



EMPLOYMENT TRIBUNALS

Claimant: Mr John Richards

Respondent: The Chief Constable of North Wales Police

Heard at: Mold Law Courts On: 4, 5, 6, 7 8, 12 and 13
September 2023

Welshpool Law Courts On: 1, 2, 6, 7, 8, 9 and 10
November 2023

Before: Employment Judge P Davies

Members: Ms C Peel
Mr A Greenland

Representation:

Claimant: Mr David Flood (Counsel)

Respondent: Mr Richard McLean (Counsel)

RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is that

- (1) The claims of victimisation in the meaning of 27(1) of the Equality Act 2010 are dismissed.
- (2) The claims of discrimination arising out of disability in the meaning of Section 15 of the Equality Act 2010 are dismissed.
- (3) The claim of unfair dismissal is dismissed.
- (4) The claim of unlawful deduction from wages pursuant to Section 13 of the Employment Rights Act 1996 is dismissed.

REASONS

1. By a claim received on 19 January 2021 the Claimant, Mr John Richards complained of discrimination on the basis of sexual orientation, race and sex. There was also a claim for loss of wages which at that time was put at a total loss of £6,983.92 which was the amount of income that Mr Richards said he lost while his concerns into discrimination and bullying are being addressed. The Response denied that the Claimant has been discriminated against on the grounds of race, sex, age or sexual orientation as alleged or at all and it was denied that the Claimant has been bullied or harassed generally. It is said that the claim was ill founded and that the claim has no reasonable prospect of success. A second claim was received on 30 April 2022 in which the Claimant said that he had been unfairly dismissed, discriminated against on the basis of his disability, and that he was owed holiday pay. A statement in support of the claim was attached to the claim form which set out in detail what the Claimant says were the events that led up to the claim being made. The Response to the second claim denied that the Claimant had been unfairly dismissed, discriminated against or subjected to unlawful deduction from wages and said the precise nature of the claims the Claimant was attempting to bring was not clear. It is said in the Response that on 29 November 2021 the Respondent informed the Claimant in writing that he was terminating his employment on the grounds of the irretrievable breakdown of the relationship between the Claimant and the Respondent. The Claimant was paid in lieu of six weeks notice. The effective date of termination was 22 November 2021. The Claimant was also advised of his right of appeal. It is said that the Claimant was dismissed for some other substantial reason. It is contended that the dismissal was fair in all the circumstances of the case.
2. The parties had agreed a List of Issues, and this List of Issues was amended at the conclusion of the case and formed the basis of the final written submissions which were made to the Tribunal. During the course of Case Management Discussions certain of the claims were withdrawn and dismissed by the Tribunal. There was a separate Judgment issued in respect of those withdrawn claims. The position as set out in the Amended List of Issues concerned firstly disability, on the basis of depression as well as autism; doing a protected act by the Claimant; whether the Respondents subjected the Claimant to a detriment (victimisation); discrimination arising out of disability; unfair dismissal; unlawful deduction from wages; and issues of jurisdiction regarding particularly unfair dismissal, unlawful deduction from wages, and discrimination.
3. The Tribunal heard oral evidence from the following witnesses – Sergeant Melanie Brace; Miss Alison Jones, Head of HR; Chief Superintendent Neil Anderson; Temporary Chief Superintendent Simon Williams; Mr Seb

Phillips, Director of Finance and Resources; Ms Jenny Parry, Head of People and Organisational Development; the Claimant, Mr John Richards; and Mrs Rachel Richards, wife of the Claimant. A witness statement of Mr Ian Davies, Chief Information Officer, had been exchanged between the parties and provided to the Tribunal but Mr Ian Davies was not called as a witness.

Background

4. The Claimant joined North Wales Police as a Police Officer in August 1983 and served for 30 years until his retirement in 2013. About two thirds of his 30 years' service was done on roads policing and the Claimant's specialised for 9 years as a dedicated Fatal Investigation Officer.
5. On 19 October 2015 the Claimant recommenced employment with North Wales Police as a Police Community Support Officer. On 16 July 2018 the Claimant then commenced a role as a Camera Enforcement Officer with Go Safe. At that time the sergeant supervisor was Police Sergeant Nicola Collins. In May 2019 a new supervisor Police Sergeant Melanie Brace took over from Police Sergeant Collins.
6. The Claimant says that he had a very positive one-to-one meeting with PS Brace on 11 June 2019 when he explained his experience and background in road traffic matters and PS Brace told the Claimant about her background. On 2 July the Claimant received an email from PS Brace informing him that she might have to resort to giving him an action plan as she believed that the Claimant might not be wearing his blue Go Safe operational top. The Claimant says that he had been wearing his old black police community support officer tops because he only had one blue top which was short sleeved and size medium. There had been other tops ordered by Police Sergeant Collins which did not materialise. Regarding the blue T-shirts Sergeant Brace said at one time a poster was placed on her desk making a joke about the T-Shirts. This prompted PS Brace to send an email to the Claimant and his colleague, who was the person that put the posters on her desk, setting out that the T-Shirts were a requirement from Theresa Ciano (All Wales Go Safe Partnership Manager) and that she should not be put in a position where PS Brace might have to discipline them over this simple request.
7. On 2 August 2019 PS Brace spoke to the Claimant about the ICAD (a system operated by the Respondent that logs and allocates every job that comes into the force). PS Brace said that she was giving words of advice not to misuse the system. The Claimant was puzzled because he did not understand how he was misusing it. Now PS Brace told him not to worry about it.

8. There was a performance review meeting on 28 October 2019 between the Claimant and PS Brace. During the meeting PS Brace produced a number of time sheets, called SCARAB sheets going back some six to seven weeks. PS Brace said that she was concerned the Claimant was spending too much time on administration and that she wanted the Claimant to spend more time out on sites. The Claimant said he could not understand what she was saying because he detected a number of offences and the more people you catch the more statements had to be put in and the more administration time was needed. The Claimant says this was the first time in 34 years that he had ever been challenged about his work ethic. He says that the performance review meeting ended with them having a difference of opinion. PS Brace felt that given the Claimant's extensive background as a traffic officer that the Claimant felt he knew better than most people including herself who had only been in the area for a short time.
9. The Claimant also felt during this time that PS Brace was not actioning some matters referred to her, while PS Brace says that the Claimant challenged advice given, in effect, he felt he was better than most people regarding the work. There developed a degree of tension between PS Brace and the Claimant at this time.

Referral to Professional Standards Department

10. The Central Ticket Office is where offences are processed by the Respondents. The Central Ticket Office was responsible for verifying and processing offences based on camera footage which was undertaken by camera enforcement officers such as the Claimant.
11. On 25 October 2019 Ms Alexa Whittaker (Supervisor) in the Central Ticket Office (Safety Camera Process Unit) emailed PS Brace asking her to look at some of the clips that she attached which have made some of the verifiers "a tad uncomfy with watching people the last one may be a bit more than usual" Ms Whittaker says "it may be innocent but we did pick up on this with an older officer in the past who was removed from the unit." This concerned films that had been taken by the Claimant. PS Brace was unsure how to view the clips so she called to see Ms Whittaker and was informed they were recordings of people, particularly young females, near schools and similar which had caused concern in the office. PS Brace attended the Central Ticket Unit to view the footage. The video was put together by the Central Ticket Office based on the clips they thought were concerning. Having reviewed the footage PS Brace had concerns and one of the supervisors suggested that PS Brace should speak to the Professional Standards Department based on a previous case.

12. In an email of 30 October 2019 from PS Brace to Sergeant Paul Foulkes and copied to Inspector Gareth Jones PS Brace says that as a result of what was found on the footage Ms Whittaker and herself “dip sampled some of John’s work and found further footage of a similar nature which basically involves moving the camera away from the vehicles and towards female pedestrians including school pupils”. PS Brace was asking about the next step.
13. PS Brace telephoned the Professional Standards Department and explained to them what she had been shown and the Professional Standards Department requested that they be sent the footage and they would decide what to do. PS Brace then telephoned her Inspector, Inspector Gareth Jones to explain what had happened and was assured that she had done the right thing.
14. On 15 November 2019 the Claimant was hand served with misconduct papers in respect of the video clips. The Notice of Alleged Standards of Professional Behaviour said “following a review of speeding offences captured by yourself using a Go Safe camera, a dip sample has been undertaken. This dip sample found multiple instances where the camera has been deliberately moved from the field of relevance which is the road, and the vehicles thereon, to the footway and a prolonged focus has been made on a number of female pedestrians some of them dressed in school uniform and almost all of them could be said to be teenagers or young women”. The Claimant says that he was shocked at being served these papers and told PS Brace and Paul Cheshire who were in the office at the time that he felt sick and was going home. The Claimant self-certified for a period of 3 days until 17 November 2019. The Claimant returned to work after his sickness and scheduled rest days on 21 November 2019. The Claimant said that he felt like a leper during this period of time and although he undertook work in the usual way for some days thereafter he could not access a network in order to do attendant paperwork. He had been removed from being able to access the network.
15. On 28 November 2019 the Claimant reviewed the video footage and was concerned that in respect of two DVD’s they were heavily edited and considered there were a gross distortion of what he had filmed and why he had filmed it. The Claimant to counter arguments from offenders regarding no pedestrians or cars nearby developed a practice of context filming. He would attempt to show the context immediately before or after a speeding offence which proved successful. The Claimant had not been given any training on how or what to film. The Claimant had been accompanied by his Union Representatives at this viewing and they told the Claimant to put together written submissions to present to Professional Standards Department and told him that he had until 16 December 2019 to do it. Thereafter the Claimant was spending hours of work time going through

old recordings and picking out edited excerpts of his own to show that the recordings also contained plenty of shots of pedestrians generally such as men, dogs walkers, schoolboys, old people, everybody.

16. On 3 December 2019 the Claimant was looking at the video recordings when PS Brace entered the office. PS Brace said that the Claimant had spent all the previous day working on this which was correct, and asked how long he needed. The Claimant replied "how long is a piece of string. As long as it takes to respond to the spurious allegation against me". PS Brace then said words to the effect that he was paid to be out there in the van catching speeders and go out now. The Claimant alleges that PS Brace then pointed her finger in his face and shouted "get out there now big man". It is also alleged by the Claimant that PS Brace said we will see what Unison have to say about this. The Claimant made notes about what had happened (page 634 to 635) PS Brace said that she did not say the words that the Claimant alleged she said and that she did not lose her temper but rather asked him to go out to enforce. PS Brace was taken to an email of 3 December (page 636) where she says that she had had words with the Claimant today as he has over the last couple of weeks spent around 24 hours viewing his offences and preparing statements etc. PS Brace says in that email that she advised the Claimant that he needed to be out working towards the safety of road users and that she felt he had spent enough work hours preparing his defence. PS Brace said in evidence that the Claimant got quite irate with her and threw papers but that it was not a heated exchange. PS Brace said that her words were said not as a rebuke but as an instruction to go out and enforce. We find that the Claimant was irate and annoyed by the attitude of PS Brace, he did throw papers, that there was what could be termed a heated argument between himself and PS Brace. In that context we accept that the words the Claimant said were used by PS Brace and as recorded by him were properly recorded and said by PS Brace. It is unfortunate that there was no discussion about what time should be given for the Claimant to use in work time to prepare his response to the allegations and it was certainly not a helpful response by the Claimant to say how long is a piece of string. The words that were used particularly big man reflect the opinion of PS Brace as expressed in her evidence that she believed that the Claimant knew better than most people including herself. We do not find that this was a direct reference to anything related to sex as such.
17. On the 14 December 2019 the Claimant self-certified as unfit to work for 14, 15 and 16 December 2019 because he experienced vomiting and diarrhoea.
18. On 16 December 2019 the Claimant's wife took his defence file into the Professional Standards Department in Colwyn Bay.

19. The Claimant emailed PS Brace asking how he should film and whether he could film pedestrians at all. PS Brace replied 17 December 2019 saying that to enforce speed limits the camera needs to be directed towards moving vehicles, the camera is not to be used to record pedestrians unless they come into the line of the camera or a crime is being committed or likely to be committed. A second email was sent by PS Brace to the Claimant saying that as he was aware PS Brace had been tasked with reviewing recordings of the Claimant by Professional Standards Department. PS Brace said "what is clearly visible is the camera positioning does not appear to move and in most of the recordings it is static, with the cross hairs in the centre of the road. Due to this it is highly likely that many offences have been missed which does not contribute to road safety. I appreciate your current position however I expect you to be observing the road and moving the camera to check the speed of the vehicles. If you are unsure or require refresher training on how to operate them then this can easily be arranged". PS Brace ends the email by saying "we will discuss when we are both next in work." The Claimant says that this email was psychologically for him the final straw. The Claimant viewed this email as a course of conduct by PS Brace against himself and it had begun before he was served the misconduct papers in November 2019 and involved a number of incidents which whilst they may seem petty and he attempted to disregard them at the time now in his opinion began to fit a pattern of unfavourable treatment towards him for no apparent reason.
20. We find that the instructions which had been given by PS Brace in that email and on previous occasions were instructions properly given in a supervisory capacity and whilst some of the content may have been unwelcome to the Claimant they were not inappropriate for PS Brace to exercise her supervisory role. There clearly were two different perspectives which existed at this time. PS Brace considered then and now that the filming carried out by the Claimant had been inappropriate whilst the Claimant considered that what he had done was not inappropriate and in fact was carrying out to a high level the duties of his employment as a Camera Enforcement Officer.
21. On 20 December 2019 the Claimant received a telephone call from Chief Inspector Dan Tipton who told him that they had looked at the complaint and that it was not going any further. Furthermore they had taken the time to assess the filming the Claimant had done as part of his training and that the filming showed a consistent pattern of filming practice and the complaint was not going anywhere and there was going to be no further action. In the absence of any policy what the Claimant was doing was best practice and asked the Claimant to send an email setting out the way that the Claimant worked. Although relieved the Claimant also was frustrated

as the training footage would have been available to look at by everyone in the Go Safe unit including PS Brace.

22. On 30 December 2019 Mr Tipton sent an email to PS Brace saying that having had an Interim Report from DS Foulkes, a response from the Claimant and further information from the department he has reassessed this case as no case to answer. Detective Chief Inspector Tipton says that John was informed by him prior to Christmas so that he was not unduly waiting prior to the receipt of the full report from DS Foulkes. Detective Chief Inspector Tipton goes on to say that he thinks there were some issues raised by this case that could benefit from some organisational learning which he would like to discuss when PS Brace is next available to see if they can agree an appropriate response to the findings. On 9 January 2020 PS Brace emailed Detective Chief Inspector Tipton asking to have in writing the rationale behind the decision and the learning outcomes. Detective Chief Inspector Tipton says that he would send his rationale and the learning is very much one for you and the Go Safe Wales SPOC to consider and they can only advise on some options based on the findings of DS Foulkes's report. He then asks Sergeant Foulkes to summarise what salient points came from his investigating that may assist PS Brace in her discussions with Go Safe Wales. Sergeant Foulkes sends an email on 9 January 2020 to PS Brace asking her to give him a call when she is free to discuss the matter.
23. The response that PS Brace received from Theresa Ciano was that Ms Ciano did not feel that any learning outcomes that highlight exposure through Go Safe procedure had been identified and for what it is worth she saw merit in the officer having (the minimum) words of advice in terms of appropriate conduct.
24. On 17 January 2020 Detective Chief Inspector Tipton (now Detective Superintendent) emailed Superintendent Jane Banham, Head of Roads Policing, regarding the PSD investigation and set out in a detailed email what suggested learning was and includes that the evidence indicates the Claimant has provided a satisfactory explanation for filming members of the public highlighted in the referral from PS Brace. The explanation provided is conducive with the Claimant's belief that his operation of the camera was appropriate aligned to his training, his role profile, the All Wales Speed Enforcement Policy Guidelines and PS Brace's expectations. Whilst the images presented in the dip sample consist of young females, the evidence presented by the Claimant indicates he has captured a wide range of individuals as supporting evidence for speeding offences. The evidence does not indicate he has a propensity to solely focus on young females. It is acknowledged that PS Brace acted appropriately in raising the matter for consideration by Professional Standards Department but there could be revisited training for operators

with a specific input on the appropriate filming of pedestrian activity and any amendments to policy agreed both locally and nationally. It was on 14 January 2020 that Alison Jones wrote to the Claimant enclosing the outcome of the PSD investigation. The letter says that the file on the internal investigation against the Claimant has been disposed of as follows, it has been decided that no misconduct charges should be preferred against you. No further action is being taken in the matter and the Police Staff Notice served on 15 November 2019 is now withdrawn. That letter was signed by Superintendent Nick Evans of the Professional Standards Department. The full investigation report by DS Foulkes is on page S257 of the bundle. The Claimant having reflected on the report had a number of questions he wanted answered and his concerns addressed, the fact of his innocence to be communicated to his colleagues.

25. The tribunal was provided with a note on video footage that formed the basis of the complaint to the PSD Unit. The Tribunal did not consider it necessary to view the footage as such and suggested that a note be agreed about the contents. The note provided is a Respondents draught but there was no challenge as such to the accuracy of that draft by the Claimant's representative.

Events from 14 January 2020

26. Miss Alison Jones wrote to the Claimant on 14 January 2020 regarding the continued absence of the Claimant from work and offering any support and the way forward following the conclusion of the PSD investigation. Miss Jones says that she would like to instigate a referral to Occupational Health Services which will inform them of how they can best support the Claimant. On the 26 January 2020 the Claimant wrote to Alison Jones a long and detailed letter asking for information surrounding the referral to Professional Standards Department with 51 numbered questions set against the Claimant's view of what had been happening and stating that he has no faith or trust whatsoever in his Line Manager PS Brace. There are a number of further questions from (a) to (s) setting out the Claimant's feelings and view of PS Brace including the fact that the Claimant feels and believes that PS Brace feels empowered in her position by being the partner of Superintendent Banham. He says he is not the only North Wales Police employee who feels there may be a conflict of interest in this regard. The Claimant alleges that PS Brace has displayed discriminatory behaviour as she has made the assumption that he has a preference sexually towards the female of the species and young women/schoolgirls in particular by filming them and clearly he had not discriminated against whom he films. The Claimant says in that letter that he currently is in no fit state to return to work and in order for him to have closure he feels the need to understand what exactly has happened and why and notwithstanding this, he believes his supervisor has a dislike for him, has

- no trust in him and unfortunately for the reasons he gives in the letter he certainly has no trust or faith in her to do right by him. He says that he does require referral to Occupational Health Unit as the stress this has caused has taken its toll on him giving him nightmares and the fact that he only left the house on a handful of occasions since before Christmas. In conclusion the Claimant says he does not believe that it is unreasonable for him to request that the organisation seeks answers to his questions and to send out a message to notify colleagues that following investigation he has been exonerated of breaching the standards of professional behaviour and that his professionalism and integrity has been maintained.
27. Miss Alison Jones says that her initial thoughts upon receiving the Claimant's email was that given the length and detail she thought it would be best to have a conversation with the Claimant to get a real sense of how he was feeling and what the issues were. She made arrangements for this to take place with Chief Superintendent Neil Anderson. Superintendent Anderson was the Head of Operational Support Services at the time and the Go Safe Team which the Claimant worked fell within the OSS function. Superintendent Anderson was Line Manager of Superintendent Jane Banham, Superintendent Banham headed up the Roads Policing function. Superintendent Anderson was content to attend the meeting with the Claimant and to support and explore any concerns the Claimant had raised.
28. On 31 January 2020 there was a meeting between the Claimant, who was accompanied by his wife for support, and Miss Alison Jones and Superintendent Anderson. Notes of that meeting were taken by Mrs Richards which are on pages 650 to 651 of the bundle. The Claimant is reported to have said that his main concerns were supervisory regarding PS Brace and Superintendent Banham working in the same department and it was not the PSD investigation but more how it was presented to them. Mrs Richards mentioned that the allegation presented a barrier for their fostering. It is noted that Superintendent Anderson discussed PS Brace and said that he did not think she was a malicious person as he has worked with her on things equally he was not saying she was a good supervisor either. He said he would go and speak with PS Brace and that he would like to see the Claimant return to work at the Go Safe office. Superintendent Anderson said they would get back to the Claimant hopefully in a couple of weeks and Alison Jones is recorded as saying "don't do anything rash come to us and discuss things." The meeting lasted for about 1 hour and 5 minutes and Superintendent Anderson was of the view that PS Brace did what she felt was correct and that it was a matter referring to the experts who were best placed to establish the facts in the right manner. It was for the Police Standards Department to make the decision on whether further action was necessary or not following the referral. Superintendent Anderson got the sense that the Claimant's

objective in raising concerns was that he wanted HR or himself, Superintendent Anderson, to confirm his belief that PS Brace was wrong in referring the matter to Professional Standards Department.

29. On 4 February 2020 the Claimant was seen by Dr Lister, Force Medical Advisor, who wrote a report typed on 5 February 2020 (page 299). Dr Lister says that the Claimant quite naturally does not feel that he can return to the department or his role until his concerns are dealt with and a resolution reached that he finds acceptable. Reaching such a resolution is an employee relations a management issue and not a medical one. From a purely medical point Dr Lister thinks that the Claimant is experiencing a natural emotional reaction and response to his circumstances and he expects this to subside with a suitable outcome from further investigation. In the interim it may be better that he moves to a different department where he is sure he will be able to perform administrative type duties. At present Dr Lister sees no absolute reason why the Claimant should not be able to come to work in a suitable role and clearly he needs to draw a line under his previous workplace issues so that he can move forward. He is currently having some counselling. Ultimately however Dr Lister thinks administrative management and employee relations resolution is required.
30. Superintendent Anderson did have discussions with PS Brace with Alison Jones. PS Brace whilst recognising that the PSD investigation reached its conclusion did not accept as such the outcome of it. PS Brace said that she could work with the Claimant at some time but there came a tipping point when she is not sure when she did not feel that they could work together. She was concerned with the grievance and the other matters also concerned her that were set out.
31. The Claimant's wife emailed Miss Alison Jones on 14 February 2020 and said that the Claimant is still keen to receive answers to his questions and that day by day the Claimant was becoming more bitter with the nature of the allegation and the behaviour towards him by a supervisor and lack of answers to reasonable questions. The Claimant is continuing to be reclusive. Miss Alison Jones replies to say that they had been working on some potential options for the Claimant in terms of alternative roles in the interim which will keep him engaged with work whilst they work through his questions. Miss Jones says that she wants to reassure the Claimant that they will work through his questions and get back to him as quickly as possible. Her colleague Steph Millican, HR Officer will be making contact with the Claimant.
32. On 24 February 2020 Mrs Rachel Richards took a sick note in and spoke to Steph Millican. In that conversation she had told Miss Millican that the Claimant was stressed and not sleeping very well having flashbacks and nightmares. Miss Millican said that she could not promise anything but

- there maybe some temporary work in the Coroner's Office for the Claimant but not permanent to cover sick leave. Mrs Richards said that Miss Millican would have to talk to the Claimant about that but he was not well enough to come to work and needed answers to his questions that Alison Jones had said were reasonable.
33. Following that meeting Mrs Rachel Richards sent an email to Miss Alison Jones copied to Miss Millican in which she says that the Claimant may be suffering from PTSD having noticed a decline in his mental health. She says the Claimant feels he is no further forward and please can Miss Jones advise how the Claimant may progress a grievance against OSS, is there a need to send him paperwork through the post or should they allow him to access documentation on a work laptop. At least by putting in a grievance, time parameters can hopefully be met.
34. Miss Alison Jones emailed the Claimant and the Claimant's wife on 25 February 2020 saying that she understands the Claimant does not feel able to return to work in any capacity at present. Miss Jones says that she believes that she will need to talk through matters with PSD on some of the questions raised. In respect of a grievance Miss Millican would be forwarding the relevant documentation but she asks the Claimant to consider whether he could wait for her written response which should get to him before the end of the week prior to submitting as this may well address most of the concerns, this would not compromise a right to submit a grievance.
35. The Claimant replied on 26 February 2020 in an email to Miss Alison Jones which said amongst other things that he did not feel his best interests would be deployed elsewhere in an interim position as he feels he would have to explain and defend his position to colleagues and what message is the organisation sending out when as a victim which he now feels he is he is removed from his appointed role apparently for his wellbeing. He believes that that dip sample process was flawed and biased unduly against him. The Claimant says that for him to be able to move effectively in whatever capacity he would like the organisation to be open and honest in its response to his concerns, deal effectively with any individual or individuals who are likely to have contributed to the situation he finds himself in and for the acknowledgment to be distributed internally by the organisation that he has not breached standards of professional behaviour and that his integrity and good character remains intact. He says he has never been accused of something so degrading in all his life although he has been exonerated it has taken a toll on his wellbeing and he feels very bitter towards his supervisor in particular. So much so that he says he is now seeking new employment outside of the organisation. On 27 February 2020 Miss Alison Jones emails the Claimant saying that she will ensure that there can be provided a full a response as possible

- hopefully before the end of the week. Miss Jones says that she advises that the Claimant can instigate the grievance process formally at any time should he wish to do so, if you feel the matter is taking too long or if you remain dissatisfied with the response. Miss Jones said in evidence that her workload was such that it was taking longer than she would have liked to have been able to reply which included the fact that it was around this time that COVID hit and she had an incredibly high workload adjusting to that situation.
36. On 26 March 2020 Miss Millican sent an email to the Claimant stating that she had spoken to Alison Jones and that she is aware she has not replied or sent anything in relation to the questions, she is going to send something as soon as she can. The Claimant accepts that late March to early May 2020 was a period of great uncertainty where the normal workings of many organisations were turned on their head because of COVID.
37. On 28 April 2020 Miss Millican sent an email to the Claimant with a letter attached in regard to the Claimant's half pay date which was on 9 May 2020. Miss Millican says "as you can see the letter the Chief Constable makes all decisions on half pay so therefore she would appreciate if the Claimant could send some representations in as soon as possible." In that email Miss Millican also says that she knows the memo from the Forces Medical Officer stated the Claimant was not in a position to return to work in any capacity with the offer of finding alternative work in order to get you back to work is still there and that she can look at this for the Claimant. The Claimant replied to that email including that he says what he believed he stated to the Forces Medical Officer is that he is not willing to return to work to be supervised by PS Brace or her partner Superintendent Banham, notwithstanding that he says he has alluded to a meeting with Chief Superintendent Anderson he does not believe that he should change the way that he works in terms of capturing best evidence and he may be able to draw a line under this whole sorry saga if he was offered an alternative permanent post commensurate with his skill and current pay.
38. By letter dated 30 April 2020 the Claimant was told that the Chief Constable decided he is unable to exercise his discretion to extend full pay on this occasion and that entitlement to full pay will cease from midnight on 9 May 2020.

Formal Grievance

39. On 10 May 2020 the Claimant submitted a grievance form using the pro forma template used by the Respondents. Under the heading of nature of grievance it is said to be bullying, harassment, management issues; under

the heading of treatment my manager. Also discrimination which is not deleted in respect of the protected characteristics that includes them all. In that form the Claimant refers to his statement in response to misconduct allegation, his supplementary report in response to the misconduct allegation and his report to Alison Jones dated 26 January 2020 highlighting concerns of harassment, bullying and discriminatory behaviour towards him by his supervisor PS Brace. The Claimant also says he is further aggrieved as he will apparently receive half pay as soon as the Chief Constable decided on this occasion that full pay is not warranted. The Claimant refers to the fact that under the heading of proposals for resolution of the matter that he has intimated that he may be interested in the offer of alternative permanent post commensurate with his skill set and current take home pay, this of course would only be acceptable to him in a department away from PS Brace and her partner and within a reasonable travelling distance of his home in Conwy. He also believes it is reasonable to expect the organisation to send out a message that there was no evidence to suggest that he had the propensity to film schoolgirls and young women in particular and that his professionalism and integrity remains intact. The third matter he requires is that there be answers to his questions and concerns raised regarding his direct supervision and investigation into the spurious misconduct allegation.

40. In an email of 13 May 2020 Miss Alison Jones apologised for the length of time it has taken to compile a response. There is a response to various points numbered 1 to 51 as set out in the Respondents letter but in respect of the other matters in the second part of the document Miss Jones says that they had better address through a formal grievance process, which the Claimant has already submitted, and says that the Claimant's concerns are being taken seriously and the aspirations for us to work towards a position of the Claimant returning to work. In support of this Chief Superintendent Neil Anderson and Superintendent Nick Evans, PSD have agreed to engage in further discussions with the Claimant providing additional assurance about the process and support to enable a return to work in some capacity. Miss Jones says "if you would like to take this offer up please let me know and this will be arranged as soon as possible".
41. The Claimant's response to Miss Jones's partial response to the issues raised by the Claimant is set out in an email on page 685 to 686 of the bundle. The Claimant responds to the various points in this email and that to summarise he says he now has very little faith with the organisation and very little honesty and openness has been shown but that he will await the response to his formal grievance and that should that response not be positive or meaningful to him he is open to the consideration of the process going through an independent third party mediator to facilitate a resolution. He says he would like to thank Chief Superintendent Anderson

- and Superintendent Evans for the opportunity to engage to potentially provide additional assurances but he feels that this would be futile as he already highlighted his concerns and it is up to the organisation as a whole that they are taken seriously with the appropriate action taken provide a lip service or disregard them altogether. He says that his state of mind is extremely fragile at the moment he cannot contemplate a return to work in a temporary role and “my professionalism, integrity and continued employment with NWP has been shattered by the actions of one person, for reasons unknown to me, but I am determined it will not cause further detriment to the effect on my health and private life”.
42. On 19 May 2020 Ms Jenny Parry emails Miss Alison Jones and Temporary Chief Superintendent Simon Williams to say that she has spoken to Temporary Detective Superintendent Simon Williams who has agreed will take the grievance in the first instance and meet with the Claimant to understand the scope of the grievance and therefore which individuals/teams will likely need to be investigated as part of the grievance. After this has been done we will discuss with the DCC if he feels it is inappropriate for him to continue the investigation and if they should consider some external support. Having said that Ms Parry goes on to say it would be beneficial for a case review with Simon, yourself, and Phil Kenyon (Forces Solicitor) before Simon gets going just so that we can put together a bit of a risk matrix early doors as we obviously have the background of the conduct investigation and the long term sick absence all tied in with the grievance.
43. On 3 June 2020 the Claimant received a formal confirmation of the appointment of Temporary Chief Superintendent Simon Williams as the Grievance Manager and setting the date of the grievance meeting for 11 June 2020. The meeting with Temporary Chief Superintendent Simon Williams and the Claimant took place at the Claimant’s home address on 11 June 2020. At this meeting the Claimant was accompanied by his wife and Union Representative. Temporary Chief Superintendent Simon Williams’s view was that the Claimant was clearly deeply affected by what he perceived as unfair treatment and after discussion it was accepted that there was no conflict with Temporary Chief Superintendent Simon Williams continuing to investigate. Following that meeting Temporary Chief Superintendent Simon Williams sent an email to the Claimant and his Union Representative to say that it was good to meet the Claimant and his wife. There is a request that there be sent to him the Claimant’s report which he will review and come up with a plan and that he would keep the Claimant regularly updated. Temporary Chief Superintendent Simon Williams says he feels confident that he can go some way to addressing some of the issues which have been raised. The Claimant prepared a document which is on S1-29 headed “Grievance Meeting”. Incident/inaction involving PS 1923 Brace highlighting bullying behaviour

and impact upon me as a result, response to Alison Jones's report highlighting unanswered questions and expectations resolution compiled a week leading up to 11 June 2020. Towards the end of the document the Claimant says that NWP has broken the trust we had together and that he cannot see it returning. He says his reputation has been tarnished and this is not recoverable and that damage has been done. The damage has been done by PS Brace and North Wales Police as an organisation he believes is looking at excuses for her behaviour through the grievance procedure rather than tackle the situation head on. Under the heading of "expectations/resolutions" he wants a receipt of a full exoneration letter addressed to him to include that an inappropriate referral was sent to PSD, that there was no evidence of misconduct on his behalf and that his professionalism and integrity remains intact and that there be communication to that effect circulated to all NWP employees. He wants to receive honest answers to key points 1 – 9. That PS Brace to be investigated for breach of alleged standards of professional behaviour. A written apology from PS Brace for hurt and anguish caused. A written apology from NWP for allowing PSD to investigate an allegation that was made inappropriately. And removal of advice given regarding "admin time" on PDR.

44. On 7 July 2020 Temporary Chief Superintendent Simon Williams sent an email to the Claimant to say that he is sure the Claimant will not be surprised that in summary PS Brace had a different perspective to all of the issues raised. She recalled each incident though and will send me through her considered response to each and Temporary Chief Superintendent Simon Williams will update the Claimant with the detail in due course. In relation to the referral and how that took place he now has a better understanding which he will be able to provide to the Claimant and he just needs to do some more work around this to understand the detail even further. He could not promise he would be able to resolve everything to the Claimant's liking but he is confident he will be able to answer many of the questions that have been posed. Temporary Chief Superintendent Simon Williams appreciates that it is difficult for the Claimant given the length of time he had to wait but he will endeavour to move things along as quickly as he can.
45. It is noted that on 16 July 2020 a letter was written by Superintendent Nick Evans of the Professional Standards Department to the Claimant in which he says that having spoken to Chief Superintendent Simon Williams that Superintendent Evans is writing to confirm the conclusion of the conduct investigation which the Claimant was subject of at the end of last year. He says that having reviewed the case in detail he is satisfied that the concerns raised about the Claimant's conduct by a member of the Central Ticket Office were done so with the very best of intentions and with no malice. Upon receiving the information within PSD, the assessment of the

severity has been made at that point on face value. This is intended to ensure that as a person subject of the concern, you are notified that the concern has been raised and that you are provided with your rights and appropriate support. In the letter Superintendent Nick Evans goes on to say the appropriate authority was totally satisfied that your account provided legitimate explanation and as such concluded there was no case to answer. The rationale of the appropriate authority included the statement “there is, even on the balance of probability, in my view no evidence that Mr Richards has acted inappropriately in his recording of members of the public”. Superintendent Nick Evans goes on to say “again I appreciate that this may offer little solace, but I assure you that such a scenario is not uncommon. An individual subject of an investigation can often swiftly provide the context required to satisfy the concern raised. This does not however mean that the concern was wrong to be raised in the first place, as such transparency is an essential part of maintaining public confidence. I can assure you that this investigation has been filed within PSD as there being no case to answer, and that there is no perception that you have done anything wrong. Again I apologise that the experience has caused such an impact on you I do genuinely wish you all the best and hope that you are able to move on from it”.

46. On 8 September 2020 Temporary Chief Superintendent Simon Williams sent his Grievance Final Report to the Claimant but in the first paragraph of the email containing the Report he said that contrary to the title this is not the Final Report. This is because Temporary Chief Superintendent Simon Williams says he wants to discuss what he had found thus far and hear any further comments or representations from the Claimant as this is a fairer way than just making decisions based on what he has found. He has tried to write the Report in a neutral manner. It is the intention to spend time with the Claimant the following day 9 September to hear what the Claimant’s thoughts are.
47. On 9 September 2020 Temporary Chief Superintendent Simon Williams sent an email to Alison Jones to say that after speaking again to the Claimant and his wife that he did not think that the Claimant would be fully satisfied at the end but they are now talking about resolution. The main one we have to crack is what we do with him. Temporary Chief Superintendent Simon Williams says “He is ready to come back into the workplace. He is willing to go back to Go Safe with some form of mediation arrangement to assist. From an organisational perspective I see real problems with this. I am leaning to recommending that from an NWP angle I think we need to find him another post commensurate with his skill set (a reasonable alternative)”.

48. The Claimant responds on 11 September to say that he thanks Temporary Chief Superintendent Simon Williams for his balanced approach thus far on all matters concerning his grievance.
49. On 22 September 2020 Temporary Chief Superintendent Simon Williams emailed PS Brace to say that the Claimant has been updated about what PS Brace has said and he is awaiting the Claimant's response before he makes judgments in respect of the issues raised.
50. On 21 October 2020 Temporary Chief Superintendent Simon Williams provided his Final Report to the Claimant accompanied by a covering email in which he offered to meet with the Claimant to go through the Report. The Claimant never took up that offer. There was also outlined his appeal options and ensured that he was receiving the necessary welfare support from his Unison Representative as Temporary Chief Superintendent Simon Williams anticipated it would have a significant impact on him. In summary Temporary Chief Superintendent Simon Williams found no evidence of harassing, bullying or discriminatory behaviour by PS Brace against the Claimant. PS Brace's actions in the areas of concern raised by the Claimant had been appropriately justified. Importantly although the Claimant had been exonerated by PSD, it did not follow that the referral was inappropriate. In respect of the Claimant's proposed resolutions Temporary Chief Superintendent Simon Williams agreed with the Claimant that he did not consider a return to Go Safe feasible for him in the circumstances it was clear his relationship with his manager had broken down. It was clear that the Claimant harboured a deep and enduring distrust for officers and staff who had been involved in his grievance. This included various colleagues from various departments including Go Safe, OSS and CTO. The Claimant had questioned the integrity of many colleagues which Temporary Chief Superintendent Simon Williams found to have been unsubstantiated. Temporary Chief Superintendent Simon Williams therefore expressed concerns that the Claimant's relationship with the Force may have irretrievably broken down. However Temporary Chief Superintendent Simon Williams's recommendation was for the Force to support the Claimant in seeking to identify a suitable alternative role for him. In addition he agreed with the Claimant that communication could take place with regard to confirming the outcome of the PSD investigation namely that no further action was taken against him. No further recommendations were made although Temporary Chief Superintendent Simon Williams did set out details of some additional resolutions and organisational learning.
51. One of the matters which were considered to be relevant in the evidence of Ms Alison Jones was what the Respondents termed an abusive reference to "the dog is wagging the tail or is it the tail wagging the dog here" contained in an email from the Claimant of 9 October 2020 to Ms

- Jones. Whilst it may not have been a helpful phrase to have used by the Claimant it is not something which per say we considered to be abusive but probably unconsidered. Similarly criticism of Ms Jones made by the Claimant in an email of 15 October 2020 saying that Ms Jones was “abandoning him at a time when you might need me the most” and “incompetence on so many levels” are undoubtedly personal remarks and triggered Ms Jones feeling not able to continue to support the Claimant, but they are not so outside the language in employment disputes between employee and employer that could in the Tribunals view be regarded as being abusive per say.
52. On 20 October 2020 Ms Jenny Parry wrote to the Claimant introducing herself and that Alison Jones had said that the Claimant is unhappy with how Alison Jones has been dealing with the situation and that she is unable to support the Claimant and therefore Ms Jenny Parry agreed that she would support the matter moving forward. There were two issues that she would like to address with the Claimant namely the recommendations in the grievance outcome heard by Temporary Chief Superintendent Simon Williams and the decision that the Chief Constable has made in relation to the pay. In respect of recommendations from the grievance outcome the hope is that moving to a new role will allow you to move forward and give the opportunity for a relationship between North Wales Police and yourself to mend. Ms Parry says there are some opportunities which we have which she would like to discuss with the Claimant which would allow him to work close to home and for your current pay and conditions to be protected and she would very much welcome the opportunity to review the roles with the Claimant and also allow her to understand more about the anxiety that he is suffering with and to start to explore how they can support the Claimant with that and what a return to work could look like moving forward.
53. We accept the evidence of Alison Jones and Ms Jenny Parry that they attempted to deal with the Claimant’s questions and issues in an empathetic and full way as they could, albeit there were delays in some of the interaction with the Claimant.

Appeal

54. On 27 October 2020 the Claimant lodged an appeal against the grievance decision of Temporary Chief Superintendent Simon Williams (page 378). The grounds of the appeal were firstly that not all the relevant information had been considered by the Grievance Manager; the grievance procedure has not been properly followed and that Temporary Chief Superintendent Simon Williams should have declared a conflict of interest because he was appointed at the same time as PS Brace and that he was never going to be independent or impartial; new evidence contained in a report

- prepared by the Claimant; that the grievance outcome is wrong with an example given about challenges regarding administration time. The Claimant says that referral to PSD must be inappropriate as he met PS Brace's expectations which furthermore were only expectations and not part of any policy, guidelines or standard operating procedure. The Claimant says that the Respondents have not taken his concerns seriously since January 2020 and that he asked reasonable questions and raised concerns informally in the hope that matters could be addressed but they have still not been. The Claimant refers to the expectations and resolutions discussed on 11 June 2020 and he is still expecting for them to be met. There was also a reference to a rumour regarding the Claimant barging Chief Inspector Cust in the workplace and the Claimant expected the Respondents to investigate this alleged incident but Temporary Chief Superintendent Simon Williams has not provided any response to questions about whether or not Chief Inspector Cust informed him over the potential assault/incident.
55. Mr Ian Davies, Chief Information Officer, was appointed to deal with the appeal. On 5 November 2020 Mr Davies wrote to the Claimant proposing that they meet up first for an informal chat about the reports and make sure that everything is understood. There is also a reference to time scales for the appeal. The Claimant replied he would get back about a meeting that in terms of his return to work which he says everyone seems to be keen for him to do, that he cannot see that happening. He says he does not feel well enough to do so and fears that the mutual trust and confidence between himself and the Respondents has been compromised. Having said that the Claimant says until he has exhausted all avenues in trying to have his expectations for resolution met he is keen to keep his options open and hopes that they can reach the right place in the end.
56. On 5 November 2020 Mr Davies emailed suggesting that they meet at a local hotel which would not be part of the formal process. Mr Davies refers to experiences he has had of being "investigated" a few times and expresses empathy in respect of the position of the Claimant. Mr Davies says it's a fact that the Claimant's longstanding reputation remains spotless. And that regardless of the appeal and its possible outcomes the Claimant will have to get his head around that fact. Mr Davies suggests that the focus be on two parts firstly the relationship with PS Brace and the things which occurred; and secondly the PSD matter how it went and how it made the Claimant feel.
57. Mrs Richards says that she travelled with the Claimant to Beaumaris to meet with Mr Davies on 13 November 2020 near his home. Mr Davies said amongst other things that something had seriously gone wrong when two longstanding good people are both off work and that it would be best

for the Claimant to keep his head down and apply for some other jobs as PS Brace had taken against him. Mrs Richards felt that Mr Davies had really listened to the Claimant and understood the situation.

58. On 20 November 2020 the Claimant and his wife attended a Grievance Appeal Meeting held by Mr Ian Davies and Julie Brierley, HR Training Director. It was recorded and both the Claimant and Mrs Richards read out pre-prepared reports. At the end of the meeting Mr Davies said that he was going to partly uphold the appeal and there was discussion on progressing the harassment and the Claimant said he would be submitting a statement to PSD about the bullying and harassment which had been discussed in the appeal.
59. On 27 November 2020 the Claimant was sent the outcome of his appeal. In the findings of Mr Davies there is a note that he was satisfied that the time PS Brace and the supervisors within the CTO felt that PSD should be consulted then that is the proper process. Mr Davies was satisfied that the proper PSD referral and process were followed and in that aspect the appeal was not upheld. He was also satisfied the grievance was investigated by Temporary Chief Superintendent Simon Williams in an impartial context and could see no connection with him and PS Brace joining NWP at the same time as many of NWP staff/officers do which is inevitable. In respect of PS Brace's actions and decisions and the other matters mentioned in the grievance some aspects were partly upheld and require actions and recommendations. Firstly it took too long to complete the grievance and this would be fed back to the Head of HR. The question of uniform to be fed back to Go Safe. There will be a recommendation that Go Safe have a policy regarding health and safety to make good any issues in a quicker time frame. The Go Safe filming procedures need to be clarified and agreed. Consideration needs to be given to Data Protection legalities of deliberately filming members of the general public. PSD would be contacted in respect of a number of points. In respect of the 25 page statement read out by the Claimant there were some new points which caused some concern to both Mr Davies and the HR Appeal Support Julie Brierley. Those new issues appear to be matters where there might be grounds for misconduct proceedings can be submitted to PSD. Finally there was a recommendation of engaging with Jenny Parry to discuss returning to work and to explore some possible mediation with PS Brace even if it transpires you do not decide to return to Go Safe and take another role. It is noted that the Claimant was willing to enter into mediation. At the very end Mr Davies says that he would like to thank both the Claimant and his wife for their kind assistance to him and positive engagement throughout his role as Appeals Manager since it was a testament to both of their professionalism and integrity of which remains untarnished.

60. The Claimant sent an email to Jenny Parry on 30 November saying that he did not agree that Simon Williams was impartial as a Grievance Manager. That Simon Williams was biased against him without justification he does not agree that PS Brace's referral to PSD was appropriate. The Claimant poses a question that from Jenny Parry's experience in terms of Ian Davies speaking to Simon Williams to ascertain his view do you think that that was appropriate as he is not so sure and would question Ian's impartiality by doing this if Simon has given biased opinion as he did in his final report. That said the Claimant says he is happy that Mr Davies has partly upheld his appeal. The Claimant says one of the expectations for resolution through the grievance process was for PS Brace to be investigated by PSD. The Claimant says he is hopeful that PS Brace will soon be finally questioned about her behaviour towards him with the referral being accepted on face value. The Claimant says that he would partake in any kind of structured mediation process but is PS Brace.
61. On 7 December 2020 the Claimant sent a complaint to the PSD. It was resent on 10 December 2020. The statement to PSD outlined incidents of bullying, harassment and discriminatory behaviour by PS Brace. At the end of the statement the Claimant says for the sake of clarity and avoidance of doubt he wishes that PS Brace be investigated by an investigator through the appropriate channel about her conduct towards the Claimant between May 2019 and December 2019 and her relationship with Superintendent Banham with the power imbalance that involves. As a minimum the Claimant asks that she should be given words of advice on a few counts which would hopefully prevent anyone else in the organisation being treated by her like the Claimant has in the future. In a covering email the Claimant says that he feels that he is banging his head against a brick wall with the organisation it is as if the Respondents will not acknowledge that he has suffered at the hands of a bullying and harassing supervisor.
62. On 1 February 2021 the Claimant received an email from Detective Superintendent Dan Tipton which said that having carefully considered all allegations and accompanying material he was satisfied that with regards to allegations 1 to 10 any breach of the Standards of Professional Behaviour that reached the threshold for misconduct had not been reached. In respect of allegation 11 to do with his van matters, this was a matter that should be done through dialogue with the force health and safety representative in the first instance. Detective Superintendent Tipton is going to request via Jenny Parry that consideration is given to this aspect of the Claimant's concerns being submitted to the force Health and Safety Lead for an appropriate review to be made. Under the heading of "Conclusions" Detective Superintendent Tipton said that having made an assessment of conduct he had also considered other resolutions. With regards to performance Detective Superintendent Tipton believes the grievance process which was thorough and protracted was an appropriate

vehicle through to identify such issues. No performance issues appear to have been so identified. Reflective Practice is something that could benefit the parties involved. He believes this could be achieved as part of a broader mediation process and whilst it is not his remit to formally direct such he does recommend this is considered and urges both Claimant and the other party to engage if this is offered. Detective Superintendent Tipton says the matters for which the Claimant was investigated by PSD that may have ignited the sequence of events had initially been referred to them appropriately. The ensuing investigation was thorough and did not find any evidence of wrongdoing on the Claimant's part and to that end he was exculpated from any findings of culpability.

63. On 7 December 2020 the Claimant sent an email to Ms Stephanie Millican most of which concerned pay matters and also sick notes and medical matters. In that email the Claimant says "I know I'm not well and have been so since I was served with misconduct papers following a referral by a Sergeant who was malicious in her actions before during and after the referral. There is no way on earth that I will rest until I know that I have done all that I can to protect myself and other colleagues from PS Brace's malicious, harassing and hurtful behaviour that she can display towards those she chooses to....".

64. The sentiments expressed by the Claimant in this email are entirely consistent with what he said to others who were part of the grievance process or the appeals process and how he has maintained this fixed point of view throughout his dealings with the Respondents.

65. On 15 December 2020 a letter was written by Stephenson's (Solicitors), on behalf of the Claimant and sent to Ms Jenny Parry. It was headed without prejudice but prejudice has been waived and the Tribunal was invited by both parties to look at this letter. In short it is said that the Claimant's position with the service has become untenable and it is clear there has been irretrievable breakdown of trust and confidence on a number of matters relied upon by the Claimant. There was also reference to possible settlement.

66. Again this letter and its sentiments expressed are consistent with which what was said in open email and letter and report sent by the Claimant clearly reflected his point of view at this time regarding how he saw the relationship with the Respondents.

Second Grievance

67. On 6 December 2020 the Claimant sent a further grievance to Ms Jenny Parry. The Claimant says that there were no answers in his case. The Claimant says that he is not able to return to work until he feels safe to do

- so. He has been accused by the Respondents of being a pervert through PS Brace's inappropriate and malicious referral and that is his belief. The Claimant says that another reason why he believes they should not work in the same department, that is PS Brace and Superintendent Banham, is with the power imbalance their relationship entails. The Claimant says he is not sure he wants a meeting about mediation at this stage given PSD are now likely to become involved in his complaint. He says events might turn out such that PS Brace no longer works on the Go Safe unit and then he would have to consider whether he would be safe in returning to his role with Superintendent Banham in her post and what message as per his expectations for a resolution is sent to the staff on the unit about his exoneration. There is then reference to the rumour regarding CI Cust.
68. The grievance form submitted by the Claimant is on page 398 of the bundle. The nature of the grievance is management issues. The grievance is detailed and raises a number of issues including the conduct of his grievance and timescales in relation to that as a resolution of the second grievance the Claimant was seeking apologies as appropriate in relation to points 1 to 6 with an explanation of why he was let down. In terms of point 7 he is seeking there is an investigation into how Paul Cheshire can try to convince the Claimant's wife that he shoulder barged CI Cust having demonstrated deliberate sideways shoulder movement. The Claimant says there was no contact between him and CI Cust. He is seeking clarity on issues 8 to 12 and receipt of the transcript of the appeal meeting.
69. On 18 December 2020 Ms Jenny Parry wrote to the Claimant with a detailed response to the 13 points raised by the Claimant. Ms Parry says that she feels that it should be dealt with by way of response and provide points of clarity rather than a new grievance as it concerns matters related to a previous grievance and appeal along with other issues which they have been in contact about. It is noted that in respect of the allegation regarding shoulder barging CI Cust Ms Parry says that Paul Cheshire said that he was told by a third party and he cannot remember who that the Claimant had shoulder barged CI Cust in the corridor of Unit 31 but he did not witness it himself. CI Cust has confirmed that the Claimant did not shoulder barge him and has not heard anyone say that he did. Given that Paul Cheshire is unable to confirm who told him that you shoulder barged CI Cust Ms Parry says she is afraid that she cannot do much more investigation. Ms Parry says she hopes the Claimant can be reassured that CI Cust has confirmed that you did not shoulder barge him and she would be happy to ensure that the Go Safe team are aware of that.
70. In respect of point 9 which was "is your Go Safe post still available for you to return to when you are well enough and feel safe to do so" Ms Parry says your post is still available in Go Safe but we need to have some honest discussions about what your intentions are. It is my understanding

that during the grievance investigation a proposed resolution to the grievance that you put forward was for you not to return back to Go Safe but into another post. That you returned to another post in force was also a recommendation of Superintendent Simon Williams as he felt that the relationship between yourself and Mel Brace had broken down. If you do wish to return to Go Safe then mediation, suggested by Ian Davies as the Appeals Manager, would be an appropriate way of determining if that is something which would work for you, Mel Brace and the force. It may be that the relationship between yourself and Mel has broken to the point where a return to Go Safe is not going to work and therefore return to another role in force is the most appropriate resolution. I can guarantee that should you wish to return to a different role within the force that we will offer you an alternative role via the redeployment process.” Then in relation to point 10 would Mel Brace be willing to take part in mediation with you Ms Parry says that at the time of the Claimant’s grievance being investigated Mel Brace did not believe that mediation would resolve the breakdown of relationship between the two of you. In relation to the point above if the Claimant wanted to return to Go Safe then Ms Parry would discuss the benefits of mediation with PS Brace.

Issue of Proceedings – Claim 1

71. On 21 December 2020 the Claimant contacted ACAS to commence the conciliation process. The Claimant says he did this because he felt the Respondent was not taking his complaints seriously and because Ian Davies had said to him after he concluded his appeal words to the effect of don’t hold your breath over the PSD investigation. The Claimant says he was now beginning to understand that the force was never going to be willing to properly address these issues internally. The Claimant received his Conciliation Certificate on 22 December 2020 and issued proceedings on 19 January 2021.
72. Prior to the issuing of proceedings there had been correspondence between the Claimant and Ms Jenny Parry headed catching up. In an email of 15 January 2021 Ms Parry said that the solicitors letter had been received but the Respondents preference is to continue to engage with the Claimant to return to work rather than entering into a settlement. In response to this the Claimant said that he would consider returning to work. In an email sent at 4.35pm on 15 January 2021 by the Claimant to Ms Parry the Claimant says that Ms Parry could understand that the Claimant would be disgruntled returning to the workplace given that he had been reprimanded for misuse of police systems without being told what he had allegedly done wrong as an example. PSD would have to record every conversation I had particularly with supervisors to protect him

from false allegations. He says that people record the conversation to protect us both as he has lost trust and confidence with the Respondents as Ms Parry knows. The Claimant says if he is not back to his role then we would have to consider resigning and claiming constructive dismissal. The Claimant says as it happened he did not return to work at this time and received one last sick note for a month on 14 January 2021.

73. On 9 February 2021 the Claimant sent a complaint to the Police and Crime Commissioner. The complaint was sent in Welsh and an English translation appears in the bundle at pages 866 to 868. In that complaint the Claimant says he does not feel safe going back to work because he does not have any answers and the Respondents refuse to accept that he has been treated unjustly or unfairly. He then says he is adamant and certain in his heart that treatment towards him by PS Brace has destroyed trust and confidence between him and the organisation and that Jenny Parry he thinks is trying her best to rebuild the relationship but the problem is that she is either not believing me or she is hiding behind the organisational point of view that a fair due process has taken place which he disagrees has been fair. The Claimant says he has reached the point where he is close to resigning and put an application into an Employment Tribunal for constructive dismissal. If he could avoid this by going back to his job with assurances it was safe after PS Brace had words of advice through a reflective practice or learning outcomes then he would. The Claimant says in January he received an email from Jenny Parry saying that the Respondents might start the process of dismissing if he did not come back to work straight away and that he was given the choice of going to MRU or taking annual leave to await the mediation. He chose to take annual leave but since then he is back on sick leave because he feels like he was on annual leave from the daily and nightly worry he feels.
74. On 23 February 2021 the Police and Crime Commissioner wrote back to the Claimant stating that he did not get involved in individual cases and advised the Claimant to seek advice from Unison.

Mediation

75. There were two mediation sessions with the Respondents Ms Jenny Parry and an independent third party through ACAS to chair the mediation. The two mediation sessions, were one on 18 March 2021 and the second one on 29 March 2021.
76. In the first mediation session the Claimant said he did not take up the offer to return to MRU when it was offered due to COVID concerns but now he has a laptop he can do some work from home. Dr Gidlow, Consultant Occupational Health Physician had also sent a memo saying it would be good for the Claimant's mental wellbeing to return to work. Ms Parry

needed reassurance that the Claimant was fit to return to work and that how they would move forward in the relationship with a new Line Manager when the Claimant had previously said he does not trust the Respondents and would feel he had to record interactions. Ms Parry confirmed that the Claimant could work from home if he did return to work subject to training and upskilling that was required. Ms Parry did not think that a return to Go Safe was an option over the concerns that the Claimant still had there were still queries about the process and concerns that the Claimant was raising. It was clarified that PS Brace did not want to participate in mediation and mediation about a return to another role would be considered if they could address how relationships could be built. On 23 March 2021 Ms Parry sent an email to the Claimant saying that she would be able to progress Resolution 2 and it was one of the things she would like to discuss at mediation as to the outstanding actions and an agreed way forward to ensure everything is actioned appropriately.

77. At the second mediation session on 29 March 2021 the Claimant had a script that would take him 30 minutes to deliver. The Claimant said he did not think that Jenny Parry could be impartial. The Claimant said in terms of his health it is agreed he can return to work, that he would dispute there being a breakdown of relationship with PS Brace. However Ms Parry confirmed the position that the Respondents do not think it is right for the Claimant to return to Go Safe and the points that were raised in mediation show there is a gulf in the Respondents and PS Brace does not want to engage. Ms Jenny Parry says she was not sure she could continue to represent the Respondents in the mediation given some of the things the Claimant had said today and she tried her best in a complex situation. Ms Jenny Parry offered a role with MRU or Ian Davies but the Claimant said he did not want a role in MRU and said he would some administrative work in the CIO office. It was confirmed that the Claimant would do some admin risk assessments, PAT forms etc. on his return ready to start in CIO the following week. Ms Jenny Parry confirmed to the Claimant the return to work would not be in OSS.

Panel Hearing Invitation

78. On 13 April 2021 Jenny Parry wrote to the Claimant to say that it was not the case that Temporary Chief Superintendent Sian Beck would be taking over the mediation. The reason is that organisationally the Respondents have determined it is not appropriate for the Claimant to return to Go Safe and as the Claimant's position is that he does not wish to consider a move to any other role and only wish to return to Go Safe then there is nothing of value that Temporary Chief Superintendent Sian Beck can add to the mediation proceed. Then the following paragraph appears "taking into consideration the discussion outcome of the last mediation session and the position of Temporary Chief Superintendent Sian Beck in regards to

the mediation the force is of the belief that, unfortunately, and despite our genuine efforts, the relationship between yourself and the force has irretrievably broken down and there is no possibility of regaining the trust and confidence which is required for a constructive employment relationship. The reason for this decision is that you have made it very clear you wish to return to your previous role in Go Safe and we do not believe that this is possible due to the following

- A fundamental breakdown in the relationship between yourself and Sergeant Mel Brace
- A fundamental breakdown in the relationship between yourself and the wider Go Safe/OSS team
- A fundamental breakdown in the relationship between yourself and North Wales Police as a force
- A lack of options for moving forward with the concerns that you have with the force.”

Ms Parry then says based on the above the Claimant would be invited to a panel meeting chaired by Seb Phillips, Director of Finance and Resources where he would be given the opportunity to present why he thinks he should be able to return to Go Safe and why the working relationship has not broken down. Ms Parry says that she needs to make the Claimant aware that the outcome of the hearing could result in dismissal from North Wales Police with notice. The process was ongoing, the Claimant would be placed on gardening leave which means that he would receive full pay and benefits but not required to attend work and Annalee Morris, HR Business Advisor would be in touch to discuss this in detail. Ms Parry says that she understands this will be disappointing as the Claimant has been working towards a phased return to work over the last couple of weeks and he wished to return to Go Safe but in the absence of mediation and giving us a way forward Ms Parry says they do need to look to the future.

79. This letter was written against the background that on 31 March 2021 the Claimant was back in work, working from home, doing his return to work protocols. He did not have any actual work to do and he was waiting for Ian Davies to find him some work. Ian Davies sent the Claimant a WhatsApp message asking him if he could use an ICAD and RMS. The Claimant responded that he could and thereafter they communicated by WhatsApp. The next working days were 5 and 6 April 2021. On those days the Claimant attended online courses with other people on his work laptop. After that the next scheduled working day was 13 April 2021. On the morning of that day with the permission of Ms Jenny Parry the Claimant attended a course on neurodiversity at work online. On the afternoon of 13 April 2021 he was telephoned by the ACAS nominated representative who were engaged in mediation to say that the process had come to an end and by the evening of 13 April 2021 Mr Ian Davies

responded to say that despite his best efforts he did not have any work for him.

Autism Diagnosis

80. The Claimant's son had been diagnosed with autism and on 30 March 2021 the Claimant wrote to the Occupational Health Department to ask whether there was a test that he could take to see if he was "on the spectrum". Occupational Health replied saying that they could not help. On 11 April 2021 Integrated Autism Services accepted the Claimant's case as an urgent referral.
81. On 4 May 2021 the Claimant was given a diagnosis of autism. The Claimant informed the Respondents by email about this matter. There was further reference to this in an email from the Claimant's Union Representative to Annalee Morris, HR Training Support Officer on 25 May 2021 which said as you may now be aware the Claimant has received a formal diagnosis. In that letter it is said that it is extremely important to the Claimant that he understands why the Respondents consider that he should not return to the Go Safe team and this is related to his autism condition. Therefore before the Claimant is able to make a decision about whether to look at redeployment or to attend the panel to put forward a case to return to Go Safe he would like to request a copy of the allegations in full and the evidence. There was then a reference to the request being made as a reasonable adjustment under the Equality Act 2010 to enable the Claimant to fully process the available information before making any decision.
82. In April 2021 upon legal advice from the Respondents solicitor, the Respondents HR initiated enquiries in St Asaph in the Go Safe department on the basis that the intention was to gauge and understand the feeling after staff had raised concerns to management that the Claimant may be returning to Go Safe. Six out of the eight employees it is said had concerns about the Claimant returning to Go Safe even if they did not have a concern with him personally. The question posed was "how do you feel if John Richards came back to work in the Go Safe Unit in St Asaph?". The note that was made about this is on page 462 to 463 of the bundle. However an analysis of the individual employee notes show the following – employee 1 stated they did not really have any thoughts or feelings either way. Employee 2 said that personally they were not bothered about the Claimant returning to work; employee 3 said that the Claimant returning to the office would have no impact on them; employee 4 said amongst other things that there would probably be an atmosphere if the Claimant returned but that they knew the staff would remain professional and that the Claimant had been industrious throughout his career and if he did return to the office it would be nice to see him back in

- the department without any issues; employee 5 said it would be difficult for them and others if the Claimant returned to the office; employee 6 said there would be an atmosphere if the Claimant returned to the office and particularly impact on them and others; employee 7 said that to be honest the Claimant returning to the office would not make any difference to them; and employee 8 said that they would have no problem if the Claimant returned to the office. The overall answers to the question posed would not support a contention that there had been a breakdown in relationships between the Claimant and certainly most of the staff.
83. The panel hearing was neither a capability or a misconduct hearing case and the Respondents determined that it would be appropriate for the hearing to look at options rising out of a significant breakdown in working relationships. The options were whether the Claimant could or should return to Go Safe; secondly if that was not possible whether he should return to another role in the force; or thirdly if neither of the above were possible whether consideration should be given to terminate his employment by reason of some other substantial reason. Mr Seb Phillips, Director of Finance and Resources, was asked to be involved in the panel as he was a person with many years experience of handling HR investigations in other organisations and within the Respondents any Stage 3 Hearing would be determined at Director level.
84. Dr Gidlow, Consultant Occupational Health Physician prepared a report on 9 June 2021 after a telephone consultation with the Claimant and that report is on page 442 to 443 of the bundle. In short in respect of a panel hearing Dr Gidlow said that the Claimant clearly needs adequate representation but once the panel hearing is taken it suggested that there should be a case conference to look at a suitable role for the Claimant if he cannot return to his previous role. Mr Phillips said that it was agreed to delay the panel hearing pending the outcome of the autism diagnosis.
85. On 13 August 2021 the Claimant was invited to a panel hearing on 22 September 2021. The panel comprised Mr Phillips, Superintendent Paul Jones, and Trisha Foley (Assistant Director). Ms Annalee Morris would be attending in an HR capacity but would not be part of the decision making panel. In the letter of 13 August 2021 it was said the purpose of the panel will be for the Claimant to put forward his representations as to why he thinks that he should return to Go Safe (if indeed he does) and for the panel to consider this. It was also said that the Claimant may also wish to request the force look to place him in the redeployment pool which the panel would consider along with what reasonable adjustments may be required in an alternative role. If it is ultimately confirmed that there is no alternative role available then dismissal would be a possibility. This hearing date was changed due to unavailability and was rescheduled for 27 September 2021. A pack was prepared for the panel hearing (page 464

- to 484 of the bundle) this pack was put together by HR and in particular Alison Jones.
86. At the panel hearing the Claimant was accompanied by his wife, a union representative and a support worker from the National Police Autism Association, Mr David Fox. At the hearing the Claimant and his wife were allowed to read their statements. Mr David Fox also addressed them and played them a clip showing an interview with a Vice Admiral who was seen as being obsessive, challenging and demanding because of his autism but was a highly effective officer for the same reason. The panel had prepared their questions in advance and read them out. The Claimant says because of the pressure of the situation and his autism he struggled to answer them effectively. The union representative asked that could the questions be written down and given to the Claimant to consider and respond to in written form and some time was allowed for this. But by then the Claimant was in no fit state to answer the questions and the panel agreed to give the Claimant more time until 1 October 2021 to give answers. There was an issue regarding one of the questions which was "why would you think an autistic person could not follow the code of ethics?". Submissions were made to the panel that this was a discriminatory question. The Claimant says that Mr Phillips apologised for the careless use of language and said there had been no intention to cause offence or use discriminatory language.
87. The Claimant answered the panel's questions on 1 October 2021. There was then submitted a further 8 questions from the panel. The Claimant provided detailed answers to these questions. Mr Phillips says that during the adjourned period he continued to be engaged in correspondence with the Claimant on a frequent basis.
88. On 3 November 2021 the panel met to discuss the Claimant's responses to the questions that the panel had raised. No final conclusions were drawn on 3 November 2021 by the panel and the Claimant was written to on 3 November 2021 to say that the hearing panel would reconvene on 10 November 2021. Approximate timings were provided with an Agenda set out in the letter of 3 November 2021 from Mr Phillips to the Claimant regarding the reconvened hearing. Once the hearing was concluded there would be delivered an outcome.
89. The reconvened hearing took place on 22 November 2021. Various documents were submitted for consideration by the panel. After hearing the representations Mr Phillips said that the panel considered that the Respondents had taken the Claimant's concerns incredibly seriously and made extensive efforts to address them but that on the Claimant's part there appeared to be no reflection or acceptance of responsibility that some of the issues are partly of his own making. The Claimant had raised

- issue with a significant number of colleagues and appeared resistant to anybody who had been involved in his case disagreeing with the outcomes. Mr Phillips said that as evidence of that there was an exchange during the first panel hearing between the Claimant and Mr Paul Jones where the Claimant was not willing to answer questions and was more combative in his response to Mr Paul Jones. Mr Phillips considered it was clear that after an event the Claimant would revisit events and his recollection was not always correct.
90. Mr Phillips said the panel first considered whether they thought a return to Go Safe was feasible for the Claimant. However there had been a fundamental breakdown in the Claimant's relationship with management and this was not something that seemed capable of resolution. If this issue was allowed to continue it could have a significant negative impact on the rest of the team and in addition they had serious concerns about the Claimant's own wellbeing should he return to Go Safe. The panel felt that concerns around the relationships were too serious to be addressed by adjustments.
91. The panel then had discussions around suitable alternative employment. They had a list of vacancies from HR but there were some fairly common themes according to Mr Phillips as to why the vacancies were not considered suitable alternatives for the Claimant as for example the panel had concerns around the Claimant's lack of reflection of all that occurred throughout the case. The Claimant clearly did not accept the Respondents approach in handling things and this led to a concern as to whether a future relationship with the Respondents would be productive. This led the panel to believe that the relationship with the Respondents had irretrievably broken down and whether putting in place adjustments would overcome these concerns, the panel did not think it would.
92. The third consideration then concerned the termination of the Claimant's employment. The panel recognised that the Claimant had raised issues that most people that had been involved in the case which included PS Brace, Mr Neil Anderson, Ms Alison Jones, Simon Williams, Mr Ian Davies, and Ms Jenny Parry. The Claimant had raised some pretty serious questions around their integrity which were not substantiated. All things considered the panel had some serious concern regarding the Claimant's conduct and whether taken together it was outside the forces Code of Ethics. Ultimately they considered that the Claimant's relationship with the Respondents as a whole had irretrievably broken down. There was no option but to terminate the Claimant's employment on the grounds of some other substantial reason. Mr Phillips stressed that the decision was not because of a particular issue but when all of the Claimant's issues with the force's conduct were taken in the round it was clear that his employment could not continue.

93. The panel then convened the hearing and the rationale for the decision to dismiss the Claimant was given. The rationale had been written out by Mr Phillips and is on page 580 to 581 of the bundle. A letter of dismissal was then written to the Claimant on 29 November 2021 (page 582 to 583 of the bundle).
94. As the Claimant was paid in lieu of his notice period his employment therefore terminated on 22 November 2021.

Appeal against dismissal

95. The Claimant appealed against his dismissal by notice on 21 December 2021. The Claimant complained that the prospect of dismissal was only included in the running order of the hearing one working day before the hearing. The Claimant believed that previously there were only two potential outcomes being considered namely a return to Go Safe or redeployment. The Claimant says none of the panel was trained in autism or neurodiversity and therefore lacked the expertise to understand the impact of the Claimant's autism on events previous on the Go Safe team. It was not clear what was the conduct on the part of the decision to dismiss. The decision to dismiss was not a proportionate means of achieving a legitimate aim. There was a distinct lack of impartiality during the processes adopted by the organisation. The Claimant sought reinstatement of his employment with the Respondents and the above points to be considered and actioned.
96. The Claimant queried whether the Chief Constable who was hearing the appeal could be independent and impartial given that the Chief Constable had placed the Claimant on half pay and then no pay in 2020 and subsequently dismissed the Claimant via the reconvened panel hearing on 22 November 2021. As a result of that the force solicitor, Mr Philip Kenyon emailed the Claimant to say that the Deputy Chief Constable will now be hearing the appeal. The hearing of the appeal was on 10 June 2022. The Claimant says that he has absolutely no problems with the manner in which the appeal was progressed and heard by the Respondent. The manner and structure of the hearing was entirely fair and his only complaint is the outcome. The appeal outcome was received on 26 August 2022 (page 597). Amongst the Grounds of Appeal was that the Claimant says that the Respondents dismissed him for questioning the way this case had been handled. The Deputy Chief Constable, Mr Richard Debicki, said that he did not consider the Claimant was dismissed for questioning the way his case had been handled. The Deputy Chief Constable said that he thought that the evidence of the Claimant's failure to accept decisions that he did not agree with is indicative of the position that your relationship with officers and staff of North Wales Police had

broken down. That Ground of Appeal was not upheld. There was considerable detail in relation to the issues connected with autism but the Deputy Chief Constable considered that the matter had been dealt with appropriately. In relation to the distinct lack of impartiality during the processes adopted by the organisation which the Claimant claimed, the Deputy Chief Constable said he had reviewed significant amounts of material presented to the panel and reviewed the outcome letter and annex and could find no evidence of a lack of impartiality. In short the Deputy Chief Constable found that the processes adopted for the hearing and the outcome was fair.

97. The Claimant disagreed with the decisions made and considered that he effectively rubber-stamped earlier decisions and contained all the flaws and discrimination that was “baked” in those earlier decisions. The Claimant says his feeling both at the end of the process and now is that he was penalised, marginalised and then dismissed for complaining and continuing to complain. The Claimant says there was never a revisiting, reappraisal or reassessment of his behaviour by the Respondent in the light of his autism diagnosis before his dismissal. He considers that no-one in the Respondents was prepared to overrule or criticise any one of the colleagues either in the ranks or in HR.

Issue of the Second Claim

98. On 18 February 2022 the Claimant contacted ACAS in respect of the new proceedings. There are issues regarding jurisdiction which we will set out in our conclusions. The claim being the second claim was received on 30 April 2022.

The Law

99. Disability is defined in Section 6 of the Equality Act 2010. It states
- “(i) a person (P) has a disability if –
 - (a) (P) has a physical or mental impairment and
 - (b) The impairment has a substantial and long term adverse effect on (P)’s ability to carry out normal day to day activities.
100. Section 15 of the Equality Act 2010 is headed discrimination arising from disability and states
- “(i) a person (A) discriminates against a disabled person (B) if –
 - (a) (A) treats (B) unfavourably because of something arising in consequence of (B)’s disability and
 - (b) (A) cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(ii) Sub section (1) does not apply if (A) shows that (A) did not know, and could not reasonably have been expected to know, that (B) had the disability.

101. Victimization is defined by Section 27 of the Equality Act 2010 namely

(i) a person (A) victimises another person (B) if (A) subjects (B) to a detriment because –

- (a) (B) does a protected act or
- (b) (A) believes that (B) has done or may do a protected act

(ii) Each of the following is a protected act –

- (a) bringing proceedings under this Act
- (b) giving evidence or information in connection with proceedings under this Act
- (c) doing any other thing for the purpose of or in connection with this Act
- (d) making an allegation (whether or not express) that (A) or another person has contravened this Act

(iii) giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

102. Section 123 of the Equality Act 2010 deals with time limits. This states

(i) Proceedings on a complaint within Section 120 may not be brought after the end of –

- (a) The period of 3 months starting with the date of the act which the complaint relates or
- (b) Such other period as the Employment Tribunal thinks just and equitable....

(ii) The purposes of this section –

- (a) Conduct extending over a period is to be treated as done at the end of the period
- (b) Failure to do something is to be treated as occurring when the person in question decided on it.

103. By Section 94 of the Employment Rights Act 1996 an employee has a right not to be unfairly dismissed by the employer. Fairness is dealt with in general under Section 98 of the Employment Rights Act 1996 which says

“(1) In determining for the purposes of this part whether dismissal of an employee is fair or unfair it is for the employer to show –

- (a) The reason (or if more than one, the principal reason) for the dismissal and

- (b) That it is either a reason falling within sub section (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position in which the employee held
- (2) A reason falls within this sub section if it is –
- (a) Relates to the capability or qualifications of the employee for performing work of the kind for which he was employed when employed to do
 - (b) Relates to the conduct of the employee
 - (c) Is that the employee was redundant or
 - (d) That the employee could not continue to work in the position which he held without contravention whether on his part or that of an employer or a duty or restriction imposed by or under an enactment....
- (4) Where the employer has fulfilled the requirements of sub section (1) the determination of the question of whether dismissal is fair or unfair (having regard to the reason shown by the employer) –
- (a) Depends on whether in the circumstances (including the size and administrative resources of the employers undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and
 - (b) Shall be determined in accordance with equity and substantial merits of the case
104. Section 123 of the Employment Rights Act 1996 is headed compensatory award and sub section (1) states that the amount of the compensatory award shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal insofar as that loss is attributable to action taken by the employer. Sub section (6) states that where the Tribunal finds the dismissal was to any extent caused or contributed to or by any action on the part of the complainant it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.
105. Section 111 of the Employment Rights Act 1996 says in relation to complaints to the Employment Tribunal
- (i) A complaint may be presented to an Employment Tribunal against an employer by any person that he was unfairly dismissed by the employer
 - (ii) Subject to the following provisions of this section an Employment Tribunal shall not consider the complaint under the section unless it is presented to the Tribunal –

- (a) Before the end of the period of 3 months beginning with the effective date of termination or
- (b) Within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.

106. Section 13 of the Employment Rights Act 1996 states that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or relevant provision of the workers contract or the worker has previously signified in writing his agreement of consent to the making of the deduction.

107. By Section 23 of the Employment Rights Act 1996 a worker may present a complaint to an Employment Tribunal that his employer has made a deduction from his wages in contravention of Section 13 and that subject to sub section (4) an Employment Tribunal shall not consider complaints under the section unless it is presented for the end of the period of 3 months beginning with in the case of a complaint relating to a deduction by the employer the date of payment of the wages from which deduction was made. Sub section (4) states that where the Employment Tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of 3 months, the Tribunal may consider that the complaint if it is presented in such further period as the Tribunal considers reasonable.

108. Section 18(A) and 18(B) of the Employment Rights Act 1996 sets out the details of the Early Conciliation Scheme. By Section 18(A)(i) before a person present an application to institute relevant proceedings relating to any matter, the prospective Claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter. If Early Conciliation is refused or unsuccessful the prospective Claimant is issued with an Early Conciliation Certificate confirming that ACAS notification has been complied with. If at any stage of the process the parties indicate they do not want to participate in Early Conciliation the ACAS Officer in charge will proceed directly and issue the respective Claimant with an Early Conciliation Certificate. The Claimant would then be able to submit a claim to the Tribunal.

109. Section 207(B) of the Employment Rights Act 1996 deal with extension of time limits to facilitate conciliation before institution of proceedings. Sub section (2) states "in this section –

- (a) Day A is the day on which the complainant or applicant concerned complies with the requirement in sub section (1) of Section 18A of the Employment Rights Act 1996 (requirement to

contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought and
(b) Day B is the day on which the complainant or applicant concerned receives or if earlier is treated as receiving by virtue of Regulations made under sub section (11) of that section, the Certificate issued under sub section (4) of that section. Sub section (3) states “in working out when a time limit set by a relevant provision expires the period beginning with the day after day A and ending with day B is not to be counted. Sub section (4) states “if a time limit set by a relevant provision would (if not extended by this sub section) expire during the period beginning with day A and ending one month after day B, the time limit expires instead at the end of that period. Sub section (5) states “where an Employment Tribunal has power under this Act to extend the time limit set by relevant provision, the power is exercisable in relation to the time limit as extended by this section”.

110. A number of reported cases concerning the issues in this case were cited by Counsel in their Skeleton Arguments and written submissions and are not repeated here.

Submissions

Submissions on jurisdiction

111. Both the Claimant and Respondents representatives provided Skeleton Arguments on the issue of jurisdiction as well as written final submissions together with further submissions by way of reply/rebuttal to the other party’s final written submissions.

112. Dealing with the issue of jurisdiction this was a matter relied upon specifically in relation to the Claimant’s second claim. The issue is set out as follows “the Claimant was dismissed on 22 November 2021 and entered into a second period of ACAS Conciliation between 18 February 2022 and 31 March 2022. The ET1 in respect of this claim was issued on 30 April 2022. The Respondent asserts that the second ACAS Certificate has no effect on time limits and that therefore the unfair dismissal claim is out of time.”

113. If the unfair dismissal claim is out of time, was it not practicable for the Claimant’s unfair dismissal claim to have been brought in time. Has

the unfair dismissal claim been brought within such further period as would be reasonable in the circumstances.

114. In respect of the claim for unlawful deduction from wages if out of time was it reasonably practicable for the Claimant's claim for unlawful deductions from wages to be brought in time. Has the unlawful deduction from wages claim been brought within such further period as would be reasonable in the circumstances.
115. Finally in relation to the claims of discrimination being brought in time and if not do any of those acts amounting to a continuing course of conduct extending over a period which is in time for the purposes of Section 123(3)(iii)(a) of the Equality Act 2010. If not would it be just and equitable to extend time under Section 23(1)(b) of the Equality Act 2010.
116. The Respondents submit that "any matter" as referred to in Section 18(A) of the Employment Rights Act 1996 would relate to all claims eventually brought by the Claimant and that his first Early Conciliation period pre-dates his dismissal does not place his dismissal outside the "any matter" specified in Section 18(A) of the Employment Tribunals Act 1996. Nor does the later dismissal require a second Early Conciliation Certificate in order to bring a claim relating to it. Reliance was placed on the reported cases of ***Compass Group UK and Ireland Limited -v- Morgan [2016] IRLR 924***, ***Science Warehouse Limited -v- Mills [2016] IRLR 96***, and ***Drake International Limited -v- Blue Arrow Limited [2016] ICR 445***.
117. Furthermore the Respondents submit that the fact of a second Early Conciliation Certificate does not extend the time limit for the presentation of a claim in the same way that the first Early Conciliation Certificate does. The Respondents say the case of ***Commissioners for HM Revenue and Customs -v- Garau [2017] ICR 1121*** held that only one Certificate was required after which the prohibition against bringing a claim no longer applied and that stopping the clock only occurred under the first Early Conciliation Process/Certificate. The Respondents further rely upon the decision in the case of ***E.On Control Solutions Limited -v- Caspall [UK EAT/0003/19]*** that a second Early Conciliation Certificate is "voluntary" and not part of the statutory regime.
118. The Respondents submit the unfair dismissal claim was brought about one and a half months after the expiry of the time limit. The Respondents submit the Claimant has provided no good reason as to why it was not reasonably practicable for his unfair dismissal claim to have been brought in time. Furthermore at the very least it was reasonably practicable for the Claimant to have presented his second claim on 18 February 2022 when he determined he was receiving no response to his

queries. The Respondents rely upon the case of ***Dedman -v- British Building and Engineering Appliances Limited [1974] ICR page 53*** for the proposition that total ignorance of rights does not inevitably mean it is impracticable for a Claimant to present his complaint in time.

119. The Claimant's submissions regarding jurisdiction and the second claim say that what is of central importance is the meaning of the word "matter" in Section 18(A)(1). After referring to the cases of ***Science Warehouse Limited -v- Mills, and Drake International Systems Limited and others -v- Blue Arrow Limited***, the Claimant's submissions focussed on the case of ***Compass Group UK and Ireland Limited -v- Morgan*** and in particular the guidance given by Mrs Justice Simler who having found that an Early Conciliation Certificate could cover future events, said in paragraph 23 "ultimately, we can see no reason artificially to restrict the scope of the phrase "relating to any matter". That does not mean that an Early Conciliation Certificate affords a prospective Claimant a free pass to bring proceedings about any unrelated matter it does not. In our Judgment, it can be a question of fact and degree in every case where there is a challenge "and we hope and anticipate there will be very few such challenges, to be determined by the good common sense of Tribunals where the proceedings instituted by an individual are proceedings relating to any matter in respect of which the individual is provided the requisite information to ACAS".
120. Therefore the Claimant's submissions are that the Tribunal has to conduct an assessment of fact and degree in each case determined by the common sense of Tribunals. It is submitted that the second proceedings are a separate matter for the purposes of Section 18(A)(1) of the Employment Rights Act 1996 in that they raise separate claims that were neither within the knowledge nor the contemplation of the parties at the time of the first Early Conciliation or proceedings. Neither party knew that the Claimant was autistic and was going to be diagnosed over a year later, if either party was contemplating the termination of the Claimant's contract of employment neither party knew or could have foreseen there would have been a significant dispute over the Claimant's holiday entitlement post his dismissal. It is said this present case can be distinguished from the ***Compass Group*** case where the Claimant was already well on the way to concluding her employer was breaching the implied term of trust and confidence which caused the resignation. The second claim is fundamentally different as far as the nature of the claim is concerned and they were over a year apart rising different causes of action. The Tribunal is invited to take an approach to avoid disputes over jurisdiction between the parties over Conciliation and time limits.
121. Dealing with the issue that if the claim is out of time was it reasonably practicable for the Claimant's unfair dismissal claim to have

been brought in time the Claimant's submissions are that the operative reason why the Claimant missed the deadline is that he believed that the appropriate way to issue the second set of proceedings was to proceed as he had with the first and engage with the ACAS Conciliation procedure first. Reference is made to the case of ***Palmer and Saunders -v- Southend on Sea Borough Council*** [1984] IRLR 119 where the Court held that although the element of "practicability" makes the threshold for a late Claimant higher than a pure reasonableness test, the question is not whether it was physically possible to submit the claim in time. In the Judgment of Lord Justice May the formula to be used was expressed as "was it reasonably feasible to present the claim complaint to the Employment Tribunal within the relevant 3 months? – Is the best approach the correct application of the relevant sub section". The Claimant says the question is if the Claimant's ignorance of the rule that caused him to miss the deadline was the active cause of him missing the deadline was it reasonable for him to be in that position and he submitted it was given that he had made all relevant enquiries and the rule was one that would not be easy for a litigant in person to discover and avoid through the normal channels. He is an entirely different position to a litigant in person who failed to enquire or find out about a primary 3 month time limit.

122. Furthermore it is submitted that having acted under the misapprehension that the normal ACAS procedure and its effect on time limits applied that such further period as would be reasonable in the circumstances must be the time limit that applied had that been the case. Therefore the Claimant submitted his claim within the time limit.

123. In respect of the unlawful deduction from wages claim if out of time the point at which outstanding holiday pay should have been paid is his final wage which was received on 16 December 2021. The same submissions were made on reasonable practicability and a further period as in the unfair dismissal claim.

124. The Claimant's submissions regarding the discrimination claim is that in relation to victimisation failure to implement a recommendation to dismissing the Claimant then if the Tribunal finds for the Claimant on the ACAS Certificate issue the Claimant does assert a course of conduct relying on ***Hendricks -v- Metropolitan Police Commissioner*** [2003] IRLR 96 in that the Claimant is continuously being treated unfavourably for raising complaints and the manner in which he raises his complaints. Furthermore it is submitted that it is just and equitable to extend time because the Claimant was a litigant in person at all times which he issuing and amending his claims he had an ongoing illness with depression and hoped the matter might be resolved internally right up to and including his dismissal appeal and the delay in the Respondents internal processes should be taken into account. Furthermore the Respondents were given as full as possible notice and details of the Claimant's dissatisfaction of the Respondents actions and omissions well before and indeed

after the first set of proceedings. Therefore the discretion should be exercised in favour of the Claimant.

Claimant's Submissions

125. In relation to the issue of disability regarding depression and whether the Claimant was disabled within the meaning of Section 6 of the Equality Act 2010 by reason of depression between 9 June 2020 and 25 January 2022 the Claimant relies upon the medication and Fit Notes submitted by the Claimant and the Claimant's own account of his condition together with that of the evidence of Mrs Richards and that there is clear evidence of a mental impairment that had a substantial adverse effect on the Claimant's ability to carry out normal day to day activities. They were long term because it is clear from the outset that his condition was linked to his ongoing employment issues and those issues were likely to take a considerable amount of time to resolve. It is submitted that the Claimant's stress at work absence graduated into an ever worsening absence for anxiety and depression. It is a matter of record that the Claimant's depression caused him to be signed off sick from 9 June 2020 to 19 March 2021.

126. The Claimant was diagnosed with autism on 4 May 2021 and informed the Respondent of this by email. The Respondents say that there is evidence about the effect upon him which can be found amongst other sources by Mr Fox's description. It is submitted that the long term effect is not an issue in relation to autism as although the Respondent only had notice of the Claimant's autism upon his diagnosis in May 2021 it is clear that the autism had lasted for more than 12 months and was likely to last for the rest of his life. In relation to the Claimant's communication contained in the pack of documents used at the 20 November 2021 hearing it is whether that arose in consequence of his autism and was dismissed for complaining and for the manner in which he expressed those complaints.

127. The Claimant's relies upon a number of protected acts (some no longer pursued as set out in the Amended List of Issues clarified in the written submissions). The Claimant's submissions is that recommendation 2 was never actioned and that this was a detriment within the meaning of Section 27(1) of the Equality Act 2010. It is said there was further victimisation by placing the Claimant on gardening leave on 13 April 2021, by deciding to progress the Claimant's case to a progression to panel hearing, and by calling the Claimant's colleagues into the Claimant's place of work and asking their opinion as to whether the Claimant should be allowed to return to work. It is asserted that the Respondent was building a case to justify his dismissal. It is also alleged as part of victimisation that the Claimant was dismissed.

128. The Tribunal was referred to a number of reported cases regarding whether it must be shown that less favourable treatment of the person victimised was by reason of him having done a protected act. A simple “but for” a test was not appropriate. Provided the necessary link in the mind of the discriminator between the doing of the acts and the less favourable treatment can be shown to exist then victimisation will be established. In effect the Claimant was being effectively punished by the Respondent for standing his ground on original complaints regarding the failure to implement recommendation 2 and that Ms Jenny Parry’s decisions to end the mediation process feed into the garden leave and panel hearing decisions and therefore there is a link in Ms Parry’s mind between the allegations the Claimant had made and was continuing to make about PS Brace; how the grievance into those allegations had been handled and the decision to terminate mediation not to allow him to return to his role place him on garden leave and to submit him to a panel hearing. The interview of his colleagues arose out of the sequence of events regarding the impasse about mediation and the Respondents position the Claimant could not return to Go Safe.
129. There was not an issue of bad faith raised as a defence in this case.
130. The Claimant says that there was discrimination arising out of disability by the Respondent treating the Claimant unfavourably because of something arising as a consequence of his disability by deciding to place him on no pay on 5 October 2020. Reference is made to the case of ***Sheik Holeslami -v- University of Edinburgh [2018] IRLR 1090*** which stated “in short this provision requires an investigation of two distinct causative issues: (i) did A treat B unfavourably because of (an identified) something and (ii) did that something arise in consequence of B’s disability. The first issue involves an examination of the putative discriminator’s state of mind to determine what consciously or unconsciously was the reason for any unfavourable treatment found. If the something was a more than trivial part of the reason for unfavourable treatment then stage (i) is satisfied. The second issue is a question of objective fact for an Employment Tribunal to decide in the light of the evidence. It is submitted that the Respondent had actual knowledge of the Claimant’s diagnosis of depression and actual knowledge of the impairments he was suffering to establish his disability. It was the Respondents decision to give the Chief Constable very little information about the Claimant’s illness and absence and to operate a policy that the Chief Constable would not exercise their discretion unless the officer sustained a physical injury whilst on duty or was a victim of PTSD. There is no justification given for this policy and it must follow that the Respondent had knowledge of disability when deciding to put him on no pay.

131. Regarding the claim for unfair dismissal, excluding the arguments about jurisdiction, it is contended that this was not a true case of some other substantial reason, dismissal was if anything a dismissal for misconduct dressed up as some other substantial reason for dismissal. Reference was made to the case of ***Ezsias -v- North Glamorgan NHS Trust*** [2011] IRLR 550. It was submitted that following the remarks of Mr Justice Langstaff (President) in the case of ***The Governing Body of Tubbenden Primary School -v- Sylvester*** [UK EAT/0527/11] that the Tribunal be prepared to consider the whole of the story insofar as it appears relevant and not artificially as they would see it be precluded from considering matters that are relevant or may be relevant to fairness. It is submitted that on the Respondents own case and by the evidence of Mr Seb Phillips, the Claimant was dismissed for things he had done. This was not an ***Ezsias*** type case.
132. The Claimant submits the decision to dismiss the Claimant was riddled with procedural and substantive unfairness throughout. There were delays in the way that the complaints and grievance was dealt with by the Respondents. Although the Temporary Chief Superintendent Simon Williams expressed the view that the Claimant's case should be dealt with as a special case and potentially given preferential treatment and redeployment none of the sentiments were ever set out in the grievance outcome and he was never placed in redeployment. The finding that the Claimant should not return to his role was fundamentally unfair since he had been exonerated by PSD completely and yet PS Brace and her superior Superintendent Banham did not accept the PSD outcome along with Theresa Ciano. No action was taken against them and no consideration was made as to allowing C to return to his role after the staff had been informed of his complete exoneration. There was a change in the Respondents view regarding mediation and the outcome of that since the Claimant was told he cannot return to his substantive role. The reality is they were looking for other roles for the Claimant and were still willing to employ him. But the Claimant was never placed in the redeployment process. The panel in fact never made any attempt to redeploy him and find it would not be appropriate for the Claimant to be redeployed at all. That was not the process that was set out in any of the letters inviting the Claimant to a panel hearing. Reasons given for the Claimant's dismissal are matters that were never put to him in the form of a charge sheet or any letter as would have been under the Respondents misconduct procedure. They are matters that have been mentioned for the first time post dismissal. No advice from the force Medical Advisor was put before the Tribunal about how the Claimant's autism affected his behaviour for the preceding 23 months. The oral evidence of Mr Phillips that the Claimant was dismissed because of a lack of empathy understanding and

compromise were classic autistic traits and therefore the Claimant was dismissed for being autistic.

133. The conduct that the Claimant was dismissed for was conduct that was blameless and there should be no reduction in any compensation awarded.
134. It is submitted in relation to the Section 15 claim that the autism of the Claimant means that he considers that something has been missed or they must be biased when his complaints are not upheld. He is dismissed because of the number and nature of the complaints however the tenure of Mr Phillips's reasoning was the panels concern at the nature and frequency of the Claimant's complaints. In essence it is admitted that the Claimant was dismissed for complaining and this was a Section 27 dismissal and for the manner in which he expressed his complaints which is relevant to the Section 15 claim.
135. In respect of the unlawful deduction from wages claim it is said that the issue is a legal one rather than a factual one. The Claimant asserts that he believed he was owed 359 hours and 35 minutes for holiday pay and had not been paid for 152 hours and 23 minutes carried over. There is no dispute that the Claimant has been correctly paid pro-rata for 185 and 22.12 hours. The dispute is about the 152 hours carried over. The monetary value is £2,369.50. It is submitted the policy the Respondent relies on runs squarely into the law. The Court of Appeal in the case of **Smith -v- Pimlico Plumbers Limited (No. 2) [2022] IRLR 347** held that the single composite right is to take annual leave and to have the benefit of the remuneration that goes with it when the leave is taken. Under the Working Time Regulations 13, 14 and 30 the Court of Appeal added that where in any leave year a worker was unable or unwilling to take some or all of the leave to which the worker was entitled under this Regulation because he was on sick leave the worker shall be entitled to carry forward such untaken leave as provided for in paragraph 15. Leave to which paragraph 14 applies may be taken forward and taken in a period of 18 months immediately following the leave year in respect of which it was due. The claims under the Working Time Regulations have been held to be wages. The Claimant was absent for most of the 2019/2020 holiday year and was then absent except for a few days in the 20/21 year. The Claimant was able to take his holiday entitlement from the holiday year 2019/2020 but had been unable to take all of his holiday entitlement from the year 2020/2021. On termination he was only paid holidays for the 2021/2022 year in which he was dismissed. The Respondents policy directly contravenes the Claimant's rights and the policy is unlawful.

Respondents submissions

136. The Respondent admits in respect of the Claimant's autism that he was disabled for the purposes of the Equality Act and the Respondent had knowledge of this from 4 May 2021. It is submitted that the Claimant and his wife were not able to say with certainty which things could be attributed to autism and which could be attributed to personality or general way of being. The Tribunal is unable to draw any conclusion that the pack provided to the panel is attributable to the Claimant's autism. The safer conclusion to draw on the balance of probabilities is that the correspondence was not a result of the Claimant's autism but simply indicative of the general behaviour of the Claimant was the standard behaviour or regular behaviour.
137. The Respondent does not admit the Claimant was disabled in respect of the condition of depression. The depression is said to be dependent on the resolution ending of the grievance process and therefore it was situational and reliant on circumstances. The assessment of the likelihood of the adverse effect lasting for 12 months is to be made as of the date of the alleged discrimination and must not take into account anything only known or occurring after that time. The condition did not have a substantial adverse effect on the Claimant.
138. On the issue of victimisation it is admitted that paragraphs 4(i) to (xi) have the potential to constitute protected acts under Section 27 of the Equality Act. The five claimed instances of victimisation of a recurring theme in that in each case the relevant person has acted reasonably in line with the facts before them at the relevant time. In relation to resolution 2 the Claimant wanted an email sent to all employees to inform them of the allegation that he had been cleared. Detective Chief Superintendent Simon Williams stated he had misgivings about such a circulation. It cannot be said the Claimant was subjected to a detriment in respect of resolution 2 Temporary Chief Superintendent Simon Williams agreed with the resolution and it was the Claimant's responsibility to follow it up. There was a need to agree wording and further action with the Claimant and these practical concerns run directly against any suggestion that detriment occurred for the reasons claimed. It was reasonable to conclude that the Claimant ought to be placed on gardening leave as the inability despite best efforts to find the Claimant an alternative role. The Respondents say that in the meantime it was impossible without either some form of resolution not yet found or by moving colleagues such as PS Brace away to have the Claimant resume his role in Go Safe. Moving PS Brace away would not be a reasonable response in a situation where she had done no wrong and where it was seemingly the Claimant adopting stubborn intractable position. Garden leave was the most compassionate and sympathetic route for the Respondent to go down in the circumstances. In respect of progressing the case to a panel hearing the Claimant was fixated on his perception he had been wronged in some way and none of

this was conducive to the Claimant returning to work at Go Safe or in an alternative role within the Respondent force. The Respondents were unable to reach reasonably compromise of resolution with an intractable Claimant and faced with this situation it was reasonable to progress to a panel hearing.

139. As for the detriment about calling the Claimant's colleagues into the Claimant's place of work asking their opinion about whether the Claimant should be allowed to return to work, responses from employees were largely neutral and that this exercise had no impact on the outcome and to that extent was largely pointless. There was a distinction to be drawn between the questions asked which is how do you feel if the Claimant came back to work in the Go Safe Unit in St Asaph to asking whether the Claimant should be allowed to return. It was a neutral question. No information was given to colleagues in the discussion. No attempt was made to suggest or persuade colleagues otherwise. Any outcome was not because the Claimant claimed the doing of protected acts but around his stated desire to return to Go Safe and the Respondents concern was the Claimant would not realistically be able to return to work there as things stood.
140. The last detriment claimed of dismissing the Claimant was that the Claimant was dismissed for some other substantial reason as opposed to being dismissed because of any protected act.
141. In respect of the claim of discrimination arising from disability and being placed on no pay it is admitted the Claimant was placed on no pay on 5 October 2020 in line with the Respondents policy. That the sick pay would appear to be a consequence of the depression condition. But the Claimant had suffered for a relatively short period of time where there was no indication he would suffer substantial effect for 12 months or more at the time. The Respondent relies on the justification defence that placing the Claimant on no pay was a proportionate means of achieving a legitimate aim. The aims were ensuring staff were able to attend work; securing consistent attendance at work; and managing staff budgets effectively. None of the factors regarding the exercise of discretion applied to the Claimant's case. It is important to note that there is no duty on the Chief Constable to extend pay but instead is a discretion. The Tribunal should in the Respondents submission draw a distinction between active "duty" that is performing ones role/duties as a Go Safe Officer, in the public facing sense, and being embroiled in an internal employment/management related dispute.
142. In respect of the claim for unfair dismissal the Claimant was dismissed for some other substantial reason. The inability to work in any role within the organisation after exploration of the issues over many

- months could justify the dismissal of an employee. It was reasonable in the circumstances. The whole sequence of events the Respondent took were reasonable steps to solve the problem between the Claimant and PS Brace as well as redeployment being attempted and mediation. The Claimant had an inability to move past his issues that showed no sign of improving without the Respondent completely coming to his way of thinking. Perhaps also while taking some form of action against PS Brace.
143. Furthermore the Respondents rely upon the **Polkey** principal and that there is at least a high probability the Claimant could be dismissed at a later date in any event.
144. This was not a conduct dismissal and for some other substantial reason was the reason for the dismissal so the Tribunal should expect to see the focus on the fact and or effect of the breakdown as opposed to a focus on who was culpable. In this case if anything it is the Claimant with the focus on culpability and who is at fault with the constant focus by the Claimant on PS Brace's conduct. Reliance is placed not simply on the **Ezsias** case referred to above but also **Perkin -v- St George's Healthcare NHS Trust [2005] IRLR** that is a case where manner and management style which had led to breakdown in relationships was held to be some other substantial reason rather than conduct.
145. In respect of unlawful deduction from wages the policy is that staff who are unable to take annual leave due to long term sickness may only carry over up to 20 days leave into the next holiday year and that there are no exceptions to this policy that would apply. Therefore the policy was correctly applied in this case.

Conclusions

146. Dealing firstly with the issue of disability. The Claimant was originally signed off work in November 2019. According to the medical records disclosed from the Claimant's GP surgery on 9 June 2020 his condition was recorded as work stress/anxiety and depression and a note made that counselling was essential. Thereafter the GP notes record anxiety with depression. On 14 July 2020 it was noted the Claimant sleeping 2 to 3 hours/not much appetite/no motivation/overthinking/nightmares/not fit for work. There had been earlier reference to on off nightmares and flashbacks on 12 May 2020 in the GP records. This was the first time that there is recorded that medication was prescribed being Citalopram. On 30 June 2020 the GP notes that the Claimant has had 6 more counselling sessions through work and agreed to step down from Citalopram and a change in medication to Sertraline. The notes say that the Claimant feels tired and very demotivated angry not feeling Citalopram is making any difference to him. On 14 July 2020 it

is noted that the Claimant is getting worse. On 18 August 2020 it was noted that the Claimant was getting nightmares and had bad sleep biting his gums at night recurrent ulcers for a long time.

147. On 22 September 2020 there was a referral to the Mental Health Team and on 12 October 2020 the Claimant was seen in Psychiatry Clinic. The Claimant was discharged from the Community Mental Health Service on 15 December 2020. It is noted on 16 April 2021 the Claimant has gone back to work on a phased return but not to his previous role trying to find out why mediation not working as [and there is a redaction there] was biased. He wants to go to 150mg with the Sertraline again now is struggling.
148. The counselling interim report on the Claimant at page S400 to S401 refers to a situation being ongoing for 14 to 15 months and during this time the client's health and wellbeing had been majorly impacted requiring medication for stress and anxiety as well as constant mouth ulcers and disturbed sleep. The cause of the client's emotional and mental distress according to the counsellor relate to the initial allegation made against him and the ensuing processes which had not been dealt with in a timely manner rather the longevity has aggravated and augmented the client's ill health and proven to be psychologically harmful. The approximate date of completion of counselling is said to be uncertain being dependent upon a resolution. Dr Gidlow had a telephone conversation with the Claimant on 11 March 2021 it was noted that the Claimant was still having counselling with further sessions to be considered and that the ongoing absence is not helping his mental state. He is anxious to return to his role and this would help his mental state. The counselling report on 11 March 2021 says the Claimant will need continuing support to help him return to work after such a long absence. In the memorandum of the 22 April 2021 Dr Gidlow says that he can only stress the ongoing nature of this case is causing considerable stress and anxiety for John (the Claimant).
149. The Claimant describes how he stopped functioning doing the things he used to do. He stopped mowing the lawn, he stopped doing the logging, cleaning the windows, gardening, do it yourself relating to the house. He became unkempt and stopped shaving. He no longer showered frequently and stopped eating frequently. He lost interest in driving. His married life shut down and suffered on every level. The Claimant says an escalation in medication reflected a collapse in his personality that he could no longer function at even a basic level and he struggled to do the most basic things such as washing himself and feeding himself. At the same time he was spending hours, days and nights on the laptop hyper focussed on all the issues to do with these proceedings. Mrs Rachel Richards describes how the Claimant was clinically depressed not

sleeping experiencing heart palpitations withdrawing from normal life and he was a shadow of his former self. This would be in a period from May to June 2020. Mrs Rachel Richards says that although the Claimant was officially diagnosed with anxiety and depression she knows that he exhibited all the signs week before. In October 2020 Mrs Rachel Richards describes the fact that the Claimant was paranoid about going to be arrested and they were isolating themselves as they did not want to see anyone so they did not leave the house. Mrs Rachel Richards could not get the Claimant to move from inside the house and describes it as being dreadful. Mrs Rachel Richards describes the Claimant as looking a mess and being heavily medicated for depression and was in a very dark place. In November 2020 Mrs Rachel Richards describes the Claimant as being lost in the house, agitated and still having anxiety attacks with a tight chest and dry mouth.

150. We accept the evidence of the Claimant and the Claimant's wife about the effect on the day to day activities of the Claimant from June 2020. There is abundant evidence in the medical notes, the counselling notes as well as the Occupational Health position that the Claimant was being greatly affected at this time. We have referred to the Guidance on matters to be taken into account in determining questions relating to the definition of disability by the Secretary of State. It is not necessary to consider how an impairment is caused. The Appendix in the Guidance gives the factors which if experienced by a person would be reasonable to regard as having a substantial adverse effect on normal day to day activities and they include difficulty going out of doors unaccompanied, persistent general low motivation or loss of interest in every day activities, persistently wanting to avoid people or significant difficulty taking part in normal social interaction.
151. Having taken into account the Guidance, and looking at the evidence that we have accepted we find that from June 2020 the Claimant was suffering due to a mental impairment namely depression, substantial interference with his day to day activities.
152. The Equality Act 2010 states that for the purpose of deciding whether a person is disabled a long term effect of an impairment is one which has lasted at least 12 months, or where the total period for which it lasts, from the time of the first onset, is likely to be at least 12 months or which is likely to last for the rest of the life of the person affected. The Guidance says the cumulative effect of related impairments should be taken into account when determining whether the person has experienced a long term effect for the purposes of meeting the definition of a disabled person. We bear in mind that there was an undiagnosed condition of autism at this time when considering whether there is disability because of depression. In relation to likely to be continuing would mean that it could

- well happen (according to the Guidance paragraph C3). In C4 in assessing the likelihood of an effect lasting for 12 months, account should be taken of the circumstances of the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood. Account should also be taken of both the typical length and such an effect on an individual, and any relevant factor specific to the individual for example general state of health or age.
153. As submitted by the Claimant's representative by June 2021 the Claimant's depression had lasted for 12 months and it was clear from the outset that his condition was linked to his ongoing employment issues and these issues were likely to take a considerable amount of time to resolve. It is submitted that the Claimant's stress at work absence graduated into an ever worsening absence for anxiety and depression and that this should be taken into account in considering whether the Claimant's condition was likely to last 12 months. We consider that the Claimant's submissions are correct in the assessment of depression as a disability for the Claimant.
154. The Respondents say the assessment of the likelihood of the adverse effect lasting for 12 months is to be made at the date of the alleged discrimination. The discrimination arising out of disability is said to have been placing the Claimant on no pay on 5 October 2020. The Respondents had actual knowledge of a diagnosis of depression and the fact that it may be related to a situation or matter is irrelevant. We find that the Respondents had actual knowledge or should have had knowledge from the background circumstances of the Claimant's absence from November 2019 and the information obtained by the forces Medical Advisor and other matters discussed with employees of the Respondents that the Claimant was suffering a disability by depression.
155. With respect to the issue regarding autism, as referred to above the Respondents say the precise nature and effect of the Claimant's autism are matters which the Tribunal have to make findings on. There is no specific medical evidence addressing aspects of the Claimant's condition. In any event the fact of autism is admitted and we do not at this stage need to consider it any further. We return to the issue about whether that was discrimination because of autism later in the conclusions.
156. Dealing with the issue regarding protected acts, the Claimant relies on protected acts set out in paragraph 4(i) to (xi). Of these acts the Respondents admit that they have the potential to constitute protected acts under Section 27 of the Equality Act 2010. Bearing in mind the definition of protected acts within the meaning of Section 27(ii) of the Equality Act we find that – (i) was a protected act; (ii) we accept the evidence of the Claimant that he made the allegation as set out and that

this is a protected act; (iii) the matters raised under this sub paragraph also constituted a protected act – (iv) we accept the Claimant’s evidence that that was said that this was a protected act; (v) we accept that in all the circumstances this was a protected act; (vi) this is no longer pursued and therefore we do not find this was a protected act – (vii) we accept the evidence of the Claimant that he repeated those allegations of sex discrimination and was a protected act; (viii) we find that the complaint to the PSD was a protected act as alleged; (ix) this is no longer pursued and we do not find that this was a protected act; (x) this is no longer pursued and we do not find that this was a protected act; (xi) the claim form clearly sets out claims of discrimination we find this was a protected act.

157. In relation to victimisation and detriment, the detriments relied upon by the Claimant are firstly failing to carry out recommendation 2 in the grievance outcome namely that staff at Unit 31 would be informed that the Claimant had been exonerated in respect of any wrongdoing or misconduct in respect of the allegation of filming schoolgirls and young women. The Claimant says that Temporary Chief Superintendent Simon Williams knew of the protected acts and that as a consequence of that he made a conscious decision to park recommendation 2. We do not accept that this is a correct analysis of the evidence given by Temporary Chief Superintendent Simon Williams. Temporary Chief Superintendent Simon Williams stated that he had misgivings about a circulation that would facilitate communication to all North Wales Police employees. Temporary Chief Superintendent Simon Williams did not agree that the PSD matter should be “shout from rooftops”. Temporary Chief Superintendent Simon Williams agreed that people should know the actual facts but he had misgivings about circulating it to 2,500 employees which would be akin to a message that you are not aware of the case and he did not think it was a good idea because the broader knowledge of people knowing about it but if the Claimant wanted him to do it that he would. He understood the Claimant’s concern. Temporary Chief Superintendent Simon Williams felt he had to advise the Claimant it was never actioned and the reason was how it should be worded and to go on there would be a discussion with the Claimant. But the matter then went on appeal and Temporary Chief Superintendent Simon Williams did not do any further action. There was no contact with the Claimant after he submitted his report.

158. We reject the suggestion that the actions or inactions of Temporary Chief Superintendent Simon Williams regarding resolution 2 had anything to do with the protected disclosures or because of that, it was rather the reasons given by Temporary Chief Superintendent Simon Williams that we accept.

159. The Claimant relies upon a second point that the recommendation 2 was never implemented because of what happened at the mediation

and the breakdown of that. During the mediation Ms Jenny Parry indicated she would process recommendation 2. Matters then proceeded on a wider front in relation to the future of the Claimant and his employment with the Respondents. We do not accept that because of the protected acts that Ms Jenny Parry failed to implement recommendation 2. There was no causative link between the protected acts and the failure to implement recommendation 2. Of course it is regrettable that before the termination of employment there had not been further clarification and agreement between the Claimant and the Respondents regarding sending out a message to colleagues. It could be said that the Claimant himself could have informed colleagues about the result of his PSD investigation should he have wished to do so.

160. The second detriment claimed is that of placing the Claimant on garden leave on 13 April 2021 and in doing so refusing the Claimant's request to work in his Unit. By the time the Claimant was placed on garden leave there had been considerable efforts to deal with grievances issued by the Claimant through formal and informal processes which include mediation. There were issues regarding a future role could be found for the Claimant and in particular bearing in mind what he himself had said about a breakdown in trust and confidence, as well as what had been said by others on the management side regarding their reaction to being accused of inappropriate conduct, not necessarily arising out of dealings with the Claimant, by the Claimant himself. What would be the proper approach and resolution to the situation regarding the Claimant. We accept what the Respondents say it was impossible without either some form of resolution not yet found or by moving colleagues such as PS Brace away to have the Claimant resume his role in Go Safe. The Claimant was placed on garden leave with thought out practical reasons relating to his ability to work in the Go Safe role while the broader situation remained unresolved. Therefore the Claimant was paid his salary during this period of time. The Claimant had in the past refused to consider roles in the MRU, Coroner's Office, and Chief Information Officer's Office when they had been broached at various times. There was no work available in the department that Mr Ian Davies had responsibility for and the decision regarding garden leave was not a detriment because of the protected acts that the Claimant had made.

161. The alleged detriment of deciding to progress the Claimant's case to a panel hearing against the background at various attempts of resolution having failed and the fact that the impasse which had been reached which needed to be resolved in a fair and appropriate way by the Respondents. The adoption of the Stage 3 Panel Hearing was an appropriate and fair way of attempting to allow the whole situation to be examined and decisions reached about the future employment of the Claimant. We do not accept the Claimant's submissions that there was a

link in Ms Jenny Parry's mind between the allegations the Claimant had made and was continuing to make about PS Brace and for this to be submitted to a Panel Hearing. We do not find that the progress to a Panel Hearing was a detriment because of the protected acts.

162. Finally regarding the alleged detriment of dismissing the Claimant on 22 November 2021. We will come to our findings regarding dismissal later in this Judgment but we find that the Claimant was not dismissed because of any of the protected acts.

163. We now consider the claim of discrimination arising from disability namely did the Respondent treat the Claimant unfavourably because of something arising in consequence of his disability by deciding to place the Claimant on no pay on 5 October 2020. We have already considered whether the Respondents had knowledge that the Claimant was suffering from a disability namely depression at this time. We will not repeat our findings that they did as set out above. The Respondent relies on the justification defence that placing the Claimant on no pay was a proportionate means of achieving a legitimate aim. The policy is set out in the attendance management policy (page 233 of the bundle) which states under the heading extending period of pay the following "circumstances in which the Chief Constable will consider extending an individuals period of full or half pay include:

- Where there is evidence that the Police Officer/Police staff's incapacity is directly attributable to an injury or illness that was sustained or contracted in the execution of his/her duty
- Where the absence is during a pregnancy and is solely due to the pregnancy
- The police officer/police staff is suffering from an illness that may prove to be terminal
- Should a police officer's case be supported by the selected medical practitioner (SMP) for ill-health retirement, they will be reinstated onto full pay upon receipt of the SMP report and by the force."

164. Ms Alison Jones said that HR make no representations about what the Chief Constable should do in relation to the policy they simply give information. If there are any representations or submissions made by Unison on individuals to be put before the Chief Constable. Ms Alison Jones says that everyone is treated equally and where there is a discretion there is a need for defined criteria. Reference was made to Regulation 28 which is entitlement to occupational sick pay outlined in the Police Regulations but the Chief Constable has the ultimate discretion. Ms Alison Jones stressed that it is at the discretion of the Chief Constable in circumstances set out on page 233. Ms Alison Jones said the decision

regarding sick pay if it was depression would not change the situation that occurred with the withdrawal of pay and that was her experience.

Discrimination arising from disability

165. A claim under Section 15 does not require the disabled person to show that the treatment suffered was less favourable than that experienced by a comparator. In the case of ***O'Hanlon -v- HM Revenue and Customs Commissioners*** [2007] ICR 1359 the Court of Appeal held that the disabled Claimant was less favourably treated by virtue of the way the employer had applied its standard sick pay policy to her. The policy provided for full pay for the first 26 weeks of absence followed by half pay for a further 26 weeks. Although an Employment Tribunal initially decided that there was no less favourable treatment when the Claimant who was on long term sick leave related to a disability had her pay reduced the Employment Appeal Tribunal, with whom the Court of Appeal agreed, overturned that decision compared with a non-disabled person who had not been on sick leave for a similar period as Section 3(A)(1) Disability Discrimination Act then required, there was clearly less favourable treatment although the Employment Appeal Tribunal went on to hold he was justified in the circumstances.

166. We find that there was unfavourable treatment and that was something that arose in consequence of the Claimant's disability and the unfavourable treatment was because of something that arises in consequence of the disability. The question arises as to whether the unfavourable treatment can be objectively justified. The Equality and Human Right Commissions Code of Practice on Employment sets out guidance on objective justification. In short the aim pursued should be legal should not be discriminatory in itself and should represent a real objective consideration. Although business needs and economic deficiency may be a legitimate aims, the Code states that an employer simply trying to reduce costs cannot expect to satisfy the test. As to proportionality the Code notes that the measure adopted by the employer does not have to be the only possible way of achieving the legitimate aim but the treatment will not be proportionate if less discriminatory measures could have been taken to achieve the same objective.

167. The Tribunal has to carry out a critical evaluation on the question of objective justification. In this case it entails weighing of the needs of the employer against the discriminatory impact on the employee. Here the Respondents rely upon ensuring staff are able to attend work; securing consistent attendance at work; and managing staffing budgets effectively. The evidence of this matter and policy was given by Ms Jenny Parry and referred to by others. We have to consider whether this was a proportionate response.

168. We are not satisfied that managing staffing budgets in itself would be a sufficient legitimate aim in this case. However the two other reasons of ensuring staff attendance and consistent ability to attend work go to the issue of why the policy is directed to matters arising during the course of duty of police officers and the discretion on that basis is a legitimate aim to assist those who are injured or affected in the way it is set out in the policy. The discretion ameliorates the harsh consequences there would be for the adoption of the policy itself. We find that there have been shown legitimate aims in relation to the way in which the discretion will be exercised and that it is proportionate.

169. In the circumstances we find that the Respondents have objectively justified and shown that the unfavourable treatment is a proportionate means of achieving a legitimate aim.

Unfair Dismissal

170. There is a preliminary issue regarding the jurisdiction of the Tribunal to hear the claims set out in the second claim form and in particular the claim for unfair dismissal. We have summarised above the parties positions regarding the jurisdiction point. We have considered the case of ***HM Revenue and Customs -v- Garau* [2017] ICR 1121** in that case the Employment Appeal Tribunal held that the time limit had not been extended by contacting ACAS a second time (the day before the primary 3 month limitation period was due to expire) which prompted ACAS to issue a second certificate on 25 April. The statutory Early Conciliation provisions do not allow for more than one Early Conciliation Certificate per “matter” to be issued by ACAS. If more than one such certificate is issued, a second or subsequent certificate is outside the statutory scheme and has no impact on the limitation period. It was held that the Employment Judge ought therefore to have found that disability discrimination unfair dismissal claims presented by the Claimant on 25 May were out of time (unless time could be extended in the exercise of the Tribunal’s usual discretion).

171. The Employment Appeal Tribunal’s decision in ***Garau*** was applied in ***Romero -v- Nottingham City Council* [EAT/0303/17]**. In that case the Claimant had obtained an Early Conciliation Certificate but then through his solicitor a second certificate was issued in respect of a second unsuccessful conciliation period. The solicitor discovered the existence of the first ACAS certificate worked on the basis the limitation period was extended by reference to the second certificate. That claim form was struck out for being out of time. The Employment Appeal Tribunal held that the Tribunal had been entitled to conclude that the two certificates both related to the same “matter” that the claim was made out of time. There is

one mandatory conciliation process there is nothing to prevent the Claimant from contacting ACAS on a further occasion to seek assistance on a voluntary basis. Since it was reasonably practicable for the claim to have been presented in time there was no jurisdiction to hear it on the facts in that case.

172. We reject the submissions of the Claimant that the content of the second claim was unrelated to the same “matter” as was set out in the first claim. As the Claimant has set out in written submissions a number of reported cases, including ***Compass Group UK -v- Ireland Limited and Morgan*** (above) there is no reason artificially to restrict the scope of the phrase “relating to any matter”. Whilst the first claim does claim discrimination on a number of basis, the time that claim was issued in January 2021 the gist of the grievances of the Claimant against the Respondents, and in particular the actions of PS Brace, and the actions or omissions of the Respondents the Claimant saw it to deal effectively with the situation, are very much part of the substance of the second claim which could not be viewed on any basis as a stand alone dispute unrelated to matters complained of in the first claim. It would be stretching matters far to far to hold that this was the case. Whilst it may be a question of fact and degree in every case looking at facts of this first claim and the second claim and the degree of connection between the two we conclude that the Respondents submissions are well made and that the matters set out in the second claim form which include the dismissal of the Claimant do not require a second Early Conciliation Certificate in order to bring the claims.
173. In the circumstances we find that the second set of proceedings were issued outside the primary period of time limits. However the Tribunal has then to apply the statutory regime firstly concerning time limits for unfair dismissal and secondly time limits in relation to claims of discrimination, and thirdly in relation to time limits for bringing an unlawful deduction of wages claim.
174. In dealing with the time limit for unfair dismissal the unfair dismissal claim was brought about 1.5 months after the expiry of the primary time limit. A number of questions relevant to determination whether it was or was not reasonably practicable for the unfair dismissal claim to have been brought in time. Firstly it is relevant that the Claimant knew that the primary limitation for his unfair dismissal claim was going to expire on 21 February 2022 as he wrote to the Tribunal, the force solicitor and Unison asking whether he needed to submit a second certificate before issuing a second set of proceedings and seeking guidance as to how he should add unfair dismissal to his claims without ending up out of time. He says this in his written witness statement. It has already been noted in the sequence of events in this case that the Claimant had previously consulted solicitors,

Stephensons, by 15 December 2020 since they wrote a letter on his behalf to the Respondents. The Claimant did not make any enquiries of these solicitors regarding the issue of effect of a second Early Conciliation Certificate or the need to obtain one.

175. However the Claimant says that on 18 February 2022 having heard nothing from anyone he contacted ACAS and was not told that he did not therefore need to go through conciliation and that he should simply issue the proceedings. The Claimant waited until 30 April 2022 which if time had been extended was the last date that proceedings should have been issued but of course the position was that time was not extended at all. It is difficult to understand why the Claimant waited until the last minute before issuing the second claim because he had not received any positive information that there was a need for a second certificate to issue proceedings and he would have still been unclear on what he says as to what the actual legal position was. There could have been opportunities to go back to those parties that the Claimant said he wrote to and which nobody replied but he failed to take any further steps in this regard.
176. This is not a case where the Claimant has been misled or misrepresented the true position even at the Claimant's account of contact with ACAS. The reality is that the Claimant has incorrectly calculated the time limit. There was not advice misinforming the Claimant about any right to present a claim. Taking into account the circumstances of this particular case we find it was reasonably practicable for the claim to have been issued by the Claimant within the primary limitation period that is on or before 21 February 2022. We bear in mind the guidance given in a number of reported cases including that of ***Dedman -v- British Building and Engineering Apprentices Limited*** (above).
177. We have considered whether the claim was presented within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months. Although we need not answer this matter if it was necessary we would have found that the period when the claim was presented was not within such further period as was reasonable since the Claimant delayed some considerable time before issuing the second claim.
178. The conclusion is that the claim for unfair dismissal is dismissed as on the basis the Tribunal has no jurisdiction to hear the claim.
179. However the dismissal itself is also said to have been an act of victimisation because he is dismissed due to the number and nature of his complaints which included complaints of discrimination. The Respondents say that the Claimant was dismissed for some other substantial reason for

the reasons set out in the dismissal letter (582 to 583) namely that the Claimant should not return to his role at Go Safe and that he should not return to a suitable alternative role.

180. Mr Seb Phillips, Panel Member at the Dismissal Hearing, accepted that it was clear that the Claimant was a person with a disability and that the panel dealt with the Claimant as a person with a disability. The panel were concerned with three options namely whether the Claimant could return to Go Safe, if that was not possible could he return to another role within the force, or if neither were possible consideration should be given to terminating employment by reason of some other substantial reason that would be the breakdown of trust and confidence. Mr Seb Phillips referred to engaging with the Claimant in significant correspondence during the process and he felt that the Claimant would repeatedly cover the same ground. It became clear to Mr Phillips that the Claimant's issues with the force were very deep rooted. Mr Phillips also said in his oral evidence that he did not see dogged or determined thinking as a cause of the issues in this case. We accept that evidence of Mr Phillips. Mr Phillips's concerns focussed on the damaged relationship between the Claimant and the Respondents and a failure to acknowledge any aspect of the process as being fair, reasonable or proportionate. Having taken into account everything that was said and read at the hearing, which included the answers to specific questions, written questions given to the Claimant to take account of his autism, Mr Phillips was of the view there appeared to be no reflecting or acceptance of responsibility that some of the issues were partly of the Claimant's own making. He had raised issues about a significant number of colleagues and that it was alleged that they were biased in the way that they dealt with him. Mr Phillips considered the Code of Ethics the context for example of reference to selflessness. But the case was not about misconduct as such but it is the Claimant acting as a barrier to restore a working relationship. For example the return to Go Safe was not considered feasible, there had been a fundamental breakdown in the Claimant's relationship with management. In relation to the without prejudice document that was put before them Mr Phillips said it would have been helpful to have it excluded but he compartmentalised it. The Claimant according to Mr Phillips was asked to reflect on his behaviour to acknowledge the issues on both sides but there was a lack of recognition and an unwillingness to reflect or any understanding and empathy.

181. Mr Phillips said that he made his conclusion taking into account Mr Fox's input about autism which was going back again and again and could be related to autism. Mr Phillips agreed that the Claimant should have the opportunity to raise concerns and should not be penalised for that but the grievance was fully investigated and there was a need to move on. There was no consequence just because the issue was raised.

182. Mr Phillips stressed that consideration was made in the context of the case moving forward and it was noted that PS Brace did not wish to engage in mediation. In short Mr Phillips considered that there were deep rooted issues on which there had been no progress. The panel felt that the concerns around the relationship were too serious to be addressed by any adjustments as far as the Go Safe team was concerned. Regarding alternative employment there was concern about the Claimant's lack of reflection of all the things that had occurred throughout the case and the non-acceptance of the Respondents approach in handling matters and concern as to a future relationship with the Respondents. In these circumstances they considered that no adjustments would overcome those concerns and that therefore redeployment would not be possible because of the irretrievable breakdown of the relationship with the Respondents. The conclusion was there was no option but to terminate the Claimant's employment on the grounds of some other substantial reason.
183. We accept the evidence of Mr Phillips that the rationale of the decision to dismiss contained in the Appendix to the dismissal letter of 29 November 2021 was the reason for the dismissal. There had been a fundamental and irretrievable breakdown in the trust and confidence between the Claimant and the organisation. Reference was made to a lack of trust and confidence as evidenced on a number of occasions within the hearing file and additional material provided and the panel's belief it is not possible to restore it to a level as a vital element of the employee/police service relationship. Mr Phillips was being criticised in submission for not telling the Tribunal of the documents he was referring to in his dismissal rationale. Mr Phillips accepted that the rationale was there without the particulars but that the Claimant could challenge those matters if he wished to appeal the panel's decision. The fact that particulars were not there regarding the documents does not detract from the thrust of Mr Phillips's evidence of the reason why the conclusions were made and the rationale from those conclusions. It was not the dogged or determined thinking that was the cause of the issues in the case or the fact that there had been exercised rights under the grievance, discipline or appeal process but what was revealed in the contents of those documents and attitude of the Claimant regarding how he viewed the management and the Respondents in general and their mostly biased approach to what the Claimant believed to be self-evident facts. These were the matters contained in the rationale appendix.
184. In the evidence of Mr Phillips he refers to the panel recognising that the Claimant had raised issues with most people that had been involved in his case which included PS Brace, Chief Superintendent Anderson, Temporary Chief Superintendent Simon Williams, Mr Ian Davies and Ms

Jenny Parry. Mr Phillips goes on to say he had raised some pretty serious questions around their integrity which were not substantiated. We accept that this was an accurate statement. The actions of Chief Superintendent Anderson in meeting with the Claimant and being sympathetic to his position and how he felt, was reflected in the attitude shown to the Claimant by Temporary Chief Superintendent Williams who had sent an email to Alison Jones on 6 October 2020 Temporary Chief Superintendent Williams said provided they feel that the broken relationship can be mended he thinks that the Claimant will be dealt with as a special case and potentially given preferential treatment in redeployment with an extended period to explore options.

185. We reject the Claimant's submissions that because he made protected acts that he was victimised by being dismissed.

186. It is further submitted that the Claimant was dismissed for the manner in which he expressed those complaints and that this was discrimination arising from disability. The Claimant stands by his original allegations and accuses anyone who does not accept them or his right to return to Go Safe of bias or impartiality and it is submitted that this is something that arises out of his autism. Mr Phillips said he considered what Mr Fox had said about the possible impact of autism in the behaviour of the Claimant but for example the Code of Ethics was said by Mr Fox should apply to those with autism and they could comply. Mr Phillips was clear that the reason for the dismissal was not in any way connected to a disability or any of the discriminatory concerns that the Claimant raised.

187. We accept the evidence of Mr Phillips that he carefully considered the impact of the Claimant's autism as outlined by the Claimant himself as well as Mr Fox, took account of the autism passport, and that the panel allowed adjustments such as the provision of written questions and time to answer those questions as fully set out in the appeal records, but that there had been irretrievable breakdown on both sides and it was not appropriate to employ the Claimant in any role. One of the matters referred to in the rationale was the behaviour of the Claimant showing lack of respect and courtesy as would be expected in the Respondents Code of Ethics. It was not the fact that the Claimant challenged grievance decisions or appeals but some of the content and attitude which showed a lack of respect and courtesy. We reject the suggestion that this was as a result of autism but rather was a decision carefully considered by the Claimant as to how to present his case from the time that he was suspended.

188. In the circumstances the conclusions of the panel were reasonable and cannot be categorised in the way that has been formulated by the Claimant regarding the reason for dismissal. For the avoidance of doubt

we do not consider that this was a “conduct” dismissal but was properly characterised by the Respondents as a dismissal for some other substantial reason.

189. The Respondents also maintain that the claims for dismissal pursuant to Section 27 of the Equality Act 2010 as well as Section 15 of the Equality Act 2010 are out of time and the Tribunal has no jurisdiction to hear them. We have already concluded that the second claim is out of time for the purposes of the unfair dismissal and the consequence of that as set out above. The test regarding discrimination claims are different than that of the unfair dismissal claim. The Tribunal has discretion pursuant to Section 123 to allow such claims to be brought within such other period as the Employment Tribunal thinks just and equitable. Although we have considered the matter on the merits above we would not consider it just and equitable to extend time in this case because of the sequence of matters which overlap with the reasons regarding our conclusion that the ordinary unfair dismissal claim is out of time. Whilst conscious that it is a different and wider test of just and equitable we do not consider that it would be just and equitable to extend time in this case. We have considered the Claimant’s submissions that there were four separate matters to consider namely the Claimant’s status as a litigant in person, his ongoing illness with depression, hope that matters might be resolved internally and delay in internal processes. The Claimant submits that it is accepted that no one of these matters is of itself necessarily justifies the exercise of the Tribunal’s discretion to extend time but it is submitted that all of them viewed cumulatively do. It is also the balance of prejudice. It is relevant to consider these submissions but the Claimant had power to bring these claims within a primary period of limitation for the reasons set out above and did not do so. He had access to possible advisors before the second claim was issued. There was delay during this period of time. Whilst the Respondents are aware that the Claimant had a number of concerns about the Respondents attitude and behaviour towards himself we do not consider that the balance of prejudice comes firmly down in favour of the Claimant as opposed to prejudice caused to the Respondents by having to deal with arguments that the dismissal was for some discriminatory reasons. In the circumstances we do not consider it just and equitable to extend time.

190. The issue of unlawful deduction of wages was also a matter that is relied upon as a jurisdiction point by the Respondents. For the reasons given in respect of the ordinary unfair dismissal claim we find that the claim for unlawful deduction of wages was made out of time. The question arises was it reasonably practicable for the Claimant’s claim to have been brought in time. The Claimant submits the only difference between the application of the reasonably practicable provisions for the unfair dismissal and unlawful deduction claim is that the primary limitation period for the

wages claim expired on 15 March 2021. The reasons that we have found that it was reasonably practicable to bring a claim for unfair dismissal we find it was reasonably practicable to bring the claim for unlawful deduction from wages. Therefore this claim is out of time and will be dismissed.

191. Although it is not necessary to consider the points regarding the merits of whether the policy of the Respondents prevails upon what the Claimant says is the clear law regarding the ability to be paid on termination outstanding holidays, if we would have decided this matter on the merits then we would have accepted the Claimant's submission that the relevant provisions do allow for payment of the sum as claimed by the Claimant to be outstanding and that the policy of the Respondents could not be relied upon to defeat the statutory regime. However that is academic in the circumstances.
192. Sadly this is a case in which the Claimant was determined that PS Brace should face professional sanctions for what he perceived as the unwarranted and malicious referral to PSD, and the failure of the Respondents to think like himself and to take action. Even when pointed out to him by PSD itself that the referral was appropriate in the circumstances and with exoneration of the Claimant the Claimant was dissatisfied and constructed a view that those who disagreed with him were impartial and biased which led to some such as Alison Jones being unable to continue to support the Claimant.
193. The summary of the Claimant's case in paragraph 1 of his witness statement namely that the entire case stems from three things – PS Brace's conduct towards him in late 2019, his decision to complain about her conduct and the Respondents reaction to his complaints that led to him being prevented from returning to his role, put on garden leave and then dismissed, is unfortunately a wrong analysis of the situation. The decision to dismiss the Claimant was reasonable in all the circumstances.

Employment Judge P Davies
Dated: 27th February 2024

JUDGMENT SENT TO THE PARTIES ON 28 February 2024

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche