegation. If, however, we were wrong on that he was certainly alleging that no formal action had been taken against Mr Snowball, and that there had been a cover up. Whilst in the penultimate paragraph of this disclosure he asks *"Have senior officers sorted it out for him again? Has there been another cover up?"* , in the next paragraph he says: *"He is closely associated to senior officers and his misconduct and failings have been covered up."*

The s.43B tests.

PD 3.2 21. Our next task is to determine whether the claimant satisfies the Tribunal that he had the requisite reasonable belief that the disclosure tended to show one, or more, of the matters specified in s.43B(1). The matters relied upon are that this information tended to show (a) that there had been a failure to comply with one or more legal obligations, namely (i) the duty to protect the public and prevent crime; and/or (ii) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of duties and responsibilities; discreditable conduct; and/or (b) that the health or safety of the general public had been endangered.

PD 3.2 22. The first of these, under s.43B(1), breach of legal obligation, must relate to the common law duty previously discussed. This disclosure, it is to be remembered, is not that Mr Snowball took decisions in Operation Oakland that failed to protect the public or prevent crime, but that his failures were covered up. That is one step removed from the operational failings themselves, and relates to subsequent events. The claimant has therefore to show that he reasonably believed that this disclosure tended to show that this legal duty had been breached by the alleged cover up. The Tribunal does not see how he could have reasonably believed that this disclosure tended to show that.

PD 3.2 23. The reason for that is simple. As part of this disclosure the claimant disclosed that Mr Snowball had been granted a career break. He was, therefore , not going to be in a position to fail to protect the public or prevent crime. How then would any alleged cover up lead to that alleged breach of a legal duty? The cover up , of itself, would not result in breach of the duty to protect the public and prevent crime. Allowing Mr Snowball to continue is such a role, by covering up his failings , may, of course have led to him then failing to protect the public or prevent crime. But the claimant disclosed in the same disclosure the fact that he was taking a career break. Any cover up, therefore, was irrelevant, and was not likely to lead to him remaining in the role in which he had allegedly been so deficient.

PD 3.2 24. The Tribunal therefore does not accept that the claimant therefore had a reasonable belief that this disclosure tended to show that there was a breach of this legal obligation.

PD 3.2 25. Likewise, the same must apply to the s.43B(d) ground relied upon, that the health and safety of the general public had been , or was likely to be, endangered. That is, of course, because the disclosure is about the alleged cover up, not the actions of Mr Snowball in Operation Oakland (which are the subject of PD3.1).

PD 3.2 26. The 2012 Regulations issue has already been addressed.

PD 3.2 27. For completeness, it is noted that the claimant has not relied, for this disclosure, upon ground (f) of s.43B(1), that there had been deliberate concealment.

PD 3.2 28. We would not, given the less serious and pressing nature of the subject matter of this disclosure, and the timeline around Mr Snowball's misconduct proceedings and his career break, and what the claimant knew , and when he knew it, the Tribunal does not consider that there is a ***Muchesa*** issue in relation to this disclosure, and it would not fail on that ground. Finally, whilst academic given our findings on s.43B(1)(b) and (d) above, in terms of the public interest test, we would, as with other disclosures , have found that the claimant had the requisite reasonable belief that it was in the public interest to make this disclosure.

PD 3.2 29. This disclosure fails, however, for the above reasons, as a protected disclosure under s.43B.

The s.43F test.

PD 3.2 30. Whilst this disclosure falls at s.43B(1) , we will, in the alternative, nonetheless consider s.43F. Whilst not in the clearest terms, and taking into account the discussion above as to what , precisely , the claimant did allege in this disclosure, which the Tribunal has taken as a separate disclosure as pleaded by the claimant , the information he conveys, and the allegations he makes are:

a) Mr Snowball falsified a warrant;

b) There was no investigation into Mr Snowball's conduct in respect of Operation Oakland and/or falsifying warrants;

c) No formal action was taken against Mr Snowball for either of these actions;

d) There had been a corrupt cover up, by ACC Sweeney amongst others, of his failings or misconduct in respect of these two alleged acts of misconduct, or either of them, because of his personal relationship with Mr Snowball.

PD 3.2 31. The claimant therefore needs to demonstrate a reasonable belief in the substantial truth of each of these allegations.

PD 3.2 32. Turning to the first, that Mr Snowball falsified a warrant, if this is an allegation, the terms in which it is couched – he "may have" done so – immediately call into question

whether the claimant had a reasonable belief that he had in fact done so. This is a matter (as is the whole of Operation Oakland) about which the claimant had no first hand knowledge. For both this and PD3.1 the claimant said the source of his knowledge was conversations with unspecified members of the SCD SLT, and for this one he cites DI Kevin Dolan.

PD 3.2 33. It transpires, however, that DI Dolan was not involved directly in Operation Oakland, so had no first hand knowledge of it. He was part of the MCRU, working under Martin Bottomley. His evidence (he was called by the claimant) related to being asked by the FRO Martin Bottomley ,after the event, and was informed of it by Martin Bottomley, and he was asked for his view. He goes on to say (para.37 of his witness statement) that "it also emerged" that Mr Snowball had amended a warrant before executing it, as he thought the warrant had too much information on it. Despite apparently being involved in the review to some degree, DI Dolan gives no further evidence about this allegation.

PD 3.2 34. When the claimant was taken through the details of the IPCC Poppy 3 report, and its findings in relation to what Mr Snowball had actually done, he accepted (pages 2345, 2350 and 2352 of the transcript) that Mr Snowball had not "falsified" the warrants, but had changed them. He said he had used that terminology because that was the information he had been given at the time he made his disclosure. When asked who had given him that information, he could not name anyone , but said it could have been any of those who had knowledge of it, he had "flagged up" the whole thing. He went on to say that he had highlighted an issue around the warrant being "tampered, altered, falsified, something to do with the warrant". He went on to say, and later repeat, that the main disclosure was that he had allowed an armed robbery to take place, and was part of the information that he had at the time. He later refers to it as a "secondary" or "ancillary" issue.

PD 3.2 35. The upshot of this is that the Tribunal does not accept that the claimant had a reasonable belief that Mr Snowball had falsified any warrants. All he had was incomplete, second – hand information, with no detail. That he framed his allegation in terms of "may have" shows that he lacked a reasonable belief in it. It was, at most, a suspicion, but a reasonable suspicion is not a reasonable belief.

PD 3.2 36. To the extent that the claimant gives information, or makes an allegation, that there had been no investigation into Mr Snowball's handling of Operation Oakland and/or the warrants issue (which the Tribunal considers he did, the questioning form of his language being rhetorical), this was done with no enquiry by the claimant . In fact, as he had spoken with DI Dolan in the MCRU, who told him (see his IPCC witness statement page 1499 of the bundle) that he was reviewing the matter, and had handed Mr Snowball's Policy Book to DCS Rumney, he knew the opposite was the case, there was an investigation. Further, in para. 344 of his first witness statement he makes reference to (D)CS Rumney as Head of PSB "having oversight" of this latest incident. The claimant therefore could not reasonably have believed that there had been no investigation into Mr Snowball's conduct on Operation Oakland.

PD 3.2 37. In terms of formal action against Mr Snowball, allegation (c), it is clear that there was some "formal action", as D/Supt. Savill of PSB was involved, and asked to

prepare a report with a view to potential misconduct proceedings. The claimant , it seems , was not aware of it, but as he was aware of some involvement by the PSB, from his discussion with DI Dolan, the Tribunal would expect him to be on notice that some form of formal process was being followed. His assertion that no formal action was taken was incorrect, and in the circumstances, made recklessly, without him knowing whether this was the case. His belief in the substantial truth of this allegation therefore is not a reasonable one.

PD 3.2 38. Finally, and most importantly, the claimant , at allegation (d) makes the allegation that Mr Snowball's failings and misconduct were covered up. Again he makes this assertion from no first hand knowledge. The one informant he does identify, with some awareness of the investigation by PSB, DI Dolan, whom he called as a witness, does not support him with any evidence to this effect , and clearly did not tell him that he had this view. Nor is there evidence from anyone else to support it.

PD 3.2 39. The claimant did not, until these proceedings, have sight of either Martin Bottomley's review, nor of D/Supt. Savill's severity assessment. The only basis upon which he suggested that there had been a cover up is that Mr Snowball was granted a career break to go to New Zealand. Again, he knew nothing of the circumstances, when Mr Snowball made the application, and when, or why , or even by whom , it was granted. The two pieces of work looking into Operation Oakland were carried out swiftly, and had been concluded before Mr Snowball was due to start his career break on 15 May 2014. Neither Martin Bottomley's nor D/Supt. Savill's enquiries took into account the fact of Mr Snowball's career break. Indeed, Martin Bottomley's review was concluded on 15 November 2013, before Mr Snowball had applied for it.

PD 3.2 40. The claimant makes reference to this career break in para. 344 of his first witness statement. In it he makes reference to page 1022 of the bundle, as if it were some form of supporting evidence, but it is not, it is just a copy of the disclosure, PDR3, as sent to ACC Copley on 17 January 2014.

PD 3.2 41. On what basis therefore does the claimant have a reasonable belief that there was a cover up? He knew there was an investigation by PSB, but did not know what its conclusions were, nor the basis for them. He did not know who had authorised Mr Snowball's career break, when , or why. The Tribunal cannot see that he had any such basis, again he only had his suspicions, not any belief, still less a reasonable one.

PD 3.2 42. On this basis alone, this disclosure, even if it survives s.43B, fails s.43F, and is not protected. That would be our conclusion regardless of whether the underlined and omitted parts of the paragraphs relied upon by the claimant in this part of PDR3 were included in the information he conveyed or not.

Group 5:

14. Protected disclosure 1.16 : corrupt support for the promotion of DCI Worth

84. Information disclosed: DCI Denise Worth was supported for promotion because of her close relationship with ACC Sheard and in spite of having been taken off the

Operation Somerville murder investigation for alleged failings (this being cited as another example of cronyism). [CGoC § 22 and 61]

The pleaded disclosure (with the extracts omitted from the List of Issues added with underlining) was set out at § (xli), (xlii) and (cxxxix) in the following words:

xli) On the evening of Friday 25th May 2012 Mark Short was shot and killed in the Cotton Tree public house in Droylsden. Three others were shot and wounded at the same time.The murder was set against a background of two criminal families involved in a long running dispute , with a 'high risk' of further violent actions between the opposing factions. The investigation had been managed during the weekend by DCI Denise Worth, with the assistance of other senior officers.

(xlii) On Tuesday 29th May 2012 I attended a Serious Crime Division SLT meeting at Nexus House. After the meeting D/Supt Barraclough called an impromptu meeting of the Major Incident Team DCIs who were present. DCI Worth and TD/Supt Scally were not present. He provided a brief update of Op Somerville and said that TD/Supt Scally would be taking over the investigation and that he would be mentoring him. He referred to things having not run smoothly over the weekend.

(cxxxix) Example 4 - Chief Supt Zoe Sheard, when Divisional Commander on the Tameside division changed an appraisal of DCI Worth from a poor appraisal to a glowing one. DCI Denise Worth was her friend who she socialised with outside work. The appraisal had been written by her line manager Supt Alan Lyons. Ch Supt Sheard was subsequently advised about her interference with the appraisal. Early in 2013 Ch Supt Sheard went acting as ACC. During her short period of time in the rank she promoted her friend DCI Worth to Temporary Superintendent on the Oldham division, informing her of the promotion even before she made contact with DCI Worth's Divisional Commander, who ironically was DCS Shenton.

Para. 87 of the List of Issues sets out the claimant's case that he reasonably believed that this disclosure was made in the public interest and that this information tended to show (a) that there had been a failure to comply with one or more legal obligations, namely (i) the duty to protect the public and prevent crime; and/or (ii) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of honesty and integrity; duties and responsibilities and discreditable conduct and/or (b) that the health or safety of any individuals, namely the general public , had been or was likely to be endangered.

Relevant facts:

PD1.16 1. CS Zoe Sheard was Divisional Commander on the Tameside Division when DCI Denise Worth was serving there in 2011. DCI Worth underwent a review process, and a document entitled Individual Achievement Review was completed by her line Manager, Supt. Alan Lyon, and Chief Supt. Zoe Sheard, his line manager. It is a 5 page document , at pages 438 to 442 of the bundle.

PD1.16 2. At page 4 of the document (page 441 of the bundle) DCI Worth's review she was rated by Supt. Lyon against seven "leadership expectations". He rated her at 3 – meets required standard – in relation to four of the criteria, and 4 – exceeds required standard – in respect of the other three, with his rating for overall performance in Leadership Expectations as a 3.

PD1.16 3. Chief Supt. Sheard, as counter – signatory, alongside Supt. Lyon's rating , in brackets, added ratings of 4, where he had only rated 3, in respect of two of the Leadership Expectations , namely Working in Partnership and Service Delivery , and her overall rating was also a 4 , as opposed to the 3 from Supt. Lyon.

PD1.16 4.At section 6 of this document, "Overall rating for achievements" , Supt. Lyon's rating was B3, and Chief Supt. Sheard, as counter – signatory, added in brackets "B4".

PD1.16 5. In the "Comments and Sign Off" section, Chief Supt. Sheard said this (page 442 of the bundle):

"I understand Denise's disappointment when she compares this current appraisal with the outstanding one she received previously from Supt Berry and concur that her performance since Supt Berry's assessment has exceeded and improved on what she achieved then. I also respect Alan Lyon's right to grade her as he sees fit and it is true that everyone's bar and perspective is different when undertaking appraisals. I have inserted my own grading of Denise above, which I believe differs from Alan's because in leadership terms I am looking at the contribution she made overall to the division as a member of the SLT rather than just within the constraints of her specific portfolio. As a leader I consider her style to be inclusive, supportive and rounded and her cross-portfolio perspective is well-developed."

PD1.16 6. Nothing was altered on this document, and Chief Supt. Sheard's comments were clear and plain for all to see. She accepted that she disagreed with the assessment by Supt. Lyon, but explained why she did so. The appraisal by him was not a poor one, it was that she met, and in some instances, exceeded leadership expectations. The appraisal by DCS Sheard was not a "glowing one". Whilst she rated DCI Worth at a 4 for some of the expectations, she agreed with the assessment of 3 for others, and did not award DCI Worth any 5 – exceptional – ratings at all.

PD1.16 7. At the time that he made his disclosure to the IPCC, the claimant had not seen this document. The claimant was unable to state who told him about the alleged change in the appraisal, saying that he had more than one source, and that it was probably Supt. Lyon , or a DI.

PD1.16 8. Whilst the claimant disclosed that CS Sheard was "advised" , i.e admonished, about this alleged change in appraisal, she was not, nor was he able to say who told him that she had been. The claimant accepted in cross examination that she had not been, but said that he did not know that at the time he made his disclosure.

PD1.16 9. In 2012 DCI Worth , then a member of the MIT, was appointed the SIO on Operation Somerville, an investigation into the murder of Mark Short which had occurred

on 25 May 2012, in an ongoing violent dispute between two criminal gangs. D/Supt Simon Barraclough was the PIP4 for that Operation. On 1 June 2012 DCI Worth was due to go on holiday, and was not available to continue working in her SIO role that week. She informed Simon Barraclough about this, and arrangements were made for a new SIO to take over.

PD1.16 10. D/Supt. Barraclough did hold an informal meeting on 29 May 2012, at which the claimant was present, and he did inform the meeting that TD/Supt. Scally would be taking over as SIO. That was not, the Tribunal accepts, because he had any issues with DCI Worth's ability to carry out the role of SIO on the Operation, but because she was not going to be available. He was, he accepted, disappointed that she had chosen to take this leave rather than prioritise the Operation, which he saw as a major developmental opportunity for her in her career.

PD1.16 11. The Tribunal accepts that D/Supt. Barraclough probably did say words to the effect that "things had not gone well over the weekend", but that was not any comment upon the competence of DCI Worth, although the claimant saw it as one.

PD1.16 12. In April 2012, expressions of interest were invited from DCIs for consideration for promotion to Superintendent (see page 501 of the bundle). DCI Worth expressed her interest (pages 506 to 510), and she was supported in an email on 2 May 2012 by TD/Supt. Scally (see page 503 of the bundle) her line manager. He also supported her application in the relevant section, as did DCS Shenton , the Commander of the SCD (see pages 509 and 510 of the bundle). Zoe Sheard had no role in this application. As a result DCI Worth was placed in a pool of potential candidates for promotion to Superintendent.

PD1.16 13. DCS Sheard was promoted to ACC in November 2012. An opportunity arose for a temporary Superintendent position at Oldham, a uniform role. ACC Sheard with Emma Bilsbury, Head of Workforce Development, considered the candidates, of whom DCI Worth was one. They identified her as being suitable for promotion. The decision, however, was not theirs, and a Chief Officers' group meeting was required. Whilst not documented, the Tribunal accepts that this occurred, and ACC Sheard's recollection is that ACC Shewan was supportive of DCI Worth DCI Worth was in the pool for promotion, and ACC Shewan supported her move to Oldham as a T/Supt. .

PD1.16 14. DCI Worth in a later exercise was successful in her application for promotion to substantive Superintendent around December 2013, the same exercise that the claimant undertook, but unsuccessfully . It was ACC Sheard who informed her of her appointment. DCS Shenton, her Divisional Commander, had supported her application, and would be expecting her appointment. It was not an unusual thing to do. The claimant underwent the same process at this time, but was unsuccessful.

PD1.16 15. ACC Sheard accepts that she and DCI Worth got on well together, and did occasionally socialise. That was, the extent of their relationship, and DCI Worth had visited her house, with other members of the SLT on two occasions. ACC Sheard went to DCI Worth's house on two occasions, once with other members of the SLT. They

were not, however, close friends, and, since ACC Sheard's retirement from the Force, they have not been in contact.

PD1.16 16. The allegation that D/Supt. Sheard changed DCI Worth's appraisal was not included in the claimant's IPCC witness statement dated 1 December 2014. He explains this by the fact that the IPCC by then had indicated what it would, and what it would not, would investigate, but this did not prevent him from making reference to DCI Worth's alleged corrupt promotion.

Discussion and Findings

The information disclosed.

PD1.16 17. It will be apparent from the recital of the disclosure set out above, and the inclusion of the underlined wording that the Tribunal has considered not only the words recited in the List of Issues, but also the remainder of the omitted portions from the paragraphs of PDR1 that have been cited.

PD1.16 18. This disclosure is one in which in the List of Issues there is an ellipsis – two in fact. The wording of para. 85 of the List of Issues is "PD1.16 was set out at § (xli), (xlii) and (cxxxix) in the following words:" The claimant's argument is, it seems , that notwithstanding para. 49 of his Closing Submissions, the Tribunal cannot regard the omitted words as part of the information conveyed, because the claimant is not relying upon them, and the List of Issues precludes it from doing so. The phrase "in the following words" is to be taken literally as limiting the Tribunal to consideration of what is expressly recited.

PD1.16 19. Whilst the ellipsis in para. (xli) is inconsequential , as it adds only background, that in para. (cxxxix) is highly pertinent. Indeed, it is surprising that the claimant would want to exclude this text from consideration, as , in that it contains specific allegations of a prior instance of CS (as she was then) Sheard favouring DCI Worth, the Tribunal would have thought that the claimant would have wanted this to form part of the information that he relied upon as part of his disclosure. He has certainly given evidence about these matters, but appears to want to have his evidence considered in support of the information that he relies upon as amounting to a protected disclosure, but does not want that information to be considered as part of this disclosure.

PD1.16 20. That the Tribunal should not consider the omitted wording in para. (cxxxix) is totally unrealistic, and is an attempt to divide ("fillet" would be Mr Gorton's term) the information conveyed into individual constituent parts, some of which are to be considered, and others are not. This is highly artificial. The link between the two pieces of information, quite apart from their contiguity in the paragraph, is overwhelmingly obvious, and the Tribunal must consider all of the information in this paragraph as constituting the information conveyed in the alleged disclosure.

PD1.16 21. The Tribunal has already set out its decision upon the degree to which the List of Issues binds it in terms of what it can and cannot consider as being the information which amounts to any potentially protected disclosure. To the extent that there remains

any doubt as to the permissibility of this approach, as observed in ***Mervyn*** , this ultimately comes down to the interests of justice. Had it been the case that the claimant was not given an opportunity to respond to any challenge to the omitted parts of the information, then there may have been some prejudice to his case. He was, however, cross – examined about these matters . His first witness statement (at para. 284) leads evidence of DS Sheard's alleged changing of DCI Worth's appraisal , and there was extensive cross – examination upon it. He is not therefore prejudiced by the Tribunal taking this information into account when determining whether this was a protected disclosure.

The s.43B tests.

PD1.16 22.The Tribunal will start with the s.43B issues. Whilst the claimant has only to satisfy a low threshold of what he believed the disclosure tended to show in terms of the prescribed matters in s.43B(1), the Tribunal is hesitant that the claimant could satisfy even that. There are two pleaded elements to this disclosure, the claimant (in para.84 of the List of Issues) contends firstly that the information disclosed was that DCI Worth was supported for promotion because of her close relationship with ACC Sheard, and secondly (or so the List of Issues suggests) that she was taken off Operation Somerville for her alleged failings.

PD1.16 23. The claimant's pleaded case is that this information tended to show (a) that there had been a failure to comply with one or more legal obligations, namely (i) the duty to protect the public and prevent crime; and/or (ii) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of honesty and integrity; duties and responsibilities and discreditable conduct; and/or (b) that the health or safety of any individuals, namely the general public, had been or was likely to be endangered.

PD1.16 24. The Tribunal does not accept that the claimant believed that this disclosure, which is effectively that DCI Worth was promoted by her friend Zoe Sheard, tended to show any breach of a legal obligation. The claimant cites two such obligations, the first being the duty to protect the public and prevent crime, a legal obligation which the Tribunal accepts does exist. The Tribunal does not see how the improper promotion by a senior friendly officer , of itself, leads to a conclusion that the respondent would thereby fail to protect the public or prevent crime. It is appreciated that the claimant may have this view because he considered that DCI Worth was not up to the job, but in terms of what a disclosure "tends to show", it must, in the Tribunal's view be a fairly obvious implication, at the least, of what is being disclosed. That is not, in the Tribunal's view an obvious implication of this disclosure. Competent officers can be corruptly promoted as well as incompetent ones.

PD1.16 25. In terms of the Regulations, the Tribunal has previously ruled upon the lack of legal obligation imposed by them.

PD1.16 26. The final , and alternative aspect of this disclosure relied upon under s.43B is that the claimant believed that the disclosure tends to show the health or safety of any individuals, namely the general public, had been or was likely to be endangered. Again,

the Tribunal cannot see that as a belief that can be sustained. Rather as with the breach of the duty to protect the public and prevent crime, the Tribunal does not see how the claimant could believe that this disclosure could tend to show this alleged risk of danger, from the mere fact of the allegedly cronyistic preferment of DCI Worth.

PD1.16 27. In relation to the allegations relating to DCI Worth's role on Operation Somerville , on reflection, whilst the description in the List of Issues (para.84) of the information disclosed refers to DCI Worth being promoted "in spite of having been taken off" that Operation "for alleged failings", re-reading it, the Tribunal considers that the information disclosed does not actually say that. It makes reference to TD/Supt. Scally taking over the investigation, and things not having run smoothly over the weekend, but it does not refer to any alleged failings by DCI Worth. That falls way short, the Tribunal, considers of information which tended to show any of the matters in s.43B.

PD1.16 28. The Tribunal finds, therefore, that this disclosure falls at the s.43B stage.

PD1.16 29. On the ***Muchesa*** test, although there is some antiquity in relation to some of the matters that the claimant was disclosing, we do not consider that they were in the same league as the very serious matters raised in connection with the Nixon and the Cregan matters. Delay in these circumstances is not necessarily incompatible with the belief that the claimant has to show, and we would not find that this disclosure fails on that basis. Turning, unnecessarily, but for completeness, to the issue of reasonable belief that it was in the public interest to make this disclosure, as with other disclosures, we would be satisfied, although perhaps only just, that the claimant has shown, notwithstanding that he may also have a strong personal interest in making it, and it has a lot to do with his own lack of success in the same promotion process, that it was in the public interest to make it. These are, of course, academic findings.

The s.43F test.

PD1.16 30. Turning to s.43F, in the alternative, if we are wrong on s.43B, there are a number of aspects of this disclosure where the claimant has failed to persuade the Tribunal that he had a reasonable belief in each of the allegations contained in it, when it is read in full, with the allegations in para.(cxxxxix) that are omitted from the List of Issues restored.

PD1.16 31. The first of these is that DCS Sheard changed an appraisal of DCI Worth from a poor one to a glowing one. This disclosure was incorrect in almost every respect. Firstly, and most importantly, DCS Sheard did not "change" anything. She made, openly, her own appraisal of DCI Worth, which differed from, and was more favourable than that which Supt. Lyon had given her. His appraisal, however, was not "poor", it was that she met expectations, nor was DCS Sheard's a "glowing" one, it was that in some, but by no means all , expectations she exceeded them. That the disclosure was so inaccurate, of course, does not, of itself mean that the claimant cannot have held a reasonable belief in what he disclosed, but it makes it harder for the claimant to establish that his belief was reasonable. The claimant, of course, had not seen at the time he made his disclosure the appraisal document. That makes it somewhat reckless of him to have made the serious assertions that he did that DCS Sheard had changed anything on the

appraisal. He goes further, of course, because he goes on to suggest that she was subsequently was "advised", admonished for doing this, thereby reinforcing the allegation that she had done something improper.

PD1.16 32. The claimant was familiar with appraisals, and will have carried them out himself. He would have known that they were countersigned by a senior officer, and therefore that it was open to that officer to express different ratings from those provided by the immediate line manager. The claimant , however, did not consider this, and without seeing the document, repeated the assertion that this appraisal had been changed improperly. The claimant was unclear in his evidence as to the source of his information for this disclosure, suggesting that it may have been Supt. Lyon, but also a number of DIs at Ashton. Even in Mr O'Dempsey's submissions (para.215) the highest it is put is that *"His source appears to have been Mr Lyon"* , and the Tribunal is invited to find that it is likely that he was the source of the claimant's belief about changes in the document and that DCS Sheard was later "advised" about her conduct.

PD1.16 33. All this, however, is, with respect , an attempt to bolster by submission what were serious deficiencies in the claimant's evidence. The claimant himself was unable to say whom he believed it was that had "advised" DCS Sheard for her "interference" in the appraisal, nor who had provided this information to him. It would, he accepted, have to have been an ACC, given her rank. He went on to accept that he had been wrong about this. Again that does not, as such, mean he had no subjective belief in this allegation , but it makes it harder for him to persuade the Tribunal that such a belief was reasonable.

PD1.16 34. Two further factors are significant. The first is that Supt. Lyon knew perfectly well that DCS Sheard had not "changed" the appraisal, as he had seen it. He is therefore unlikely to have told the claimant that she had. He may well have told the claimant that she had given DCI Worth a better appraisal than he had, and that he disagreed with her, but that is not the allegation that the claimant made. The second is that the alleged "advising" of DCS Sheard about her alleged change , which , of course, it was not, would be matter that would only be known of by the person who did it, and DCS Sheard herself. It seems most unlikely that either would disclose that information to anyone else, so how could Supt. Lyon, or anyone else, know that, and how could they then tell the claimant that this had occurred? A further obvious question that arises is why would DCS Sheard be "advised" in this way, if all she had done was, as counter – signatory, openly give DCI Worth a better appraisal than Supt. Lyon did? The claimant has not been able to explain this, nor, more significantly, did he question at the time how this specific information could possibly have emerged when only two persons would have been privy to it.

PD1.16 35. Added to that is the absence of any reference to these allegations in the claimant's IPCC witness statement, its absence from the List of Issues, its omission from the Scott Schedule and the consolidated grounds of claim. The Tribunal also cannot accede to the claimant's submission (at para. 215) that the additional allegation the DCS Sheard had been "advised" is not material to the thrust of the allegation. It is an additional serious allegation of corruption, which lends weight to the suggestion that DCS Sheard had done something wrong, and that a senior officer, probably an ACC,

had acknowledged that. It is not immaterial, and cannot so easily be discounted. The Tribunal accordingly, for all these reasons, cannot accept that the claimant's belief in these allegations was reasonable.

PD1.16 36. That conclusion alone is fatal to this disclosure amounting to a protected disclosure, but that is not the only issue. The claimant has also made the allegation that DCS Sheard "promoted her friend" DCI Worth. She did not, and, as has been observed previously in the case of PD1.1, she would not, alone, have been able to promote DCI Worth. That involved a process, and the Chief Officers' Group would have to be involved.

PD1.16 37. Further, the claimant knew that, but has made the allegation that she promoted DCI Worth. This was, as has previously occurred, an exaggeration. Had the claimant disclosed that DCS Sheard had unduly influenced that process (or had "supported" her for promotion , as para.84 of the List of Issues tries to characterise it) , that would have been an allegation in which he may have been able to show a reasonable belief. He did not, however, couch his disclosure in those terms, he went further and said that she , implicitly thereby, she alone, had promoted DCI Worth. The Tribunal does not consider that this is a minor matter, an inaccuracy that can be overlooked as Mr O'Dempsey has invited the Tribunal to view it. This too is fatal to this disclosure amounting to a protected disclosure.

PD1.16 38. As the rest of the information disclosed in relation to DCI Worth's alleged removal from Operation Somerville does not, in the Tribunal's view, tend to show any of the matters prescribed in s.43B, there is no need for the Tribunal to consider whether the claimant had a reasonable belief in these allegations, as the Tribunal does not consider that he actually makes them in this disclosure.

15. Protected disclosure 3.4: Supt. Worth's failure to utilise covert tactic CT1 in a missing person enquiry

114. Information disclosed: Superintendent Denise Worth failed to implement urgent actions in relation to a missing person's investigation, including actions recommended by the Claimant, which could have located the missing person's mobile phone and thus the missing person himself many hours earlier. The individual was later found dead after a fall.

115. PD 3.4 was set out at section 4 of PDR3 in the following words:

I had dealings most recently with her when dealing with the MFH Adam Pickup, a serving officer's son who went missing after a night out and tragically was found deceased, it was weekend; I was on 3-1 1pm and was dealing with a suspicious death in Salford. At about 9.00pm I learnt of the MFH case and although not involved I reviewed the FWIN on my own initiative. I noted Adam had a phone that was still 'live' and felt that more could be done so I contacted division and advised them of sensitive tactics that could 'grab' the phone and potentially locate the MFH quickly. No other senior officers had thought of this. I put division in contact with SOCG and was told by the SOCG duty officer, prior to my leaving duty, that a team was turning out to try to 'grab' the phone.

T/Supt Worth was Night Silver, she had texted me at 1051p.m to try to turn me out to SIO the MFH that night, despite me being on afternoons and she was on nights with a night DI and an on call D/Supt if she chose to assist her oversee the incident during the night. I didn't pick up the text and missed call from her until 11.50p.m. when I returned home. I rang T/Supt Worth and she dearly wanted to pass the responsibility on. I told her what I had done and although she clearly didn't know the tactic I asked her to contact SOCG Duty Officer. I later discovered she did make the call but made no reference to me and asked for the tactic herself. However after I had gone off duty the decision to turn a team out had not been authorised and T/Supt
Worth didn't challenge it. I came on duty at 3.00pm the following day to discover the IMSI team had just been turned out. This was 16 or 17 potentially vital hours after I had suggested it. Potentially precious time had been lost during which time the battery would have been dying. I understand Adam Pickup probably died of injuries resulting from a fall but he had survived initially and he could have been lay injured slowly dying from hypothermia, in which case those missing hours could have been vital.

Para. 117 sets out the claimant's case that he had a reasonable belief that this disclosure was made in the public interest, and that the disclosure tended to show (a) that there had been a failure to comply with one or more legal obligations, namely (i) the duty to protect the public; and/or (ii) the Respondent's duties under the HRA and Article 2 of the ECHR to safeguard the life of the missing person; and/or (iii) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of duties and responsibilities; discreditable conduct; and/or (b) that the health or safety of an individual, viz the missing person, had been endangered.

Relevant facts.

PD3.4 1. On Friday 27 December 2013, a night out had been arranged for Adam Pickup, the son of a serving Police Officer, and some of his friends to go to Manchester City Centre for a drink at some of the Public Houses.

PD3.4 2. Adam did not return to his home address which was out of character for him and at 15.52 hours on Saturday 28 December 2013, Adam's father, Christopher Pickup, contacted the Greater Manchester Police and reported that Adam was missing from home. As a result of this, the Greater Manchester Police began an enquiry In order to locate and find Adam. This was Operation Carousel.

PD3.4 3. Immediately, Adam's details were circulated on the Police intelligence system as a person 'missing from home' , and enquiries were made at local hospitals and Police Stations to check if Adam could be at any of these locations, but these checks proved to be negative. Requests were also made with the Manchester City Centre control room that use and monitor the CCTV in Manchester City Centre.

PD3.4 4. At 16.30 hours, the same day, Inspector Chadwick declared that Adam was now being classed as a 'high risk missing from home' due to the fact that Adam had not returned home, had made no contact with his parents or friends and that this was totally out of character for him. It was also decided to trace and interview Adam's friends who

he had been out with on Friday 27 and Saturday 28 December 2013 in order to gather Information of the exact locations where the group had visited on their night out in Manchester City Centre. As a result of this, it was established that Adam was last seen by them at the Fab Cafe, Portland Street, Manchester City Centre in the early hours of Saturday 28 December 2013.

PD3.4 5. The operation was opened at 15.52 , and the Investigating Officer was Inspector Susan Chadwick. Superintendent Nicola Spragg was the Superintendent covering the Oldham, Tameside and Stockport Divisions,. As the missing person came from the Stockport area, the case was being dealt with on that Division.

PD3.4 6. The log of the Operation (page 2889) shows that by 16.38 that day, consideration had been given to locating Adam's mobile phone by triangulation, and the Force Duty Officer, CI Booth, was contacted. He advised that the authorisation of the Superintendent would be required once viable lines of enquiry had been considered and exhausted. He advised that the Officer in the Case should speak with the Duty Superintendent. At 16.54 Supt. Nicola Spragg authorised triangulation of Adam's mobile phone (page 2890 of the bundle). Notice under the Regulation of Investigatory Powers Act 2000 ("RIPA") was generated directing the service provider to provide certain data. This was, however, limited to triangulation and phone activity on the missing person's mobile phone (see page 1 of the Closed Bundle). This was not, to be clear, deployment of the CT1 tactic, which is far more accurate, but required high level authorisation for which Supt. Spragg did not apply.

PD3.4 7. Inspector Chadwick and DS Hussein contacted the SPOC David Sullivan at 16.55 to request triangulation, Supt Spragg confirmed authorisation at 17.05 to the SPOC, and at 17.09 he reported back to DS Hussein , and PC Cregan, who was co-ordinating the search, that the phone was on, and had been located. He gave a location by grid reference, and a radius of 0.5 km. (see page 2970 of the bundle)

PD3.4 8. At 18.16 (page 2899 of the bundle) Inspector Chadwick logged that the mobile phone had been traced some 20 minutes previously, in the city centre, and was still live. No calls had been made from it. She noted that the phone was not moving. The triangulation that had been carried out had located the phone, but would not be accurate enough to provide its specific location, only a general area in a 0.5 km radius. The plan was then to back track through any CCTV from 03.30 when Adam was last seen, and to do a ground search from the locations of the last sighting to the area where the phone was located.

PD3.4 9. At 21.54 Inspector Chadwick recorded (page 2915 of the bundle) contact, which appears to be initiated by the claimant , with the claimant who told her that he would provide support by turning out an MIT team to Cheadle Heath Police Station.

PD3.4 10. Supt. Worth came on duty at 21.00, taking over from Supt. Spragg. She was aware of the operation, and is recorded as at 22.36 , as having "oversight" (see page 2940 of the bundle). She was briefed by Supt. Spragg about the operation. We consider that Supt. Worth either sought authorisation , or herself put in train seeking authorisation

, for use of the CT1 tactic. That is the most likely explanation of the deployment of the Merseyside TSU, as follows.

PD3.4 11. At 22.25 the SPOC was contacted by Merseyside TSU, which had been deployed, asking for authorisation to use the CT1 tactic to locate the phone more precisely. That request was made to Supt. Lyon, the Force Authorising Officer, who refused it. The SPOC informed the TSU of this at 22.33 on 28 December 2013 (see page 2971 of the bundle). The TSU accordingly then turned back, and was stood down. The SPOC continued to check with the service provider that no calls had been made, and the phone had not moved.

PD3.4 12. At 22.51 the claimant was sent , but did not read immediately, a text message from Supt. Worth. He also missed a call from her at 22.50. He says this was an attempt to "turn him out" as SIO on the operation that night, despite him having been on an afternoon shift that day. The claimant has not, however, produced this text message, notwithstanding that he wrote his PDR3 document , in which he makes mention of it, on 16 January 2014 with the intention of raising a grievance and then going to the IPCC. He had, of course, previously volunteered to "turn out an MIT team" to Cheadle Heath earlier in the day.

PD3.4 13. The claimant rang Supt. Worth back at 23.50 that night. He alleges that from this phone call it was clear that "she clearly did not know this tactic" and that he suggested that she contact the SOCG Duty Officer, to seek its use, and to make reference to him (by name) in doing so. The Tribunal considers that the evidence is that an application had already been made to use the CT1 tactic before the text and telephone call from Supt. Worth to the claimant , and that it is highly unlikely that she said she did not know about the tactic. There may have been some conversation about how to challenge the refusal by the FAO, but the Tribunal does not accept that Supt. Worth did not know about the tactic.

PD3.4 14. In her email of 24 January 2014 (pages 1062 to 1066 of the bundle) ACC Copley challenged the claimant's assertions about Supt Worth contacting him, and the reason for doing so. She explained how she, ACC Copley, had asked her to do so.

PD3.4 15. At 04.30 hours the SPOC was told that Supt. Worth was now the SIO. He contacted her, and she authorised the continuing triangulation checks, and wanted to be updated on any changes notified by the service provider. He continued to collate this information and update it, but there was no change. Supt Worth went off duty at 07.00 on 29 December 2013.

PD3.4 16. At some point , therefore , before the text and call to the claimant , Supt. Worth had made , or directed, an application to the Force Authorising Officer for deployment of the CT1 tactic. It was refused . This is not documented, but is suggested by what ACC Copley told the claimant (see below) , and in the response document prepared DCS Paul Savill in the response to the IPCC , which is undated, and is at pages 5335 to 5367 of the bundle. In the entry relating to this disclosure he says (page 5366 of the bundle):

"T/Supt Worth did attend and asked the Force Authorising Officer (D/Supt Lyon) for authority for the covert tactic outlined. This was refused. It was authorised the following morning.

The inquest has not been held, but the SPI investigation clearly shows that Mr Pickup has died before the matter was reported to the Police. The delay in the authority will have had no bearing on this. This sensitive tactic is rarely used in Missing from Home enquiries."

PD3.4 17. The evidence of Russ Jackson was in a similar vein, the use of this tactic was rare, had to be authorised at a very high level, even up to the Chief Constable, and was not generally authorised for non – criminal cases. He became involved the following day, when he went to Cheadle Heath Police Station , and sought authorisation for use of the tactic, which was then authorised. Around 9.00 a.m. a further application was made to the Force Authorising Officer for use of the tactic. This was successful, and at 09.18 that morning authority was given to deploy the tactic (see pages 2 of 5 of the Closed Bundle).

PD3.4 18. A Gold meeting was held at 10.45 on 29 December 2013 (pages 2979 to 2981 of the bundle). Supt. Worth was not present, nor is she noted as being in the command structure. Supt.Berry was the Gold commander. Supt. Spragg was back on duty by then, but as Supt. Berry was now Gold, he took over.

PD3.4 19. During the afternoon of 29 December 2013, CCTV footage that had been retrieved from Oxford Road Railway Station, Manchester City Centre and CCTV footage that had been retrieved from Deansgate Railway Station, Manchester City Centre showed that at 03.29 hours on Saturday 28 December 2013, Adam was seen alone entering Oxford Road Railway Station and later made his way towards Deansgate Railway Station on the railway line. Adam was later seen on CCTV footage at Deansgate Railway Station alone. The last time Adam is seen on CCTV footage at Deansgate Railway Station is at 04.13 hours on Saturday 28 December 2013 when he is seen walking along the platform in a direction towards a railway viaduct at Castlefield, Manchester City Centre.

PD3.4 20. A search on 29 December 2013 at 15.35 located his body. The phone triangulation results , which had shown the phone to be within a 500 metre radius of the Jury's Inn Hotel, Great Bridgewater Street, Manchester City Centre with an ark between 8 and 12 on a clock face, proved accurate .

PD3.4 21. Adam's body was later recovered and taken to the Mortuary at The Royal Oldham Hospital. On Tuesday 31 December 2013, Doctor Philip Lumb, Home Office Forensic Pathologist, conducted an autopsy on Adam. His injuries suggested that he had tried to get over spiked metal fencing, but had got entangled, and injured himself on it, before falling to the ground. This indicated that Adam had survived for some period of time. Doctor Lumb stated that the injuries that Adam sustained would have permitted survival for a period of time although he probably died from haemorrhage within a relatively short period of time, probably less than ten minutes. The time of death was

estimated at between 4.00 and 5.00 a.m on the morning of 28 December 2013 .Doctor Lumb stated that Adam was not wearing a coat and that hypothermia could have played a significant role in Adam's death and that because Adam had consumed alcohol, this could increase the risk of the development of significant hypothermia which could lead, to confusion and irrational behaviour. Doctor Lumb stated that Adam's medical cause of death should be recorded as right upper limb and neck injuries.

PD3.4 22. In an email exchange with the claimant , ACC Copley shortly after this incident, on 24 January 2014, she says this (at page 1063 of the bundle):

"I would also ask you to consider whether you may, on occasion, be drawing the wrong conclusion. For example you complain that Denise Worth "tried to turn you out and..... clearly wanted to pass the responsibility" to deal with the MFH Adam Pickup. I was on call that evening and I therefore feel I can address this point directly. When Denise came on duty at 9pm she took over responsibility for the search for Adam. Denise was told that you had contacted Stockport voluntarily and that you and your team were on the way over to help. I therefore advised her to contact you and agree the role that you and your team would undertake in leading and co-ordinating the investigative work that was needed to help find Adam. If you are unhappy at being asked to attend to help this should be directed at me, not Denise. In any event you did not attend to help despite my request that you should. I wonder why that was. From reading your email it also turns out that the report that you had volunteered to go to Cheadle Heath to help was incorrect The [CT1] authority on the night was refused by the Force Authorising Officer. I raised my concerns about this first thing the next morning when I became aware and it was subsequently rectified."

PD3.4 23. The claimant , on coming on duty on 29 December 2013, became aware that Supt. Worth had made an application whilst she was on duty, but had been unsuccessful. He was not aware of what she had said, what information she had provided to the Force Authorising Officer, why it had been refused, or whether, and, if so how , she had challenged that decision. He was aware that the tactic had subsequently been deployed that morning. He also , before he wrote his PDR3 document dated 16 January 2014, which he presented to the IPCC on 31 January 2014, was aware the time of Adam's death was around 4.00 to 5.00 am. on 28 December 2013, before he was reported missing.

Discussion and Findings.

The information disclosed.

PD3.4 24. The Tribunal finds that the information disclosed was, and the allegations contained in it, were:

That he informed Supt.Worth of CT1, of which she was unaware, and advised her to contact the SOCG duty officer in order to deploy the tactic;

Supt. Worth did subsequently, but after a delay , call the SOCG duty officer, and asked for the tactic to be deployed, without making any reference to the claimant;

The use of the tactic was not authorised, and Supt. Worth did not challenge this;

The earlier use of the tactic could have been vital in locating Adam before he died.

The evidence and our findings of fact.

PD3.4 25. The claimant's account in his PDR3 document, his (first) witness statement, and in his evidence to the Tribunal, is confusing and unclear. He has not supported it with any documents, and it makes little sense in some aspects. When and how he found out that Supt. Worth had sought deployment of the tactic is unclear, and if she was aware that an unsuccessful application to use the tactic had already been made, why would she be discussing it with the claimant? As observed, she may have been discussing the unsuccessful application, but the claimant's case is that she was unaware of the tactic. Against that, the Tribunal has been provided with no evidence from Supt. Worth, nor any documents which record her actions whilst on duty , other than those referred to above. It does, however, have access to the material which records the investigation and the actions taken, from which a clear timeline appears, into which the claimant's evidence about the communication with Supt. Worth does not fit.

PD3.4 26 The Tribunal is not satisfied, on a balance of probabilities that there was a discussion in which Supt. Worth expressed a lack of awareness of the potential use of the CT1 tactic. The phone call was more likely to have been about what assistance the claimant was going to provide, following his offer to help. It may have touched upon the unsuccessful application, but we cannot accept that Supt. Worth expressed ignorance of the CT1 tactic when an application for its use had been made after she had come on duty , and before she had any communication with the claimant.

The s.43B tests.

PD3.4 27. There are a number of issues for the claimant in relation to this disclosure. Starting with the s.43B requirements, the claimant made this disclosure on 31 January 2014, and wrote PDR3 on 16 January 2014. By that time he knew that Adam Pickup had died sometime in the early hours of Saturday 28 December 2013, as he acknowledges in his PDR3 ("I understand that Adam probably died of injuries resulting from a fall"). He was not reported missing until 10 hours later, at 15.52 that day. In his witness statement (para.374) the claimant says that he later (he does not say when, but the Tribunal considers it likely to have been before he made his disclosure to the IPCC) discovered "that the injuries were severe, and that it was likely that he would not have survived. However, had his injuries been survivable those missing hours could have proved vital."

PD3.4 28. The claimant alleges that the failure on the part of Supt. Worth to act upon his advice to deploy the tactic, or rather to challenge the refusal of the authorising office to sanction it, occurred , at the earliest around 23.50 on 28 December 2013 , when he spoke to her. Given that the claimant knew at time he made this disclosure that Adam Pickup was already dead at the time he was reported missing, how can he reasonably have believed that his disclosure tended to show that Supt. Worth had failed in her legal

duty to protect the public and prevent crime ? How could he reasonably have believed that the disclosure tended to show that the health and safety of an individual (identified as the missing person) had been endangered by her alleged failings? Any failings, if such they be, occurred long after the tragic death had occurred. In our view the claimant could not, on any view, reasonably have believed at the time he made his disclosure that was the case. The most that could be said was that any failure to seek use of the CT1 tactic may have lost vital time, but as it turned out, it would have made no difference.

PD3.4 29. For the same reasons , that must be the case in relation to any 2012 Regulations and Article 2 ECHR related grounds relied upon for this disclosure .

PD3.4 30. Our view is also that , at its highest, taken as the claimant contends, the most that the claimant reasonably believed that this disclosure tended to show was inexperience on the part of Supt. Worth. That , he agreed, would not be a breach of any legal obligation, nor could he reasonably have believed that this disclosure even tended to show that. Nor, were they relevant, could he reasonably believe that it tended to show a breach of the Professional Standards, under the 2012 Regulations, which he has cited as amounting to "discreditable conduct". Inexperience, or failing to challenge the FOA could hardly have been reasonably considered to amount to discreditable conduct. This ground has been rejected by the Tribunal's previous findings applicable to all the PDs in any event.

PD3.4 31. What the claimant's disclosure tended to show at most was that there could have been such a breach of a legal obligation, or there could have been endangerment of a person's health and safety, but in the circumstances, tragically, there was not. The other limbs of s.43B allow for disclosures which tend to show that the prescribed matters have occurred, are occurring, or are likely to occur in the future. In other words disclosures can tend to show that there has been one of the various forms of wrongdoing in the past, is currently in the present , or will be in the future. That does not include the putative, or the hypothetical.

PD3.4 32. The Tribunal therefore, for all these reasons, finds that this disclosure falls at the s.43B stage.

PD3.4 33. Given the recent nature of the matters disclosed, no issues of delay or incompatible conduct arise. For completeness, however, in relation to the requirement of a reasonable belief that it was in the public interest to make it, the Tribunal would, for the reasons given in other disclosures, find that the claimant had this belief, notwithstanding the subject matter was Supt. Worth, who had recently been promoted in an exercise in which he had been unsuccessful.

The s.43F test.

PD3.4 34. Additionally, even if this analysis is wrong, there remains s.43F. The claimant has to go further and satisfy the Tribunal that he had a reasonable belief in the substantial truth of the information and any allegation contained in it. It must follow that even if we were wrong on s.43B, on our findings of fact the claimant has not satisfied the Tribunal that Supt. Worth was not aware of the tactic, or unduly delayed seeking

authorisation for it, or inadequately challenged its refusal. He has not established that he had a reasonable belief in any of these allegations.

16. Protected disclosure 3.5 : Supt Worth's failure to treat the death of a Hungarian man as other than accidental.

Information disclosed: Superintendent Worth, when DCI, led an investigation into the death outdoors of a Hungarian man and determined it was accidental. At the inquest the Coroner concluded that the case was suspicious and referred the case back to GMP for review. Following that review, it was decided to investigate the case as a murder, the previous decision making of DCI Worth hindering the progress of the case and reducing the opportunities for successful conclusion.

PD3.5 was set out in section 4 of PDR3 in the following words (the Tribunal adding with underlining words omitted from the full paragraph by ellipsis):

In my 'Whistle-blowing' report and within my grievance reports, I have made reference to T/Supt Worth, who has been successful at the recent Promotion Board Interview. During the interview candidates had to talk about a hypothetical critical incident scenario and T/Supt Worth clearly must have dealt with the hypothetical scenario to the assessors' satisfaction, however in reality a Coroner has recently returned to GMP a case that T/Supt Worth dealt with involving the death outdoors of a Hungarian man. T/Supt Worth led the investigation and determined it was accidental, there was no third party involvement and it was not suspicious. The Coroner has recognised it is a suspicious death and returned it to the Force.The case has been reviewed and there is criticism of the manner in which the investigation was managed by T/Supt Worth. The investigation has now been returned to the Major Incident Team and is being investigated as a murder. The chances of success however are greatly reduced given the previous mismanagement and the time that has elapsed.

The heading of this section of PDR3 is ***"Further concerns re Superintendent Promotion Process, the continuing smell of cronyism and further risks to the public."***

Whilst the claimant has not relied upon the words set out in the immediately ensuing paragraph of this section of PDR3, or other parts of it, the Tribunal considers that they too form must part of the information that he disclosed, and must be considered by the Tribunal in the determination of whether this is a protected disclosure. The Tribunal's reasons for this are derived from its discussion in Chapter IIIabove as to the effect of the List of issues upon the scope Tribunal's examination of what information was conveyed by the claimant as part of this disclosure, regardless of whether it has been expressly pleaded as being relied upon. Firstly the Tribunal's view is that this further paragraph is inextricably linked to the preceding one, and contains further allegations about her abilities and the consequences of her alleged failings. The Tribunal consider that the claimant cannot dissociate this paragraph from the preceding one as being part of the information conveyed, particularly given the heading under which these paragraphs are set out. To the extent that there remains any doubt as to the permissibility of this approach, as observed in ***Mervyn*** , this ultimately comes down to the interests of justice. Had it been the case that the claimant was not given an

opportunity to respond to any challenge to the omitted parts of the information, then there may have been some prejudice to his case. He was, however, and there was extensive cross – examination upon these matters. He is not therefore prejudiced by the Tribunal taking this information into account when determining whether this was a protected disclosure.

As a result a murderer is free to walk the streets of Manchester, perhaps to strike again. I understand T/Supt Worth has blamed her mismanagement of the case on her lack of training and not being PIP 3 accredited. I find this hard to accept when her last 3 roles have been as a Detective and I and many other SIOs have dealt with numerous murders and 'critical incidents' prior to becoming PIP 3 accredited. On a daily basis unaccredited DIs and DCIs with far less experience make decisions on persons found deceased in a variety of circumstances. I understand no action has been taken in respect of T/Supt Worth. The murder T/Supt Worth wrote off as not being suspicious is ironically now being investigated by another officer who was unsuccessful in the recent promotion process and is having to pick up the pieces following T/Supt Worth's failings.

Further, the phrase "who allows a murderer to walk around free", referring to TD/Sup Worth is repeated again in this section of PDR3 in the penultimate paragraph on page 1023 of the bundle, and, in the bullet points made on page 1026 of the bundle is repeated again, this time with the plural "(s)" added.

Further, the claimant also, at page 1023 of the bundle, as part of this disclosure said this:

"It cannot be ignored that DCI Worth is a very close friend of CS Sheared, the Head of Workforce Development who has been involved in setting up the Promotion Process. It is CS Sheard who in her short time as ACC promoted DCI Worth to Temporary Superintendent; this was at a time when another male officer had been promised that he would be next to be given an acting superintendent position. Furthermore, CS Sheard, when previously the officer's Divisional Commander had re-written for her a poor appraisal which had been completed by T/Supt Worth's line manager, as referenced in my 'whistle-blowing report. The officer's current daily work colleague is CS Hankinson, one of the main interviewers in the process. Although nothing can be proved there was widely held suspicions that this officer would be better 'informed' and 'prepared' on her attendance for interview than other candidates. The officer's success certainly did not come as a surprise to anyone."

This includes information that forms part of the claimants pleaded disclosure at PD1.16, and has been considered in that context above. It is, however, we consider also part of the information, and contains allegations, which are relevant to this disclosure.

Para. 122 of the List of Issues sets out the claimant's case that he reasonably believed that this disclosure was made in the public interest and that this information tended to show (a) that there had been a failure to comply with one or more legal obligations, namely (i) the duty to protect the public and prevent crime; and/or (ii) the duty of a police officer to comply with the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of duties and

responsibilities; discreditable conduct; and/or (b) that the health or safety of the general public had been endangered.

The relevant facts.

PD3.5 1. On Tuesday 26 June 2012 a man, of Hungarian nationality, was discovered dead between 12.45 and 12.50 pm by two members of the public in an open public park called Birchfields in the Longsight area of Manchester. The deceased was found on a grassed area of the park known as the 'logged* area. He was lying on his back with his arms extended slightly outwards from his torso with his legs outstretched. He was fully clothed with visible blood present around his face and head and a linear laceration ran along the underneath of his chin. No other person was In and around the area of the body at the time he was discovered. The two members of the public finding the deceased sought help from two gardeners who were working in a nearby road, one of whom put the deceased in the recovery position and began first aid when he thought he felt a faint pulse. After about five minutes, the police were called to the location and arrived within minutes. Two of the first responders began CPR on the deceased until paramedics arrived to take over. The paramedics continued CPR for a few more minutes before deciding to cease efforts and life was pronounced extinct at 13.10 pm. The death was treated as suspicious at the outset due to fact he was found in an open public area with injuries to his face with no apparent explanation for them.

PD3.5 2. A police investigation was immediately initiated and headed by Detective Inspector Theresa Carter. It was given the name “Operation Agricola”. Due to the suspicious nature of the death, the investigation was subsequently overseen by DCI Denise Worth of the MIT , with the support of a number of her detectives who together worked in conjunction with divisional staff in the initial days of the investigation.

PD3.5 3.The last confirmed sighting of the deceased was at 11.32 am in the Job Centre on Clarence Road in Longsight. This sighting is recorded on CCTV. His movements between leaving the job centre and being found in Birchfields Park remain unknown despite extensive CCTV and house to house enquiries. During the post mortem done by Dr Carter, it was noted that the deceased had severe neck injuries comprising the large laceration just beneath his chin with striped bruising to one side of this, bruising over the front of his neck and significant bruising into the soft tissues of the neck. He also suffered multiple rib fractures, most of which the Doctor attributes to resuscitation. Dr Carter noted, however, that there was an unusually large amount of bleeding associated with the rib fractures and one of the first ribs , was fractured which is considered unusual and not expected to be attributable to resuscitation. Furthermore, there was a fracture to one of the left ribs at the posterior angle, suggesting the possibility that the deceased suffered a blow to the back of his chest. It is the opinion of Dr Carter that this fracture in particular could not have been caused during resuscitation.

PD3.5 4.Dr Carter determined that the cause of death is a result of the extensive neck injuries suffered by the deceased. Such injuries could have obstructed his breathing and very likely caused the aspiration of his stomach contents which was also detected in the post mortem. The Doctor concluded that the aspiration of the stomach contents was considered a significant causative factor in his death.

PD3.5 5. Dr Carter's determination as to how the deceased came by his injuries was inconclusive. The injuries to the front of his neck indicated some form of impact to the front of his neck delivered with significant force. The doctor put forward two hypotheses to explain the cause of the impact to the deceased's neck. The first is that he fell forward, striking his outstretched neck on the ground or a protruding object. However, the doctor was not convinced by this scenario due to the severity of the neck injuries which would have had to be caused by his neck being outstretched and hitting a protruding surface. There was no evidence to suggest he was drunk and unstable. The evidence showed he was not drunk due to the low alcohol level in his blood. Another explanation for the deceased's fall could have been that he simply collapsed as a result of a medical condition. The doctor noted that he had an enlarged heart which could cause sudden collapse because the abnormally large heart is prone to the development of abnormal heart rhythms. However, this could not be proved by the pathology.

PD3.5 6.The second hypothesis was that the deceased's neck injuries resulted from one or more heavy blows to the front of his neck delivered by another person, possibly kicking or stamping. HM Coroner noted that the police investigation did not identify any third party involvement in the deceased's death. The absence of such evidence did not mean that the deceased was not assaulted by a third party.

PD3.5 7. An inquest was held, on 1 and 2 July 2013 and an open verdict was recorded. H M Coroner Nigel Meadows wrote to the Chief Constable on 3 July 2013 in these terms (pages 3208 to 3209 of the bundle):

"The above named was found dead in Birchfields Park, Central Manchester on 26th June 2012. He had suffered some unusual facial and neck Injuries. The Incident was treated as a potential serious criminal Investigation and a crime scene established. An extensive GMP enquiry ensued. I instructed Dr Carter to cany out a forensic post mortem examination. She concluded that he died as a result of neck Injuries which had been contributed to by a degree of natural heart disease.

However, she was unable to discount that the deceased may have been attacked and assaulted, therefore causing the Injuries. The injuries themselves were unusual although it could not totally be ruled out that they could've been sustained in some sort of accidental fall, although the features of the immediate vicinity did not provide direct support for that hypothesis.

The deceased and his immediate family are recent Immigrants into the UK and are Hungarian by ethnic origin. His behaviour and demeanour the day before and on the mornlng of 26th June was out of character and unusual. His family are highly suspicious that something untoward has happened to him and there Is third party Involvement In the death.

I understand that a thorough enquiry was conducted by the GMP and that Detective Inspector Theresa Carter gave evidence to summarise the results. The family do not speak English as their first language and we required an Interpreter in court.

At the conclusion of the inquest I Indicated that I would write to you and request that the Investigation conducted was reviewed and that the family were advised as to the outcome and kept In touch with developments. The second post mortem carried out by Dr Charles Wilson does not dispute Dr Carter's findings. As it stands, therefore, it cannot be conclusively determined who or what caused the injuries to the deceased that resulted in his death on the 26 th June 2012.

Please do not interpret this letter as any criticism of the inquiries made to date, because it is not. It is a very unusual case and the factual circumstances are exceptional and I thought it was an appropriate case for there to be a review."

PD3.5 8. The claimant had not seen this letter before making his disclosures. As a result of the Coroner's request, there was a review of the investigation. This was carried out by the Force Review Officer, Martin Bottomley. Terms of Reference were agreed on 26 July 2013 (see page 3213 of the bundle) . He conducted his review, and his report dated October 2013 is at pages 3219 to 3293 of the bundle.

PD3.5 9. In his conclusions, he said this:

"14.1

At the start of the investigation into the death of the Hungarian man on 26th June 2012 there was no conclusive proof that he had died as a result of an accident or whether he had been unlawfully killed. The police investigation that followed and the subsequent inquest were also unable to determine how he sustained the injuries which led to his death and as a consequence HM Coroner recorded an open verdict. It Is important to confirm that this review has not uncovered any new evidence which conclusively proves whether his death was the result of an accident or whether he was unlawfully killed.

As such there is no justification at this stage for informing HM Coroner of the need to consider re-opening the inquest into death. The Coroner should however be provided with a summary of the findings of the review.

In the opinion of Dr. CARTER the injuries sustained by [the deceased] were suspicious from the outset and in the absence of any evidence at the time to suggest otherwise Dr. CARTER advised:

14.3

'Given the nature of his injuries it is essential to investigate this death as a homicide until proved otherwise

It is the opinion of the Force Review Officer that this advice was appropriate at the time and remains so today. What the review has established is new information which is relevant to the death of [the deceased], a number of future learning opportunities and the fact that there are opportunities remaining for taking the investigation forward.

These opportunities have been documented as case specific recommendations.

14.4 The review Is not critical of individual officers or police staff involved in the original investigation. It Is apparent to the review team that both INPT1 and MIT staff conducted the investigation In good faith and in difficult circumstances. A combination of factors was critical in deciding the direction and eventual outcome of the initial Investigation.

• Organisational factors including demand on SCD resources in June/July 2012, the Impact of divisional reorganisation through PMIT2, lack of challenge during the MIT Investigative Assessment process and the fact that the Investigation was not subject to organisational review

• A failure to rigorously test the working hypotheses proposed by the SIO in the early stages of the Investigation which resulted in assumptions being made about how the deceased may have sustained the injuries which led to his death and the subsequent withdrawal of MIT resources and expertise from the investigation.

• Investigative factors such as the decision not to employ an investigative management system, a lack of clarity around CCTV results and the limited resources available to INPT1 to continue the investigation as a Special Procedure Investigation after 6th July 2012.

14.5 The conclusion of the Force Review Officer is that consideration should be given to MIT addressing the identified investigative opportunities in order to satisfy the Organisation, HM Coroner and the family of the deceased that all reasonable lines of enquiry to ascertain how and why [the deceased] died on 26th June 201 have been fully explored."

PD3.5 10. Pursuant to Martin Bottomley's Review, the investigation was allocated to the MIT, and TD/Supt. Marsh was assigned to it. His report was eventually completed on 4 February 2015, and is at pages 3294 to 3306 of the bundle.

PD3.5 11. From this it can be seen that he did not commence his investigation until 14 January 2014, two days before the date of the claimant's PDR3 document. He can therefore only have had, at most, two days on the investigation. He was clearly aware that there had been a Review, as he was briefed by Dave Pinder of the Force Review Team. He recorded in his report (at page 3295 of the bundle) :

The following points were raised at the inquest and as such a review of the investigation was undertaken by the Force Review team.

a. The family of the deceased had expressed concerns that something untoward had happened to [the deceased]

b. The competency of the interpreters)

c. The views of Dr CARTER (Pathologist) which had been expressed to the inquest — Death is potentially suspicious?

d. Forensic examination of the scene - did the incident leading to his death occur in the park?

e. Establishing contact with the family of the deceased and the local community.

This review created 20 recommendations.

PD3.5 12. TD/Supt. Marsh took as his hypothesis that the deceased had been attacked in the park by one or more persons who caused him fatal injuries. Having reviewed the evidence , and made further enquiries, his conclusion was that the death remained unexplained, and he could not discount other hypotheses, though his favoured one was that the deceased had been assaulted by either a kick or a weapon, went to the ground, and then very quickly died.

PD3.5 13. The Review by the FRO Martin Bottomley was a thorough review, and it identified a number of learning opportunities, and potential further lines on investigation. He was clear, however, that he too was not being critical of the original investigation, and he identified a number of factors which had possibly hindered the investigation. He did, however, conclude that the original investigation should, until the converse was established, remain open as a homicide investigation. Homicide, of course, is not synonymous with murder, and includes the lesser offence of manslaughter.

PD3.5 14. The claimant , of course, did not see the FRO's Review, as acknowledged in para. 308 of Mr O'Dempsey's Closing Submissions. The claimant's only (although Mr O'Dempsey says he was the "main") source of knowledge about Operation Agricola was TD/Supt. Peter Marsh.

Discussion and findings.

The information disclosed.

PD3.5 15. The information disclosed was, and included allegations that:

H M Coroner had recognised the death as a suspicious death and had "returned it" to GMP

The case had been reviewed, and the review was critical of DCI Worth

The case had then been investigated as a murder

DCI Worth's failings had allowed a murderer to walk free

DCI Worth had been corruptly promoted by CS Sheard due to their close friendship, CS Sheard having improperly changed an appraisal by her line manager

The s.43B test.

PD3.5 16. Our next task is to determine whether the claimant satisfies the Tribunal that he had the requisite reasonable belief that the disclosure tended to show one, or more, of the matters specified in s.43B(1). The matters relied upon are that this information tended to show (a) that there had been a failure to comply with one or more legal obligations, namely (i) the duty to protect the public and prevent crime; and/or (ii) the duty of a police officer to comply with the standards of professional behaviour set out in

Schedule 2 to the Police (Conduct) Regulations 2012 and in particular the standards of duties and responsibilities; discreditable conduct; and/or (b) that the health or safety of the general public had been endangered.

PD3.5 17. The first of these, under s.43B(1), breach of legal obligation, must relate to the common law duty previously discussed. The Tribunal cannot see how the claimant believed that this disclosure tended to show that this legal duty was being breached, unless by it he was disclosing that by failing to carry out an adequate investigation, DCI Worth had indeed let a murderer walk free. That must be the case, as there had already been a death, so the duty can only be in relation to future potential homicide being carried out by the unapprehended perpetrator.

PD3.5 18. The 2012 Regulations issue has already been addressed.

PD3.5 19. Similarly , in relation to s.43(B)(1)(e) the claimant contends that this disclosure tends to show that the health and safety of the general public had been endangered, which must again relate to the risk that the investigation had failed to apprehend a killer. Again , this must be based upon the allegation that DCI Worth's failings had let a murderer walk free.

PD3.5 20. Did the claimant have these requisite beliefs? At this stage, of course, he need only believe the disclosure "tended to show" these things. Our conclusion, however, is that he does not satisfy even this low threshold for s.43B(1). The terms of the disclosure reveal that all the claimant could reasonably have believed this disclosure tended to show was that the death was not, but should have been, treated as suspicious by DCI Worth, and she should have pursued other lines of enquiry. At the time that he made the disclosure he knew that the matter was being further investigated, but it was early days. He had a belief, which the Tribunal accepts would be reasonably held, that the delay would hamper the new investigation, and may therefore compromise the chances of apprehending any perpetrator. We do not, however, see how the claimant can have reasonably believed that this disclosure "tended to show" that a killer had been let free, or, therefore , that the common law duty had been breached, or that the health and safety of the general public had been endangered. That there was a risk that this may happen would be something that he could reasonably have believed, and that his disclosure tended to show that, but he goes further than that , and contends that his disclosure tended to show that the risk had come to fruition. This disclosure therefore fails on s.43B(1). As the claimant was only aware of these matters once they had been returned to the GMP, and T/Supt. Marsh was investigating them at the end of 2013 and beginning of 2014, no issues on delay or incompatibility of conduct on the part of the claimant arise.

PD3.5 21. For completeness , in terms of belief that it was in the public interest to make the disclosure , we note that it was not made until 16 January 2014 , when it formed part of a grievance that the claimant raised in respect of his lack of success in a promotion process in December 2013. DCI Worth, however, was successful in this exercise, and was then promoted to substantive Superintendent .

PD3.5 22. Reading PDR 3 as a whole, the Tribunal can see how the first three and a half pages are all about this promotion exercise. This is the context in which the claimant

makes this disclosure. It may, therefore be considered that the claimant was motivated by personal pique, and lacked any real concern for the public interest. The respondent invites us to find that the claimant lacked the necessary reasonable belief that making this disclosure was in the public intertest.

PD3.5 23. We take that into account, and the disclosure could be considered to contain a degree of threat to the respondent that if the claimant's grievance was not resolved to his satisfaction, he would be taking the matter outside the Force. That does not, however, preclude the claimant from also having a belief that to make the disclosure was also in the public interest, and he does expressly refer to his concerns about the safety of the public in the document as a whole. We therefore find that the claimant has shown the necessary reasonable belief that to make the disclosure to the IPCC was in the public interest.

PD3.5 24. That is, however, irrelevant, as it fails the other s.43B(1) tests.

The s.43F test.

PD3.5 25. Whilst this disclosure falls at s.43B(1) , we will, in the alternative, consider s.43F. For that purpose we must look at the information and any allegation contained in it. We have already indicated that we do not consider we are confined to the pleaded and recited extracts from PDR3 which are relied upon for this disclosure, but can look beyond them to see what information, as a whole, was conveyed. That does not require examination of anything further that the ensuing paragraph after that which has been expressly pleaded (the claimant has not used numbered paragraphs in this PDR). That paragraph begins "*As a result a murderer is free to walk the streets of Manchester, perhaps to strike again.."* As discussed above, the claimant must have intended that paragraph to be considered as part of the information that he conveyed, as it must be the basis for his claims that this disclosure tended to show the matters that he relies upon.

PD3.5 26. The first issue that arises is whether the claimant has shown that he had a reasonable belief in the allegation he makes that the case had been reviewed (which must be a reference to the FRO's review) *"and there is criticism of the manner in which the investigation was managed by TD/Sup Worth"*. It is clear that the claimant had not seen the Review carried out by the FRO. He has since seen it, and large parts of his witness statement make reference to it, but this is all after the event. He has not explained what he was told at the time about the Review, and what it said. The limited evidence he has adduced is of a conversation (or possibly more, it is unclear) with TD/Supt. Marsh, but he has not said what he was told about the Review, by this officer, or anyone else. The Tribunal does not, therefore, see how the claimant , without sight of, or a reliable oral summary of , the contents of the Review, can have had at the time he made his disclosure on 31 January 2014, written on 16 January 2014, a reasonable belief that it made criticism of the management of the investigation by TD/Supt. Worth. Even if it did (and Martin Bottomley is very clear in his conclusion that the Review made no criticism of any individual officer) there is no evidence from which the Tribunal can conclude that the claimant reasonably believed that this was the case. This is, at best, suspicion, speculation or surmise on the part of the claimant, and he has failed to establish a reasonable belief in this allegation.

PD3.5 27. It is important that the process by which the investigation came to be conducted by TD/Supt. Peter Marsh of the MIT is understood. The circumstances of the death were not, as is clear from the documentation , returned by H M Coroner "to be investigated as a murder". He returned the case to GMP to make further enquiries , so as to be able to satisfy the family of the deceased that all lines of investigation had been explored. He was expressly not critical of the previous investigation, and he did not direct how the further investigation should proceed, still less did he direct that it should be investigated as a murder. At most he wanted the respondent to re-examine whether the death was a "suspicious death".

PD3.5 28. TD/Supt. Marsh was not called by the claimant as a witness. Mr O'Dempsey makes the point that the respondent did not call him, but it is the claimant who needed to establish the basis of his reasonable belief, and who therefore needs establish what he was told by TD/Supt. Marsh. The claimant's Submissions (at para. 309) invite the Tribunal to accept that TD/Supt. Marsh was likely to have disclosed to the claimant his hypothesis that the deceased had been assaulted. The Tribunal cannot accept that, as the investigation was only two days old when the claimant first wrote down this allegation, and he does not suggest that he was told anything more between the date of his document, and its submission to the IPCC 15 days later.

PD3.5 29. The Tribunal considers that TD/Supt. Marsh's report is the the best evidence of what he was likely to have told the claimant. What is clear from that is that he was aware that there had been a referral back to the GMP from H M Coroner, and that there had then been a Review. Nowhere, however, does he use the word "murder", nor does he refer to the matter being referred back to GMP "as a murder". He clearly considered that the deceased may have been unlawfully killed, but he does not classify it as a murder.

PD3.5 30. In para. 388 of the claimant's witness statement he says "I had highlighted in my disclosures that such a mistake had potentially allowed a murderer to walk the streets of Manchester and perhaps to strike again." The claimant has inserted the word "potentially" into the information that he disclosed in PDR3. He did not so qualify his disclosure, he stated it as a fact. Similarly he did not qualify the allegation that the investigation had been returned to the MIT, and was being investigated, "as a murder". It was not, it was being investigated as a suspicious death, which is not the same thing.

PD3.5 31. These are thus two more allegations which were not, in fact, substantially true, and the claimant did not have a reasonable belief in them, as the imported word "potentially" in para. 388 of his witness statement implicitly recognises.

PD3.5 32. The Tribunal notes how Mr O'Dempsey seeks to minimise the significance of these minor, as he would categorise them, differences in shades of meaning. The Tribunal does not agree. The reasonableness, or lack thereof, of the claimant's belief in the substantial truth of these allegations is to be judged in all the circumstances, including the claimant's position, knowledge and experience. He, as he has been at pains to point out, was a highly experienced senior detective, with a law degree. He, of all people, knew the difference , in law, between murder and manslaughter. He also knew that the former requires pre-meditation, and in some, but far from all, circumstances, may be committed by serial offenders. The types of manslaughter,

however, are various, but they do not require the intent (*"mens rea",* if the Tribunal may be permitted the Latin term) required for murder. A robbery that goes wrong, a fight that gets out of hand, are two common examples of manslaughter. Murderers may go on to re-offend, if they are serial killers, those who commit manslaughter in the heat of the moment , however, often do not.

PD3.5 33. The claimant , however, baldly and clearly alleged that TD/Supt. Worth's actions had the result that "a murderer is free to walk the streets of Manchester". That was a gross exaggeration, and an allegation in which he could not have had a reasonable belief. It virtually suggests that she opened the cell door for an apprehended suspect.

PD3.5 34. Another factor that the Tribunal takes into account in assessing whether the claimant had a reasonable belief in the substantial truth of this allegation, is the fact that he clearly had an animus against TD/Supt. Worth. It was she upon whose more favourable treatment he based his first 2012 sex discrimination Tribunal claim , and who also featured heavily in his grievance of 25 June 2012 (pages 527 to 536 of the bundle). In assessing whether a belief , if such it be, is reasonable, the Tribunal is entitled to consider whether it is the result of careful consideration, or the jumping to a conclusion that is not evidence- based, but is born of pre-conception and personal opinion. We consider the latter is likely to be the case here, the claimant had no reasonable belief in these exaggerated and sensationalised disclosures.

PD3.5 35. Finally, there is the allegation, contained in this PDR, but also in para. (cxxxix) of PDR1, where it has been considered as part of PD1.16, that DCI Worth was promoted by ACC Sheard due to their friendship (an allegation which is intensified in this PDR to a "close" friendship), and had improperly changed an appraisal by her line manager. We have found that the claimant lacked a reasonable belief in those allegations for the purpose of determining whether PD1.16 was protected disclosure, and as these allegations in our view also form part of the information that was conveyed in this disclosure, the claimant's lack of reasonable belief in them is equally fatal (alone, regardless of the other aspects we have identified) to this one.

PD3.5 36. Regardless of whether it fails under s.43B, therefore this was not a protected disclosure which satisfies s.43F.

Group 6:

17. Protected disclosure 1.14 : Re – write of review of Operation Span

PD 1.14 was set out at §§ (xxxiv) to (xxxv) of PDR, in the following words (with the words omitted from the List of Issues added with underlining):

(xxxiv) This is not the only occasion when ACC Sweeney has suppressed information about failings of an investigation. A review of Operation Span (sexual abuse of children in Rochdale) undertaken by the GMP Review Team led to a highly critical report of the Force. It was revealed that certain lower ranking officers had recognised the severity of what was going on at an early stage and highlighted the lack of resources available at Rochdale to mount a proper investigation. A Divisional Investigative Assessment was

submitted to Command on the advice of officer 'L' who had been approached by a concerned officer from the Rochdale division. Officer 'L' was appalled at what was taking place and feared the abuse of the children could result in the death of a child. He disliked the term 'child sexual exploitation' and prefers to refer to what was taking place as 'the rape of children'. The DIA was not acted upon and the issues were ignored at that time, as there was a culture of 'performance management' being driven by Force Command who were more interested in 'volume crime', and the detection rates for thefts from and of motor vehicles, burglaries and minor street robberies than taking action to stop the rape and abuse of children. A damning indictment of the Force Command.

(xxxv) ACC Sweeney did not like the report findings and ordered changes. There have since been many revisions and amendments to the report, implemented on his instruction by the Force Review Officer, Martin Bottomley. It is believed the latest version is around version 9. The original authors, staff 'M' and 'N', have refused to put their name to the report since around version 5. Copies of the original report have been retained by the authors. I feel in light of the high level of public interest into GMP'S handling of investigations into the abuse and rape of children in Rochdale, questions need to be asked about why the original report has been suppressed and why the issues that were identified have not been publicly disclosed. Of interest is the fact that around the same time GMP commissioned NPIA (National Police Improvement Agency) to review Operation Storm (GMPs response to burglary). The report was critical and this too was buried by ACC Sweeney and its recommendations ignored.

17.1 Whilst the List of Issues states at para.74 that the information disclosed was:

"When a review of Operation Span (sexual abuse of children in Rochdale) undertaken by the Greater Manchester Police Review Team resulted in a report which was highly critical of the Force, ACC Sweeney told the authors of the report to change it and, when they refused to do so, suppressed the original report and arranged for a report to be written by the Force Review Officer, Martin Bottomley. [CGoC §77, 79]"

The Tribunal considers that the final sentence of para. (xxxv) must also be included. This is following the discussion in Chapter III above as to the extent to which the Tribunal is bound by the List of Issues. The first reason for that is that, whilst there is no ellipsis at the end of the recital in the List of Issues, which uses the "in the following words" formula , the omitted sentence follows directly on. The second is that these two paragraphs sit under the heading (C) Review of Op Nixon – A cover up!. The matters alleged in relation to Operation Span are cited as a further example of ACC Sweeney suppressing information, it being previously disclosed that he had covered up Operation Nixon. The final sentence in (xxxv) is cited as a third example of such conduct, and is a reference to Operation Storm. Thus the claimant seeks to rely upon in in support of the disclosure, but seeks to avoid it being considered as part of the information conveyed in it. Finally, as in other instances, to the extent that there remains any doubt as to the permissibility of this approach, as observed in ***Mervyn*** , this ultimately comes down to the interests of justice. CS Savill gave evidence about Operation Storm, saying how it was an internal report, which begs the question as to from whom was the GMP seeking to cover anything up. It has been touched upon, therefore in the evidence, but it is appreciated that there was no cross – examination of the claimant upon it

Para. 77 of the List of Issues sets out the claimant's case that he reasonably believed that this disclosure was made in the public interest and that this information tended to show (a) that a legal obligation had not been complied with, namely a police officer's duty to adhere to the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012, in particular the standard of Honesty and Integrity, the duty not to engage in Discreditable Conduct and the standard of Challenging and Reporting Improper Conduct; and/or (b) that this information had been deliberately concealed.

Relevant Findings of Fact.

PD1.14 1. In this disclosure Officer L is Ian Hynes , "staff" M is Bob Ashton and "staff" N is Dave Pinder.

PD1.14 2.The background to this disclosure is the investigation which started in August 2008 into allegations of the sexual exploitation of 6 girls aged between 12 and 15 in Rochdale. Alleged perpetrators were arrested, but ultimately no charges were brought. This was against the background of Childrens Social Care in Rochdale, on 23 June 2008, issuing a document entitled "Update on review of sexual exploitation across the Borough to Rochdale Borough Childrens Safeguarding Board" (the RBCSB"). The report identified the number of children who were at risk of Child Sexual Exploitation ("CSE") in the Borough, and made proposals for a multi- agency approach to deal with it. The GMP engaged with this process, and as a result, and with funding from the RBCSB in January 2009 an operation , Operation Sunrise, was instigated to tackle allegations of sexual abuse in the Rochdale Borough, based in the Public Protection Investigation Unit in Middleton. It was this operation which carried out the investigation started in August 2008.

PD1.14 3. In early 2009 there were further allegations made which were investigated, but still there were no charges brought. At some point (it has not been possible to identify precisely when, it seems around January 2011) Operation Sunrise became Operation Span, effectively carrying on the investigation into CSE in Rochdale.

PD1.14 4. On 14 December 2010 ACC Sweeney chaired a Gold command meeting in Operation Sunrise (see pages 3323 to 3324 for the minutes). He had a number of concerns about it. He had previously visited the PPIU at Middleton. He declared a "critical incident", and as a result also asked the FRO , Martin Bottomley to conduct a review, which he acknowledged and instigated on 20 December 2010 (page 3422 of the bundle).

PD1.14 5. With these arrangements in place to take the investigation forward the ACC Crime commissioned a review by the Investigative Review Section (IRS) of the Serious Crime Division (SCD) to critically examine what had gone before to identify both good and weak practice along with any organisational and individual learning that might help improve force performance.

PD1.14 6. There have been a number of inquiries into how the various agencies have responded to child sexual exploitation in Rochdale . GMP faced criticism from a number of quarters including from former GMP officers who have worked in the safeguarding arena. From a policing perspective there have been two key reports - the Serious Case Review (SCR) into Operation Span and the GMP misconduct investigation into the same operation, which was supervised by the IPCC.

PD1.14 7. On 30 December 2010, PSB informed the IPCC who made the decision to supervise the PSB investigation, (see page 3542 of the bundle , with the IPCC Terms of reference at page 3425).

PD1.14 8. The GMP Professional Standards Branch investigation report focussed on whether there was a case to answer for serving officers for misconduct. The PSB report has two parts. The first part examines in detail the initial investigation into the sexual abuse of Child 1 and Child 2 which came to GMP's attention in 2008. This criminal investigation then expanded in size to include other victims, most of whom did not support the police investigation at the time or since.

PD1.14 9. The second part of the GMP PSB investigation report explores the wider decision making by the Rochdale Senior Leadership Team as the issues around child sexual exploitation were developing in early 2010. That report, which is curiously undated, resulted in 7 officers being served with notices under the Police Conduct Regulations (see page 3541 of the bundle) , was critical of the actions taken in Operation Span.

PD1.14 10. The 2012 criminal trial held at Liverpool Crown Court focussed upon the abuse against five children, Child 1, Child 3, Child 4, Child 5 and Child 6.The criminal trial concluded at Liverpool Crown Court in May 2012 , with 9 men convicted of serious sexual offences against children in Rochdale.

PD1.14 11. In October 2012 following the convictions, RBSCB notified GMP of the decision to conduct a Serious Case Review (SCR) in respect of the six young people who had been subject of child sexual exploitation in the borough . This was to have multi – agency input, with each agency requested by RBSCB to complete an Individual Management Review (IMR) report . Terms of Reference were provided, and the SCR was to be completed by 18 March 2013 (see pages 3452 to 3456 of the bundle).

PD1.14 12. The IMR from the GMP was to be written by Bob Ashton and Dave Pinder, both of the MCRU. Martin Bottomley was to be the Quality Assurer. The process of drafting began in or around January 2012, and various versions of the draft were produced.

PD1.14 13. There appears to have been some overlap between the continuing internal investigation and the preparation of the respondent’s IMR for the RBSCB, and the Policy File and Log of Events at pages 3444 to 3518 of the bundle is a good record of what actions were taken, when and by whom. It starts in September 2012, before the RBSCB request, but continues up until 9 January 2018. It records the RBSCB request, agreement of the Terms of Reference, and many other matters as to precisely how and

when the respondent would provide his response. It was not until January 2013 that the authors were able to prepare a first draft of the IMR, with a formal Draft 1 being submitted to Martin Bottomley on or before 26 February 2013.

PD1.14 14. The drafting and amendment process for the IMR can be seen in the document at pages 3519 to 3531 of the bundle. That starts with an email from Martin Bottomley on 26 February 2013 to a number of senior officers, including ACC Sweeney, and invites their comments upon the draft report, being prepared at that time by Messrs. Ashton and Pinder. The ensuing pages are a document which was a "living" document, as comments are obviously added as the various versions are released, and comments sought from interested parties and senior officers.

PD1.14 15. Those officers, including the Chief Constable , make their observations upon the various versions of the report that they have seen or wish to comment upon. ACC Sweeney (on pages 3521 to 3523) , with whom the authors met on or about 4 February 2013, made extensive comments upon Version 2. In essence he was generally appreciative of and in agreement with the contents of the draft, but did suggest some amendments. Those, according to the final column of this table , which records amendments made, were largely accepted, and that draft, Version 2, was then duly amended.

PD1.14 16. By 8 March 2013 the IMR had been considered and discussed widely, and it is recorded (page 3508 of the bundle)that the feedback had been overwhelmingly positive . The authors were aware that the IMR had been discussed at Force Command level, as noted in the Policy File and Log of Events on 14 March 2013 (pages 3508 and 3509 of the bundle) , Whilst the Chief Constable and ACC Heywood are cited, along with various other senior officers, but ACC Sweeney is not mentioned.By this time the report had reached its fifth version, but between 8 March and 14 March 2013 the authors became aware of the stance taken by the Chief Constable in respect of Draft 5 of the report. The report was to be submitted and published under the name of the Chief Constable.

PD1.14 17. They met with Martin Bottomley on 14 March 2013 (page 3511 of the bundle). This is noted in the Log as follows:

The IMR authors met with Mr Bottomley the Force Review Officer at 0915 March this morning. The purpose of the meeting was to discuss the stance taken 2013 by the Chief Constable in respect of Draft 5 of the IMR report which the IMR authors understand he has now read in its entirety. It would appear that the IMR authors have been subject to implied criticism from the CC regarding the content of the IMR report. The IMR authors understand that there have been a series of emails interchanged between the Chief Constable, Sir Peter Fahy, The ACC Steve Heywood, and the Head of the PPD Mary Doyle regarding the Force position on the content and submission of the IMR report. The IMR authors have not been invited to participate in this process. The FRO is attending a meeting with the CC today. The IMR authors have not been invited. It remains to be seen what will emerge from this meeting but the overwhelming impression that both IMR authors have at this point is that the content of the IMR report has not been well received by the CC. The IMR authors are of the opinion that they will be put

under pressure to change the content of the IMR report not because it is factually inaccurate but purely on the basis that the content does not meet with the approval of the Chief Constable. The IMR authors are not prepared to do this."

PD1.14 18. This was followed up by a written statement (perhaps in an email) in these terms (in bold text as used in the Log):

"THE IMR authors have prepared the IMR report based on sound methodology. The content of the report is founded on thorough research and extensive discussions with officers and staff of all ranks who had direct or indirect involvement with the GMP CSE investigations between 2008 and 2012." They have written the report and interpreted the content to the best of their professional ability and with integrity. The IMR authors stand by the content of the report and are not prepared to change the content, redact, re-write or amend any part of the report other than to clarify specific issues or correct factual inaccuracies."

PD1.14 19. At pages 3531A to 3531C of the bundle is a Table showing the drafts that were prepared , and the changes that were made. There is a box headed "Rationale and outcome".

PD1.14 20. Up to and including Draft 5, Messrs. Ashton and Pinder are recorded as the authors, with Martin Bottomley as the quality assurer. That, however, changes for Draft 6, when Martin Bottomley becomes the author, and there is no quality assurer.

PD1.14 21. In the box for "description of report", for Draft 5 the following appears: *"Report amended following feedback from ACC Terry Sweeney"*. In the "rationale and outcome" box is recorded :*"Editorial amendments agreed following feedback from interested parties".* Similar comments appear in respect of two previous drafts. This is the only reference to ACC Sweeney in this document.

PD1.14 22. For the next draft, Draft 6, the description box reads: *"Report amended by Martin Bottomley following feedback from Supt Owen and direct intervention by CC Peter Fahy"* . In the rationale and outcome box , the following appears:

"CC Peter Fahy requests meeting with Force Review Officer and C/Supt PPD and directs sections of the report be edited before it is sent to the Safeguarding Board. IMR authors are not invited to this meeting and are not involved in the editing process. IMR authors not happy about this process."

PD1.14 23. Thereafter, Martin Bottomley becomes the author, and Ch. Supt Mary Doyle is the quality assurer. For Draft 7 the description is : *"Amended report edited on the instruction CC Peter Fahy"* and in the rationale and outcome box appears: *"Draft 7 of the report post CC amendments is sent to Safeguarding Board. Significant sections have been removed."*

PD1.14 24. Dave Pinder continued to work on the IMR, but only under the direction of Ch. Supt. Mary Doyle. A meeting was held on 15 April 2013 , which is noted in the Table (page 3531B of the bundle) as follows:

"At 15.00 on Monday 15th April 2013 a meeting took place in the office of Chief Supt Mary Doyle to discuss feedback in relation to the GMP IMR received from the Rochdale SCR Author/Chair/Panel. Present were: Chief Supt Mary Doyle PPD / Martin Bottomley Force Review Officer / Supt Phil Owen PPD / DI Nicky Porter ex PPD / Mr David Pinder & Mr Robert Ashton MCRU. Ch. Supt Doyle stated her position which was that there should be no further amendments made to the GMP IMR report other than to correct factual inaccuracies identified by the SCR panel or to provide further explanations for existing content. CC Peter Fahy had previously directed that amendments should be made prior to the report being sent to the Safeguarding Board. Ch Supt DOYLE believed that the report now provided a balanced, honest and accurate account of the police position and that it was in the best interests of the SCR process and safeguarding children in Rochdale for the report to remain substantially unchanged. No redactions. Mr Pinder Supt Owen and DI Porter were directed to address any factual accuracy/ clarification issues before re-submitting the report with a list of amendments to Chief Supt Doyle for Q/A prior to resubmission to the SCR panel. This was done and a revised report was submitted on 19/4/13.

PD1.14 25. Thereafter Draft 8 was prepared , and approved by Ch. Supt Mary Doyle, and submitted to the Safeguarding Board.

PD1.14 26. Ultimately , on 7 August 2013, Draft 9 was produced, by Dave Pinder on the instructions of Ch. Supt. Mary Doyle, and submitted by him to her with an email of 14 August 2013. This is also referred to in the Log of Events, and there may in fact have been two emails. In what may be a second, or covering email, Dave Pinder says this:

"Mary

Apologies for the lengthy email..!

Our primary objective as IMR authors was to identify good practice and or deficiencies in the police response to CSE and children in Rochdale in order to improve safeguarding procedures. We reported what we found honestly and we think we achieved that objective in the original IMR report. We've never been happy with the rationale behind requests for redaction from the SCR panel. Our view has always been that it remains in the remit of the SCR author to comment on the content of the IMR in her overview report, favourably or otherwise? As you know Bob and I argued our case and we've been grateful for your support. I've redacted/amended the GMP IMR report submitted to the SCR Panel on 19th April 2013 in line with the comments in your email from 7th August. The changes are summarised below and more fully documented in an attachment to this email. A revised version of the IMR report (submission 3) is also attached. The IMR report is PW protected, password to follow in separate email. I'll ring tomorrow should you need to discuss? Draft 9 produced and sent to MD & RSCB 23/08/13"

PD1.14 27. Dave Pinder sent that day, or the next day another email to Ch. Supt Mary Doyle in these (or partly these terms):

"Mary

Just for your information I've listed some examples below which highlight why we feel strongly about the stance taken by the SCR / RBSCB in this case...

• We commented on the content of the Terms of Reference at two IMR authors meetings, (the meetings weren't minuted). I'm aware that Phil and Nicky, GMP's panel members also made representation on our behalf. Our belief is that our comments were not taken seriously by the SCR Author/Chair and it certainly did not feel like partnership working.!! As an example we queried why one of the ToR in v1 related to 'Looked after Children' when none of the six subjects chosen by the SCR Screening Panel had ever been a 'Looked After Child'. Ironically this ToR was eventually removed from ToR (v8), which was circulated to IMR authors AFTER the date for submission of first draft IMR's!

Our criticism of the administration (as well as the content) of the ToR was because we were often unaware of revisions; circulations were delayed and on two occasions (v4/5) we didn't receive them at all. The admin was overseen of RBSCB.

[Reference is made to 2 of the child victims in the case]

• [REDACTED] also an appointed advisor to the Serious Case Review. [REDACTED] referred [REDACTED] as her point of contact in the local authority back in 2008/09 in relation to 'Sunrise' the RBSCB initiative to address CSE in Rochdale. Sunrise was never really established, it was poorly supported and did not function properly. We comment on this in the IMR. It is not difficult to perceive a potential conflict of interest here?

17/10/13 I'm conscious that because of workloads outside of Span I've not been able to add to this document in recent weeks despite the fact that there have been a number of relevant developments since the final submission to the SCR panel. These include:

• Us having sight of several draft versions of the SCR overview report the content of which in part we fundamentally disagree with on the basis that it does not represent a fair and balanced (or even accurate) reflection of the contents of the police IMR (e.g. - performance culture described as a hypothesis and not mentioned again)

• Confirmation of the fact that the PSB have now concluded their investigation which has included misconduct interviews with former members of the SLT at Rochdale.

• Despite numerous attempts from both myself and Bob to alert senior managers to the benefits of a Gold Group to manage media interest following the publication of the SCR report which is likely to be highly critical of the police (albeit not for the reasons we highlighted in the IMR... I!) the organisation does not seem able to acknowledge this as an issue."

PD1.14 28. Finally, for completeness, there ensued further communications in October 2013 about an issue relating to a highly sensitive and personal matter relating to one of the victims of the CSE, about which there has been cross – examination and some

material before the Tribunal. It was a matter omitted from the IMR, although it was included at one stage. It is not, however, one of the matters that the claimant disclosed, nor, the Tribunal considers is it relevant to the issues that it has to decide.

PD1.14 29. To the extent that the Chief Constable intervened in this process, and expressed a strong desire as to what the IMR should and should not contain, he agreed that this was indeed the case. There was amongst some (indeed some senior) officers a view that there had been an over - emphasis on the need for the Force to tackle "acquisitive" crime , at a time when its resources were being depleted, and this was some form of mitigation for its failure adequately to protect vulnerable children from the risk of CSE. There was a debate over the extent to which "target – driven policing" may have led to deficiencies in the proper approach to tackling CSE. He did not wish this to detract from what he regarded as the Force's own failings in this regard. This was, to some extent , a political issue, and he accepted that he did wish to ensure the IMR did not give a distorted picture. The impetus for such intervention, however, was his. As can be seen in version 7 of the IMR (pages 333 to 334 of the claimant's Submissions) the changes inserted in that version expressly refer to the "performance culture pressure", and how this should not be used as an excuse for a failure to tackle CSE. Reference is also made to attitudes to class and culture, and perceptions of various agencies of the victims of such crimes.

PD1.14 30. Additionally, ACC Sweeney's views on this issue are reflected in his contribution to the IMRs, in both versions 6 and 7 (and remaining through to the final version 9), which can be seen on pages 333 to 335 of the claimant's Submissions. He described, in this context, the treatment of the SLT at Rochdale "as 'very brutal' with the pressure exerted upon them to improve performance as 'immense'." Later, (at pages 336 to 337) a previous version with a quotation from ACC Sweeney about this issue is revised for version 7, where that quotation is removed. There is no evidence that it was ACC Sweeney who directed its removal, and Messrs. Ashton and Pinder had by that time ceased their involvement, save, on the part of Dave Pinder, to carry out work he was specifically directed to do.

PD1.14 31. In short, there is no contemporaneous evidence that ACC Sweeney sought the changes that Messrs. Ashton and Pinder objected to, and hence no evidence that this was the information that they conveyed to the claimant , still less the reasons why he was seeking the changes that he allegedly was.

PD1.14 32. In respect of the final allegation in para. (xxxv) , the claimant has adduced no evidence at all about any NPIA (National Police Improvement Agency) report to review Operation Storm (GMPs response to burglary), or the alleged "burying" of it by ACC Sweeney, so the Tribunal can find no facts in relation to it. In any event, the Tribunal's understanding , from the evidence of Paul Savill , is that this was an internal review, so it is unclear how this would be covering up anything from any external scrutiny.

The information disclosed:

PD1.14 33. The claimant's pleaded case is that the information disclosed was that when a review of Operation Span (sexual abuse of children in Rochdale) undertaken by the Greater Manchester Police Review Team resulted in a report which was highly critical of the Force, ACC Sweeney told the authors of the report to change it and, when they refused to do so, suppressed the original report and arranged for a report to be written by the Force Review Officer, Martin Bottomley.

PD1.14 34. That , however, overlooks the rest of para. (xxxv) in which the claimant goes on to disclose information that ACC Sweeney also "buried" a report into GMP's response to offences of burglary which was critical of the GMP.

PD1.14 35. Before moving on, it is important to identify precisely what the claimant was disclosing in this disclosure. As observed, there were a number of reviews of Operation Span. The terminology used by the claimant in this disclosure is, with respect ambiguous. In para. (xxxiv) he refers to a "review of Operation Span …. undertaken by the GMP Review Team" leading to "a highly critical report of the Force". That, at first blush, looks like the PSB review, carried out under IPCC supervision, which resulted in 7 officers being served with notices under the Conduct Regulations.

PD1.14 36. The claimant , in this paragraph, goes on to describe what he was (apparently) told by Officer L, now known to be Officer Hynes, who worked on Operation Span, and ends this paragraph with "A damning indictment of the Force Command". In the next paragraph, however, para.(xxxv), the claimant says *"ACC Sweeney did not like the report findings and ordered changes."* (emphasis added). He then goes on to refer to there being many revisions and amendments to the report, and how there were around 9 versions. He also refers to the authors refusing to put their names to it "since around version 5", so this can only be a reference to the IMR. The Tribunal will therefore take it that this is what the claimant means, and he is only alleging improper intervention by ACC Sweeney in respect of drafting any report as in relation solely to the IMR.

The s.43B tests.

PD1.14 37. The claimant puts the first issue to be determined as " Did the claimant reasonably believe that this disclosure was made in the public interest and that this information tended to show (a) that a legal obligation had not been complied with, namely a police officer's duty to adhere to the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012, in particular the standard of Honesty and Integrity, the duty not to engage in Discreditable Conduct and the standard of Challenging and Reporting Improper Conduct; and/or (b) that this information had been deliberately concealed"?

PD1.14 38. These are the only limbs of s.43B(1) upon which the claimant relies. In terms of the first limb, the only legal obligation identified is that under the 2012 Regulations. As previously held, the Tribunal does not consider that this is a legal obligation, and the claimant did not refer to it as such in his PDR documents, so the claimant cannot therefore have reasonably held the belief that this disclosure tended to show any such breach, and it fails at that stage.

PD1.14 39. There is , however, a second limb relied upon, that of concealment, under s.43B(1)(f). The question is, however, what information is it that the claimant contends this disclosure tends to show was being concealed ? He does not appear to be saying that the alleged re-write by ACC Sweeney was to conceal any wrongdoing (i.e of the type prescribed in s.43B(1) of the Act) . He says that there was an "original report" which was a "damning indictment of Force Command", and highlighted various issues in terms of resources, cultures, and the prioritisation of other types of crime over child sexual abuse, but the Tribunal cannot see how he could reasonably have believed that this disclosure tended to show that alleged re-write by ACC Sweeney was to conceal any form of wrongdoing. All he says is that ACC Sweeney did not like the report findings. That is a long way off saying that he did not like them because they showed wrongdoing that he then wanted to conceal. This limb, however, has never been elucidated in any submissions for the claimant (it is mentioned briefly at para. 198 of the claimant's Closing Submissions) , so the Tribunal can only speculate on what he may mean. The Tribunal finds that the claimant lacked a reasonable belief that this disclosure tended to show the type of concealment specified under s.43B(1)(f), so it fails at that point.

PD1.14 40. On the ***Muchesa*** test , whilst it is unclear when the claimant found out about these matters, it cannot have been before mid - 2013, so the period of delay would not be more than 9 months or less. These were not disclosures of the type of serious harm of the nature that contained in the disclosures in relation to Nixon and Cregan, and the Tribunal would not find that the delay or any other conduct on the part of the claimant was incompatible with the beliefs that he has to show. For completeness , the Tribunal would accept that, had it satisfied the s.43B(1) test, the claimant could satisfy the test of a reasonable belief that it would have been in the public interest to make such a disclosure.

The s.43F test.

PD1.14 41. If, however, the Tribunal is wrong on s.43B, and this disclosure satisfies it, it must go on to consider whether the claimant had a reasonable belief in the substantial truth of the information he was disclosing, and any allegation contained in it. In this regard, context is vital. These disclosures sit in PDR1, under the heading "C – Review of Op Nixon – A cover up!". They follow paras. (xxix) to (xxxiii) in which the claimant alleges that ACC Sweeney and DCS Shenton covered up the failings of TD/Supt. Scally in Nixon , the subject matter of PD1.3. These paragraphs, therefore, are relied upon by the claimant to reinforce his previous disclosure that there had been a cover up in Operation Nixon, but they are, and have been pleaded to be, a separate and distinct disclosure about another alleged instance of ACC Sweeney's involvement in a cover up, in fact two such instances.

PD1.14 42. The claimant gives as his sources of belief for this PD Bob Ashton, Dave Pinder and Ian Hynes. The latter is not relevant, as he was not the source of any information about ACC Sweeney seeking to change the IMR. He has called none of them, and not adduced any other witness evidence from any of them . He has had, as part of the disclosure in the case (even if late, and somewhat piecemeal) access to the various iterations of the drafts of the Report and its final form. None of this, it must be stressed, was information that he had at the time he made his disclosure to the IPCC on 31 January 2014. All he says he had at that time is what he had been told by Bob

Ashton, Dave Pinder and Ian Hynes. The latter only provided information about the original investigation, not about the IMR process.

PD1.14 43. As in other instances, the relevance of the "after the event" material is that it can cast light upon what information the claimant was likely to have been given by any of his sources for this disclosure.

PD1.14 44. The claimant's assertion in this PD (predominantly, but there is something else) is that ACC Sweeney improperly interfered in the drafting of the IMR report, leading to the two contributors withdrawing from the process. This is said to have been because ACC Sweeney (as he had in Operation Nixon, and was to do in relation to a report into the GMP response to burglaries) wanted to cover something up.

PD1.14 45. So where is the evidence that shows that it is likely that this was the information provided to the claimant , in which he could then have held a reasonable belief? The claimant deals with this disclosure in para.268 of his first witness statement. There he says:

"Two officers who were involved in the investigation , Bob Ashton and Dave Pinder, had told me that the conclusions first reached were overruled. …….. They had told me ACC Sweeney (former divisional Commander of Rochdale) did not like the report findings and ordered changes . They said that there had since been many revisions and amendments to the report. It was believed that the latest version … was around version 9 and the original authors (Bob Ashton and Dave Pinder) had refused to put their name to the report since around version 5. The Force Review Officer , Martin Bottomley completed the subsequent amended versions. ….. I was told by Bob and Dave that they had retained the original reports such were their concerns around the cover up."

PD1.14 46. There is, it seems to the Tribunal a fairly simple issue to be determined here. Whilst there has been much (probably too much, for which the Tribunal must accept some responsibility) analysis of the gestation of the various iterations of the Report, and a lot of evidence about its contents , the claimant's disclosure was that ACC Sweeney had interfered in the preparation of the Report, seeking improperly to suppress information that may be contained in it, to prevent it becoming public. In the evidence, as highlighted in the respondent's submissions, the claimant went further than that, and implicated Martin Bottomley and Sir Peter Fahy in this wrongdoing. The essential question, however, is whether the claimant has established a reasonable belief that ACC Sweeney himself was involved in any such wrongdoing.

PD1.14 47. The only evidence available to him at the time was that of Bob Ashton and Dave Pinder. The claimant's evidence of what he was told by either of these persons is very vague. It resides solely in para. 268 of his witness statement. He gives no details of when he was told any of this by his sources, whether they were together or told him independently, and what details they provided. Even at face value , all the claimant has been told is that ACC Sweeney "did not like the Report". The claimant does not say his sources told him why he did not like it , nor is it clear that they, rather than the claimant, used the word "cover up". They did not use that phrase in any documented comments they made at the time. Their withdrawal from the process occurred in April 2013. The

claimant could have been told about it around the time or later. He did not raise the matter until 20 June 2013, in his PDR1 document.

PD1.14 48. Against that we have clear contemporaneous evidence of the evolution of the IMR, and well documented reasons for Bob Ashton and Dave Pinder's dissatisfaction with the proposed changes to their work from Version 5. They were not alone, as we can see that Ch. Supt. Mary Doyle was similarly adamant, at that stage, that there should be no changes. All the evidence at that time suggests, as the claimant himself accepts , that the impetus for changes was coming from the Chief Constable. Whilst ACC Sweeney was, as were many in the SLT, involved in the process of reviewing drafts of the IMR, there is nothing to suggest that there was any opposition to his proposed changes. Indeed as the Table at page 3531A of the bundle shows, up to and including Version 5, prior to which ACC Sweeney did have some input, the authors were content to sign off the draft IMR up until that point. Whilst Mr O'Dempsey highlights the use of the words "around version 5 " in para. 268 of the claimant's witness statement, we know that it was after that version, on 15 April 2013. It was clearly the intervention of the Chief Constable that provoked the withdrawal of Messrs. Ashton and Pinder from the process. That is well documented, and in all the material thereafter from Dave Pinder who remained involved, there is no suggestion at any time of ACC Sweeney's actions leading to their disengagement from the process. The claimant's submissions, however, go on to refer to differences between versions 6 and 7. Indeed a Table is annexed to the Submissions to show these differences. There is, however, nothing to indicate that it was ACC Sweeney, rather than the Chief Constable, who wanted to change the IMR in a manner with which its previous authors disagreed.

PD1.14 49. Leaving aside for a moment the question of whether he had a reasonable belief that the actions of anyone involved in this process were improper , and were some form of cover up, the real question is whether the claimant had a reasonable belief that ACC Sweeney was involved in any such conduct at all. This was, of course, what he was trying to show, because this disclosure is relied upon to support the claimant's previous disclosure that ACC Sweeney had covered up Operation Nixon. This, and the ensuing disclosure about suppression of a report into the GMP response to burglary (the end of para. xxxv, but omitted from the List of Issues) are designed to show a "propensity" to cover up on the part of ACC Sweeney. Whilst his evidence may have strayed into making further allegations against Martin Bottomley and Sir Peter Fahy, these did not form part of this disclosure. They are, of course, relevant to the issue of reasonable belief, because, as submitted by the respondent, if the claimant's evidence as to who was actually trying to suppress unwelcome elements in the draft reports has shifted from ACC Sweeney to others, this undermines his contention that he had a reasonable belief that it was ACC Sweeney who had acted improperly. Finally, in this connection, that ACC Sweeney wanted to make changes because he wanted to cover up anything, in particular the "performance culture" is rather undermined by the contributions he did make up until version 6, where he is recorded as being critical of it, and the immense pressure that it put members of the SLT at Rochdale. All that, however, is rather by – the – by, as the essential issue is whether the claimant had a reasonable belief that it was ACC Sweeney who had sought to cover anything up , rather than why he did so.

PD1.14 50. For us, the claimant not having called any of the sources of his information, his own evidence is the only real source from which he can begin to establish that he had a reasonable belief that ACC Sweeney had been guilty of this type of improper conduct. He has not in any of his witness statements given an account of precisely what he was told , by whom, and when.

PD1.14 51. As highlighted by the respondent in his submissions, when the claimant was cross examined upon page 3511 of the bundle , which is the record of why Messrs. Ashton and Pinder refused to continue to sign off the draft IMRs, his evidence was:

'Q So, just pause there for a moment. If this is the information that you're relying on, and you do, in part, in your alleged PDR, there are one or two propositions that arise here and I want you to be -- I want to be absolutely clear with you about this. Either they have misled you into saying that it was Mr Sweeney who was getting involved in relation to 3511 - do you understand that? So, instead of saying the Chief, they said it was Mr Sweeney?

A Yes.

Q Or they have reported to you that it was the Chief, and you've substituted him for Mr Sweeney. Do you see that?

A I can hear what you're saying, but –

Q Yes.

A -- it's not true.'

PD1.14 52. So the Tribunal is left solely with the claimant's vague, undocumented and uncorroborated account of information allegedly provided to him by Messrs. Ashton and Pinder, to the effect that ACC Sweeney sought changes to the draft IMR, for improper motives, which is at odds with all the contemporaneous evidence of what actually occurred, and therefore seems most unlikely to have been the information that was conveyed to the claimant by these sources. If it is was, however, it was wrong, but the claimant simply has repeated it in his disclosures, with no scrutiny. That it was framed in such a manner as to be a further illustration of the propensity of ACC Sweeney to behave in such a manner, to further the claimant's narrative of his view of ACC Sweeney's conduct in general, makes us question whether the claimant was really concerned about whether his belief was reasonable, or simply made assumptions , or jumped to conclusions which were not reasonable on the information given to him, whatever that was. That the net was widened considerably in the course of the claimant's evidence before the Tribunal to include Martin Bottomley, and Sir Peter Fahy, who would indeed accept that he sought changes that Messrs. Ashton and Pinder objected to, albeit not for any improper purpose, also demonstrates how the claimant's belief in the significant involvement of ACC Sweeney has rather waned.

PD1.14 53. For all these reasons, the Tribunal finds that the claimant has failed to establish that he had a reasonable belief in the substantial truth of this allegation, and this disclosure fails on s.43F.

A further allegation made as part of this disclosure.

PD1.14 54. Finally, there remains, though largely overlooked by the parties , it seems , the further allegation, omitted from the recitals in the List of Issues, that ACC Sweeney also "buried" a report into the GMP response to burglary. This is part of para. (xxxv) of PDR1, expressly pleaded by the claimant to set out disclosure PD1.14. Whilst it begins *"Of interest is the fact that …."* it is clearly part of this disclosure, not just an aside. That is particularly so when it is recalled that these paragraphs appear under the heading "C – Review of Op Nixon – A cover up!". They follow paras. (xxix) to (xxxiii) in which the claimant alleges that ACC Sweeney and DCS Shenton covered up the failings of TD/Supt. Scally in Nixon , the subject matter of PD1.3. These paragraphs, therefore, are relied upon by the claimant to reinforce his disclosure that there had been a cover up in Operation Nixon. This is therefore another alleged instance of ACC Sweeney's involvement in a cover up.

PD1.14 55. There is simply no evidence before the Tribunal of the claimant's reasonable belief in this allegation. He does not refer to it in any of his witness statements, there are no documents in the bundle to which he has referred the Tribunal about it, so there is no basis upon which the claimant can satisfy the burden upon him to prove his reasonable believe in the substantial truth of this allegation. Whilst he was not cross – examined upon it, evidence was given by Paul Savill about it.

PD1.14 56. This alone would have rendered this disclosure unprotected under. S.43F. The Tribunal, however, can see that in this respect , the claimant may have a point (though not in our view a strong one) on ***Mervyn*** that to determine this PD on this basis when it was not brought to the claimant's attention that the respondent would be going outside the express recitals in the List of Issues in this regard would be unfair, this issue is not determinative of this disclosure. Even without it, for the reasons above this disclosure fails to amount to a protected disclosure. The reference to this other alleged cover - up , we feel has some evidential relevance, however, in our view as another instance of the claimant's readiness to make inaccurate allegations against, in particular, ACC Sweeney, with no evidential basis.

18. Protected disclosure 2.1: DCS Shenton, with the knowledge of ACC Sweeney and ACC Heywood, authorised the destruction of human tissue from the victims of Harold Shipman without notifying their families.

PD 2.1 was set out in detail at §§ (ii) to (x) of PDR2, which stated as follows:

(ii) It has come to my attention that ACC Sweeney, ACC Heywood and DCS Shenton have been discussing a highly sensitive issue for the past few years. It has become an increasingly problematic issue for them as a result of years of indecision and a reluctance to 'grasp the nettle'. It is an issue that would attract media attention and negative publicity.

(iii) It involves the highly sensitive issue of the retention of human tissues, more commonly referred to in the media as 'human body parts' and probably best known to the public through the Alder Hey Organs Scandal back in 2001, where bereaved families

of lost children were devastated to learn that Police had destroyed body parts without ever notifying the families nor allowing their repatriation with the bodies proper of the deceased

(iv) In this instance it concerns the retention of the body parts / tissues of the victims of Dr Harold Shipman, the biggest ever murder investigation in GMP.

(v) The tissues and body parts [of the victims of Harold Shipman] had been retained since January 2000 when Dr Shipman was convicted of the murder of 15 of his patients. DCS Shenton has only recently dealt with the matter. There has been an ongoing review of Human Tissue held within the various fridges and freezers across GMP for approximately the last 18 months which will have brought this issue to a head and increased the pressure for a decision.

(vi) DCS Shenton held a small meeting with a selected few including a very small number of IAG representatives who were not fully informed of all the issues and DCS Shenton directed the meeting, despite some very strong protests, towards his chosen decision; the body parts were to be incinerated in secret and family members were not to be informed or consulted on the matter.

(vii) Under the Human Tissue Act 2004, the Code of Practice for the disposal of tissues states that human tissues 'should be handled in accordance with any reasonable wishes expressed by the deceased person or their relatives, as long as 'the method of disposal is legal'. Although material taken or retained in police criminal investigations is not subject to the provisions of the HT Act with regard to disposal, section 4.8 of 'Home Office guidance on Police and Coroners approach to pathology' requires the police where practical to dispose of the material in compliance with the HTA's requirements.

(viii) In practice, in criminal investigations relatives are always informed and consulted about their wishes as to means of disposal, that is whether relatives require the parts to be returned to the grave via further burial, cremated (and perhaps ashes reunited) or whether they prefer dignified destruction by the police.

(ix) Although consideration had to be given to the length of time and the heartache and upset that would be caused to families in such a case, the relatives should have been informed, they should have been consulted and should have been made aware of the situation; it was the right decision morally and on every other level.

(x) The decision made by DCS Shenton was not borne out of a concern to save the families heartache; it was borne out of a desire to avoid negative publicity for ACC Heywood, ACC Sweeney and himself. And so the body parts were incinerated in secret.

Para. 97 of the List of Issues sets out the claimant's case that this information tended to show that there had been a failure to comply with one or more legal obligations, namely (i) the requirements of the Human Tissue Act 2004 and the legal duty to follow the Code of Practice of Disposal of Human Tissue issued under that Act by the Human Tissue Authority; and/or (ii) the Standards of Behaviour set out in Schedule 2 to the

Police (Conduct) Regulations 2002 (sic) , in particular the duty not to engage in Discreditable Conduct; honesty and integrity; duties and responsibilities.

The relevant facts.

PD2.1 1. The starting point for an understanding of the relevant facts is the Human Tissue Act 2004 ("HTA 2004", to differentiate the Act from the Authority) . That came into force on 1 September 2006. As a result, it was necessary for all relevant holders of human tissue to carry out an audit, and arrange for disposal or retention in accordance with the provisions of the Act and any Code of Practice issued under it.

PD2.1 2. From the IPCC witness statements of Dave Law (note, not Laws) at pages 6985 to 7000 of the bundle, and the findings of the IPCC in Poppy 1, a very full account of the history of the matter can be gleaned, but the essential facts are these.

PD2.1 3. In the course of the investigation into the murders carried out by the GP Harold Shipman up to 998 human tissue samples had been collected from the bodies of 12 of his victims who were exhumed to obtain this evidence. Shipman was convicted on 31 January 2000. Those samples had been retained by the Forensic Science Service at Chorley, on behalf of the GMP. Following the coming into force of the HTA, there was some discussion within GMP in 2006 and 2007 about what should be done with these samples, but nothing was actioned at that time.

PD2.1 4. The HTA 2004 defines human tissue as material relating to, consisting of or including, human cells from the body or part of the body of a deceased person . It established the Human Tissue Authority (HTA) to regulate activities concerning the removal, storage, use and disposal of human tissue. Consent is the fundamental principle of the legislation and underpins the lawful removal, and use of body parts, organs and tissue.

PD2.1 5. The HTA 2004 defined human tissue retained prior to 1 September 2006 as being within a separate category and referred to as 'pre-existing holdings.' In relation to the material relevant as part of the Shipman investigation this human tissue had been retained prior to 1 September 2006 and therefore was defined as being within the category of "pre existing holdings" for the purposes of this legislation.

PD2.1 6. The HTA produced nine Codes of Practice to give professionals practical guidance on human tissue legislation. The relevant codes to this disclosure are the Code of Practice 3, concerning post-mortem examinations and Code of Practice 5, concerning the disposal of relevant material.

PD2.1 7. Code of Practice 3 details that in criminal investigations consent is not required to retain human tissue material for the purposes of a criminal investigation. It details that where human tissue material is taken or retained under police authority only, it is not subject to the provisions of the HTA (2004). it highlights that section 7.8.6 of the Home Office guidance on legal issues relating to forensic pathology requires the police, where practicable, to dispose of the human tissue material in compliance with the HTA's requirements.

PD2.1 8. Code of Practice 5 covered the disposal of existing holdings, which it defines as “material (identifiable or unidentifiable) that was stored for use for a scheduled purposes when the HTA 2004 came into force.

PD2.1 9. The Code of Practice provides separate advice on dealing with unidentifiable tissue and identifiable tissue. In respect of identifiable tissue the Code of Practice states:

"Decisions about existing holdings that are identifiable should cover the following:

1. for existing holdings that are identifiable and about which relatives are in contact , where an establishment is in contact with relatives, unless a commitment has been made to relatives to do otherwise, no holdings in this category should be disposed of. They should be stored until relatives feel able to make their wishes clear.

2. for existing holdings which are identifiable but are unclaimed: where contact has not been made with relatives, it is reasonable for establishments to consider whether to dispose of identifiable but unclaimed tissue”

"There may be cases where an establishment has been in contact with relatives but no decision was made by them about what to do with any existing holding/s , and contact is subsequently lost. In such cases , if despite an establishment’s reasonable efforts to contact relatives again , there is still no further contact by relatives , any existing holding/s may be considered unclaimed. It would then be reasonable for establishments to consider whether to dispose of this identifiable unclaimed tissue.”

PD2.1 10. In 2007 GMP reviewed its retention of the human tissue from Shipman victims. DCI Scarratt was involved, and a project board was set up in GMP . She, with two officers assisting her, reviewed every freezer used to store exhibits within GMP, as well as the Forensic Science Service laboratory at Chorley , and categorised the human tissue that the force had retained.

PD2.1 11. In July 2007, as a result of a request from (then) DCS Steve Heywood , DCI Scarratt was tasked with auditing all the GMP human tissue holdings. She was requested to compile a report which outlined options for dealing with the Shipman human tissue. The report was commissioned by ACC Ian Seabridge.

PD2.1 12. Within that report, three options were suggested to deal with these holdings:

“Option 1
That, as it is now 9yrs since the post mortem examinations and there has been no contact from any of the bereaved families on this subject the human tissue samples are disposed of in accordance with current force policy as clinical waste by incineration. It is not known whether the families are aware that human tissue was retained as evidence of cause of death after the post mortem examination.

Option 2

Contact families via FLO [Family Liaison Officer] and letter to inform them of existence of samples and offer that GMP will dispose in communal manner by cremation accompanied by suitable service, (see draft letter below). Costs to be borne by GMP. Tissue samples to be kept separate.

Option 3 (Preferred option)
Contact families via FLO and letter informing them of existence of samples and give option to return to families on individual basis through undertaker nominated by them for future disposal by burial or cremation (see draft letter below). Costs to be bome by the families. If a family does not wish the items to be returned, GMP will dispose of by cremation accompanied by a suitable service. Costs to be borne by GMP."

PD2.1 13. A meeting was held to discuss the implications of HTA 2004 on retention of the Shipman human tissue on 22 October 2007 by GMP personnel, at which the Coroner, Dave Law, who was the Coronial officer, and DCI Scarratt , among others, were present . DCS Heywood was the most senior officer present. The decision was made to retain the items for a further 5 years, given the possibility of an appeal.

PD2.1 14. The families of the victims had not been notified of this meeting, nor had there been any contact with them to discuss this issue. No action was recorded in relation to informing the families, and a review of the decision was scheduled for October 2012.

PD2.1 15. Thereafter, in 2009, the HTA required auditing of each mortuary in relation to all human tissue that it retained. That led to further auditing requirements, which involved Police Forces across the country, and the Association of Chief Police Officers (ACPO) became involved, issuing guidance as to how Forces should respond.

PD2.1 16. In December 2010 the Government announced the closure of the Forensic Science Service.

PD2.1 17. Sir Peter Fahy was appointed as Chief Constable of GMP in September 2008. The Chief Constable stated that he was only made fully aware of the retained human tissue during a briefing with DCS Heywood on 29 April 2010. He decided at that time that the original policy decision, from 2007, should remain in force.

PD2.1 18. While the Human Tissue Audit had already begun, this announcement now required every police force to evaluate what evidence of this nature they held, whether it be within Police establishments, or stored with the FSS. It required a decision as to how to deal with that evidence, with forces needing to choose alternative suppliers for retention, or destruction.

PD2.1 19. The GMP Human Tissue Act Force Policy was prepared, and came into force on the 2 July 2010 (pages 5858 to 5872 of the bundle). It provided guidance in relation to the seizure, retention and disposal of human tissue. The policy did not differentiate between pre 1 September 2006 (pre-existing holdings) and post 1 September 2006 material.

PD2.1 20. The policy heavily references the HTA 2004 Codes of Practice and Home Office Guidance.

PD2.1 21. As regards the timeliness for retention, the policy provides various instructions, which include:

'In the event tissue is seized you should not keep the tissue any longer than is necessary.

- *Disposal of tissue can be done at any time the reasons for retention are no longer valid.*

- *If the family agree to police disposing of relevant material this must be done in a dignified manner ……*

- *Second funerals and burials may have significant emotional and financial implications. These should be discussed sensitively with those involved."*

PD2.1 22. Between July 2010 and February 2011 there was considerable debate and discussion within the GMP about what to do about the Shipman tissue samples and similar evidence. The imminent closure of the FSS site at Chorley due in March 2011 meant that this issue had to be addressed. The families were not contacted, and there was considerable traffic within GMP as to how the Force should deal with this issue. It is unnecessary to rehearse this now, but the IPCC Poppy 1 findings set out in considerable detail the events that occurred in 2010 and 2011.

PD2.1 23. At some time (precisely when is unclear, but probably around mid - 2010) a Gold group Human Tissue Working Party was established within the GMP. The Working Party met on a number of occasions. ACC Sweeney was the most senior officer, and chaired it. Dave Law was a member of the Working Party.

PD2.1 24. Dave Law was concerned about the position, and had been for some time. He was of the view that the GMP had failed to address HTA 2004 issues in a timely manner, and this could be a problem in the long term. The term "ticking time bomb" was used by him and others. He expressed his concerns in emails to senior officers in the Force. Some of them shared his concerns, D/Supt. Rumney on 5 August 2010 highlighting them in email communication to ACC Sweeney, DCS Shenton and DCI McMahon.

PD2.1 25. By September 2010 following ACPO National Gold Group meetings, an audit by each Police Force was required , and the GMP had to prepare for theirs. DCI Rawlinson had been appointed as the SPOC for this audit. At what appears to have been the first meeting of the Working Party on 8 September 2010 , she expressed the view that the families of the Shipman victims should be informed of the retention of tissue by the GMP, and asked for their views on what should be done with these items. Others, however, were of a different view, fearing that this would be likely to cause the families more upset, and expose them to the risk of press scrutiny. No decisions were made at this meeting.

PD2.1 26. The GMP SCD had an Independent Advisory Group ("IAG") , which was a small group of individuals within the GMP from different cultures and backgrounds. Its purpose was to advise the GMP on issues that they may wish to raise with it from time to time. Its aim was to reflect the diversity of local communities and advise upon policies and procedures. The Force is not obliged to follow its advice, and the Force can create a specific IAG to deal with a particular incident or issue. In this instance the IAG in question was a longstanding group which had been working with DCS Shenton over period of time.

PD2.1 27. DCS Shenton and DCI Rawlinson met with the IAG on 20 September 2010. DCI Rawlinson provided information about the HTA 2004 to the IAG, and explained the issues which the GMP would face when making decisions of this nature. No specific cases were discussed, but the issues of whether families should be informed, and how, were covered. No consensus was reached, and a variety of views was expressed. This was the only involvement of the IAG in this matter.

PD2.1 28. The audit was undertaken , and the FSS provided to the GMP details of the materials that they still held.

PD2.1 29. A further Working Party meeting was held on 6 December 2010, and then again on 2 February 2011 . It was chaired by ACC Sweeney. DCS Shenton was present, as was Dave Law. The full list of attendees was:

ACC Sweeney	Force Command
T/DCS Shenton	SCO Command
Martin Bottomley	Investigative Review
Jane Inskip	Legal Services
Sarah Fraser	Head of Press Office
Dave Law	Force manager Coronial matters
D/Supt Rumney	MIT
D/Supt Barraclough	MIT
DI Hariow	SCO

Apologies	DCI Rawlinson - MIT

PD2.1 30. No member of the IAG was present at this meeting. At the meeting, as minuted (page 6064 of the bundle) , the following was agreed:

"It was agreed that the policy of Greater Manchester Police is to treat all human tissue holdings in a lawful and appropriate manner, and that they should only be retained where there is a clear legal and investigative requirement to do, this is to be kept under constant review and the reasons to be identified and recorded properly.

It was recognised that the Shipman holdings were subject to a policy decision to retain for the reasons outlined, but that in the circumstances it was now appropriate to bring forward the review date to ensure compliance with the force policy above. Having

reviewed the matter it was decided that they should no longer be retained and so are to be disposed of in an appropriate manner in accordance with force policy."

PD2.1 31. In the meeting , Martin Bottomley updated the Group on the national position, which was that there was no national position on informing next of kin. The legal position was that it remained a matter for consideration in each particular case.

PD2.1 32. DCS Shenton is recorded to have been in favour of disposal without informing the families. Dave Law disagreed with this , and argued against it. Only , however, the lawyer in attendance , Ms Inskip, supported his position. The group decision, however, was to follow DCS Shenton's proposal.

PD2.1 33. On 9 February 2011 DI Harlow sent an email to Emily Burton , the Head of Forensic Sciences, (page 6069 of the bundle) saying this:

Following a meeting of the GMP Human Tissue working party ACC Sweeney has reviewed the material held by FSS from the Shipman case and has directed that it should be disposed off in an appropriate manner.

He would therefore wish to take up the offer from FSS outlined below.

This email can be considered to be authority for this course of action.

Can I please be notified when this has taken place so that our records can be updated accordingly.

PD2.1 34. In due course, after further discussions between the various personnel involved, and liaison with the FSS, the materials in question were disposed of by cremation , carried out by the FSS, on 16 February 2011, without the families being informed.

PD2.1 35. Thereafter the Working Party continued to meet, and further issues pertaining to record keeping and similar issues were discussed. In the course of communications between ACC Sweeney and DCS Shenton the former sent an email in which he used inappropriate language which indicated a lack of sensitivity to the issues for colleagues and others who were involved in it.

PD2.1 36. The claimant first mentioned this issue in his PDR document , dated 20 June 2013, pages 858 to 859 of the bundle)

PD2.1 37. On 29 November 2013 the Manchester Evening News published an article with the headline "Police secretly kept and destroyed human remains of Harold Shipman's victims" (pages 6245 to 6248 of the bundle). It is unclear , and immaterial, where this information came from, but the matter was now in the public domain.

PD2.1 38. It was shortly after this that the claimant saw Dave Law , as they discussed the article, and Dave Law told him something of his involvement in the matter, and his attendance at the meeting on 2 February 2011 when the decision to dispose of the

remains was taken. Precisely what Dave Law told the claimant is unclear, and they had more than one conversation. Further, as the claimant was apparently aware of the matter before the MEN report, and his PDR2 report , he must also have spoken to Dave Law before 20 June 2013.

PD2.1 39. Dave Law subsequently made a witness statement to the IPCC dated 24 October 2014, in which he set out his involvement in this process, and an account of the meeting on 2 February 2011. He references ACC Sweeney being present , and leading it, with DCS Shenton, and how the latter strongly expressed a view in favour of disposal without informing the families, a view which Dave Law disagreed with, and strongly argued against. He was supported , however, only by Ms Inskip , the lawyer present. His account says that ACC Sweeney said very little, but inclined towards DCS Shenton's view. He makes no mention at all of ACC Heywood.

PD2.1 40. On 23 January 2014 the claimant sent an email to ACC Copley, informing her of his intention to make disclosures as a "whistleblower" (page 1061 of the bundle). He did not set out the disclosures he wished to make in this email, but ACC Copley was aware of them by 24 January 2014 as she sent him an email (pages 1062 to 1066) setting out her response to some of the matters he had raised. She had, of course, previously seen his PDR2 document, and was aware of his allegations about the human tissue matter.

PD2.1 41. In that document, she said this:

"Shipman - This case raises complex legal and ethical issues. As you are aware there have been considerable developments on this matter emanating from the leak to the press. Irrespective of that, I had already commissioned a lawyer who had no previous involvement to review the actions that had been taken by the Force to determine their legality in the first instance. That report has confirmed that what was done was legal. However, the ethical issues herein are much more complex and views on the most appropriate way to have dealt with the human tissue are hugely divergent IAG advice was sought at the time, I am told that this too was unsurprisingly divergent. Each of the affected families now knows of the decisions that were taken by GMP.

I would have to do more work to establish what exactly the Shipman families have been told and also to better understand some of the new issues that you have included in this paper, but as you wish this matter to be dealt with by another I will not do so for now."

PD2.1 42. The claimant replied by email on 26 January 2014, (pages 1067 to 1072 of the bundle) saying this, in relation to the human tissue element of his disclosure:

"*(4) Re Shipman. I have always been aware of the 'legality' of the disposal of body parts by the Force. Whilst one can argue the officers concerned may have been legally empowered to do as they did I don't think the Force could argue it was a morally and ethically right decision. The way this was dealt with 'in secrecy' certainly raises questions around integrity. As I have said it is my understanding that the decision was taken for personal self serving reasons to avoid negative publicity and that the Force did not 'agonise for months' as the Chief Constable told the media. It is my understanding that*

the 'truth' hasn't been told and that there are many with a story to tell - if only they were given the chance. I am also led to believe that personal effects may also have been destroyed which, if found to be true, in terms of legality would be a different matter. As with all the other disclosure I feel there should be an independent investigation."

PD2.1 43. The claimant references this exchange in his IPCC witness statement (page 1501 of the bundle) , and agreed in cross – examination that this was the position, there was no breach of the law, but he considered that there had been ethical or moral issues where the GMP had not behaved appropriately.

PD2.1 44. Following the referral by the claimant of this matter to the IPCC, ACC Sweeney was on or about 25 July 2014 served with a Notice of Investigation for his alleged gross misconduct in authorising the disposal of these samples without taking into account the wishes of the families of the victims, who were not consulted or informed of the decision prior to disposal taking place (see page 5381 of the bundle).

PD2.1 45. The IPCC report on these issues, Poppy 1, was completed and released to the respondent on 29 April 2016. It is at pages 5372 to 5464 of the bundle, with Appendices at pages 5465 to 5478. It is a comprehensive and extensive document. It contains much detail which the Tribunal considers unnecessary and irrelevant for the purposes of determining whether the claimant made this allegedly protected disclosure. Under its Terms of Reference, its remit was to investigate (page 5451 of the bundle):

"To investigate

- *Whether there was active engagement with the families in respect to the human tissue.*
- *Was sufficient information given to families so that they could make informed decisions about the actions taken by Greater Manchester Police?*
- *Who made the decision to dispose of the human tissue by incineration?*
- *Whether the decision making was supported in law.*
- *Whether the human tissue had previously been declared correctly through the ACPO audit process.*
- *Whether the actions of Greater Manchester Police, in the disposal of the human tissue, were reasonable in the circumstances.*
- *How was the human tissue destroyed and how did Greater Manchester Police record it?*

PD2.1 46.The IPCC examined the considerable body of evidence provided to it up to when the decision was taken in the Working Party meeting on 2 February 2011, and then beyond it. Further, it also examined specific communications from ACC Sweeney

after the decision was taken, and the circumstances of the disposal carried out on 16 February 2011. It also examined the Force's response to the MEN article, and its subsequent dealings with the affected families.

PD2.1 47. It found that ACC Sweeney was the decision maker, albeit, not alone, in that the decision was ratified by the COG. It considered whether he had a case to answer for misconduct. The findings were broken down into two parts. The first was in relation to the decision itself, where the focus was upon the issues set out above. That was not, of course, the same as the issue raised by the claimant in his disclosure as to whether DCS Shenton had acted improperly.

PD2.1 48. The IPCC's conclusions on these issues (pages 5451 to 5461) were, in summary:

There was no active engagement with the families in respect of the human tissue.

The families were given no information by the GMP , either at the time of the exhumations, or at any time thereafter, to allow them to make informed decisions.

It was ACC Sweeney , as the chair and senior officer in the meeting on 2 February 2011 of the Group with overall responsibility to make the policy decisions, who , in the opinion of the Investigator, made the final decision to dispose of the Shipman victim human tissue by incineration. The investigator accepted that the COG and the Chief Constable were in agreement with that decision.

Whilst not the IPCC role to make a definitive decision on the legality of the decision, its view was that the disposal of pre-2006 holdings in this manner was a matter for the professional discretion of the GMP, and was not open to legal challenge.

Whilst the material had not been declared through the APCO audit process, it was strongly arguable that there was never any obligation to do so.

Whilst the GMP had failed adequately to document the rationale for the decision, which made it unable to establish that the decision was reasonable, that did not warrant a finding that the decision was unreasonable.

PD2.1 49. The IPCC Poppy 1 report then moves on (pages 5461 to 5464 of the bundle) to consider issues of misconduct, in terms of whether there was a case to answer. This considered only the conduct of ACC Sweeney. It reviewed his actions and decisions, and accepted that , as he had said at the time, the decision as to whether or not to inform the families was not taken in order to protect the Force from reputational damage. It rejected, however, the suggestion that contacting the families would have been difficult, and considered that, on balance, they should have been contacted.

PD2.1 50. It reviewed communications between ACC Sweeney and DCS Shenton after the disposal, and found one email contained in them to be in poor taste , insensitive , and entirely inappropriate. This betrayed an indifference on the part of ACC Sweeney to the apparent distress and concern amongst members of his senior staff caused by

the way in which they perceived the issue had been dealt with by the GMP. The finding was (page 5463 to 5464 of the bundle) that in this regard ACC Sweeney had a case to answer for misconduct. It was made clear, however, that this was in respect of his conduct in his manner of communicating with other Police officers and staff about the issue, but not in respect of the substantive decision on the issue of disclosure to the families and the manner of disposal.

Discussion and findings.

The information disclosed

PD2.1 51. Para. 94 of the List of Issues identifies the information disclosed as *"DCS Shenton, with the knowledge of ACC Sweeney and ACC Heywood, authorised the destruction of human tissue from the victims of Harold Shipman without notifying their families."*

PD2.1 52. With respect , that is not the Tribunal's view of the information disclosed, even if the respondent has agreed that it was. The only mention of ACC Sweeney and ACC Heywood is in para.(ii) of PDR 2, where it is stated that it had come to the claimant's attention that ACC Sweeney, ACC Heywood and DCS Shenton had been discussing "a highly sensitive issue for the past few years." In paras. (v), (vi) and (x), however, the claimant refers only to DCS Shenton, and in the latter he refers to the "decision made by DCS Shenton". It is correct that he goes on to say that DCS Shenton made his decision out of a desire to avoid negative publicity for ACC Heywood, ACC Sweeney and himself, but that is not the same thing as saying that ACC Heywood was aware of, and therefore party to, the improper conduct of which DCS Shenton was alleged to be guilty.

PD2.1 53. Further, and importantly, whilst the claimant in his PDR3 document did touch upon these matters further, he has not relied upon any part of PDR3 for this disclosure, and has not sought to qualify this disclosure by any other.

PD2.1 54. This is not a disclosure where any issue of ellipsis , or departure from the expressly pleaded words relied upon, arises.

The s.43B tests.

PD2.1 55. The claimant puts his case on limb (1)(b) of s.43, namely that he had a reasonable belief that this disclosure tended to show that there had been a breach of a legal obligation. There are two such legal obligations identified, the second , to take them out of turn, is that previously discussed, which relates to the Standards of Behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012, in particular the duty not to engage in discreditable conduct; honesty and integrity; duties and responsibilities. Para. 97 of the List of Issues refers to the date of the Regulations as 2002, but this must by a typographical error for 2012, as there are and were no such Regulations. The Tribunal has already ruled upon this as a ground under this limb of the section , and the claimant cannot rely upon it.

PD2.1 56. Turning then to the alternative legal obligation identified, it is claimed to derive from the Human Tissue Act 2004 , and the legal duty to follow the Code of Practice of Disposal of Human Tissue issued under that Act by the Human Tissue Authority.

PD2.1 57. The claimant was not taken to the provisions of the 2004 Act in his cross – examination. The reason for that was probably his concession, made originally in correspondence with ACC Copley in January 2014 , just before the claimant went to the IPCC, that he was not disputing that the GMP had acted lawfully, it was the ethical and moral aspects of the handling of this issue that he was questioning. ACC Copley had expressly told him that the legal advice received was that the actions of the GMP were lawful. In his reply the claimant accepted that, but went on to question the ethical or moral position.

PD2.1 58. In the claimant's Submissions, Mr O'Dempsey seeks to deal with this matter. Initially, he asserts , in para. 222, that the claimant reasonably believed that the information tended to show "wrongdoing (legal obligations, Human Tissue Act 2004 and legal duty to follow Code of Practice of (sic) Disposal of Human Tissue issued under that Act by the Human Tissue Authority). He does not address the point that the HTA 2004 was not applicable to this material which was a previous holding under the Act, nor does he address the claimant's concession that he knew there was no breach of the Act. He then, in the alternative, relies upon a different legal obligation, that under the Police (Conduct) Regulations 2012, and the Standards of Behaviour referenced therein. In para. 227 of his Submissions he makes reference to the claimant's belief that the behaviour was morally wrong, and this was sufficient in the context of the legal duty to avoid discreditable conduct. In other words, this a reference back to the 2012 Regulations, and therefore fails on that ground.

PD2.1 59. The Tribunal cannot see, therefore, how the claimant can satisfy the requirement s of s.43B(1)(b) that he reasonably believed that this disclosure tended to show breach of a legal obligation under the Human Tissue Act 2004 when he had been told, and had accepted , that the GMP had acted lawfully. Whilst Mr O'Dempsey submitted (para. 228 of his Submissions) that it did not matter in law whether there was a breach of legal obligation, that can be correct in certain circumstances, but a person cannot reasonably believe that their disclosure tended to show a breach of a legal obligation if they actually knew, as the claimant did, that no such legal obligation had been breached. He cannot actually, or reasonably , have believed that, and this disclosure fails at this stage.

PD2.1 60. On the ***Muchesa*** test, given that the claimant first raised this issue in June 2013 in PDR2, although he then delayed taking it to the IPCC until January 2014, given the nature of what he was disclosing, in contrast to the matters in other disclosures, the Tribunal would not find that the claimant acted incompatibly with the belief that he is required to show. Turning to the public interest , given that these were sensitive issues in which there would be public interest, and the claimant took them to the IPCC, notwithstanding any other motivation, the Tribunal would accept that he satisfies the low bar of a reasonable belief that it was in the public interest to make this disclosure, albeit that the Shipman holdings were a very small part of the human tissue holdings of the

GMP. Highlighting this aspect, of course, made this issue more prominent and, as occurred, likely to attract publicity.

PD2.1 61. As, however, this disclosure fails under s.43B(1)(b), this is academic.

The s.43F test.

PD2.1 62. If, however, the Tribunal is wrong, and the claimant does satisfy the s.43B tests, it must then go on to consider the position under s.43F, and whether the claimant has shown he held a reasonable belief in the substantial truth of the information conveyed and any allegation contained in it.

PD2.1 63. It has to be observed that , perhaps not uniquely in these proceedings, the evidence and submissions before the Tribunal have ranged far and wide, and have touched upon many matters which are either only peripherally relevant, or actually irrelevant, to the narrow issues that the Tribunal has to decide on the wording of the disclosure actually made. That is particularly so in respect of the after – the - event actions and conduct of certain individuals, notably ACC Sweeney, to whom, of course, this disclosure does not refer at all, save in passing in paras. (ii) and (x), and the Chief Constable. Other than to advance the claimant's thesis, quite possibly one shared by others, that the whole affair was embarrassing for the GMP, and the Force did not handle it well, all this evidence has little relevance to the issue of whether the claimant had a reasonable belief in the substantial truth of what he actually disclosed, as opposed to a belief that the Force generally was acting as it did out of a desire to avoid reputational damage. That was not, of course, what he disclosed. His disclosure was specific to DCS Shenton, whose motivation was alleged to have been to avoid negative publicity for ACC Sweeney and ACC Heywood.

PD2.1 64. In this disclosure the claimant conveys information and makes allegations that:

a) DCS Shenton had held a small meeting with small number of IAG representatives who were not fully informed of all the issues;

b) DCS Shenton directed that meeting, despite some very strong protests, towards his chosen outcome, disposal without informing the families of the victims;

c) DCS Shenton had made the decision to dispose of the remains without informing the families;

d) He had done so not out of concern for the families, but out of a desire to avoid negative publicity for himself and two ACCs.

PD2.1 65. The claimant gives as his sources of information for this disclosure , of which he had no first - hand knowledge, Dave Law, and Harry Kearney. The latter was a DS working on the human tissue audit team , and is referenced in Joanne Rawlinson's IPCC witness statements . He made a witness statement to the IPCC (pages 7033 to 7036 of the bundle) . He says nothing in that statement about any conversations with the

claimant. The claimant says nothing in his evidence as to what he was told by Harry Kearney , but says a lot about what Dave Law told him. He gives this evidence in his first witness statement , at paras. 301 to 380. In his evidence to the Tribunal he stated that Dave Law had given him information, orally, about these matters on more than one occasion. He has no note or other record of these conversations. Dave Law was not called by the claimant , nor was any witness statement from him adduced for these proceedings. Dave Law did, however, make two witness statements to the IPCC, which are at pages 6985 to 6998 and 6999 to 7000 of the bundle.

PD2.1 66. Dave Law gives an account to the IPCC of his dealings with HTA issues within the GMP, and in particular his involvement, in due course, in the Working Group meetings.

PD2.1 67. He attended the meeting held on 2 February 2011 at which the decision to dispose of the material was taken. Whilst he clearly makes reference to DCS Shenton strongly expressing the view in favour of disposal without informing the families of the victims, he also clearly makes reference to ACC Sweeney's presence , and to him leading the meeting. Dave Law makes it clear that he also expressed his own, contrary view, strongly, which he considered had displeased DCS Shenton. He goes on to make reference to DCS Shenton telling him (Dave Law) before the meeting that he was going to speak to the IAG members ahead of the meeting, and seek their approval. Dave Law had issues with that, and was concerned at what information they may be given. He says, however, no more about it.

PD2.1 68. Dave Law also goes on to make reference to meeting the claimant , by chance, in November 2013. This was after the MEN article had been published on 29 November 2013, because they discussed it. He does not, however, say what he told the claimant in that, or any subsequent, conversation. That may not have been their first conversation about the matter, because the claimant had made his PDR2 document in June 2013.

PD2.1 69. The claimant's disclosure is confused and inaccurate. In para.(vi) he refers to DCS Shenton holding a "small meeting" with a select small number of the IAG, who were not fully informed of the issues. He goes on in this paragraph to refer to DCS Shenton directing that meeting and steering it towards his favoured outcome.

PD2.1 70. As the IPCC report , and the evidence of DCI Rawlinson to the IPCC in particular makes clear, there was only one meeting with the IAG, and that was on 10 September 2010. Further DCS Shenton was not alone, DCI Rawlinson was with him, and it was her who briefed the IAG and sought their views , in general, but upon the HTA 2004 issues that GMP would have to face in the forthcoming audit. This was not an ad hoc group, but a longstanding one. It is true that DCS Shenton had worked with it for some time, but the claimant seeks to insinuate that he had deliberately selected a small group from within the IAG, and had deliberately not provided it with the necessary information. There is no basis at all for such a belief. Dave Law's witness statement to the IPCC does not say that, it merely says that DCS Shenton told him that he was going to seek the views of the IAG, which gave Dave Law some concern. He did not say that

DCS Shenton had already done this, and hence it is highly unlikely that he told the claimant anything different.

PD2.1 71. Secondly, the claimant , or his source, may have been conflating two meetings. The way that para (vi) of this PDR is written, the sense is that the meeting at which DCS Shenton took the decision , overruling strong objections, was one at which this small group of the IAG was present. The evidence is that it was not. There were two meetings. The one with the IAG was 10 September 2010, attended by DCS Shenton and DCI Rawlinson, and the other was on 2 February 2011. That was a Gold meeting, at which no members of the IAG were present. This paragraph , however, refers to only one meeting, and thus has conflated two different events, or, if the claimant is referring in this paragraph to the meeting on 10 September 2010 with the IAG, it is wildly inaccurate, as no decision was made as a result of that meeting . Dave Law was at the latter meeting, but not the former. He will have known that no members of the IAG were present at the latter, and would therefore not have told the claimant that they were. Indeed his concern was that DCS Shenton was going to speak to the IAG. His account therefore does not suggest any members of the IAG were present in the meeting on 2 February 2011.

PD2.1 72. The claimant , however, has himself recognised the mistake in para. (vi) , because in his PDR3 document, pages 1019 to 1020 of the bundle, he gives further information about the human tissue matter, saying this:

"Since submission of my 'whistle-blowing report' I have learnt that ACC Sweeney was present at the meeting where it was decided to incinerate the body parts/organs of the victims of Dr Shipman in secret. I am also aware CS Rumney was present at that meeting, as was DCI Rawlinson. It is also my clear understanding that the Force didn't 'agonise for months' over the decision, as was the account provided to the media by the Chief Constable (I am unsure as to how he was briefed on this). I am aware that there were strong objections to the decision at that meeting by the Force Coronial Manager Dave Law, and Force Solicitor Sandra Pope who regarded the decision as wrong both morally and on every other level. And no IAG members were present as I had first thought; they were apparently briefed in private by DCS Shenton. I understand DCI Rawlinson herself recognised the decision was wrong and has remained silent although she made a record in her book, 'to protect herself should what had happened ever become publicly known.

I am concerned as it was not just laboratory slides of human tissue that were incinerated; it was large body parts and organs. I also understand personal effects may have been incinerated with them and the final decision was made by ACC Sweeney, who now is second in command on the highly emotive Hillsborough enquiry."

PD2.1 73. The next, and major, error in what the claimant has disclosed is that DCS Shenton took the decision. He has stated in para. (x) "the decision made by DCS Shenton", and in para.(v) he says "DCS Shenton has only recently dealt with the matter". It was not DCS Shenton who took the decision, it was the Gold Working Party. Whilst DCS Shenton may well have expressed his strongly preferred outcome, the decision was not his. Indeed, if any one person was to be held responsible for the decision it was

ACC Sweeney, as the lead and most senior officer, a view re-enforced by the IPCC's view that he should be served, as he was, with a Reg. 15 Notice for potential misconduct proceedings.

PD2.1 74. That DCS Shenton took the decision is an allegation that the claimant has persisted with in his first witness statement to the Tribunal, and in the Scott Schedule (page 76 of the bundle) , where it is framed as "DCS Shenton directed that body parts … were to be incinerated in secret".

PD2.1 75. The claimant has not withdrawn PD2.1, nor sought to have it augmented by the paragraphs from his PDR3 cited above. Indeed, the claimant's case is that the Tribunal is precluded from considering any information other than that expressly pleaded as being relied upon in the List of Issues. In these paragraphs the claimant acknowledges that his disclosure about IAG members being present at the meeting was incorrect, and he also makes it clear that he is aware, and has been since January 2014, that ACC Sweeney took the decision. He has not, however, sought to resile from PD2.1 as pleaded, and has continued to rely upon it, even though he had accepted, by January 2014, and indeed knew earlier than that, that there was no breach of any legal obligation. His own PDR3 document shows that he did not, and indeed, could not, at the time that he submitted all his PDRs to the IPCC (which was at the same time) , still have believed, let alone reasonably believed in these allegations which were still contained in his PDR2 document. The date of his PDR2 document is 20 June 2013, and that on his PDR3 document is 16 January 2014, and his submission of all of them to the IPCC was 31 January 2014.

PD2.1 76. Finally, in terms of allegation (d), Dave Law, in his first IPCC witness statement, said this:

"I gained the distinct impression from the words DCS SHENTON used to support his views that his focus was on avoiding any unnecessary embarrassment for the force and also cost to GMP of disposals e.g. if the families were to be consulted and opted for burials."

That is the best evidence we have of what Dave Law is likely to have told the claimant. It falls well short of what the claimant has disclosed as being the motivation that he ascribes to DCS Shenton. It is, firstly, only an impression, not fact. Secondly, embarrassment for the Force is one thing, but the claimant is specific that DCS Shenton was motivated by a desire to save himself and the two named ACCs negative publicity, for which there is no basis in what Dave Law says. Thirdly, the motive of saving cost may not have been the most laudable, but it would have been a legitimate one to consider. If Dave Law told the claimant what he says in this witness statement, then this has been omitted by the claimant, and calls into question what he reasonably believed at the time of his disclosure.

PD2.1 77. In short, all of these matters manifestly demonstrate that the claimant did not have a reasonable belief in the substantial truth of the information that he conveyed in PD2.1, and each of the allegations in it, and this disclosure fails on s.43F in any event.

19. Protected disclosure 3.3: Despatch of senior officers to deal with a domestic incident

109. Information disclosed:

ACC Sweeney arranged for DCS Shenton and TD/Supt Scally to deal with a domestic incident between a Superintendent and his wife in an unlawful and inappropriate manner, which involved the Superintendent's wife being unlawfully arrested and her home unlawfully searched by a Major Incident Team for sexual video material relating to the Superintendent [CGoC para.94].

110. PD3.3 was set out in section 2 of PDR3 , in the following words (the Tribunal having added the underlined words as potentially part of this information, as discussed below):

Although I have verbally highlighted to you in previous meetings my concerns about the way ACC Sweeney dealt with the domestic incident involving [Superintendent X] and his wife, I feel that I need to raise the incident again formally in writing. He chose to turn out DCS Shenton and D/Supt Scally to deal with a domestic incident involving this senior officer when they were not duty officers. The incident had arisen over [Supt X] having an argument over sexual material that had been found by his wife of the officer and a woman he had met on a website. The arrest of his wife (and later caution) and searching of the address was highly irregular. What was being searched for? Sexual material / recordings? The whole incident smacks of senior officers covering up an incident for another senior officer. Again it features the same names of officers I have regularly referred to throughout my report. I know Force Command are aware of this incident. Has there been an internal investigation? Yet another incident that raises serious questions about the manner in which senior leaders in GMP operate, not least questions in relation to abuse of authority, a potentially unlawful arrest and unlawful search and real issues around the integrity of those involved.

Para. 112 of the List of Issues sets out the claimant's case that he reasonably believed that this disclosure was made in the public interest and that this information tended to show (a) that a criminal offence had been committed, namely misconduct in public office, by TD/Supt Scally and DCS Shenton; and/or (b) that there had been a failure to comply to with one or more legal obligations, namely (i) the arrest and search provisions contained in the Police and Criminal Evidence Act 1984 and/or (ii) the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012, in particular the standard of Honesty and Integrity, duties and responsibilities and the duty not to engage in Discreditable Conduct.

Relevant findings of fact.

PD3.3 1. On 21 April 2012 Supt. X , wo was off duty, contacted ACC Sweeney to inform him that he had been assaulted by his estranged wife at his home. He claimed that she had bitten him on the hand. ACC Sweeney contacted TD/Supt. Scally , who was off also duty, and asked him to take responsibility for the investigation. TD/Supt. Scally duly did so, noting this in his Case Book (pages 2116A to 2216L of the bundle). It was alleged that Mrs X had assaulted Supt. X, had bitten him, and torn his shirt. It was also alleged that the couple's 12 year old son was present when this occurred.

PD3.3 2. At 19.45 TD/Supt. Scally rang Supt. X. He was at home with his son, and believed that his wife had gone out. There was a discussion about safeguarding issues for all concerned , and TD/Supt. Scally's assessment was that there was no immediate risk of harm to anyone involved. His action plan was that Supt. XX would be interviewed the next day by "appropriate staff", his son would also be interviewed as a vulnerable witness, Mrs XX would then be arrested after these interviews, and there would be a safeguarding review for the two (the couple had a daughter as well) children.

PD3.3 3. TD/Supt. Scally discussed the case with ACC Sweeney and D/Supt. Chadwick by telephone at 21.20 that evening. He set out his objectives in his Case Book, one of which was to ensure that as the complainant was a serving GMP officer, the investigation was seen to be carried out in a fair and impartial manner.

PD3.3 4. The following day, 22 April 2012, TD/Supt. Scally spoke again with Supt. X, and discussed the arrangements for interviewing him, and, if appropriate, his son. Mrs X was to be arrested that day.

PD3.3 5. The interviews with the complainant and his son took place, and an attempt was made to arrest Mrs X , but she was not at home. She was subsequently arrested at 13.30 at her home address on suspicion of s.47 assault and criminal damage, the circumstances of the former offence being recorded on the Custody Record (page 2218 of the bundle) being that she had bitten Supt. X on the hand.

PD3.3 6. Between 14.00 and 15.00 there was a meeting between TD/Supt. Scally , DCS Shenton and ACC Sweeney at Sedgley Park, with DCI Tonge joining on speaker phone.

PD3.3 7. In the course of the enquiry, DCI Tonge was told by the children that Mrs X had entered the complainant's flat and stolen a book in which he had made notes about previous incidents with his estranged wife.

PD3.3 8. Mrs X admitted the offences for which she had been arrested (see page 2222 of the bundle – her complaint), but whilst she was in custody her home was searched. Initially the view had been taken (at 14.54 , see page 2220 , the Custody Record) that no search of Mrs. X's would be undertaken, at 17.30 that day that decision was revisited, and DI Bridge (it seems, from the PACE Form 807 at page 2220A of the bundle) authorised a search of Mrs. X's home, which was carried out at 18.30 by DC Hughes and two other MIT officers.

PD3.3 9. In the course of her interview Mrs. X alleged that her husband had met a woman online, and that he had accessed pornography.

PD3.3 10. The advice of a Public Protection officer , and of the CPS was sought , (when is unclear, but it is likely to have been during the day on 23 April 2012) and the decision was made to charge Mrs. X. She was charged with s.39 (common) assault, and criminal damage, and on 23 April 2012 at 01.58 she was bailed to appear at Court on 8 May 2012. She was subsequently dealt with by way of a caution.

PD3.3 11. DCI Tonge later (in the course of the investigation by D/Supt. Turner into a complaint made by Mrs. X) in an email dated 24 May 2012, addressed to Emily Higham,

explained that the purpose of the search was to attempt to recover the notebook that Supt. X had alleged had been stolen from him. He followed this up with a further email to her on 13 June 2012, to which he attached pages from his day book (not, it seems, in the bundle) relating to the search.

PD3.3 12. Mrs. X made a formal complaint on 25 April 2012 (pages 2221 to 2225 of the bundle). her complaints were:

That the search of her home was illegal;

That she was detained for as long as she was because of her husband being a Superintendent;

The manner in which she was spoken to by a custody officer at Bury.

PD3.3 13. D/Supt Peter Turner of the PSB was assigned to investigate her complaint. He made some enquiries and sent an email on 5 May 2012 to ACC Garry Shewan, detailing the background (page 2227 of the bundle) and another, prior to meeting with Mrs. X on 26 June 2012 (pages 2231 and 2232 of the bundle). In the latter he agreed that the approach taken had resulted in "the use of a sledge hammer to crack a nut", and that Mrs. X's complaint about her house being searched could be substantiated as disproportionate. Other than words of advice , for how she was treated when in custody, he considered no other action need be taken.

PD3.3 14. In due course, ACC Shewan sent Mrs. X a letter on 29 November 2012 setting out his decision, based upon , but not entirely following, Supt. Turner's investigation, upon her complaint (pages 2284 to 2289 of the bundle). In his findings ACC Shewan upheld Mrs. X's complaint that the response to the incident had been disproportionate, but did not consider that any officer had been guilty of misconduct. He did not accept that Supt. X had had any influence on the investigation. He agreed that the potential for dealing with the matter by way of caution should have been considered at an earlier stage, and agreed that this also could be construed as disproportionate.

PD3.3 15. He rejected , however, her complaint about seizure of her mobile phone, and search of her home, stating that both were in keeping with policy and procedure in domestic violence cases, and were warranted, the latter being to find any evidence of previous incidents of domestic violence. .

PD3.3 16. Her remaining complaints about the length of her detention, not being offered food and the attitude of a custody officer towards her were not upheld.

PD3.3 17. There is no evidence of any involvement of DCS Shenton in this matter, save that he was present in a meeting on 22 April 2012 at Sedgley Park with TD/Supt. Scally , ACC Sweeney and DCI Tonge, at which the case was discussed. Whilst the claimant says in his disclosure that he was "turned out" by ACC Sweeney, there is no evidence that he was involved at all.

PD3.3 18. The source of the claimant's belief is an officer, whom he has declined to name, who was , the claimant asserts, involved on "the night" , and had spoken to Mrs.

X. The claimant says he first learned of the matter from catching up with his old MIT team, some time before Christmas 2013, late 2013, he said in evidence.

PD3.3 19. He did not, however, report it upon first hearing of it. The claimant first disclosed this incident on 17 January 2014 in the document (at page 1020 of the bundle) that he attached to an email to ACC Copley on that date (page 1015 of the bundle) , which was to become PDR3 which he later submitted to the IPCC. Whilst he claims that he had raised it orally with ACC Copley, he has not identified when he did so. Nothing in her usually very comprehensive communications with the claimant around this time, or any of her notes or emails, makes any reference to him raising this incident as a concern. He does not mention the matter in his IPCC witness statement, but says that as it was not one of the matters they were investigating, he may have omitted it.

Discussion and findings.

The information and the allegations contained in it .

PD3.3 20. The Tribunal finds that the information conveyed by the claimant was as summarised in the List of Issues. We consider that the last part of this paragraph in PDR3 must also be considered, which reads:

I know Force Command are aware of this incident. Has there been an internal investigation? Yet another incident that raises serious questions about the manner in which senior leaders in GMP operate, not least questions in relation to abuse of authority, a potentially unlawful arrest and unlawful search and real issues around the integrity of those involved.

PD3.3 21. Pursuant to the discussion at in Chapter III above, as to the effect of the List of Issues, our view is that we cannot be precluded from considering this wording as part of the information disclosed. It is the end of the paragraph that the claimant does plead as amounting to his protected disclosure. There is, in the List of Issues, another ellipsis (not easy to see, as this comprises 3 full stops "…", thus). It actually contains elements of what the claimant says the disclosure tends to show, abuse of authority and a potentially unlawful arrest and search. The Tribunal cannot see why the claimant (unless it is to avoid the consequences of s.43F) would want to omit this wording. Finally, and as the ultimate issue as identified in ***Mervyn*** is the interests of justice, we cannot see how, the claimant having led evidence of these matters , and having been cross examined upon them, his case is prejudiced by us considering this wording as part of what he disclosed.

PD3.3 22. The claimant's case is that he reasonably believed that this information tended to show (a) that a criminal offence had been committed, namely misconduct in public office, by TD/Supt Scally and DCS Shenton; and/or (b) that there had been a failure to comply to with one or more legal obligations, namely (i) the arrest and search provisions contained in the Police and Criminal Evidence Act 1984 and/or (ii) the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2012, in particular the standard of Honesty and Integrity, duties and responsibilities and the duty not to engage in Discreditable Conduct.

Reasonable belief under s.43B(1) in what the disclosure tended to show.

PD3.3 23. The Tribunal must first apply the tests under s.43B to this disclosure. The first issue is whether the claimant believed, and if so, whether he reasonably believed, that this disclosure tended to show , under s.43B(1)(a) that a criminal offence, misconduct in public office, had been committed.

PD3.3 24. What misconduct , and by whom, does the claimant say he reasonably believed this disclosure to show? Para. 369 of his first witness statement is the only indication of the basis for this contention. There he says:

"369. When I made my disclosures I regarded the actions of those senior officers on the night as an abuse of authority, and also breaching professional codes of conduct in relation to honesty and integrity and discreditable conduct. The actions regarding potential unlawful arrest and unlawful house search amounting to misconduct and potentially gross misconduct and misconduct in a public office. That a major incident team was turned out to deal with a domestic incident of a senior officer would be of concern to the public and a real public interest matter. The manner in which the behaviour of all those involved was dealt with in terms of disciplinary investigation lacked integrity and at the time I thought there had been another cover up."

PD3.3 25. Misconduct in public office is a specific offence, and has a high threshold. The claimant does not mention this in his PDR in this context. This is to be contrasted with other parts of his PDR documents where, in relation to Operation Nixon, at paras.(xviii) and (xix), in PDR1 he discusses the offence, and clearly does suggest that it had been committed by TD/Supt. Scally , and PDR3 , in relation to Mr Snowball (e.g on page 1022 of the bundle, as the claimant uses no paragraph or page numbers in this document) he again raises the question as to whether his conduct amounted to that offence.

PD3.3 26. Its omission in this part of the PDR is , therefore , of some significance. If the claimant did believe that this disclosure did tend to show that ACC Sweeney had deployed senior officers to protect Supt. X from revelations of sexual misconduct, and that this disclosure did tend to show that ACC Sweeney was guilty of misconduct in public office, he did not say it. The extent to which a whistleblower is required to specify the criminal offence or legal obligation which is being relied upon has been the subject of some debate in the caselaw. The position was reviewed in ***Twist DX Ltd and others v. Armes and others (UKEAT/0030/20/JOJ*** cited above, in which Linden,J. said this:

*"85. I also consider that this aspect of Mr Nicholls' [Counsel for the appellants] arguments is inconsistent with what was said in **Kilraine** and the emphasis, in **Babula**, on the point that the view of the worker merely needs to be that the information "tends to show" one of the specified matters. As noted above, in **Kilraine** Sales LJ emphasised that the question whether an utterance satisfies section 43B(1) involves three broad questions – the information disclosed, the worker's belief as to what it tended to show and the reasonableness of that belief - the answers to which may be affected by the evidence as to context. He made it clear that the information disclosed must have*

sufficient factual content and specificity to be capable of satisfying the section, but he did not suggest that there were any sub-rules, such as that this could only be the case if the worker expressly accused the employer of acting criminally or illegally under section 43B (1)(a) or (b) of the 1996 Act. It is quite clear from his Judgment that he regarded the three questions as interrelated ones of fact and degree, to be determined on the evidence in each case.

86. This point is also quite apparent from the text of the section, which requires the disclosure of information and the holding by the worker of a reasonable belief that it tends to show illegality etc, rather than a statement by the worker that that is what the information tends to show. In my view, it is the text of the section which should be applied by tribunals when deciding whether a disclosure is a qualifying disclosure, rather than the section plus the additional and, with respect, unclear requirements advocated by Mr Nicholls.

87. This is not to say that the questions whether the worker mentions, for example, criminality or illegality or health and safety in their disclosure, or whether it is obvious that they had these matters in mind, are irrelevant. What they said, and whether the matter is obvious, are relevant evidential considerations in deciding what they believed and the reasonableness of what they believed, rather than these questions presenting an additional legal hurdle, as Mr Nicholls effectively contends. If the nature of the worker's concern is stated - if they say that they consider that the reported information shows criminality or breach of legal obligation or a threat to health and safety - it will be harder to dispute that they held this belief and that the professed belief that the disclosure tended to show the specified matter was reasonable. The point is the same if what the worker thinks is obvious from what they say in the alleged disclosure. Conversely, if the link to the subject matters of any of section 43B(1)(a)-(f) is not stated or referred to, and is not obvious, an ET may see this as evidence pointing to the conclusion that the worker did not hold the beliefs which they claim, or that the information is not specific enough to be capable of qualifying. But what cannot be said is that unless it is stated that the information tends to show one or more of the specified matters, or it is obvious that the concern falls within section 43B(1)(a)-(f), the information is incapable of satisfying the requirements of that section because it cannot reasonably be thought by the worker that it tends to show any of the specified matters. In my view, with respect to Mr Nicholls, this is flawed reasoning."

Thus, whilst failure to mention that the information disclosed tends to show commission of a particular offence or breach of a particular legal obligation is not fatal, ***Twist DX*** makes it clear that such omission can be taken into account in determining whether a worker had the requisite belief in what their disclosure tended to show. Our view is that, given that the claimant has a law degree, and has in other instances been very specific when he has suggested that the offence of misconduct in public office had, or may have been, committed, we do consider that we can and should take his omission of any mention of that offence in this context as pointing away from any reasonable belief at the time he made the disclosure that it tended to show that this criminal offence had been committed.

PD3.3 27. In terms of the next ground relied upon , that there had been a breach of the legal obligations to comply with the Police and Criminal Evidence Act 1984, again if the

claimant believed that hi s disclosure tended to show that the arrest, and particularly the search (if it was for the improper purpose of protection Supt. X) then it would have tended to show that the provisions of that Act had been wholly disregarded. Whilst the specific legislation (PACE) was not referred to, this is an instance, we consider where that would be obvious, and if the search was being conducted for a wholly improper purposes, it would be illegal. Whilst having doubts, as we shall set out below as to what the claimant reasonably believed, we will, on balance, accept that he had a reasonable belief that, if correct, his disclosure would tend to show this breach of a legal obligation. The Tribunal would therefore accept that the claimant can satisfy this low hurdle for the purposes of s.43B.

PD3.3 28. For completeness the Tribunal has previously ruled upon the issue pertaining to the Police Conduct Regulations.

PD3.3 29. In terms of the ***Muchesa*** test , given that the claimant says he only learned of this matter in late 2013, the Tribunal would not find that the disclosure failed on the basis of any incompatible conduct. Finally , the Tribunal turns to the requirement that the claimant had a reasonable belief that it was in the public interest to make this disclosure. Whilst the delay in the claimant raising it, for many months at least, from when he first learned of the matter, has given the Tribunal some hesitation as to whether the claimant had this requisite belief, it is , on balance prepared to accept that he did , given that potential breaches of PACE were being alleged.

The s.43F test.

PD3.3 29. This disclosure thus satisfies the s.43B tests, and survives them. The Tribunal now turns to the next test, that under s.43F, which requires the claimant to have a reasonable belief in the substantial truth of the information and any allegations contained in the information disclosed. That , of course, includes the omitted sections of these paragraphs in PDR3.

PD3.3 30. The information that the claimant conveyed in this disclosure, and the allegations contained in it, were:

a) ACC Sweeney “turned out” TD/Supt. Scally and DCS Shenton in an unlawful and inappropriate manner to a report of an incident of domestic violence made by Supt. X;

b) ACC Sweeney and possibly others (presumably including TD/Supt. Scally) were covering up for Supt. X, the cover up being of sexual misconduct on his part;

c) The arrest of Mrs. X had been highly irregular and unlawful;

d) The search of her home had been highly irregular and unlawful;

e) The search of her home was for sexual material or recordings that had been in the possession of Supt. X, and was made for the purpose of covering up that he had been in possession of such articles;

Whilst it is noted that the language used by the claimant in respect of (c) and (d) above was that these actions were "potentially" unlawful, in the Consolidated Grounds of Claim (page 118 of the bundle) at para. 84 , this is pleaded as that "there had been an unlawful arrest of the wife and search of the home address for sexual video material relating to " Supt. X. That is also the way in which it is put in para.109 of the List of Issues.

PD3.3 31. The claimant says in his first witness statement (para. 354) that "the incident related to X's wife threatening to go to the press" with material relating to him, and that he was told that "it related to extra marital sexual activities and internet sites he was using to meet people". He later says that he was "led to believe that the search was aimed at recovering whatever Mrs X was going to take to the media".

PD3.3 32. The essence of this disclosure is that the deployment of senior officers and members of the MIT team was improper, and was with the purpose of covering up for a senior officer. Covering up what, is the question. Supt. X reported an assault, he was the victim. He was therefore not seeking to cover anything up, he was actually drawing attention to the incident. The claimant's hypothesis therefore must be that the purpose of the inappropriate deployment was to cover up not the assault, but the background to it, and the possible coming to light of sexually inappropriate conduct on the part of Supt. X.

PD3.3 3. The claimant had no first - hand knowledge of any of this. His evidence as to who his source was , or sources were, has not been consistent. Para. 355 , for example, refers to hearing about the incident "from various colleagues", but in evidence he said that it was one officer, whom he refused to name . He said he did not want to, fearing that they may be subject to detrimental treatment.

PD3.3 34. The claimant clearly knows who it is, because he says he knew them well, and trusted them. The Tribunal is not satisfied with the claimant's explanation for this reluctance. The events in question were at the time of the Tribunal hearing some 10 years old. The likelihood of any repercussions this long after the event seems remote , if not fanciful. Yet this officer is the sole, as it turns out, source of the claimant's belief in the allegations that he makes in this disclosure.

PD3.3 36. Assuming, however, that this officer did provide the claimant with information about the incident, and what Mrs X had told him, the question still arises as to whether, even on that basis the claimant had a reasonable belief in the substantial truth of the allegations that he makes in this disclosure

PD3.3 37. An examination of the facts that were likely to be known by the claimant at the time he made the disclosure to the IPCC on 31 January 2014 reveals that the claimant could not have held a reasonable belief in the allegations he makes.

PD3.3 38. As observed, the essence of this disclosure is that ACC Sweeney improperly assigned senior officers from MIT to a low level domestic incident for the purpose of protecting Supt. X from revelations about his sexual misconduct. For this allegation to be true, therefore, ACC Sweeney, from the very outset, as soon as he assigned TD/Supt. Scally to head up the investigation must have been aware that Supt. X was at

risk of exposure to such allegations. If he was not, however disproportionate and inappropriate this deployment may have been, it cannot have been for the purpose of protecting Supt. X from any such exposure.

PD3.3 39. In his disclosure he says: *The incident had arisen over Supt [X] having an argument over sexual material that had been found by his wife of the officer and a woman he had met on a website.*

PD3.3 40. Pausing there, the Tribunal needs to unpick this assertion. The genesis of the incident is not something that is clear, and, more importantly, would probably not have been clear to ACC Sweeney at the time . It would only have been clear if Supt. X had told him not only that he had been assaulted, but also what he and his wife had been arguing about. There is no evidence that this was the case, nor has the claimant adduced any evidence that he (the claimant) was told that ACC Sweeney had been so told , at the point of this deployment, which is the crucial time, what the domestic argument had been about. On what basis, therefore, could the claimant have had a reasonable belief that this was the motivation behind the deployment? The answer, plainly, is none.

PD3.3 41. Taking the claimant's evidence at its highest, he has been given information by an officer who spoke to Mrs. X, which, by definition, can only have been after ACC Sweeney had deployed TD/Supt. Scally , at the very start of the investigation. All the evidence suggests that Mrs. X was not spoken to until the following day, but the claimant refers to this officer being involved "on the night". Apart from a CSM (Crime Scene Manager) who saw Supt. X that night, there was no other officer involved, and no officer saw Mrs. X until the next day.

PD3.3 42. The Tribunal's conclusion is that there has been considerable conflation in this disclosure. That Mrs. X told the claimant's informant that Supt. X had been involved in some form(s) of sexual misconduct may well be correct, as may also be that he conveyed this information to the claimant. The claimant has then attributed to ACC Sweeney the motive for assigning TD/Supt. Scally , and others in MIT, to the investigation as being that of covering up embarrassing sexual conduct on the part of Supt. X . There is no evidence of this , and the claimant at the time he made his disclosure could have had no evidence that ACC Sweeney was even aware that the incident which being reported to him by Supt. X was going to involve any revelations about Supt.X's sexual conduct. He could not, therefore, have had a reasonable belief that the motive for ACC Sweeney deploying TD/Supt. Scally and the MIT team was to cover up for Supt.X.

PD3.3 43. Additionally, the claimant's evidence before the Tribunal went considerably further than this disclosure. He added allegations in paras. 354, 355 and 356 of his first witness statement, most particularly that Mrs. X threatened to go to the Press, and allegations in para. 356 that he withdrew. In para. 366 he goes on to suggest that D/Supt. Turner was also involved in some form of skullduggery, and had been chosen to investigate Mrs. X's complaint because he was trusted to provide outcomes and conclusions that were agreeable to senior officers. This is based upon his review of Operation Nixon and his investigation of Mr Snowball's bugging of SLT officers.

PD3.3 44. In terms of the allegations that the arrest of Mrs X was unlawful ,and the execution of a search warrant were unlawful, the Tribunal notes that the claimant used the term "potentially" in connection with both of these, though he earlier terms them as "irregular". The Tribunal has considered whether the claimant is actually by this terminology alleging that the arrest and search actually were unlawful.

PD3.3 45. The claimant has argued that the claimant had a reasonable belief in what he disclosed. In paras. 253 to 281 of his Closing Submissions, it is contended that:

"Para. 255 : ….The thrust of this information was that ACC Sweeney arranged for DCS Shenton and TD/Supt Scally to deal with a domestic incident between [rank redacted][NP1] and his wife in an unlawful and inappropriate manner, which involved [rank redacted][NP1]'s wife being unlawfully arrested and her home unlawfully searched by a Major Incident Team for sexual material relating to [rank redacted][NP1]"

Para. 261: C's disclosure was made on the basis that the events he records smacked of senior officers covering up an incident for another senior officer. In that regard he had a reasonable basis in that:

262.1. The incident did involve a senior officer ([redacted rank] [NP1])

262.2. That an off-duty officer (Scally) had been contacted by ACC Sweeney to deal with the incident rather than on duty senior officers (o2216C) . C regarded Sweeney as having a close relationship with Scally, as articulated in his disclosure report 1.

262.3. That a Major Incident Team, whose role is to deal with murder investigations and major incidents, had been turned out to deal with what was a minor domestic incident. The ET is asked to accept that this was highly unusual;

262.4. The embarrassing nature of the subject matter of at least part of the incident for the officer at the centre of it.

262.5. The disproportionality of action taken, both in terms of arrest for such a minor incident and a house search being authorised and undertaken.

263. The information tended to show that the force had misused resources responding to the incident."

PD3.3 46. Much is made of the disproportionality of the deployment of the MIT team, and the irregularity of the arrest and the search. We would agree, as did the subsequent review. Disproportionality, however, is not illegality, nor is irregularity , nor could they reasonably be believed by the claimant to have been. Whilst that was part of what he was disclosing, which would not satisfy in our view any limb of s.43B(1), he was doing so to support his wider disclosure that ACC Sweeney "turned out" DCS Shenton and TD/Supt. Scally to deal with this matter. He did not, at most he "turned out" the latter, and the claimant had no reasonable belief to the contrary. Whilst a search for sexually compromising material to save Supt. X would have been illegal, the claimant had no

reasonable belief that the purpose of the search was to find such material . He cannot have had a reasonable belief that the search was unlawful.

PD3.3 47. In terms of the arrest, the claimant accepted that the arrest of Mrs X was lawful. It may have been disproportionate, but that does not make it unlawful, and the claimant knows the difference. Once any belief that it may have been to protect Supt. X from embarrassment is discounted, as it must be, the claimant can have had no reasonable grounds to believe that the arrest was unlawful.

PD3.3 48. All of the above would be fatal to this disclosure under s.43F, but there is another, quite simple, allegation contained in this disclosure in which the claimant cannot show he held a reasonable belief. That is the allegation that ACC Sweeney "turned out" not only TD/Supt. Scally , but also DCS Shenton. There is no evidence , which the claimant accepted, of him "turning out" DCS Shenton at all. The term "turning out" denotes some operational or investigative involvement. In many instances that would mean deploying officers to a crime scene, or to search for , detain and interview, suspects. The use of that term in relation to TD/Supt. Scally is something in which the claimant did have a reasonable belief, because, in the broadest sense of the term, that is what ACC Sweeney did.

PD3.3 49. In relation to DCS Shenton, however, ACC Sweeney did no such thing, and there is no evidence that the claimant has adduced from which he could reasonably have believed that he had. DCS Shenton's only involvement was to take part in a discussion of the case on 23 November 2012 at Sedgley Park. The claimant said in cross examination that this was the information he was provided with, although he does not say by whom, and goes on to say that "one would assume in those circumstances that Mr Sweeney contacted DCS Shenton, and that DCS Shenton would know about TD/Supt. Scally being turned out". That is assumption, which is not the same as reasonable belief.

PD3.3 50. That is not what the claimant disclosed. DCS Shenton knew about it, he clearly did from the discussion held the following day. The claimant's disclosure , however, was that ACC Sweeney "turned out" him as well as TD/Supt. Scally , making the point that neither of them were on duty. That is an allegation in which the claimant had no reasonable belief. If it was information provided to him (which is very much open to doubt, as it appears to be merely an assumption made by the claimant) it was not something that any informant reasonably believed either. If the claimant repeats allegations made by persons with no reasonable belief in them, without question or enquiry, he cannot convert someone else's unreasonable belief into his reasonable one.

PD3.3 51. Nor can the Tribunal discount this allegation as not adding anything to the "thrust" or "core" of the disclosure. The claimant's allegation is that ACC Sweeney corruptly assigned not one, but two senior officers to investigate this matter, to protect Supt. X. For him to have done that with one senior officer would have been bad enough, but the extent of the alleged wrongdoing is literally increased twofold when this is alleged to have occurred with two such officers, one of whom was a Chief Superintendent, a rank above both TD/Supt. Scally and Supt. X. Additionally, the Tribunal considers that this allegation also contains an imputation that both DCS Shenton and TD/Supt. Scally

were complicit in this, and participated in conduct intended to help Supt. X cover up his sexual activities. In short, involving DCS Shenton in these allegations goes further than just an issue of numbers.

PD3.3 52. Whilst in the claimant's submissions (para. 264) it is said that DCS Shenton's presence in the meeting on 22 April 2012 "supports" his involvement as referenced by the claimant , it does no such thing. The claimant did not disclose that DCS Shenton was "involved", he made a clear allegation that ACC Sweeney had "turned him out", when he did not, and the claimant had no basis for any reasonable belief that he had done so. That lack of reasonable belief in the substantial truth of this allegation cannot be so minimised, and this alone would be fatal to this disclosure.

PD3.3 53. Finally, as much has been made of it, it is appreciated that the respondent's disclosure in relation to this PD was originally highly redacted, and those redactions were only removed in the course of the hearing. The claimant has, understandably, made reference to the information contained in these documents, and has sought to use it to support that he had a reasonable belief in what he disclosed. He should not have needed to do so, he should have been able, as the burden is upon him, to establish his reasonable belief in what he disclosed by his own evidence, or, ideally by the evidence of his source. That this disclosure, once opened, showed that he was correct in some of the basic information that he disclosed may well assist him, but the fact remains that most of it does the opposite. It reveals that there was no officer involved "on the night" who could have spoken to Mrs. X then. It reveals that DCS Shenton was not "turned out". It reveals that the arrest and then the search carried out was lawful. It reveals that there was an investigation, because of the complaint by Mrs. X. It also reveals that whilst there was criticism of the disproportionality of the response, there was no misconduct.

PD3.3 54. Given that the claimant had no involvement whatsoever in this matter, and what information he did receive was only provided to him some 16 months, at the earliest, after the event, his inconsistent and imprecise accounts of what he was told and by whom, and its late addition to his disclosures (despite on his case having orally mentioned the matter to Dawn Copley some time in 2013), the Tribunal has to conclude that in a number of material aspects this disclosure fails s.43F, and is not protected.

Postscript on the disclosures.

IV 32. The Tribunal has, it will be appreciated , found that the claimant has failed to establish that he made any protected disclosures, and his claims must therefore fail at that juncture. This is, the Tribunal will confess, a surprising outcome, which the Tribunal did not anticipate at the beginning of the hearing. Some of the disclosures relate to serious issues arising in the course of Police operations , or serious conduct by an officer towards his superiors, which clearly happened, and which were not disputed. The expectation was, therefore , that it would not be difficult for the claimant to establish that at least some of his disclosures were protected.

IV 33. That, however, was before the Tribunal conducted the deep analysis of each disclosure and the claimant's beliefs, as set out above , and tested them against the requirements of s.43B, and the more stringent requirements of s.43F. As can be seen,

in three instances (PD1.12, PD1.3 and PD3.3) , the claimant was able to satisfy the lower standards required by s.43B , but in all instances, he has failed on s.43F. The reason for this has been that the claimant has, in each disclosure, gone too far. Whilst he could satisfy the Tribunal of his reasonable belief in much of what he disclosed, in each disclosure he has gone on also to make allegations in which he cannot establish that necessary additional level of belief. This may be due to his passion, and his strong desire for justice and the exposure of what he sees as corruption, but, as this case demonstrates, workers who make disclosures to third party bodies such as the IPCC, which then fall under the s.43F regime, need to be very circumspect in their choice of language. Exaggeration, figurative speech and rhetoric are dangerous, and may well vitiate what would otherwise have been disclosures which satisfied s.43F. The Tribunal would draw the analogy of the provisions of s.43F, and the other tier three and above sections of ERA, with a snakes and ladders board. A whistleblower may be perfectly able to climb the ladder by conveying relevant information in which he can demonstrate a reasonable belief, only to then slide down a snake of particular information or an allegation contained in it in which he cannot show the requisite reasonable belief. That is, in effect, what has befallen the claimant in this case.

IV 34. The claimant doubtless did not set out to write his PDR documents with an eye to relying upon their contents as protected disclosures in an Employment Tribunal several years later. The difficulties for his case have largely derived from the need for him, or rather , more probably his lawyers, to “reverse engineer” as it were his PDR documents , and extract from them the specific allegedly protected disclosures upon which to base his case. That was not an easy exercise, and our findings perhaps highlight how the attempts made by the claimant to force various parts of the text of his PDRs into the narrow confines of the protected disclosure were not always successful.

IV 35. The Tribunal would add , without dwelling unduly on the arguments, the suggestion made by the respondent that the claimant could and should have carried out more investigation himself before making his disclosures is not one that carried any weight with us. We accepted that he would , in many instances, be limited in his ability to do so, certainly in terms of accessing documents to which he would have had no right of access. That said, however, as an experienced detective he knew, or should have known the distinction between allegation, suspicion and belief. His disclosures have largely failed not because of lack of investigation, but because he has overstated matters about which he had inadequate knowledge. In some cases further investigation may have led to him being able to show a reasonable belief in what he disclosed, but in most it would have been more likely to have led to him moderating the terms of the disclosures that he ultimately made.

IV 36. It was not enough, despite some submissions on the part of the claimant that he could do so, for him to raise matters with the IPCC and rely upon them to investigate. That was his expectation, we accept, and it was a perfectly valid one. If, however, he did not have, as we have found, the requisite level of belief in what he was disclosing at that stage, he will not attract the protection of the statute. That is not, of course, a bar to him , or anyone else, taking matters to the IPCC, but it is a reminder of the consequences that must be accepted when making a third tier, or higher, disclosure.

IV 37. The shame of it is that the claimant could well , with greater care , have made some perfectly valid protected disclosures which would then have attracted the protection of the legislation. His over - stepping the boundaries of reasonable belief, however, has vitiated, in many cases, disclosures which would otherwise have been protected.

IV 38. We consider that we also should comment upon the disclosures that were withdrawn during the course of the hearing, nos. PD1.7, 1.10 , 1.15 , and 1.17. There is a suggestion (page38 of the clainmant's Submissions, in footnote 24) that had the claimant been aware that his reasonable belief was to be in issue , (the Tribunal's view is that he was, or should have been) he may not have withdrawn these disclosures.

IV 39. The Tribunal does not consider that there is any merit in that contention, but in any event the claimant should appreciate that disclosures PD1.7 and PD1.10 were in any event embedded in , or very closely related to PDs 1.5, 1.6, 1.8 and 1.9. The Tribunal cannot see how , had they remained live, there would have been any different findings in relation to those disclosures in any event.

IV 40. PD1.15 was a separate and discreet disclosure about the alleged failure to discipline and continued promotion of Supt. Lyons. In relation to this disclosure, the events giving rise to it were in December 2009. The allegedly corrupt promotion of Supt. Lyons to the NWRCS was in June 2011. The claimant first raised this issue in his grievance on 25 June 2012, and did not submit it to the IPCC until January 2014. The Tribunal considers that he was likely to have considerable difficulty (as he has with other stale disclosures) in overcoming the ***Muchesa*** point that his behaviour after becoming aware of these allegedly serious matters was inconsistent with a reasonable belief that they tended to show any of the prescribed matters in s.43B(1), and/or that it was in the public interest to make this disclosure when he did, up to some four years after the event.

IV 41. PD1.17 relates to the allegedly corrupt promotions of DCIs Warren and Bridge Whilst this has not been analysed in any detail, and, of course not making any rulings as these claims were withdrawn, the Tribunal has considerable doubts as to whether these disclosures too would have passed the s.43B and s. 43F tests.

Chapter V: The detriment claims.

V 1. The claimant having failed to establish that he made any protected disclosures, his claims both of detriment and automatically unfair dismissal for having made any protected disclosure must fail.

V 2. The Tribunal has considered whether to proceed to consider the detriments claims in the alternative, and to make rulings upon them.

V 3. The first problem that we face is that in order to determine whether the claimant has been subjected to any detriment by reason of having made any protected disclosure we have to conduct what Mr Gorton has described as the "pairing exercise". He takes this from ***Dr Patel v Surrey CC [UKEAT] 0178/16*** referred to in para. 264 of his

Submissions. This follows the guidance in ***Blackbay Ventures v Gahir [2014] ICR 747.*** In order to reach a determination as to whether a detriment was on grounds of an alleged related protected disclosure, it is submitted, the disclosure and detriment need to be considered in a related pairing. This is not an issue which appears to have been addressed in the claimant's written Closing Submissions. The respondent's submissions at paras. 259 to 265 specifically raise this issue. The claimant's responsive submissions go from commenting on para. 258.4 to para. 273.5 of the respondent's submissions, but make no comment upon the "pairing" (or "matching") issue. At para. 591, however, of the claimant's responsive submissions, the issue is addressed. Mr O'Dempsey submits as follows:

"591. The second general point is in relation to the "matching exercise" that R says that the ET is required to undertake. This is not a requirement in the circumstances of this case. If R had put up any type of positive case in the pleadings or issues that some feature from the PDRS or C's behaviour in relation to the PDRs other than the PDs relied upon was causative it might be necessary. However R did not do this. When C states that his PDs were causative of his treatment (and of the behaviour of R which constitutes the principal reason for his termination of the employment) he does not need to show that this or that PD caused this or that detriment. In the case of the detriments he needs to show that the PDs materially influenced the detrimental treatment; in the case of the dismissal what needs to be examined is what the reason for dismissal is. Here it is a constructive dismissal so that the ET needs to examine what the reasons were for R's behaviour which C alleges was the cause of his termination of the employment. If the principal reason for the conduct leading to C's termination of the employment was the PDs, C succeeds under s 103A. It is not for C to have to show that a particular disclosure caused a particular detriment. It is sufficient, on the facts of this case and given the pleadings and list of issues, for the C to show that the PDs materially influenced the detriment. The fact that other matters in his documents may or may not have influenced the detrimental treatment does not matter save in the case where R pleads that it was not item A (a PD) that caused the treatment but item B (not a PD)."

V 4 In his oral submissions on 15 May 2023 Mr O'Dempsey addressed this issue, and addressed the Tribunal on the effect and meaning of the ***Blackbay*** judgment. It is not to be read as a gloss upon the statute. He argued that there is nothing in the wording to limit the word "disclosure" to the singular, it would include the plural.

V 5. No authority is cited for this proposition , which flies in the face of the ***Blackbay*** case. If that case is correct, and the Tribunal considers that it is, and nothing in this case changes the position, the Tribunal does not see how it can begin its task when it has found no protected disclosures. It would be carrying out a hypothetical exercise. What is it to do? Hypothesise that certain disclosures were protected and then carry out the pairing exercise? Which ones should it pick? Alternatively, and this seems the only reasonable option, should the Tribunal assume that all of the disclosures relied upon are protected, and then carry out that exercise? That would be highly artificial, and may do the claimant a disservice. One of the respondent's arguments is that he cannot pair any particular disclosure to any particular detriment , so he will fail at this point in any event. Were the Tribunal to have found only particular disclosures were protected, the claimant may have had a better prospect of pairing any of them with any of the alleged

detriments. To assume that all were protected may, then, give the claimant difficulties on the pairing argument, that would not arise if only some disclosures were found to have been protected.

V 6. The Tribunal, however, does not have to resolve this issue, which is a difficult one. It simply , at this stage, highlights how the issues on detriment causation are far from clear.

V 7. Those considerations, and the legal and forensic difficulties involved, are powerful ones in themselves. There is, however, another, which the Tribunal has also to bear in mind. Whilst the parties have invited the Tribunal to make findings in the alternative, the Tribunal would have to expend yet more considerable time and judicial resources in determining whether the claimant was subjected to 31 (or so) alleged detriments for purely academic purposes. The Employment Judge has searched in vain for guidance as to whether and when a Court or Tribunal should proceed to determine what are, in the light of its judgment, purely academic or hypothetical issues. Recourse must therefore be had to the overriding objective , set out in rule 2 of the 2013 rules of procedure:

2. *The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—*

(a)ensuring that the parties are on an equal footing;

(b)dealing with cases in ways which are proportionate to the complexity and importance of the issues;

(c)avoiding unnecessary formality and seeking flexibility in the proceedings;

(d)avoiding delay, so far as compatible with proper consideration of the issues; and

(e)saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

V 8. As the parties will be aware, the deliberations in this case have thus far taken many days. They have, perforce, not been continuous, and this has delayed the promulgation of this judgment. Consideration of the detriment claims is likely to take up many more days of Tribunal's time, in a case where the parties have already had over 100 days of it. That would delay promulgation of the judgment, and other parties are being denied the judicial resources that are being expended on this one case.

V 9. A further consideration, which goes very much to proportionality, is the nature of these claims, and the likely quantum of any awards if any of them succeed. Save for the detriment claim at 2.23, none of the detriment claims , if successful, would give rise to any financial losses. The claimant does, of course, seek to recover for injury to feelings for any of those claims which succeed, but it will be appreciated that if some detriment

claims succeed, but others do not, complex issues of causation and apportionment of any established injury to feelings, or even personal injury, will arise making it far from clear cut what the claimant may reasonably expect to achieve by way of compensation in respect of any proven detriments.

V 10. Turning to the additional detriment claim, at 2.23, it was added at a preliminary hearing on 20 January 2020 by the order of Employment Judge Howard, sent to the parties on 23 January 2020 (pages 343G to 343L of the bundle) , in these terms , at para. 24.2 of her Orders, by reference to para.17 of the Case Management Summary , which reads: :

"S145A. The claimant further contends that the above facts, even if failing to constitute a dismissal under S95 ERA 1996 amount in any event to a detriment, retiring due to the detrimental treatment."

The consolidated list of issues are amended to include the following:

"2.23. Causing the Claimant to retire from the Respondent on 31st January 2017.

(i) If the Claimant does not satisfy the terms of S95 ERA 1995, in respect of dismissal,

(ii) Did the claimant retire because of being subjected to the detriments grouped under 1 & 2 or a subset of them?

(iii) If so, did the Respondent treat the Claimant in these ways because the Claimant had made the protected disclosures?"

V 11. Whilst the amendment application was granted, at para.(16) of the Case Management Summary Employment Judge Howard opined that she considered the amendment was arguable in law, but went no further than that.

V 12. The claimant's Submissions address this claim at paras. 714 to 726 of his Submissions. In summary, the claimant's argument is that if he falls short of the requirements of s.103A of the ERA in establishing that he was constructively dismissed, he can and does claim in the alternative, that the respondent "caused" him to retire sooner than he wanted to , and this is a separate detriment claim, which is not precluded by the terms of s.47B(2) of the ERA.

V 13. The respondent's submission in reply (para. 375 to 379 of his Responsive Submissions) is that this is merely an attempt to circumvent s.103A, if the claimant fails to establish that he was constructively dismissed. It is further contended that the claimant cannot bring such a claim against the respondent as his employer, but would have to bring it against any individuals responsible for the treatment which led to his premature retirement, citing ***Timis v Osipov [2019] IRLR 52*** in this regard. The further point is made, as previously, for the need for the "pairing" exercise to be carried out, and how fraught with difficulty this would be for the claimant .

V 14. Although purely hypothetical in the circumstances, the Tribunal's view would be that this claim cannot succeed. The basic reason for that is that it confuses detrimental treatment with the consequences of that treatment. The essence of detriment is treatment. No new treatment is being relied upon in this further claim. The treatment relied upon for it is the foregoing, or some of the foregoing, treatment complained of in each of the preceding detriment claims. It is then alleged that this treatment caused the claimant to retire early. That is a matter of causation of loss, not further treatment. It is the claimant who decided to retire when he did, so that cannot be treatment by the respondent. It is a reaction by the claimant to the treatment he had suffered , as complained of in all of the preceding detriment claims, but it is not further treatment.

V 15. That would be sufficient in itself to determine this claim, but in addition the further points made by the respondent are also powerful ones. The first is the "pairing" issue, which would, the Tribunal considers, indeed require it to link particular disclosure(s) to particular detriment(s) . That has further ramifications in the case of causation of the claimant's retirement, as how is the Tribunal to apportion the effects of detriments that it does find proven as opposed to those which it does not? The second is the point made in relation to ***Timis v Osipov*** above, namely that a detriment that is also arguably a dismissal (leaving aside whether it be actual or constructive) can form the basis of a claim against an individual, but cannot against the employer. It would, of course, be possible to bring a claim against the respondent as vicariously liable for actions short of dismissal on the part of his officers for whom he is vicariously liable, but no such claims have been made. The discussion by Underhill LJ in that case at paras. 58 to 78 of his judgment in this case is instructive. Further, at para. 81 , when considering the recoverability of losses arising from dismissal in detriment claims, he identifies the same confusion that the Tribunal has referred to above between detriment of which the worker complains with the loss caused by that detriment. He goes on to hold (*obiter* given the determination of the main issue in the appeal) at para. 84.:

It follows that I would hold that section 47B (2) places no barrier to recovery of compensation for losses flowing from a dismissal which was itself caused by a prior act of whistleblower detriment. For the avoidance of doubt, such compensation would be subject to the usual rules about remoteness and discounting for contingencies (including the contingency that the employment might have terminated in any event).

V 16. That is the position here, but the claimant has brought no such claims against any individuals, and as the Tribunal has indicated, recovery against any of them for the loss of the claimant's continued employment would be a highly speculative exercise.

V 17. The purpose of this admitted increasingly academic discussion, however, is merely to explain why the Tribunal does not consider in these circumstances that it should proceed to make any further, alternative and purely hypothetical findings on any of the detriment claims. This discussion hopefully reinforces how disproportionate it would be for the Tribunal to proceed any further and determine , even if it can, these now purely hypothetical claims. The Tribunal therefore will not make any alternative determinations of the detriment claims, which all fail with the protected disclosures, and will be dismissed.

Chapter VI : The constructive dismissal claim.

VI 1. The claimant has , however, another , and potentially most substantial, claim , that of automatically unfair dismissal. That claim too, of course, falls with the determination that the claimant made no protected disclosures, but there is a discreet issue in this claim which the Tribunal can, and considers should, determine in the alternative. The respondent (para.17.4 of his Submissions) did expressly invite the Tribunal to adjudicate upon this claim, even if it dismissed the other claims. The Tribunal will do so. This is because this is one issue, which will take much less of the Tribunal's time, and, further, for the purposes of this exercise the Tribunal can proceed on the assumption that the claimant had made protected disclosures, as it will not matter which ones they were. The Tribunal considers that this is proportionate, and determination of this issue which relates to the most substantial aspect of the claimant's claims is likely to be of assistance to the parties in their approach to the case hereinafter.

VI 2. The issue that can and will be determined is whether the claimant was constructively dismissed. For that purpose the Tribunal will assume that the claimant has established that the respondent had acted in a manner which potentially amounted to a fundamental breach of his contract of employment (or would do if he had one) . It will then examine and find the facts relevant to the termination of the claimant's employment. It will then determine whether, on those assumed and proven facts and applying the relevant law, the claimant was constructively dismissed.

a).Discussion and findings: was the claimant constructively dismissed?

VI 3. The claimant has relied upon a series of matters as amounting to repudiatory conduct on the part of the respondent which entitled him to resign, and in response to which he claims he did resign (in the form of taking retirement, at an age earlier than he was required to). The particulars of the breach are not very fully pleaded. In the List of Issues the way the claim is put is (at para. 222):

"Did the detrimental treatment outlined above and the respondent's failures to take action in relation to the subject matter of his complaints/grievance amount to a deemed 'repudiatory breach of contract' which the Claimant accepted by retiring?"

VI 4. The detrimental treatment referred to consists of the 31 or so (some actually sub-divide as allegations) preceding detriments in the List of Issues, all of which are still relied upon as constituting the respondent's repudiatory breach of the implied term of trust and confidence , the claimant still relying upon detriment claims that have been withdrawn as particulars of breach of the implied term of trust and confidence.

VI 5. It is therefore necessary, for the purpose of this determination, to rehearse what these matters are alleged to have been, and to assume them in the claimant's favour. Thereafter the Tribunal will consider the evidence of the relevant facts surrounding the claimant's retirement, and make findings. The Tribunal regrets that the documents relevant to this issue have unfortunately been spread between the (open) hearing bundle and the Operation Leopard (closed "OL") bundle , making references to them

both necessary , with the risk of some confusion and , it must be said, inconvenience for the Tribunal, and , consequently, for any other party trying to follow them.

b).The relevant assumed facts.

VI 6. The assumed facts therefore are:

The respondent, without reasonable and probable cause:

i) On 17 March 2014 by the then Chief Constable Sir Peter Fahy circulated a Force - wide email regarding the IPCC investigation in which he stated that the complaints had been made by a "serving officer", said that the Force would be contacting as many people as possible who might be affected by the investigation, acknowledged that people would be concerned, talked about dealing with "challenging situations" and said that the Force would "not let this situation distract us". He thereby, in circulating the email of 17 March 2014, sparked immediate speculation as to who had made the disclosures, and instead of taking a neutral stance and assuring officers that the allegations would be taken seriously, provided a defensive narrative;

ii) C/Supt Sykes, between 12 February and 7 April 2014, spoke to GMP officers based in Stockport, where the claimant had very recently worked, about the identity of the whistle-blower and, while not revealing the Claimant's name, state that the whistleblower was male; had recently worked at Stockport and had worked within CID; and was a rank above Inspector. The claimant's identity as the whistleblower thereby become widely known within Stockport and from there within GMP more widely, because the claimant was the only person who could fit all these criteria;

iii) When the claimant notified ACC Copley that his identity as the whistleblower had been compromised , ACC Copley failed to challenge CS Sykes in spite of promising to do so;

iv) In a Senior Leadership meeting on 20 March 2014, the Chief Constable openly criticised the IPCC investigation and asked attendees at the meeting to sign a card of support for ACC Sweeney, one of the officers most directly involved and identified in the claimant’s disclosure to the IPCC ;

v) The respondent in early February 2014 caused the suspension of the claimant's Police Federation representative DS Elliott from Federation duties for an alleged disciplinary offence immediately after a meeting in which the claimant and DS Elliott had challenged DCS Paul Rumney on the Force's response to the claimant's disclosures , and an email was sent to ACC Copley and the Police and Crime Commissioner's Office, with a copy to DS Elliott, pursuing that challenge.

vi) The Head of PSB ACC Copley and the Head of GMP's response to the IPCC Operation Poppy investigations DCS Rumney, between 12 February 2014 and 7 April 2014, caused officers who were witnesses to the claimant's disclosures to be told of the IPCC investigations and informed that they may be treated as "suspects or witnesses";

vii) On 19 June 2014 the Chief Constable sent another Force-wide email regarding Force and officer integrity headed "Message from the Chief Constable: Protecting our Integrity". It said, in relation to ethics and professional standards, *"There are situations where there are conflicting pressures and it can often be difficult to decide what the right thing is to do .... There has been much publicity in recent months about various investigations into alleged police misconduct and failings. Some of these involve GMP... These reports are often unbalanced and hide the great effort of officers/ staff in dealing with many challenges in policing. Whatever the headlines people trust their own experience"* , thereby putting forward a defensive narrative and indirectly criticising and undermining the claimant and the IPCC investigation by the use of the word “unbalanced”;

viii) ACC Copley emailed the Claimant on 7 May 2014, stating "I know you are feeling isolated" but then went on to tell him that ACC Sweeney would be returning to GMP and working in the same building as the claimant. She stated that GMP understood its responsibility for the claimant's welfare and outlined measures to be put in place to support him and protect against further disclosure of his identity, stating that DCS Jackson would be responsible for a number of these. The respondent failed to put into place any of the measures outlined in the email of 7 May 2014;

ix) On 11 June 2014 when the claimant attended a meeting with the Chief Constable to discuss his grievances against the Force, ACC Copley and DCS Jackson also attended and so the claimant invited his new Federation Representative, PC Rothwell from Lancashire Police. The claimant, supported only by a Constable, was faced by three very senior officers. In the course of this meeting, the three senior officers were defensive from the outset, unwilling to make any concessions and unwilling to deal effectively with the claimant's concerns, in particular as regards the signed card in support of ACC Sweeney and the failure to challenge CS Sykes over the revelation of the claimant's identity;

x) DCS Jackson, the claimant's Welfare officer as regards the protected disclosures, subjected the claimant to an unfairly negative and critical 1-2-1 meeting on 18 September 2014, in which he:

a)informed the Claimant that other senior officers were concerned about working with a whistle-blower, adding "I'm probably on dodgy ground even discussing this";

b) stated that he did not consider the Claimant to be capable of acting as a Superintendent;

c) informed the claimant that he scored highly as an investigating officer, 9 or 10 out of 10, but that as a Superintendent and seeing the 'bigger picture' he was rated at 1 or 2 out of 10; and/ or

d) when challenged by the claimant, and after putting some questions which the claimant answered effectively, rowed back on his assessment regarding the "bigger picture", acknowledge that the claimant did get "the bigger picture" but said that it was "the bit in the middle" that the claimant did not understand.

xi) At a meeting between the claimant and DCS Jackson on 27 October 2014 DCS Jackson subjected the claimant to detrimental treatment in one or more of the following ways:

a) by accusing the Claimant of unlawfully accessing police information about the offender who assaulted the claimant's son;

b) by attempting to reprimand the claimant regarding his taking DI Sellars to task over her behaviour towards him and some of his staff;

c) by saying that four out of eight of the Superintendents in the division had been to see him to say that they found the claimant hard to work with, and/ or

d) by saying that rumours had been spreading about the claimant as regards things he had allegedly been saying; specifically, that a DCI Heslop had reported the claimant as saying, "I bring SLTs down".

xii) DCS Jackson made disparaging remarks about the claimant at an SLT meeting held in the last week of January 2015 in the double MIT briefing room, openly criticising the claimant in front of the rest of the SLT in a way in which he would not have openly criticised other Detective Superintendents, telling the claimant that he had to get away from the view of "MIT work and divisional work" and an "our work and their work approach", writing furiously on a flip chart as he spoke and addressing the claimant in a manner which was calculated to humiliate him in front of the rest of the SLT;

xiii) The respondent informed the CPS that the claimant was a whistleblower in the Police when the CPS was involved in advising upon a serious assault on his son on 13 July 2014 in Manchester City Centre;

xiv) In October 2015 the claimant was given the role of Officer in Overall Command (OIOC) of Operation Leopard, a serious crime investigation into organised gangs engaging in a violent feud in the Salford area of Manchester. Op Leopard had been put in place after the claimant linked a number of disparate offences and put forward a large scale strategic proposal which was agreed by the ACC Crime. The Claimant contends that, throughout the course of Op Leopard, DCS Jackson subjected the claimant to detrimental treatment by micro-managing him and by consistently and continuously undermining, questioning and contradicting his authority. He did this by:

a) DCS Jackson, although only acting in a "PIP4" advisory support role, interfered in the running of Operation Leopard by holding weekly meetings between October 2015 and April 2016 which were attended by around 10 officers, several of whom were of lower rank to the claimant, where he directed the investigation, scrutinised the claimant's decisions in front of the relevant officers and obstructed the claimant's wishes. The holding of these weekly meetings undermined the claimant's authority, with the result that officers started to report directly to DCS Jackson. In particular, DCS Jackson on 5 February 2016 informed the claimant that a balaclava had been found in the suitcase of

an OCG member attempting to travel to Spain at Manchester airport, after staff had reported this directly to DCS Jackson rather than the claimant.

b) DCS Jackson undermined the claimant and interfered in the investigation by stopping routine daily actions taking place and requesting they first be discussed at Gold and Silver group meetings. In particular, DCS Jackson stopped action to visit persons of interest and potential witnesses with officers having warrants to secure mobile phones if required, ordering that it be first discussed at a Silver meeting and suggesting it might be a Gold decision when these events were already planned with the investigation team linking in daily with the division, so that the claimant was in effect being required to seek approval for day-to-day decision making;

xv) DCS Jackson on 18 October 2015 pressurised the claimant's SIO DCI Paul Parker to designate nominal 'A' as a suspect, and proceeded to put in place several actions to progress this line of enquiry, without informing the claimant, either for approval or as a courtesy. On 17 October 2015 he sent an email detailing the rationale for the designation of the suspect to eight other officers but not the claimant, thereby excluding the claimant from the decision-making process and undermining his position as OIOC of the team;

xvi) DCS Jackson initiated and pursued mediation tactics on Operation Leopard to resolve the dispute between the violent organised gangs the claimant was investigating without informing or consulting the claimant;

xvii) DCS Jackson in November 2015 arranged for D/Supt Jon Chadwick to contact para-military mediators in Northern Ireland without the claimant's knowledge and without consulting him as the OIOC for the investigation;

xviii) DCS Jackson took further steps to pursue mediation without informing or consulting the claimant, by instructing D/Supt Chadwick and DI Joe Clark to meet with two prominent members of the opposing OCGs, who were targets of the investigation, on 11 December 2015;

xix) DCS Jackson took these further steps to pursue mediation without informing and consulting the claimant notwithstanding the fact that (after discovering what was being done by chance) the claimant had written to DCS Jackson on 3 and 9 December 2015 protesting that he had not been informed and consulted, informing DCS Jackson of the CPS view which echoed his own, expressing serious concerns that mediation was being explored.

xx) On 15 December 2015 DCS Jackson suggested to the claimant that he take responsibility for some staff currently working to another Superintendent, D/Supt Tony Creely. The claimant was pleased at the suggestion but concerned at D/Supt Creely's potential reaction. DCS Jackson, in the regular weekly PIP4 meeting on 15 December 2015, announced the staff move and falsely stated that it was being done at the claimant's request, generating a hostile reaction towards the claimant from D/Supt Creely. This was said with the intention of creating discord between the claimant and D/Supt Creeley and making the claimant's life difficult;

xxi) On 10 February 2016 DCS Jackson sent an email delaying certain operational procedures, such as visiting persons of interest and executing search warrants, until a further meeting had taken place to discuss them. In delaying the relevant procedures, DCS Jackson was micro-managing the claimant and undermining his authority;

xxii) On 16 February 2016 major arrests took place in Spain in relation to Operation Leopard. DCS Jackson repeatedly questioned the claimant's decisions made while in Spain. More particularly:

a) DCS Jackson repeatedly questioned the claimant's decision to initiate action to bring the three offenders arrested in Spain back to the UK to be dealt with by British Courts, raising this question repeatedly in meetings in the days and weeks following the arrests, in PIP4 discussions and at an SLT meeting;

b) DCS Jackson questioned the decision to bring the offenders back to the UK even though all the actions in Spain had been carried out with a view to prosecuting the offenders in the UK and it had never been suggested previously that they be prosecuted in Spain, this being a UK investigation of a dispute between two OCGs with the incident in Spain being the final incident of 14, the previous 13 violent attacks being carried out in the UK;

c) when the claimant repeatedly asked DCS Jackson for his views on the claimant's decision to bring the offenders in Spain back to the UK he would not give him an answer.

xxiii) DCS Jackson in March 2016 decided that an evidential review of the investigation be conducted by the GMP Review Team and Force Review Officer Martin Bottomley when (i) the investigation was going through a very busy period, following arrests in Spain, and the evidential review was bound to be time-consuming and distracting (ii) three CPS lawyers were already engaged in undertaking an evidential review for extradition proceedings and the proposed review was unnecessarily duplicating the work of the CPS (iii) a review of this kind was unusual and, so far as the Claimant is aware, something that had never previously been undertaken by the Force Review Team in similar circumstances. DCS Jackson instigated this evidential review to be deliberately obstructive towards the claimant.

xxiv) The claimant was obstructed when he attempted to gather evidence from colleagues, in particular:

a) The Safeguarding team headed by DCS Jackson and D/Supt Jon Chadwick initially refused to provide evidential statements, particularly about key conversations they had had with some of the main targets of the operation, forcing the claimant to battle with DCS Jackson and D/Supt Chadwick to obtain evidential statements;

b) DI Clarke told the claimant that he (the claimant) did not need their statements as he had enough evidence without them, when it was inconceivable that statements would not be required from DI Clarke and his team who had significant evidence to provide for the investigation.

xxv) When on 2 March 2016 the claimant emailed DCS Jackson, raising his concerns about the proposal for the FRO review, the lack of support for his decision-making, and the continuous undermining of his authority as OIOC, DCS Jackson sent a response to the claimant's email which was ambiguous, defensive and mischievous, which failed to address the claimant's concerns, and was generally obstructive.

xxvi) In early March 2016 , and on prior occasions, the FRO Martin Bottomley contacted Rebecca MacAulay – Addison, the CPS lawyer linked to Operation Leopard, without the claimant being informed.

xxvii) The organisational review, which was conducted by the Force Review Officer Martin Bottomley, proceeded on 16 March 2016. Mr Bottomley refused to postpone the date of the review, despite the claimant's Senior Investigating Officer (SIO) and case officer being unable to attend. He persisted in asking detailed evidential questions such as could only have been answered by the claimant's SIO and case officer, because the FRO was looking for reasons to criticise the investigation, rather than conducting an objective assessment.

xxviii) The FRO 's review, which was highly critical of the claimant, was sent directly to DCS Jackson without being shared with the claimant.

xxix) In early March 2016 DCS Jackson challenged the claimant in relation to the proposed use of covert tactics. In so doing:

a) DCS Jackson attempted to obstruct the claimant's conduct of the investigation;

b) DCS Jackson opposed the use of covert tactics because it was the claimant who was proposing them;

c) DCS Jackson inconsistent in his arguments against covert tactics. When pressed about the ethical issues he initially raised, DCS Jackson then switched to tactical, deployment-based objections.

xxx) On 30 March 2016 the claimant was told by ACC Sutcliffe and DCS Jackson that he would be demoted to Deputy OIOC for Operation Leopard, that he would be placed on an action plan and that Supt Barraclough would replace him as OIOC on a temporary promotion to Chief Superintendent. This was the first time such a plan, or indeed any performance management measures, had been mentioned to the claimant.

xxxi) During the meeting on 30 March 2016 the claimant challenged the decision to demote him from OIOC, presented evidence to undermine the rationale for his removal and complained he was being bullied because he was a whistle- blower. ACC Sutcliffe then changed her stance and gave the claimant two options, viz 1) move to Deputy OIOC and be subject to an action plan or 2) remain as OIOC but on condition that Supt Barraclough would work full-time on the investigation as a permanent PIP4. The claimant was given a few days to think about his option. The claimant requested the detailed reasons and evidence that warranted a decision to demote him from OIOC but DCS Jackson refused to provide further detail saying "you have been told".

xxxiv) At a meeting on 5 April 2016 the claimant informed ACC Sutcliffe, DCS Jackson and Martin Bottomley that he had decided to remain as OIOC. He said that he believed that their actions constituted further detriments against him because he was a whistle-blower and said that he had submitted a grievance against them. The claimant was then notified that he was to be removed from his position as OIOC and replaced by Superintendent Barraclough, and that the decision had been made by DCC Pilling.

xxxv) The reasons given for the claimant's demotion at the meeting on 5 April 2016 were a) a lack of confidence in the claimant's investigative strategy; b) the claimant's attitude towards the FRO's organisational review; and c) "relationship management". The claimant asked the Respondent to provide more detailed reasons but this was refused or failed to provide an explanation of the alleged reasons for his demotion when asked to provide details of the same by the claimant . DCS Jackson claimed that he did not know sufficient about the case to have confidence in the investigative strategy, when in fact he had been regularly updated and briefed, was fully informed about all aspects of the investigation, and had micro-managed the claimant.

xxxvi) On 12 April 2016 the claimant was signed off with work related stress as a result of the constant micromanagement and detrimental treatment to which he had been subjected (as set out above). On 29 April 2016 the claimant submitted a further report in support of the grievance he had raised against ACC Sutcliffe, DCS Jackson and Martin Bottomley. He also raised a grievance against DCC Pilling. The respondent in relation to the handling of his grievance failed to investigate the grievance in accordance with Force policy or at all, failed to provide the claimant with detailed reasons for his removal and what the proposed action plan would have entailed (information which the claimant had again requested in his grievance) until 21st March 2017 by which time the Claimant had retired.

VI 7. The claimant also alleges that the respondent, after writing to the claimant on 19 May 2016 requesting that the matter be dealt with by way of mediation, the respondent took many months to arrange mediation (which did not take place until October 2016). He also alleges that following the failure of mediation, the respondent failed to progress and respond to the claimant's grievance, in breach of his Grievance Procedure. This is not a fact that the Tribunal will assume in the claimant’s favour, but will determine with the other relevant facts set out below.

c).The relevant facts as determined by the Tribunal on this issue.

VI 8. The claimant commenced his service as a Police Officer on 6 January 1986. By 6 January 2016 therefore he had completed 30 years of service. Officers with 30 years service are (or were at the relevant time) entitled to retire on full pension. The claimant has 4 children who have all gone to university for 4, 5 and 6 year courses and it would have financially suited him to keep working. His youngest son was at the time in his second year of a 5 year Veterinary Medicine course , and his third child in their last year of university. He says he would still have been working on Operation Leopard . Officers do continue for very long periods of service , and some , such as Martin Bottomley return to civilian posts immediately after retirement as police officers.

VI 9. In a meeting with DCS Russ Jackson on 2 March 2015, the claimant mentioned his potential retirement in the following January, and how he would write a book (see pages 1530 and 1532b of the bundle).

VI 10. In another meeting with DCS Russ Jackson on 13 January 2016 he said that he did not see himself in GMP in 2017, and he wanted to finish off some pieces of work, such as his presentation on one – punch homicides (a particular interest of his) and the plan for Operation Leopard (see page 1570 and the transcribed version at page 1580A of the bundle).

VI 11. On 22 March 2016 the claimant sent an email to DCS Russ Jackson , asking to carry over 184 hours of untaken leave (page 1594A of the bundle) . In this email he says this:

"I will be retiring in the next 12 months and have leave booked in April and May and will use much of the remainder of my leave at the time I put in my notice to retire."

His request was granted and actioned by DCS Russ Jackson.

VI 12. Following the action on 30 March 2016 whereby the claimant was to be removed as OIOC of Operation Leopard, the claimant submitted a grievance on 5 April 2016 (initially by his email to ACC Sutcliffe and DCS Russ Jackson on pages 1147 to 1150 and then , later that day, by a further email also to the Chief Constable and DCC Ian Pilling at pages 1153 to 1154 of the OL Bundle) . On 7 April 2016 the claimant went off work sick, obtaining a fit note from his GP on 14 April 2016 for work related stress covering the period up until 28 April 2016. The claimant never returned to work thereafter..

VI 13. The initial response to the claimant's grievance was from DCC Pilling on 12 April 2016, in which he asked the claimant to provide details, and to say whether he considered it was appropriate for DCC Pilling to deal with it (page 1176 of the OL bundle). The claimant replied by email of 25 April 2016, at the conclusion of which he said he would provide him with a detailed grievance report by the end of the week. He did not comment upon whether DCC Pilling should deal with it. On 29 April 2016 the claimant raised a further grievance to and against DCC Pilling (plus those named in his previous grievance letters) , by writing to him and copying in the Chief Constable (pages 1186 to 1193 of the OL bundle)On 3 May 2016 DCC Pilling sent an email to the claimant (page 1204 OL Bundle) , in which the claimant was told that he would respond to the claimant "in due course", and changing his Welfare Officer to CS Ball (now Mrs Jones).

VI 14. On 3 May 2016 the claimant replied to DCC Pilling by email (page 1205 OL Bundle) accepting CS Ball as his Welfare Officer, and asking for a response sooner rather than later.

VI 15. On 19 May 2016 DCC Pilling sent the claimant an email (page 1608 of the bundle) in which he said he had asked CS Annette Anderson to review his grievance. He also had asked Legal Services to contact the claimant's solicitor (the claimant having

been legally represented throughout this process, and a further ET1 claim form being submitted on his behalf by them on 12 May 2016) regarding a potential mediation, to which the Chief Constable had agreed. He acknowledged that this was outside the usual grievance procedure.

VI 16. The claimant responded to DCC Pilling on 26 May 2016 expressing his concerns and setting out some of the outstanding issues that he had, but agreeing to a mediation and asking that a mediation meeting be arranged as soon as possible (pages 1246 and 1247 of the OL bundle).

VI 17. The arrangements for the mediation were made directly between the claimant's solicitors and the respondent's legal department. These communications were from June through to August 2016. CS Ball as the claimant's Welfare Officer was in touch with him (by telephone) throughout this period. She got involved in arranging the mediation , and sent the claimant an email on 17 August 216 (page 1676 of the bundle) about this. (See pages 1617 , 1618 , 1619 , 1620 , 1621 , 1629 , 1631 , 1633 , 1655, 1665 and 1669 of the for the discussions about arranging the mediation. To the extent that any of these documents are marked "without prejudice", the parties agreed that they can be treated as open correspondence.) In the letter from the respondent's principal solicitor on 3 June 2016 (page 1617 of the bundle) she said:

"Thank you for your recent email confirming that your client is agreeable to mediation in relation to his existing ET claim; his recent grievance; and any future ET claim. I am currently liaising with ACAS in relation to their mediation services and will write to you separately once I have full information from them.

I write now to confirm, for the sake of clarity and in open correspondence, that the grievance will form part of this mediation process.

I am instructed that your client sent an email to Deputy Chief Constable Pilling on 26th May 2016. In that email, your client repeats issues that he has previously raised and in particular he refers to not having been given detailed reasons for his recent removal from his OIOC role. Given that our respective clients have agreed to mediate and that such mediation will include your client's grievance (which in turn includes the reasons for his removal from the OIOC role), my client does not intend to deal with any of the matters raised in your client's grievance in separate email correspondence. I trust that you will agree that this has to be the case to allow our clients the time and opportunity to focus on resolution through mediation and to allow us to move matters forward expeditiously."

VI 18. The reply to that letter does not appear in the bundle, the next communication from the claimant's solicitor being on 29 June 2016 (page 1629 of the bundle) which makes no reference to the respondent's letter of 3 June 2016.

VI 19. By letter of 15 July 2016 (apparently not in the bundle, but referred to in the claimant's email of 1 August 2016 , page 1658 of the bundle) the claimant was informed that as of 20 September 2016 his pay would go down to half pay because of the length of his sickness absence. In his email of 1 August 2016 the claimant appealed this

decision , and sought a three month extension of his full pay until 19 December 2016. In this email he cited the grievance process and the delay in dealing with his grievance. He referred to the proposed mediation, which was at that time being sought for September 2016, and advanced these matters in support of his appeal.

VI 20. On 17 August 2016 the claimant spoke to his GP . The Notes record (page 1815(ii) of the bundle) this:

"Mental health much better now out of work environment. Discussed ongoing work plan – unsure if he will return to police force."

VI 21. The same day the claimant was notified that his appeal for full pay to be restored had been successful, and that he would remain on full pay until 30 November 2016 (page 1676 of the bundle, although the attached letter does not appear to be in the bundle).

VI 22. On 22 August 2016 the date for the mediation was set as 6 October 2016 (page 1678 OL Bundle) .

VI 23. On 2 September 2016 , as had been indicated in correspondence he would , the claimant issued the second set of proceedings , case no. 2402865/2016 in the Employment Tribunal.

VI 24. On 12 September 2016 the claimant spoke to his GP. The Notes record (page 1815(ii) of the OL Bundle) this:

"looking to retire probably in the near future but cannot make decision till seen outcome of mediation"

VI 25. CS Ball received an email from the claimant on 12 September 2016 confirming that the mediation date had been set (page 1677 OL Bundle).

VI 26. During this period the claimant was in communication with the IPCC. On 26 September 2016, in response to the letter notifying him that the Poppy 2 report had been sent to the respondent, he wrote to the IPCC (page 1702 of the bundle) raising a number of questions, and asking if he would be able to meet with the Commissioners. The response on 4 October 2016 from the IPCC (page 1705 of the bundle) was that the Commissioners would meet with the claimant , after the respondent had responded to the report. He was asked for his availability for November and December of 2016.The claimant replied on 5 October 2016 (page 1706 of the bundle) that he would be available to meet the Commissioners any time in November and December 2016, and queried whether it was correct , as he had heard, that the IPCC had recommended that two officers should face "simple misconduct" proceedings.

VI 27. On 6 October 2016 the mediation meeting was held, but was unsuccessful. It broke down on the day, and the claimant left the mediation meeting knowing that. Following the mediation, just when is unclear, but no later than 11 October 2016, CS Ball spoke with the claimant. On 11 October 2016 Caroline Ball spoke to ACC Ford, and

told her of the conversation she had had with the claimant , following the mediation. She said that he was angry about what had happened, and was “going to go”. She also said that he said he was going to “put his ticket in next week”. ACC Ford noted this in her Day Book (page 1707A of the bundle)

VI 28. On 18 October 2016 the claimant chased up the IPCC for more information by a further email (page 1708 of the bundle), which he said was required by his solicitor. He followed this up with another email on 10 November 2016 (page 1710 of the bundle).

VI 29. On 8 November 2016 the claimant again spoke to his GP, who noted (page 1815(ii) of the bundle) *“mediation unsuccessful looking to go to full tribunal now”.*

VI 30. On 9 November 2016 Laura Shuttleworth , the Force’s Principal Solicitor, wrote to ACC Ford about the claimant’s grievance , and how ACC Ford should deal with it. She declined to provide her with a copy of the claimant’s emails in April in which he raised these grievances, fearful of an allegation of breach of confidence, and advising her to meet with the claimant to discuss his grievances.

VI 31. On 15 November 2016 the Deputy Chair of the IPCC wrote to the claimant to provide some further information about the conduct cases that had been recommended, and agreeing to meet with the claimant in the New Year(page 5820 of the bundle).

VI 32. On 17 November 2016, after carrying out some enquiries into the issues raised, ACC Ford held a meeting at Sedgley Park with the claimant , and CS Ball . ACC Ford had prepared a structure for that meeting in her day book (pages 1275C and 1275D of the OL Bundle) . This meeting was noted by ACC Ford (pages 1257E to 1257F OL bundle). This was to be an initial meeting to discuss the claimant’s grievance, but it covered a number of matters. There was discussion, without prejudice, of settlement of the claimant’s ET claims against the respondent.

VI 33. One of the matters discussed was the claimant taking retirement, and as a result CS Ball, the following day 18 November 2016 , sent the claimant an email (page 1712 of the bundle) in which she made reference to what had been discussed in the meeting, and attached a “Form 3”, which the claimant was required to complete to action his retirement from the Force. She went on to make reference to the claimant deciding whether he wanted to leave, and to him deciding to stay.

VI 34. CS Ball copied this email to ACC Ford, and referred to the negotiations for settlement of the claims, pointing out to her that the claimant had said that the Force had a week to get back to him, i.e. by next Friday, 25 November 2016.

VI 35. On 23 November 2016 the claimant went into Nexus House. This was not pre - arranged, and was only the second time (the first being 22 June 2016 – see email from DCS Russ Jackson at page 1626 of the bundle) he had been in the building since he started his sickness absence on 11 April 2016. His purpose was to print off emails for use in his Tribunal claims. He was unable to do so.

VI 36. The claimant found his office was in use (by Operation Leopard) , and his computer had been disconnected from the network. He also saw that his desk had been cleared and emptied, and all his possessions had been put into a box , which had been placed on top of a cupboard. He realised at that point that there was no going back for him. At some point after this date, but before the claimant's retirement on 31 January 2017, the claimant spoke, probably by telephone, with CS Ball. In that conversation , she agreed in her evidence, he did make reference to his visit to Nexus House and finding his possessions in a box. She also accepted that he had mentioned the "last straw". She also stated that in her conversations with the claimant prior to the meeting on 17 November 2016 he had told her he was thinking of retiring.

VI 37. The following day the claimant sent an email to his solicitor (page 1712a(i) of the bundle). In the open part he said this:

"I went into work yesterday to find my office had been taken over and my computer disconnected from the network.

Plus the main office was very busy with staff and I couldnt find a suitable place to do my work.

Fortunately I managed to resolve my secure connection issues for my laptop at home, but was unable to print off the emails at work as planned."

There ensued some further, communication which was privileged , as this has been redacted from the email.

VI 38. The following day , 25 November 2016 the claimant sent an email to CS Ball, copied to ACC Ford, in which he said this:

"Following our meeting I have decided to put in my Form 3 and retire from the Force.

I just need to work out the correct retirement day and how best to approach this.

I calculate that I have 13 weeks time owed in terms of annual leave and time due. I have accrued this amount of time due to being fully engaged on operational commitments and had carried forward a significant amount of leave from last year(164 hours I believe and somewhat ironically in the circumstances) as I had cancelled my summer leave and returned to work to act as the PIP4 on the Massey murder (required at the time as DCS Jackson and ACC Copley did not have confidence in the now current SIO for Op Leopard , DCI Millington to run the investigation on his own and he was only able to keep that murder because I agreed to return early from leave to support him) and I did not take leave in the subsequent months because I then assumed the role of OIOC and was fully committed on Op Leopard which was quite fast paced, dynamic (sic) *, eventful and relentless.*

I am aware that you have to review the decision of whether I continue on full pay from 30th November 2016 and as I intimated at our meeting, I would want to appeal this on the grounds that;

1. My sickness absence, 'Work related stress' is entirely due to the manner in which I have been treated by senior officers in GMP

2. That I had submitted a grievance in April 2016 about my treatment and did not (sic) *receive any reply for 4 weeks and was then told it would be dealt with by way of a mediation meeting but the Force then delayed and prevaricated for 6 months before the meeting actually took place, despite the repeated requests of myself and my solicitor for the meeting. So, in sum, the delays of the past 6 months have been due to GMP and not myself.*

I intend to retire from the Force in the coming months and if my calculations are correct this would be 13 weeks from 30th November 2016, which would encompass the 13 weeks leave that I am owed and could have taken previously when working and on full pay.

I believe this would probably take me to 1st March 2017 but would need this to be checked by Pay and Finance.

If the Force were to pay me for any leave owed then my retirement day could be brought forward, this may resolve any potential problems around my continued sickness absence and leave entitlements. I understood that if I retired and was owed annual leave at that time then I would be entitled to be paid for that leave. I would be obliged if you could clarify this for me and my options.

I hope this meets with your approval and that in the circumstances you can extend my full pay to allow for me to submit my form 3 and retire on a day within the next 13 weeks, once the detail and entitlements are worked out by Pay and Finace (sic) *,"*

VI 39. The Form 3 completed by the claimant is at pages 1715 to 1717 of the bundle. The claimant completed it electronically. It has drop down menus. In the box where he was asked to select his main reasons for leaving from a number of options , the claimant selected the one which said "Discrimination/harassment/bullying". There was, however, another option "Other", which the claimant could have selected and completed the box on the form provided for that purpose.

VI 40. On 28 November 2016 the claimant sent an email to ACC Ford (page 1714 of the bundle) to which he attached his completed Form 3. He said he had contacted Pay and Finance and had decided to retire on 1 February 2017. He would be remaining on sickness absence, and asked that he be allowed to remain on full pay for the remaining two months of his service.

VI 41. On 1 December 2016 the claimant sent a further email to ACC Ford (page 1718 of the bundle) having been informed that he was going down to half pay as of 30 November 2016. He again sought to have his pay restored to full pay pending his retirement. In that document he again made reference to the delay in arranging a mediation meeting, and in dealing with his grievance. He also sought payment for hours

that he was owed. He complained that he viewed the actions of GMP as vindicative and detrimental towards him “because of his status as a Whistleblower”.

VI 42. ACC Ford replied to the claimant by email on 2 December 2016 (page 1719 of the bundle) in which she informed him that she had determined that he would remain on full pay until his retirement on 1 February 2017. She referred back to their meeting on 17 November 2016, and stated that she would investigate his grievance in relation to his removal from Operation Leopard, and would provide him with her findings in due course.

VI 43. The claimant responded to her by email later on 2 December 2016 (pages 1720 to 1721 of the bundle) in which he provided further information about his grievance, and indicated that he would be interested in working in a Safer Towns and Cities initiative.

VI 44. On 16 January 2017 ACC Ford held an exit interview and grievance meeting with the claimant. Her notes (one set, they are duplicated) are pages 1259A to 1259C of the OL bundle.

VI 45. The claimant sent himself an email entitled “Brief notes from meeting today with ACC Ford” on 16 January 2017 (page 1259I of the OL bundle) , in which he set out the points that were discussed.

VI 46. On 17 January 2017 the claimant sent ACC Ford a further email (page 1260 in the OL bundle). In that email he again sought the details of the rationale for his removal as OIOC of Operation Leopard. He also queried the position in respect of his grievance, resolution of which h was still seeking, and which did not appear to be being investigated. He ends the email saying : *“I wanted clarity on the matter before I retire from the Force as I still feel very aggrieved”*.

VI 47. He followed that up with a further email on 1 February 2017 (pages 1727 to 1729 of the bundle) in which he gave further details of his issues, and complained about many features of his treatment, and the continued cover up, as he alleged, of serious wrongdoing by the GMP. This was the day after he retired from the Force.

VI 48. ACC Ford replied on 8 February 2017 (page 1294 of the OL bundle), apologising and saying that she was finalising the investigation and would provide him with a written response by the end of the following week .

VI 49. The claimant replied the same day (page 1295 of the OL bundle) expressing his continued confusion and dissatisfaction, and that he would await her written response.

VI 50. ACC Ford sent the claimant the rationale document for his removal as OIOC on Operation Leopard on 16 February 2017 (pages 1296 to 1297 of the OL bundle). The claimant then sent an email to ACC Ford on 23 February 2017 at 15.59 (pages 1300 to 1305 of the OL bundle) . in which he continued to complain about how his grievance had been dealt with, and his removal from Operation Leopoard.

VI 51. On 21 March 2017 the claimant sent a further email to ACC Ford (pages 1310 to 1311 of the OL bundle) complaining that he had not heard from her since an email of 16 February 2017, and the lack of investigation into his grievances. She replied later that day, apologising, and saying she would provide a full response "in due course".

VI 52. After further emails pursuing the grievance outcome, the claimant was never provided with one.

d).The Law – constructive dismissal.

VI 53. Section 95(1)(c) of the Employment Rights Act 1996 provides that there is a dismissal when the employee terminates the contract with or without notice in circumstances such that he or she is entitled to terminate it without notice by reason of the employer's conduct.

VI 54. The classic statement of the law on constructive dismissal is set out in the judgment of the Court of Appeal in ***Western Excavating (ECC) Limited v Sharp [1978] ICR 221*** which held that for an employer's conduct to give rise to a constructive unfair dismissal it must involve a repudiatory breach of contract. There are three elements to a constructive unfair dismissal, namely:

That there was a fundamental breach of contract on the part of the employer;

The employer's breach caused the employee to resign; and

The employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

VI 55. In order for a Tribunal to deal with these matters it must identify the contractual term or terms, either express or implied, which have allegedly been breached. It must then go on to identify a fundamental breach of that contract on the part of the employer. Aside from any breach of the equality clause, the implied term of trust and confidence would be the term of the contract which had allegedly been breached by the respondent by various acts or omissions over a period of time which, the claimant says, cumulatively amounted to a fundamental breach. The Tribunal, therefore must firstly decide whether the employer was guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.

VI 56. That implied term of trust and confidence , as recognised in cases such as ***Wood v. W M Car Services (Peterborough) Ltd [1981] IRLR 347*** and ***Mailk v BCCI [1997] IRLR 462*** is that the respondent will not , without reasonable and proper cause, conduct itself in a manner which is calculated or likely to destroy or seriously damage the relationship of confidence and trust between the employer and the employee. It is clear that in order to establish that there has been a fundamental breach of contract it is not necessary to show one fundamental act or omission. There does not need to be one event, there can be a series of events which cumulatively amount to a breach of that implied term. In such circumstances, where there is not one individual act or omission relied upon, but a series of actions that are alleged to amount to that breach, where they

culminate in one particular act that is known as the "last straw", and in order to establish that a claimant has been constructively dismissed there has to be a last straw.[Please see the footnote at the end of this judgment as the issue of whether the claimant in fact had a contract of employment of which this term could have been an implied term].

VI 57. Indeed in the leading case on this issue, ***London Borough of Waltham Forest v Omilaju [2005] IRLR 35,*** a decision of the Court of Appeal and the judgment of Lord Justice Dyson, it is clear from the discussion in that case of the nature of constructive dismissal, that in order for there to be a constructive dismissal where there is a series of acts, the final straw must be there, and although the final straw may be relatively insignificant, it must not be utterly trivial. There must be a final straw, otherwise there can be no constructive dismissal. If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect. The judgment goes on to say:

"A claimant cannot subsequently rely on those acts to justify a constructive dismissal unless he can point to a later act which enables him to do so. If the later act on which he seeks to rely is entirely innocuous it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the final straw principle."

Moreover, and this is an important part of the judgment:

"An entirely innocuous act on the part of the employer cannot be a final straw even if the employee genuinely but mistakenly interprets the act as hurtful and destructive of his trust and confidence in his employer. The test of whether the employee's trust and confidence have been undermined is objective."

VI 58. Further consideration of the last straw doctrine was undertaken by the Court of Appeal in ***Kaur v Leeds Teaching Hospitals NHS Trust [2018] IRLR 833***. Underhill LJ confirmed ***Omilaju*** as the leading case on last straw arguments. In particular, he set out the following passages from the judgment of Dyson LJ which he said sum it all up and should require no further elucidation:

"14 The following basic propositions of law can be derived from the authorities:

1. *The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment:* ***Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27.***

2. *It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example,* ***Malik v Bank of Credit and Commerce International SA [1997] IRLR 462****, 464 (Lord Nicholls) and 468 (Lord Steyn). I shall refer to this as "the implied term of trust and confidence".*

*3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract see, for example, per Browne-Wilkinson J in **Woods v WM Car Services (Peterborough) Ltd [1981] IRLR 347**, [at page] 350. The very essence of the breach of the implied term is that it is "calculated or likely to destroy or seriously damage the relationship" (emphasis added).*

*4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in **Malik** at p.464, the conduct relied on as constituting the breach must "impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer" (emphasis added).*

5. A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. It is well put at para. [480] in Harvey on Industrial Relations and Employment Law:

""Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the 'last straw' which causes the employee to terminate a deteriorating relationship.""

*15. The last straw principle has been explained in a number of cases, perhaps most clearly in **Lewis v Motorworld Garages Ltd [1985] IRLR 465, [1986] ICR 157**. Neill LJ said (p 167C) that the repudiatory conduct may consist of a series of acts or incidents, some of them perhaps quite trivial, which cumulatively amount to a repudiatory breach of the implied term of trust and confidence. Glidewell LJ said at p 169F:*

"(3) The breach of this implied obligation of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so. In particular in such a case the last action of the employer which leads to the employee leaving need not itself be a breach of contract; the question is, does the cumulative series of acts taken together amount to a breach of the implied term? … This is the 'last straw' situation."

16. Although the final straw may be relatively insignificant, it must not be utterly trivial: the principle that the law is not concerned with very small things (more

elegantly expressed in the maxim "de minimis non curat lex") is of general application.…

19. The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase "an act in a series" in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.

20. I see no need to characterise the final straw as "unreasonable" or "blameworthy" conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy. But, viewed in isolation, the final straw may not always be unreasonable, still less blameworthy. Nor do I see any reason why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred."

VI 59. So to the extent that the claimant might have perceived any act as being the last straw , the Tribunal cannot rely solely on that, it must look objectively on the act complained of. The Tribunal has therefore also to examine whether there was, cumulatively in this instance, a fundamental breach of contract, entitling the claimant to resign, in response to which he did resign, and did not delay his resignation too long so as to affirm the contract.

e).Discussion and findings: was the claimant constructively dismissed?

VI 60. The issue to be considered is whether the claimant (upon whom the burden of proving that he was dismissed rests) has proved, on a balance of probabilities that he was constructively dismissed. In terms of the burden of proof, the Tribunal should add this caveat. In relation to whether the claimant resigned in response to any fundamental breach, or that there was any last straw, the burden is upon him. In respect of the argument that the claimant affirmed any breach, the burden of proving that would lie upon the respondent. The factual matrix for all these issues, however, is the same. The respondent has not argued (although he did in an application for a deposit order) that there was a consensual termination, so the issue is has the claimant shown that he resigned in response to the assumed, or proven, fundamental breach of contract on the part of the respondent.

VI 61. This issue , the Tribunal considers, splits into three. The first is a wide one, has the claimant shown that he resigned in response to the respondent's (assumed) breach? The respondent's case is that he has not, the claimant simply retired when he was

intending to, having over 30 years' service at the time he retired, and having given several indications that he would do so at around the time that he did. The second is that there was no final straw, and the third that the claimant affirmed the contract, and lost his right to complain of constructive dismissal.

VI 62. There is a fundamental and preliminary point which is essential to the determination of this issue. The respondent contends (para. 708.1 of his Final Submissions) that the relevant date for us to consider the issue of whether there was a constructive dismissal is 28 November 2016, which was the date that he submitted his Form 3, his retirement , in effect his notice, which expired on 31 January 2017. Mr O'Demspey submits (para. 638 of his Submissions) that this is not so, and the Tribunal can and should look at the whole of the period up to his retirement date, and not take the date he gave notice as the relevant date. He therefore submits that we are entitled to look at the respondent's conduct after the giving of notice, as being part and parcel of why the claimant retired on 31 January 2017. That would include, therefore, the respondent's continued failure to deal with his grievance.

VI 63. No caselaw is cited for their respective propositions by either side. The Tribunal has therefore considered this matter, and carried out its own analysis of the law. The essence of constructive dismissal is the law of contract, and the concepts of repudiatory breach and acceptance of that breach. In ***WE Cox Toner (International) Ltd v Crook 1981 ICR 823*** the EAT specifically held that general principles of contract law applied to issues of repudiation and acceptance. A resignation in response to a proven fundamental breach of contract is an acceptance of that breach, which then terminates the contract. The effect of the termination may not be immediate, but the acceptance of the breach by the resignation is.

VI 64. A fundamental breach of contract by the employer may be an actual or an anticipatory breach. An actual breach of contract arises when the employer refuses or fails to carry out an obligation imposed by the contract at a time when performance is due. For example, a reduction of 25 per cent without warning in an employee's monthly pay cheque is an actual breach. An anticipatory breach arises when, before performance is due, the employer intimates to the employee, by words or conduct, that he does not intend to honour an essential term or terms of the contract when the time for performance arrives. Whilst not so articulated, the claimant's case is that the respondent had committed actual, not anticipatory, breaches of contract. The time for performance , by, in particular, investigating his grievances had come and gone. This is not, therefore a case of anticipatory breach. The difference matters, because an anticipatory breach may be capable of remedy, but an actual breach is not.

VI 65. The Court of Appeal in ***Bournemouth University Higher Education Corporation v Buckland 2010 ICR 908,*** had to consider whether a repudiatory breach of contract was capable of remedy. It held that it was not. The relevance of this decision is that it focusses upon the principles of repudiation and acceptance of that repudiation as being the key elements of the law of constructive dismissal. Had the respondent, after the claimant submitted his resignation then performed the contract to the claimant's satisfaction, he could then have affirmed any previous breach by withdrawing his resignation, and opting to continue the contract. Once he had accepted the breach,

however, no further conduct on the part of the respondent can add to the breach that the claimant had already accepted. The flaw in the claimant's argument here , with respect , is that it confuses acceptance by the giving of notice , with the expiry of that notice period. The former is the operative act, not the latter. In any event, on the facts, despite the claimant's submissions at para. 638 of his Submissions, there is no evidence whatsoever that the claimant would have withdrawn his notice and not retired had the respondent belatedly dealt with his grievances before 31 January 2017. This is not a case that the claimant has actually advanced.

f).The retirement was not in response to the alleged fundamental breach, but would have occurred in any event.

VI 66. Starting with the first issue , this requires an examination of all the available evidence. The claimant's evidence was that because he has had 4 children who had all gone to university for 4, 5 and 6 year courses it financially suited him to keep working. His youngest son was at the time in his second year of a 5 year Veterinary Medicine course , and his third child was in their last year of university. He would still, he contended , have been working on the live Operation Leopard . Officers continue for very long periods of service (one witness , for example has over 35 years' service).

VI 67. That the claimant was intending to retire around the time that he did is supported by the evidence that:

a) in March 2015 he referred to his retirement and writing a book;

b) he requested on 22 March 2016 to carry over unused leave , stating that he "will be retiring" within 12 months;

c) he had told his GP on 17 August 2016 that he was unsure if he would return to the Police;

d) he had told CS Ball in conversations with her that he was thinking of retiring;

e) he told his GP on 12 September 2016 that he was "looking probably to retire in the near future" but could not make a decision until the outcome of the mediation on 6 October 2016;

VI 68. All that, is inconsistent with the claimant continuing in post for much longer, whatever other family considerations he had. Whilst he explained (b) above in his evidence on the basis that he was being "disingenuous" and was trying to get Russ Jackson to agree to what he wanted by, effectively, pretending that he was going to retire, the Tribunal does not accept that.

VI 69. Additionally, there are some features of the claimant's evidence which do not paint the full picture. He deals with this issue in the section of his (first) witness statement headed "Detriment 2.22 : delay in responding to the Claimant's grievance". It is not, therefore addressed as a separate topic, but is largely addressed in paras. 813 to 833 of this statement.

VI 70. Whilst the claimant has complained about the delay in organising the mediation (despite the agreement between the parties that neither side would be able to rely upon any delay caused by the mediation) he has rather exaggerated the length of the delay. Mediation was first suggested on 19 May 2016, and the claimant agreed to it on 26 May 2016. After discussions between the parties' legal representatives, the date of 6 October 2016 was agreed on 22 August 2016. That is just under three months from when the claimant agreed to mediation.

VI 71. Further, whilst the claimant has in para. 832 of his first witness statement stated that he intended on 25 November 2016 to "put in his Form 3 notification" , he has omitted to mention that he had been provided with that form a week earlier by ACC Ford, following their meeting on 17 November 2016, during which his retirement was discussed.

VI 72. The indications , in the Tribunal's view, are all one way. It would be quite understandable that the claimant did want , as he probably always intended , to retire around the time that he did. By November 2016 he had , as it was described "fallen out of love" with the Force. The Poppy Reports had come back, and had disappointed the claimant in terms of what the IPCC was requiring of the Force, and what action was likely to be taken against those whom he had reported upon. The family reasons for wanting to stay on longer may have been present, but they would equally have been present in January and March 2016 when he mentioned retirement to Russ Jackson.

VI 73. We also note that the timing of the claimant's decision on 25 November 2016 coincided with the deadline that the claimant had imposed upon the respondent for him to respond to a proposal to negotiate settlement of the claimant's Tribunal claims. The claimant's decision to put in his Form 3 was on the same day as that response was due.

VI 74. The Tribunal is therefore not persuaded by the claimant that he would not have retired in any event, and is not satisfied therefore that he did retire in response to any breach of contract in the respondent's treatment of him.

g).The Last Straw.

VI 75. The claimant's starting point in his Submissions (para. 773) is that there is no need for the claimant to identify a last straw. He cites no authority for this, but it may well be correct. It is certainly the case that whether the employee left employment in response to the employer's breach of contract is essentially a question of fact for the Employment Tribunal. Strictly speaking, it is not necessary for the employee to inform the employer as to why he or she is resigning (see ***Weathersfield Ltd v Sargent 1999 ICR 425***). The reason (or lack of reason) given by the employee is merely one piece of evidence for the Tribunal to consider when reaching a conclusion as to the true reason for the employee's resignation. The same, we accept , therefore applies to whether any "last straw" is mentioned.

VI 76. The claimant , however, whether in the pleadings or not, has done so in his evidence, so we must consider it.

VI 77. What then is the last straw relied upon by the claimant ? It is (firstly) the discovery by him on an unannounced visit to Nexus House on 23 November 2016 that his personal belongings had been boxed up, and his office was in use by other officers engaged in continuing work on Operation Leopard. The claimant does not say that he believes that this was done deliberately (he was off work sick at the time, and had not been in the office since 11 April 2016, save to deliver a Fit Note), but it made him realise that he was never going to go back. Having obtained the necessary Form 3 on 18 November 2016, and having discussed the possibility of retiring , as he had reached his 30 years' service, he then decided on 25 November 2016 to put in his application to retire.

VI 78. Was this a last straw? The issue is one of fact. Is this event what lead the claimant to decide to retire on 25 November 2016?. The problem for the claimant is that this is an assertion that has been made very late in the course of the proceedings. No mention of it at all is made in his email 25 November 2016. That is not a hastily written document, as can be seen. It is a considered document in which the claimant seeks to negotiate financial aspects of his retirement. No mention of it was made either in his email to ACC Ford on 28 November 2016, when he attached his Form 3 and actioned his retirement , nor in his email to her of 1 December 2016 in which he did complain of the delays in arranging the mediation, and in dealing with his grievance. No mention was made of it in the exit interview on 16 January 2016 or in any of the quite extensive correspondence that the claimant continued in early 2017 up to, and indeed beyond his retirement date of 31 January 2017. Despite being in close contact with his solicitor, emailing her the next day after his visit to Nexus House, nothing is said by either the claimant or her in the ensuing days and weeks to the effect that the event on 23 November 2016 triggered his decision to retire.

VI 79. The constructive dismissal claim was first added by amendment to the second (in fact the third) claim on 8 March 2017. No mention then was made of any last straw, but, but to be fair, the constructive dismissal claim was not very fully pleaded.

VI 80. The first mention of this last straw comes in the claimant's skeleton argument of 17 November 2019, prepared for a preliminary hearing on 18 December 2019, where it appears at para. 23 (page 343 of the bundle):

"23. C will give evidence to the effect that on 24th November 2016 that he had attended work and found his office taken over by staff and all his belongings shoved in box. This had a big impact on him. He was passionate about the work; OL had been his idea, and had been enjoying great success. He felt that at that time everyone was working on it without him. There was no apparent prospect of his being reinstated as OIOC. There was no effort to provide him with the reasons for removing him from the operation in a form which he could properly digest and to which he could respond. He realised that it would be difficult to go back through the continuing stress and upset this was causing him."

VI 81. This is not accurate (the claimant's visit was on 23 , not 24, November) and not quite how the claimant puts it in his own witness statement, where he makes no reference to his belongings being "shoved" in a box. Further, when he emailed his

solicitor the next day, 24 November 2016, he makes, in any open form, no mention of this box at all. Indeed, it is interesting what he does not say (or say openly) in this email. Its main purpose seems to be to explain why he was not able to print off emails that he was going to need for the preparation of his Tribunal claims. He had only recently , on 2 September 2016, commenced the second of these Tribunal claims , so the Tribunal would have expected some discussion about his decision to retire , and a much earlier indication of any potential constructive dismissal claim.

VI 82. The claimant makes no mention of this event in the email of 25 November 2016, despite, as it is put, the "big impact" it had upon him, nor does he in any subsequent communications with the respondent. He did, CS Ball, recalled in her evidence, and contrary to what her witness statement had said, mention it in a conversation , but when that was is very unclear .

VI 83. The Tribunal is particularly struck by the fact that, despite being represented, and clearly taking, and presumably receiving, legal advice the very next day (hence the redaction in the email to his solicitor on 24 November 2016) , no mention is made of this alleged "last straw" for the next 3 years. This is against a background of the claimant expressly claiming in his grievance documents and elsewhere that the actions of the respondent were designed to "force him to retire". Any further event which was considered to add to this intention, or to be an event of any significance, would, we would have expected , been mentioned at or near the time, especially when the claimant had two live Tribunal claims, the second being very recently issued, and was professionally represented throughout this process.

VI 84. Mr O'Dempsey correctly submits (para.773 of his Submissions) that there is no requirement for a claimant complaining of constructive dismissal to express the reasons for their resignation, nor what any last straw was, but the Tribunal regularly sees represented parties , either through their representatives, or with their own wording based on the legal advice they have received , make some reference in communication with their employer just what has triggered their decision to resign. That no mention is made of this at all (even in the ensuing correspondence whilst the claimant works his notice) is surprising to say the least.

VI 85. We accept that the claimant has used the term "last straw" , and did so in speaking with CS Ball , but when this was, and how this came up , is very unclear.

VI 86. That term, has not, however, been used by the claimant in the legal sense, in our view. He was merely expressing what was for him , as he puts it, a "realisation" that he was never going back. The timing of it is significant , as he had before 23 November 2016 , already obtained the Form 3 from CS Ball, a fact omitted from his witness statement, and had sought a response for settlement of his two Tribunal claims by 25 November 2016. That it was not being used in the legal sense is, in the Tribunal's view, demonstrated by the fact that it was never so expressed until the claimant's Skeleton Argument in opposition to the strike out application in late 2019.

VI 87. Regardless of whether the claimant considered it so, the Tribunal has to ask was this act, viewed objectively, an entirely innocuous act on the part of the employer which

the claimant genuinely but mistakenly interpreted as hurtful and destructive of his trust and confidence in his employer, but objectively was not? Did it add anything, however, slight, to the previous course of conduct relied upon by the claimant as constituting breach of the implied term?

VI 88. The claimant submits (para.642 of the Responsive Submissions) as follows:

"The action contributes to the breach of the Malik term, it is plainly conduct of the R in that officers must have moved and package and removed items; it does not matter when the items were placed there etc. All that matters is whether on the day he visited it was clear that someone had side-lined him and his belongings. He does not need to show that person's intention. It is conduct which is likely to undermine trust and confidence in a person attending their office. It showed as R submits that OL had moved on from C. He had not moved on from OL. He was trying to find a way back, but appreciating that the grievance was his last hope and that this was not being investigated."

VI 89. The Tribunal's unanimous view is that this was not , objectively, a last straw. It may have led to the claimant , for number of reasons , including his disillusionment with the Force, his sickness absence, and disappointment with the outcome of the IPCC investigations, coming to the realisation that he was unlikely to be going back, but that is not the same thing as a last straw in the legal sense. What the claimant found had nothing to do with whether his grievance was being investigated, despite the submission made that that it had. What he found was no indication of how and when his grievance was likely to be dealt with. Nor was it evidence that Operation Leopard had "moved on", all it showed, as the claimant knew, was that it was continuing, whilst he was off sick and had been for 6 months. It was not "side-lining" him, it was the utilisation of available space. The claimant accepted that this was not anything personal, he could see the operational reasons for it. He commented in his email to his solicitor how busy the office was.

VI 90. The Tribunal considers that the discovery that the claimant made that day, and the actions that the respondent must therefore have taken before he did so, lack the necessary quality to amount to a last straw. The truth is that this was no more than the claimant , subjectively, and internally, coming to a realisation that he was going to retire, a process, it is to be recalled, that he had already initiated a week earlier. This is not any conduct on the part of the respondent, this is merely a recognition by the claimant of what his future should be.

VI 91. Indeed, we consider this incident falls squarely within the type of matter referred to in para. 20 of Underhill LJ's judgment in ***Kaur*** above as behaviour (not even unreasonable behaviour) which is "so unrelated to the obligation of trust and confidence" that it lacks the essential qualities to which he had previously referred. The claimant did not know who had moved his belongings, or why, and accepted that the office was in use and that space was needed. There was no suggestion that Russ Jackson, or any other alleged perpetrator of any detriments was responsible for this action, or when it had happened . The claimant's arrival in Nexus House was not expected or planned, he had simply turned up. Whilst doubtless a matter which triggered or reinforced in the claimant's mind a realisation that he was not going to return to work, because he was

going to retire, a process he had already initiated, it was, we find, no more than that. That no mention was made of it, other than to CS Ball, by the claimant or his solicitor, despite her being almost immediately informed of it, confirms how little significance it truly had. The reference made to it with CS Ball, we find, is perfectly consistent with the expression of an acceptance or realisation of the decision to retire, and is of no greater significance.

VI 92. For all those reasons, we do not accept that the discovery that the claimant made on 23 November 2016 was in fact the last straw, in response to which he retired, or, if he did, that it was , in law, of such a nature as to amount to a "last straw", as defined in ***Kaur*** .

VI 93. Was there an alternative last straw? The claimant puts in the alternative (para. 774 of his Submissions) that the respondent's *"failure to take action in relation to the subject matter of C's complaints and/or grievance and/or to cover up the matters raised by him"* was an alternative last straw.

VI 94. The first observation to make is that or first finding, that the claimant was going to retire in an event , still applies, and we do not accept that the claimant retired in response to any last straw, whatever it was. Secondly, this is a very wide "last straw". The claimant's submissions focus largely upon the first last straw discussed above, and do not really articulate this one. It seems to the Tribunal to boil down to failing to address or provide redress for the matters he raised in his grievance.

VI 95. The evidence is that the last event before the claimant's visit to Nexus House on 23 November 2016 had been his meeting on 17 November 2016 with ACC Ford. That meeting was (in part) to progress his grievance. If one accepts, as the parties seem to agree (para. 70 of the respondent's Submissions and para.633 of the claimant's responsive submissions) , that there was agreement that his grievances lodged in April 2016 would be put on hold pending the mediation, which took place on 6 October 2016, then the clock would start ticking again, as it were, in respect of any failure to deal with the claimant's grievances from that date. Had the respondent indeed done nothing to progress them within a reasonable time after the mediation had failed the claimant would indeed have been entitled to rely upon that failure as contributing to the fundamental breach of trust and confidence. Had he resigned at that stage, he would have been entitled to rely upon that failure – which would crystallise at the point at which the respondent ought reasonably to have progressed his grievance – as a last straw. He did not, however, do so, nor did the respondent give any indication that he was not going to progress the claimant's grievances. In fact, the converse was the case, ACC Ford was appointed to progress them, and met with the claimant on 17 November 2016 for that purpose. The Tribunal appreciates that this was not, as ACC Ford agreed, a formal Stage 2 grievance meeting, and she was handicapped by the lack (on the, with respect, somewhat curious advice of Laura Shuttleworth to withhold them from her) of copies of the claimant's two grievance documents. It was, however, the Tribunal is satisfied, a genuine attempt to move things on, and deal with the claimant's outstanding grievances. It was some 6 weeks after the failed mediation, but that was explained by ACC Ford on the basis that she had no time any earlier than 17 November 2016 when she could meet the claimant.

VI 96. The essence of constructive dismissal is that by fundamentally breaching the employee's contract of employment the employer "evinces an intention not to be bound" by that contract. Such an intention, of course, does not require an express and conscious decision to so act, it can be inferred objectively by the conduct and its likely effect upon the employment contract.

VI 97. The Tribunal is quite satisfied that at this stage ACC Ford did not evince an intention not to be bound by the contract, rather she did the opposite. Her actions were consistent with considering the claimant's grievances, and trying to get him back into work. This cannot amount to a last straw, it cannot add to the cumulative breaches that antedate it, it shows the respondent doing the opposite, trying to maintain the contact of employment and repair any damage to the trust and confidence that may thitherto have occurred. If, therefore, this is contended to amount to an alternative last straw, it too fails.

h).Affiirmation.

VI 98. Finally, in the alternative, the respondent argues that if the claimant is not precluded from claiming that he was constructively dismissed by reason of the lack of a last straw, he nonetheless lost the right to complain of constructive dismissal because he affirmed the contract. This was developed in oral submissions from para. 706.6 in the written submissions. The respondent contends that the claimant affirmed the contract by firstly, waiting 7 months to resign (taking that date from his alleged removal as OIOC from Operation Leopard), but also by negotiating to secure his retirement benefits, and seeking the restoration of his full pay. The Tribunal's view is that in this regard the burden of establishing that the claimant affirmed the breach lies upon the respondent.

VI 99. The claimant, at para. 778 of his Submissions, argues that there was no affirmation, the claimant did not delay, he sought redress for earlier breaches, and used the grievance procedure, but the respondent nullified it. The claimant does not address this issue further in his responsive submissions.

VI 100. The law on affirmation is that where the employee waits too long after the employer's breach of contract before resigning, he or she may be taken to have affirmed the contract and thereby lost the right to claim constructive dismissal. In the words of Lord Denning MR in ***Western Excavating (ECC) Ltd v Sharp 1978 ICR 221,*** the employee 'must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged'.

VI 101. A leading case on affirmation is ***Chindove v William Morrison Supermarkets plc EAT 0201/13***. An important factor, according to Langstaff P, was whether the employee was actually at work in the interim, so that he or she could be seen as complying with the contract in a way that was consistent with a decision to terminate it. Where an employee is on sick leave at the relevant time, it is not so easy to infer that he or she had decided not to exercise his or her right to resign. Looking at the facts of

the instant case in context, Langstaff P thought that a delay of six weeks between the employer's breach of contract and the employee's resignation was a very short time in which to infer that the employee had decided not to exercise his right to resign. The employee had worked steadily in the post of warehouse operative for some eight or nine years and had been off sick in the six weeks prior to his resignation. As it was not clear whether the employment tribunal had taken these factors into account, its decision on affirmation was overturned and the case remitted to a fresh tribunal. The EAT warned against looking at the mere passage of time in isolation when determining whether an employee has lost the right to resign and claim constructive dismissal. What matters is whether, in all the circumstances, the employee's conduct has shown an intention to continue in employment rather than resign. The employee's own situation, Langstaff P continued, should be considered as part of the circumstances. As Lord Justice Jacob observed in ***Bournemouth University Higher Education Corporation v Buckland 2010 ICR 908,*** , resigning from a job is a serious matter with potentially significant consequences for the employee. The more serious the consequences, the longer the employee may take to make such a decision.

VI 102. There comes a point, however, at which delay will indicate affirmation . ***WE Cox Toner (International) Ltd v Crook 1981 ICR 823*** is another leading case on this topic. This was a case of a seven month delay, which the Employment Tribunal held did not amount to affirmation. On appeal, the EAT held that the employment tribunal had misdirected itself. Mere delay by itself does not constitute an affirmation of the contract, but if the delay went on for too long it could be very persuasive evidence of an affirmation. The Tribunal should have referred to the fact that throughout the seven-month period the claimant had continued to work and be paid under the contract. Even if it were arguable that he was working under protest for six months, the delay for a further month after the company had finally made its intentions clear was fatal to the claimant's claim that he had not affirmed the contract.

VI 103. Affirmation can also be implied by prolonged delay and/or if the innocent party calls on the guilty party for further performance of the contract by, for example, claiming sick pay — ***Fereday v South Staffordshire NHS Primary Care Trust EAT 0513/10.***

VI 104. In its judgment the EAT said this:

"42. The first ground of appeal is that the Employment Tribunal misapplied the decision in ***Crook*** *as it equated delay with affirmation when it should have been considering whether there had been an unequivocal act of affirmation, as it was only such an act, which could preclude the Claimant from succeeding in her claim for constructive dismissal. Mr Tindal complains that the Employment Tribunal stated in paragraph 35 that in the case of the employer committing a fundamental breach of contract, "the employee must resign in response to the breach; and the employee must accept the repudiation and resign without undue delay or otherwise affirming the contract" . His complaint is that in this paragraph and in paragraph 55 there is no reference to the requirement that there should be an unequivocal act of affirmation, and that the Employment Tribunal consequently saw "undue delay" as one way of affirming the contract.*

43. We are unable to accept this criticism because affirmation can arise in many different ways as was explained by Browne-Wilkinson J (as he then was) in the Crook case, in which he referred to affirmation as being the test and prolonged delay can be evidence of affirmation when he stated in respect of an innocent party whose contract has been repudiated, at page 446, that he:—

*"13 …can choose one of two courses: he can affirm the contract and insist on its further performance or he can accept the repudiation, in which case the contract is an end. The innocent party must at some stage elect between these two possible courses: if he affirms the contract once his right to accept the repudiation is at an end. But he is not bound to elect within a reasonable or any other time. Mere delay by itself (unaccompanied by any express or implied affirmation of contract) does not constitute affirmation of the contract; but if it is prolonged it may be evidence of an implied affirmation (**Allen v Rubles (1969)1 WLR 1193**). Affirmation of the contract can be implied. Thus, if the innocent party calls on the guilty party for further performance of the contract, he will normally be taken to have affirmed the contract since his conduct is only consistent with the continued existence of the contractual obligation. Moreover, if the innocent party himself does acts which are only consistent with the continued existence of the contract, such acts will normally show affirmation of the contract."*

44. This approach in our view shows clearly that although affirmation is needed, it can be implied by prolonged delay and/or if the innocent party calls on the guilty party for further performance of the contract. That is precisely what happened here. The Employment Tribunal was quite entitled to take the prolonged delay of nearly six weeks between the grievance decision on 13 February 2009 and the Claimant's resignation sent on 24 March 2009 in the light of the earlier history as an implied affirmation, bearing in mind that the Claimant was expecting or requiring the Respondents (who were employers) to perform their part of the contract of employment by paying her sick pay. That decision does not constitute any arguable error of law".

VI 105. It is a consequence of the delay in the finalisation of this reserved judgment that the Tribunal has also had the opportunity to consider the most recent guidance from the EAT on the issue of affirmation, in ***Leaney v Loughborough University [2023] EAT 155*** . The principles of the law on affirmation were discussed in that judgment, where it was pointed out that the words of Lord Denning in ***Western Excavating*** cited above have, over time , acquired a "varnish", to the effect that delay of itself will not necessarily amount to affirmation, other conduct or circumstances also need to be considered.

VI 106. The Employment Tribunal in ***Leaney*** fell into error by focussing upon the delay, and not the conduct. It looked more at what did not happen, rather than focussing upon the conduct during the relevant period that might or might not have amounted to an express or implied communication of affirmation. We do not understand the judgment in ***Leaney*** to be seeking to change , or add to, any of the principles set out in the caselaw cited above, which is also cited in ***Leaney*** . Rather the case serves as a reminder of how a Tribunal should apply those principles, and where it should focus its enquiries.

VI 107. Applying those principles , our view is that if we were wrong on the "response to the breach" , or "last straw" points , we would nonetheless find that the claimant did

affirm the contract. In doing so we do take into account that he was off work sick at the time, and that this is a relevant consideration. It is, however, not a strong one as he was clearly functioning well (his GP notes on 17 August 2016 record how he was feeling better being away from work, and 12 September 2016 that he was "coping OK"), was being professionally advised, was able to present a second ET claim. He was actually in Nexus House on 23 November 2016 for the purpose of printing off emails for use in his Tribunal claims. Further, as can be seen, the claimant was in contact with the IPCC during this period, was chasing up information, and seeking a meeting with the Commissioners. Whilst he may have been unfit to work, the Tribunal does not consider that he was so badly affected by his condition that he should not be taken to be fully capable of making decisions , and fully aware of his actions.

VI 108. In terms of the passage time, there is some ambivalence in the claimant's position. He personally (i.e when writing emails himself , not through his lawyers) makes frequent reference to the respondent taking "6 months" (an exaggeration, but his view) to arrange the mediation, and delaying the response to his grievance during this period. If the time for the mediation process is not to count, this period is, of course, shorter.

VI 109. On the claimant's case, however, there was already a delay (in breach , he contends of the Force's Grievance Policy) in DCC Pilling reverting back to him about his grievance, which he only did on 3 May 2016, some 4 weeks after the grievance was initially raised. The offer of mediation was then made on 19 May 2016, then some 6 weeks after the original grievance, which the claimant accepted on 26 May 2016.

VI 110. If one "stops the clock", as it were, until the mediation is held on 6 October 2016,which (clearly and manifestly so on the day) is unsuccessful, the clock then starts running again. From 6 October to 25 November 2016 when the claimant decided to retire is a further 7 weeks. The delay, excluding the mediation time, from the grievance being submitted to the decision to resign is therefore , in total some 13 weeks. The claimant's case is that the respondent was under a duty to deal with his grievance "promptly", but he does not define that period. It seems implicit that he considered this to be a matter of a few weeks, and not 13 weeks.

VI 111. In considering delay, and indeed generally, the Tribunal does also take into account the observations in the ***Bournemouth University*** case referred to above that resigning from a job is a serious matter with potentially significant consequences for the employee, so that the more serious the consequences, the longer the employee may take to make such a decision. Here the financial consequences were not severe, the claimant retired on a Superintendent's pension and lump sum, as he would always have been entitled to do, provided he remained at that rank. Whilst it was doubtless a matter of regret for him, he was in a far better position than most other workers who resign, often with no other job to go to, or with no immediate pension entitlement.

VI 112. Delay, therefore is a factor, but there are others. The first of these is that the claimant , after the failure of the mediation, then engaged with ACC Ford, who was then tasked with advancing his grievance. He met with her on 17 November 2016. He told her what he required by way of outcome, which included an apology from the Chief Constable and Russ Jackson. The obvious point is that , if, by the time the mediation

had failed on 6 October 2016, the claimant already considered that the respondent had unduly delayed, and was then delaying further, with ACC Ford not meeting with him until 17 November 2016, why did he not say "enough is enough , I am not continuing this process, I am retiring"? He did not, he engaged. ACC Ford may have been late, and not as well prepared as she arguably should have been, but once the claimant has re-engaged in the process, he cannot, in our view, then within 8 days change his mind and retire before the respondent has failed then to progress matters expeditiously. He has, in effect, restarted the clock, and indicated that he will not yet treat the contract as being at an end. That is reinforced by the absence of the imposition of any deadline for the resolution of his grievance by the claimant. He did, it is true, set a deadline of 25 November 2016, but this was in relation to the respondent responding to his terms for the settlement of his Tribunal claims, not for the outcome of his grievance. He, in effect, gave the respondent a second chance. Whilst in a position, due to the prior delay, to then say it was too late for the respondent now to seek to deal with his grievance, he did not do so, but resumed the process with ACC Ford. That sent the signal that he was not about to treat the contract as at an end, but was continuing with it. He cannot, then, in our view change his mind within 8 days and decide to accept the repudiatory breach that his actions up until then indicated he would not.

VI 113. The other, and highly relevant , factor is the claimant's negotiation of the restoration of his full pay following the reduction in his entitlement to half pay from 20 September 2016. He successfully appealed, as he puts it, that decision, and was granted full pay up to 30 November 2016. Even as he put in his request for retirement on 25 November 2016, in that email he seeks further full pay up to the retirement date, and is negotiating matters such as annual leave, and sickness absence entitlements. He maintained the request for full pay in the email of 28 November 2016 to ACC Ford.

VI 114. Whilst it is clear from the authorities that even mere acceptance of sick pay can amount to affirmation, here there is much more. There is delay, acceptance of sick pay, and negotiation for full pay, and of other benefits so as to benefit the claimant's financial position. That is , of course, not unreasonable but that is not the issue. The issue is whether in all those circumstances, the claimant is to be taken to have affirmed the contract. In our view, and taking into account the recent guidance in ***Leaney*** , looking at his conduct, and all the circumstances, we find that he did. Whist every case turns on its own facts, there are decided instances of much less amounting to affirmation. Here the claimant , by his conduct, must be taken to have affirmed any breach, and thereby lost his right to complain of constructive dismissal.

VI 115. For all these reasons, the Tribunal's conclusion is that the claimant was not constructively dismissed, and the s.103A unfair constructive dismissal claim would, in any event, fail.

Chapter VII: Postscript : the Tribunal's observations.

VII 1. This has been a substantial and difficult case. It has probably occupied much more of the Tribunal's time and resources than, in hindsight, it should have been allowed to. The Tribunal must bear some responsibility for that, but the bulk of it must lie with the manner in which the claimant has put his case , relying upon very wide ranging and

extensive allegedly protected disclosures , which the claimant has pursued in a manner which , at times, felt like an attempt to pursue the kind of public inquiry that the IPCC failed, in his eyes , adequately to carry out, and which he perhaps hoped these proceedings would achieve. The number of, and extensive nature of, the allegedly protected disclosures, was not the only issue. The claimant also claimed a substantial number of detriments, in addition to his dismissal. There were also, it must be noted, failures on the part of the respondent, particularly in relation to disclosure, which have prolonged the proceedings, and heightened distrust between the parties. That is not, at this stage to embark upon any form of inquest into what went wrong in this case, but is to explain, in part, how difficult the case has been for the Tribunal, and, doubtless , for the parties, and why it has taken so long to determine.

VII 2. The claimant's fragile mental state has doubtless not helped him either , and we note that at times he could not face participation in the proceedings, whether in person, or even remotely. The Tribunal has, of course, made such adjustments for him as it reasonably could, but he has to accept that as an inevitable consequence of this type of claim .

VII 3. He, however, is not the only person who will have been affected by these proceedings, but he was the one that initiated them. There are also, the Tribunal is deeply conscious, a number of other individuals upon whom these proceedings will have impacted. They include, for example, officers who were named and referred to in the course of the claimant's PDR documents , or in the evidence, about whom allegations were made by the claimant , who have not been in a position to respond , but the determination of those allegations against them has not been necessary for the determination of the claims.

VII 4. They also include, most significantly, those whose tragic personal and family circumstances have been ventilated before the Tribunal, doubtless bringing back difficult memories, and prolonging the hurt and distress that they will have suffered. Such , alas, is an inevitable consequence of our system of open justice, where it is not always possible to protect what may be termed "innocent bystanders" from exposure to upsetting events being rehearsed again in public. To the extent that any such observers hoped to gain any answers or insights from these proceedings that may have been of comfort to them, we trust that they will appreciate from what we said at the outset of this judgment that in the determination of these specific legal claims in an adversarial system of justice , such an outcome is not our purpose. We hope, however, that, along with the parties, we have been able to deal with any difficult issues sensitively , and without adding any undue distress to those already deeply affected by the issues raised.

VII 5. Finally, on a personal note, the Employment Judge feels that he cannot end this judgment without comment upon the considerable contribution made to it, and to the proceedings generally, by the two non – legal members. They have served in circumstances where the original commitment that they each made (which few could have matched at the outset) has been considerably exceeded, nay, probably doubled. Their contributions, however, have been little short of outstanding. As will have been apparent from their involvement in the course of the hearings, and indeed , particularly so in the course of the extensive deliberations that have been necessary, their

assistance has greatly shared the load. Their diligence, experience and insight have been invaluable. To sit alone on such a Behemoth of a case would be almost unthinkable, and the Employment Judge thanks them deeply. At a time when the continued deployment of non – legal members is under review, this case is a prime example of their considerable value.

Employment Judge Paul Holmes

9 February 2024

JUDGMENT SENT TO THE PARTIES ON

12 February 2024

FOR THE TRIBUNAL OFFICE

Footnote :

[This highlights an issue . The provision whereby Police Officers were given the right to complain to an Employment Tribunal of detriment or dismissal for having made a protected disclosure is s.47KA of the Employment Rights Act 1996, which provides:

s.47KA

(1) For the purposes of—
(a) this Part,
(b) section 47B and sections 48 and 49 so far as relating to that section, and
(c) section 103A and the other provisions of Part 10 so far as relating to the right not to be unfairly dismissed in a case where the dismissal is unfair by virtue of section 103A, a person who holds, otherwise than under a contract of employment, the office of constable or an appointment as a police cadet shall be treated as an employee employed by the relevant officer under a contract of employment; and any reference to a worker being 'employed' and to his 'employer' shall be construed accordingly.

The section thus creates a legal fiction, that the officer is employed under a contract of employment. The section does not specify what the terms of that contract are, and, in reality, of course, there is no such contract. That could give rise to an argument that if there is no contract, how can a police officer claim constructive dismissal which requires the respondent to have acted in fundamental breach of a contract which does not exist? The term of the contract relied upon as being fundamentally breached is that of trust and confidence, based on the well established principles from ***Woods v WM Car Services (Peterborough) Ltd [1981] IRLR 347*** Is that term , however, to be implied into the fictional contract under which the claimant was “employed” by the respondent? The respondent has not taken this point, and the Tribunal does not consider that it is likely that it was the intention of the legislature to exclude constructive dismissals from the protection extended to Police Officers , but the need to focus upon the contract of employment for the purposes of determining constructive dismissal claims does rather highlight what an anomalous position the legislation has created.]

ANNEXE A

The procedural history

1. By a claim form presented on 12 May 2014 the claimant , who was at the time a serving Police officer, brought claims of whistleblowing detriment arising from protected disclosures that he alleged he had made to the Independent Police Complaints Commission ("the IPCC") on 12 February 2014. The claimant was at that time unrepresented, and his claims were briefly set out , on what he said was a "protective basis" in box.8.2 of the claim form. that claim, however, was rejected, by reason of want of an early conciliation certificate.

2. The claimant accordingly on 29 July 2014 presented another claim form, which was accepted , and given case no. 2401945/2014 (hereinafter "the first claim"). The claimant was now represented by solicitors (the same ones he has had throughout these proceedings) , and Grounds of Complaint were served with the claim form. The protected disclosures pleaded in this document, however, antedated those that the claimant had referred to in his rejected claim form. They went back to May 2012, and were made initially to the respondent internally, but were then made, the claimant alleged, to the Police and Crime Commissioner ("the PCC") on 12 June 2013. The claimant also referred to and relied upon disclosures he had made to the IPCC on 12 February 2014.

3. Para. 94 of the Grounds of Complaint reads:

It is averred that the three Protected Disclosure Reports, the Claimant's three written grievances and the contents of the conversations that he had with various senior officers as set out in full above, amount to protected disclosures within the meaning of section 43A of the Employment Rights Act 1996.Specifically, it is averred that in these documents and conversations the Claimant disclosed information, as set out above, which, in his reasonable belief, tended to show that the following had taken place, was taking place or was likely to take place as set out in the Scott Schedule:

• *a criminal offence pursuant to section 43B(1){a) ERA 1996,*

• *a breach of a legal obligation 43B(1)(b) ERA 1996,*

4. The Grounds of Complaint had set out the alleged detriments at paras. 32 to 39 , between 20 March 2014 and 17 April 2014. It has to be observed that the Grounds of Complaint drafted in this way were somewhat "back to front" , in that the detriments were pleaded before the alleged disclosures relied upon were identified.

5. The respondent entered a response on 3 October 2014. The attached grounds of Resistance were brief, the respondent denying that the claimant had made any protected disclosures, or that he had been subjected to any detriments. Further and better particulars were sought.

5. The first preliminary hearing was held on 28 November 2014, at which orders were made (inter alia) for the claimant to provide a Scott Schedule, and a final hearing was listed for 13 to 24 July 2015.

6. The claimant duly provided his Scott Schedule (which is undated) on or about 23 March 2015, and a further preliminary hearing was held on 7 May 2015. In that Schedule the claimant relied upon disclosures made to the IPCC , the respondent internally and the PCC. There were 31 in total (sadly not enumerated) , and all were made to all three recipients. In terms of detriments, these were set out a column on pages 1 and 2 of this document, and effectively amounted to four matters : his identification as the "whistleblower", the Chief Constable's support of ACC Sweeney, and his criticism of IPCC investigations, all of which are alleged to have led to his identity as the "whistleblower" becoming known widely throughout the Force, with adverse effects upon him. Whilst some further particularisation was thus provided, and the limbs of s.43B(1) relied upon were identified, no particulars of the commission of what criminal offences, or breach of what legal obligations , were provided in this Schedule.

7. At the preliminary hearing, by agreement, the final hearing was postponed to March 2016, and the respondent was afforded time to plead to the Scott Schedule. Both parties accepted that the IPCC investigation may require the proceedings to be delayed pending its outcome.

8. A preliminary hearing listed for 25 September 2015 was vacated by consent , and the previous case management orders were varied. The IPCC had not by then provided its outcomes.

9. On the application of the respondent on 13 January 2016 , in part because the IPCC had still not concluded its investigations, and for other reasons, a postponement of the hearing listed for March 2016 was sought. The claimant , whilst not agreeing the application, did not strongly oppose it, and the Tribunal accordingly postponed the hearing, re-listing it for 15 August 2016, for 10 days.

10. On 29 April 206, however, the respondent sought a further postponement, by reason again of the fact that the IPCC outcomes had still not been received. The claimant's representative on 4 May 2016 agreed the application, not least because she anticipated that a further claim would be issued, which would require combination with the existing claim. The Tribunal accordingly postponed the hearing listed for August 2016.

11. Around this time the parties raised the possibility of judicial mediation, which was discussed during May to July 2016. In fact no judicial mediation was undertaken, but the parties conducted a private mediation on 6 October 2016.

12. On 2 September 2016, however, the claimant presented the second claim, case no. 2402865/2016. An application for a stay pending the mediation was made, and granted until 10 October 2016.

13. The Grounds of Complaint attached to the claim form do not add any further protected disclosures, but do allege that the claimant was subjected to further detriments , from March 2016, when attempts were made to remove him as Officer In Overall

Command ("OIOC") of Operation Leopard, and he was indeed then removed on 5 April 2016.

14. A preliminary hearing was held in both cases on 15 November 2016. By agreement the claims were combined, and the claimant was ordered to provide further particulars of his claims in a Consolidated Grounds of Complaint document, to which the respondent was to respond in a Consolidated Response.

15. On 17 January 2017 the claimant provided Grounds of Complaint in the second claim (not stated to be Consolidated, and not in the bundle for this hearing) , the respondent having already filed Grounds of Resistance to the second claim on 10 January 2017. The respondent then on 14 February 2017 filed Consolidated Grounds of Resistance, notwithstanding that there had not yet been (it seems) Consolidated Grounds of Complaint (this document too is absent from the bundle for this hearing).

16. On 9 March 2017 the claimant applied to the Tribunal for permission to amend his claims, to add a complaint of automatically unfair dismissal , contrary to s.103A of the ERA, and to make further, less significant , changes to the dates of his previously pleaded disclosures. The claimant at that time submitted the Consolidated Grounds of Complaint, dated 8 March 2017 which are in the bundle at pages 105 to 137.

17. A further preliminary hearing was held on 15 March 2017. As the respondent was considering whether an application under rule 94 (national security) should be made, no further case management orders were made. The Employment Judge did, however, exhort the parties to continue their case preparation in the meantime.

18. In terms of amendment, the respondent did not object to the proposed amendment to add a claim of automatically unfair dismissal, but did object to the claimant seeking to amend to rely upon disclosures prior to those that he had made to the IPCC as protected disclosures. The claimant , however, subsequently confirmed that the previous disclosures were only relied upon as background, and that only the disclosures to the IPCC were relied upon as the protected disclosures in the claims.

19. On 21 March 2017 the respondent filed his Consolidated Grounds of Resistance (pages 140 to 163 of the bundle).

20. On 23 March 2017 the claims were transferred to the Central London Employment Tribunal, for consideration of whether any orders under rule 94 were required.

21. Further case management accordingly was carried out by the Central London Employment Tribunal, with a preliminary hearing being held before Employment Judge Hodgson on 10 August 2017. He considered that the claims were not clear, and ordered that there be a further preliminary hearing on 19 October 2017, before the same Employment Judge. The Tribunal on that occasion formally granted the amendment to include an automatically unfair dismissal claim. The Tribunal was still not satisfied that the claims had been adequately pleaded, or particularised, stressing the importance of the claims being clarified, but went on to make orders for disclosure, preparation of the hearing bundle and exchange of witness statements .Those steps were recorded in the

orders as being required by dates in January and March 2017, but this is clearly an error, and the dates were in 2018.

22. Further, no application under rule 94 had been made at that stage, and the Tribunal ordered that any such application must be made by 30 November 2017. If no such application was made, the parties were to undertake disclosure by 28 December 2017.

23. No rule 94 application was made by 30 November 2017 , but was on 28 December 2017. On 5 January 2018 the claimant objected to that application, and made an application that the claims be transferred back to Manchester Employment Tribunal.

25. Employment Judge Hodgson, however, had reviewed the file, and , it seems of his own motion, (the Tribunal file reveals that this was on 13 December 2017) decided that there should be a preliminary hearing to consider whether the claims or any of them should be struck out as having no reasonable prospects of success, or that a deposit order should be made, on the grounds that they had little reasonable prospect of success. That direction was not actioned, however, until 10 January 2018, when the Tribunal sent the parties a letter stating that these issues would be considered, at the preliminary hearing which was also notified to the parties by a separate letter of the same date.

24. A yet further preliminary hearing therefore was held on 18 January 2018, before Employment Judge Hodgson again. Both parties had sought to postpone that hearing. The respondent was not in a position to proceed with its application for a rule 94 order. The claimant did not consider that he was obliged to provide any further particulars following the previous hearing, because the respondent had not sought any. The claimant could not respond to any application for a rule 94 order , as one had not been made with the necessary supporting evidence or argument.

25. Both parties had sought to postpone this preliminary hearing, and sought "reconsideration" of the Employment Judge's refusal of that application. In doing so , the Employment Judge said (para.2.24 of Schedule A, page 187 of the bundle)"These claims are old. The claimant should be able to state , clearly, the claims. The respondent should be able to give full reasons in support of the rule 94 application."

26. The preliminary hearing on 18 January 2018 accordingly proceeded. The respondent had, however, on 26 September 2017, made an application that the claims be struck out, for non – compliance with the Tribunal's orders. This does not appear to have been pursued. The Tribunal had listed the hearing to consider the Employment Judge's proposal to strike out or make deposit orders.

27. At paras. and 2.17 of Schedule A to the Orders made (page 185 of the bundle) Employment Judge Hodgson says this:

"2.16 The respondent has taken no proactive steps to clarify the claims.

2.17 The claimant has taken no proactive steps to clarify the claims. As far as I can tell , the claimant has [sc. "taken"] no further material steps to clarify the claims at all. Prior to receiving the rule 94 application, I considered the file and took the view that the

hearing should be listed to consider strike out of the claims for lack of reasonable prospect of success, failure to actively pursue, or unreasonable conduct."

28. With all due respect, these latter two grounds had not actually been included in the Tribunal's notification to the parties of 10 January 2018. The Tribunal , however, on 12 January 2018 , notified the parties that striking out would not be considered at the hearing, which was reduced from two day to one.

29. On 17 January 2018 the respondent indicated an intention to make an application to strike out the claims , if they remained insufficiently clarified.

30. At the hearing, the Employment Judge noted that the respondent was not in a position to proceed with the rule 94 application, and that the respondent intended to proceed with its (sic) application to strike out all or part of the claims. He records then how it was agreed that the rule 94 application would not be considered further until resolution of the application to strike out.

29. In the course of the discussion of the claimant's claims, whilst the claimant considered that the claims were sufficiently clear, the respondent and the Employment Judge did not agree. The upshot of this was that the Employment Judge declined to order the claimant to provide further clarification, but gave him the opportunity to reflect, and encouraged him to provide further clarification and to set out his claims in "a clear and succinct manner", warning that if he did not, any strike out application would proceed on the basis of the claims as they were. He had given examples of where he considered the existing pleadings required clarification.

30. The parties, in February 2018 agreed that four weeks would be the length of the final hearing.

31. On 15 February 2018 the claimant provided the Tribunal and the respondent with the Amended Consolidated Grounds of Complaint and claimant's List of Issues (pages 266 to 298 of the bundle). This document made some changes and additions to the previously pleaded claims, but retained para. 94 referred to above.

32. The same day (15 February 2018 , by email at page 204 of the bundle) the claimant also served a Claimant's List of Issues (pages 205 to 265 of the bundle). In this document the claimant recites the directions of Employment Judge Hodgson on 18 January 2018, and his requirement that the claimant identify each protected disclosure relied upon , to include (inter alia) the specific information disclosed and, where practicable, the wording of that information, if the disclosure is in a document, the details of that document, and the specific reason why the information was said to be protected.

33. In response, the claimant in this List of Issues set out at para. 5 set out this:

5. The substance of the protected disclosures made by the Claimant was set out in three reports, viz:

5.1. a report entitled "Protected Disclosure (Report 1)" (PDR1) initially prepared by the Claimant on 11 June 2013 and updated on 20 June 2013;

5.2. a report entitled "Protected Disclosure (Report 2)" (PDR2) prepared by the Claimant on 20 June 2013; and

5.3. a report entitled "Report re Complaint of Victimisation and Protected Disclosures (3)" (PDR3) prepared by the Claimant on 16 January 2014.

34. The claimant then proceeded to identify each of his protected disclosures by numbers (1:1 , 1.2 , 2.1, 2.2, and 3.1, 3.2 etc.) abbreviated, as they have throughout these proceedings ever since as “PD1.1, PD1.2” etc..

35. The claimant then proceeded , for the first time, to set out extracts from the text of the PDR documents that he had sent to the IPCC. In those documents, the claimant had used roman numerals, and hence references to extracts from them are to paragraphs so enumerated in the PDRs sent to the IPCC.

36. On 22 March 2018 the claimant made application to have the claims transferred back to Manchester Employment Tribunal, which the claimant supported. No rule 94 application was therefore pursued. Nor was the respondent’s application to strike out the claims, or any part of them, which was confirmed in a written submission document dated 9 April 2018.

37. The Regional Employment Judge in Central London, however, was concerned that national security issues may arise, and did not want to transfer the cases back to Manchester without being sure that it would not then need transferring back again. By letter of 26 April 2018, therefore, the Tribunal sought some reassurance as to the position (page 302 of the bundle), particularly as the respondent had not yet had sight of the claimant’s disclosure and witness statements.

38. In the course of the next two months or so there was disclosure, and the respondent considered the documents that were provided. He remained of the view that there were no national security issues involved, and maintained agreement to the transfer back to Manchester.

39. The claims were duly transferred back (precisely when is unclear) but it was clearly by 26 November 2018 the Manchester Tribunal because on that date the Tribunal wrote to the parties (page 311 of the bundle).

40. The Manchester Tribunal listed a preliminary hearing on 11 March 2019. Further case management orders were made, and the final hearing was listed for 12 weeks commencing 20 April 2020.

41. A further preliminary hearing was listed for 9 July 2019. At that hearing further case management orders were made, in particular for exchange of witness statements, which was ordered for 3 February 2020. There were other orders, however, for disclosure and the bundle.

41. The respondent then made an application for deposit orders, and a further preliminary hearing was held on 5 November 2019, and another two on 18 December 2019.

42. After further preliminary hearings, at a hearing on 8 April 2020, the final hearing listed to commence on 20 April 2020 was postponed, largely due to Covid – 19, although the parties would probably not have been a position to proceed on 20 April 2020 in any event . The case management orders were further varied.

43. At a further preliminary hearing on 5 November 2020 the listing was extended to 14 weeks, commencing on 6 June 2022.

44. The parties sought an earlier listing, and at a further preliminary hearing held on 25 January 2021, the final hearing was brought forward to 2 November 2021, for 14 weeks. As previous case management orders still remained to be complied with, there was further variation of those previously given. In particular, exchange of witness statements was put back (again) to 25 June 2021, with provision for supplemental statements by 16 July 2021.

45. That exchange did not take place, and there was yet another preliminary hearing on 30 July 2021, which was then postponed to 18 August 2021. On that occasion orders were made in relation to disclosure, and other matters. By then (precisely when is unclear) exchange of witness statements had taken place, and provision was made for responsive witness statements.

47. The final hearing commenced on 2 November 2021. A number of applications have been dealt with in the course of the hearing, some in private preliminary hearings.

48. Amongst these applications were those for rule 50 orders, or private hearings, matters upon which representatives of the Press were entitled to be, and were, heard. Despite the Tribunal's best efforts to have these issues dealt with in advance of the final hearing, they were not, and time was lost at the start of the hearing in dealing with these matters.

49. All orders and the reasons for them made in the course of the hearing , and any preliminary hearings held , have been promulgated, and will not be rehearsed here. Suffice it to say that orders have been made in relation to, amongst other matters, disclosure, third party disclosure, the striking out of the response, and the admission of legally privileged material , all of which have had a considerable effect upon how the claims have been presented , and defended , before the Tribunal.

50. These issues have also, inevitably, led to delays, as have other factors such as the impact of Covid – 19 upon parties, their legal representatives , witnesses and the members of the Tribunal. Parts of the hearing have been conducted in private, by reason of operationally sensitive evidence being taken, and by agreement, and with the Tribunal being satisfied that such measures were necessary and proportionate, and limited , but appropriate derogations from the principle of open justice, the identities of certain persons referred to in the evidence have been withheld for the protection of their safety, and/or privacy, or that of their families and associates. Likewise, for reasons of

operational security, certain tactics and practices deployed by the respondent have been referred to by codes. The vast majority of the hearing of evidence, however, has been in open Tribunal, to which the press and public have been afforded further access by the provision of a CVP link.

51. The final hearing was concluded after the parties' written and oral closing submissions on 16 May 2023.

Employment Judge Holmes

February 2024

ANNEXE B

Tribunal sittings and the evidence heard.

[Note: references to "Day no." are taken from the transcript, and may not fully reflect every day that the Tribunal sat, particularly when it sat in private ; the record of what evidence was taken each day, when it was, is considered reasonably accurate; Preliminary hearings, held in private have not been included.]

1 November 2021 to 2 December 2021 ; reading , case management and rule 50 applications

Tranche 1:

2 December 2021: Evidence taken: The claimant - XX day 1 (until day 24 - 31 January 2022)

6 December 2021 to 15 December 2021: the claimant's evidence in XX

17 December 2021 :

Tranche 2

10 January 2022 :

12 January 2022 Day 13; XX of the claimant resumes

24 January 2022 Day 21 : : the claimant's evidence in XX

26 January 2922 Day 22 : Nicola Spragg , witness for the respondent - XX

28 January 2022 Day 23 : XX of the claimant resumes

31 January 2022 Day 24 XX of the claimant continues

1 February 2022 Day 25 : XX of the claimant concludes ;ET questions of the claimant

3 February 2022 Day 27 EJ Holmes continued questions; Re-ex commences

4 February 2022 Day 28 Re-ex continues

7 February 2022 Day 29 Re - X ends ; Private PH held

8 February 22 Day 30 Carl Jones witness for the claimant - XX : ET questions

9 February 2022 Day 31 Carl Jones Re-examined ; Officer 28 called ; Graham Brock called

11 February 2022 Day 32 Private hearing - Officer N witness for the claimant called and XX ; Rick Mortimer witness for the claimant called;

15 February 2022 Day 33; witnesses for the claimant :Kevin Dolan called , Tom Elliott – called;

16 February 2022 Day 34: Rick Mortimer re-called; Zoe Sheard's evidence commenced

17 February 2022 Day 35; Zoe Sheard – recalled ;Neil Evans witness for the respondent called

18 February 2022 Day 36; Neil Evans – recalled

21 February 2022 Day 37 : Kay Dennison witness for the respondent called

22 February 2022 Case postponed due to the claimant's stress condition

23 February 2022 Day 39 : Tony Mole , Denise Hill , witnesses for the respondent called

24 February 2022 Day 40 : Stephen Keeley, and John Rush, witnesses for the respondent called

25 February 2022 Day 41 :John Rush recalled

28 February 2022 Day 42 Simon Barraclough witness for the respondent called

1 March 2022 Day 43 : Simon Barraclough recalled

2 March 2022 Day 44 :Simon Barraclough recalled

4 March 2022 Day 45 :Ian Palmer witness for the respondent called :DI Pearson called

8 March 2022 Day 46 :No evidence called

9 March 2022 Day 47 : Julian Flindle witness for the respondent called

10 March 22 Day 48 : the claimant recalled by the ET for questions on his alleged PD's; Private PHR

Adjourned until 13 May 2022

13 May 2022 the claimant's strike out application received Tribunal did not sit

16 May 2022 PH - application to permit Paul Bailey witness statement received Tribunal did not sit

Tranche 3

13 June 2022 Day 49 - Hearing Resumed – PH on applications made in May

14 June 2022 Day 50 - Submissions
15 June 2022 Day 51 - Submissions
16 June 2022 Day 52 - Submissions

22 June 2022 ET judgment : no strike out

23 June 2022 Day 53 – PH

The claimant had suffered a massive panic attack and was unwell breakdown during the Tribunal

24 June 2022 Day 54 – PH

28 June 2022 - ET's order re disclosure

Tranche 4:

11 July 2022 Day 55 – Russ Jackson witness for the respondent called

12 July 2022 Day 56 – Russ Jackson evidence continued

13 July 2022 Day 57 – Russ Jackson evidence continued

14 July 2022 Day 58 – Russ Jackson evidence continued

15 July 2022 Day 59 – Russ Jackson evidence continued

19 July 2022 Day 60 – Russ Jackson evidence continued

20 July 2022 Day 61 – Russ Jackson evidence continued

21 July 20 22 Day 62 – Russ Jackson evidence continued

22 July 2022 Day 63 – Russ Jackson evidence continued

25 July 2022 Day 64 – Russ Jackson evidence continued

26 July 2022 Day 65 - Russ Jackson evidence continued

27 July 2022 Day 66 – Russ Jackson evidence continued ; XX ends ;ET questions

28 July 2022 Day 67 – Paul Savill witness for the respondent called

29 July 2022 Day 68 – Paul Savill evidence continued

Tranche 5

5 September 2022 Day 69 – Paul Savill evidence continued and XX concluded

6 September 2022 Day 70 – Paul Savill ET questions

[7/9/22 ET adjudication on PH]

8 September 2022 Day 71 – Sir Peter Fahy witness for the respondent called, but not concluded

9 September 2022 Day 72 – Caroline Jones witness for the respondent called

12 September 2022 Day 73 – Sir Peter Fahy evidence continued but not concluded

13 September 2022 Day 74 – Sir Peter Fahy evidence continued but not concluded

14 September 2022 Day 75 – Sir Peter Fahy evidence continued

15 September 2022 Day 76 - DCC Debbie Ford witness for the respondent called

16 September 2022 Day 77 - DCC Debbie Ford evidence concluded

Tranche 6

3 October 2022 Day 78 – Sir Peter Fahy recalled for XX ; Martin Bottomley witness for the respondent called

4 October 2022 Day 79 - Martin Bottomley evidence continued and concluded

5 October 2022 Day 80 - Ian Pilling witness for the respondent called

6 October 2022 Day 81 - Ian Pilling evidence continued and concluded

7 October 2022 Day 82 – PH - application by the claimant

10 October 2022 Day 83 - Application dismissed ; Hearing postponed, Mr O'Dempsey unwell

Tranche 7

11 November 2022 Day 84 - following further disclosure of Martin Bottomley's notebook/diary hearing postponed

14 November 2022 Day 85 - Martin Bottomley's evidence continued

15 November 2022 Day 86 - Martin Bottomley's evidence continued

16 November 2022 Day 87 - Martin Bottomley's evidence continued

17 November 2022 Day 88 - Martin Bottomley's evidence continued

18 November 2022 Day 89 - Martin Bottomley's evidence continued ; DCC Debbie Ford recalled by CVP link – XX and re-examanation

21 November 2022 Day 90 - Martin Bottomley's evidence continued

25 November 2022 Day 91 - Martin Bottomley's evidence continued

28 November 2022 Day 92 - Martin Bottomley XX concluded

1 December 2022 Day 93 - Ian Pilling recalled ; the claimant recalled to adduce witness statement no. 5; Evidence concluded – hearing postponed, timetable for Submissions set

2023

[12 January 2023 – following representations ET issues case management orders re serving closing submissions on ET by 24 February 2023 for a further hearing listed 27 February 2023]

28 February 2023 Day 94 - The respondent's oral submissions are commenced

1 March 2023 Day 95 – Application was made to vary the timetable for Submissions, which was granted, and the Submissions were re-listed, after some delay , for 20 April 2023

20 April 2023 Day 96 – the respondent's oral Submissions continued

21 April 2023 Day 97 - the respondent's oral Submissions concluded

4 May 2023 Day 98 – the claimant's oral Submissions commenced

5 May 2023 Day 99 – PH held ; the claimant made application to amend his claims to plead that he had made disclosures pursuant to s.43(C)(2) of the ERA

9 May 2023 Day 100 - PH held to determine the claimant's application to amend

15 May 2023 Day 101 – the claimant's oral Submissions continued

16 May 2023 Day 102 - the claimant's oral Submissions continued and concluded ; this was the last day of the hearing with the parties.

It is not proposed to recite the numerous and various days In Chambers which the Tribunal then held between 16 May 2023 and 22 January 2024, some of which were conducted remotely.
