EMPLOYMENT TRIBUNALS

Claimant: **Ms P Napier**

Respondent: **Independent Office for Police Conduct**

Heard at: **East London Hearing Centre**

On: **23, 24, 25, 26, 29, 30,**
31 January, 01 February & 02 February 2024
(31 January, 01 February and
02 February 2024 [am only] In Chambers)

Before: **Employment Judge B Beyzade**
Members: **Mrs B K Saund**
Ms M Daniels

Representation

For the Claimant: Ms S Crawshay-Williams, Counsel
For the Respondent: Miss O Checa-Dover, Counsel [Miss V Von Wachter, Counsel on 02 February 2024]

JUDGMENT having been sent to the parties on 12 February 2024 and reasons having been requested in accordance with Rule 62(3) of Schedule of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

Introduction

1 The claimant presented complaints of unfair dismissal (constructive) under section 95(1)(c) of the Employment Rights Act 1996 ("the ERA 1996"), unfair dismissal (constructive) pursuant to section 103A of the ERA 1996 and being subjected to a detriment done on the ground that the claimant made protected disclosures pursuant to sections 47B and 48 of the ERA 1996. The respondent entered a Response resisting those complaints.

2 At a Preliminary Hearing (Case Management) that took place on 20 July 2022 Employment Judge Walker listed the claimant's claim for a 6-day Final Hearing, set out the complaints and issues before the Tribunal, and issued directions relating to preparation for the Final Hearing.

3 The Final Hearing in this case took place on the following dates, 23, 24, 25, 26, 29, 30, 31 January, 01 February, and 02 February 2024. This was a hearing conducted in person at the London East Employment Tribunal. Our deliberations took place in chambers (in private) on 31 January, 01 February, and 02 February 2024 (in the morning only). The Judgment and reasons were delivered orally to the parties on 02 February 2024. Both parties' representatives requested written reasons in writing in their respective correspondences dated 06 February 2024. The Employment Judge apologises for the delay in sending these written reasons which is due to a number of reasons including but not limited to sitting commitments, annual leave, training commitments, and other judicial duties, and the Clerk to the Tribunal has been directed to update the parties (on behalf of the Tribunal) by way of correspondences sent to the parties in terms of timescales. Of course, the task of producing the written reasons is that of the Employment Judge. Accordingly, the Employment Judge apologises for any inconvenience caused to the parties as a result of the delay.

4 Mr L O'Callaghan was originally assigned to be a member of the Tribunal on the first day of the Final Hearing. He was replaced with Mrs B K Saund, another Tribunal member on the second day of the Final Hearing prior to the start of the evidence. Neither parties' representative raised any issues or objections in relation to this matter. In addition, we advised parties that Ms M Daniels, the other Tribunal member had previously worked for British Transport Police up to June 2019 as a civilian albeit she confirmed that she had never had any contact with the respondent, and further confirmed, that she did not know any of the witnesses or individuals mentioned in this case. Neither party objected to Ms Daniels sitting on the case as a Tribunal member nor pursued any applications in respect thereof. We considered in the circumstances that Ms Daniels shall continue sit in the case as a Tribunal member.

5 The Tribunal were provided with a copy of a Hearing Bundle which consisted of 2526 pages (11 lever arch files), which had been agreed by parties' representatives prior to the Final Hearing, to which reference was made during the course of the hearing.

6 We also gave permission for the respondent to rely on an unredacted training attendance record, which was added to the Hearing Bundle. In addition, we gave permission for the claimant to rely on a Remedy Bundle produced on the second day of the Final Hearing, consisting of 22 pages. We considered parties' submissions in respect thereof and we concluded that it was in accordance with the Tribunal's overriding objective set out in Rule 2 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("ET Rules") to grant permission in all the circumstances. We were satisfied that both parties would have a reasonable opportunity to address any new documents within their evidence and submissions.

7 The Tribunal were also provided with a copy of an agreed Cast List and Chronology (including page references to relevant documents from within the Hearing Bundle) in relation to the Final Hearing.

8 It was agreed that the issues relating to liability and remedy (if appropriate) would be investigated and determined by the Tribunal at this hearing.

9 We discussed the List of Issues provided to us in detail with the parties' representatives at the start of the Final Hearing. Some adjustments were made by agreement and the final version of the List of Issues was sent to the Tribunal on the second day of the Final Hearing. Accordingly, the issues which the Tribunal were required to investigate and determine by the Tribunal were as follows, both parties being in agreement with these:

[Please see Annex A of this Judgment]

10 The claimant gave evidence on her own behalf, and she produced a written witness statement.

11 Colin Dewar (Operations Manager), Danny Simpson (Senior IOPC Lawyer), David Emery (General Counsel), Sal Naseem ([Former] Regional Director for London), Steve Noonan (Director in the Directorate of Major Investigations [now Acting Director of Operations]), and Derrick Campbell (Regional Director – Midlands/Grievance Appeal Manager) gave evidence on behalf of the respondent, all of whom produced written witness statements.

12 We granted permission for parties' representatives to ask supplementary questions to the witnesses that they called where appropriate, except that in respect of Mr Emery we refused permission for the respondent's representative to ask questions about Mr Naseem's attendance at training. We did not consider that that would be in accordance with the overriding objective set out in Rule 2 of the ET Rules, nor that it was reasonable or proportionate to do so. Moreover, any evidence relating to attendance at training could reasonably have been set out in Mr Naseem's witness statement.

13 Ms S Crawshay-Williams of Counsel represented the claimant during the hearing and Miss O Checa-Dover, also of Counsel represented the respondent during the Final Hearing (except that on 02 February 2024 the respondent were represented by Miss V von Wachter of Counsel).

14 The Tribunal were provided with detailed written representations by both the claimant's representative and the respondent's representative, which we found to be informative. In addition to these, both parties' representatives supplemented those representations by way of oral submissions.

15 At the outset of the hearing, parties' representatives agreed to work to a timetable to ensure that the hearing was completed in the time allocated.

16 The Tribunal reminded parties' representatives of the need to co-operate and to assist the Tribunal to further the overriding objective. Parties and their representatives assisted the Tribunal to meet its overriding objective and the evidence and submissions were completed within the allocated hearing timetable.

Findings in Fact

17 On the documents and oral evidence presented the Tribunal makes the following essential findings of fact restricted to those necessary to determine the List of Issues:

Background

18 The respondent is the Independent Office for Police Conduct ("IOPC"). The IOPC are responsible for conducting independent investigations into the conduct of police officers, including specifically following mandatory or voluntary referrals from the police. Low level public complaints are dealt with by police forces who investigate at local level and provide the complainant with a report and a right of review to the IOPC. IOPC Casework Managers undertake reviews, which can either be upheld, not upheld, or in some cases remitted for further investigation. Where conduct issues are identified, this can lead to independent IOPC investigation. IOPC lawyers can be asked to advise on reviews if required.

19 The claimant's employment with the respondent started in 2004 when she was employed as a PA to the Chief Executive of the respondent's Predecessor organisation, the Independent Police Complaints Commission ("IPCC"). The claimant thereafter worked in the role of Casework Manager for approximately 12 years.

20 The claimant commenced the role of investigator in 2016 and in 2017 she was appointed to the role of Lead Investigator.

Claimant's training

21 On 30 January 2020, the claimant attended a training event titled "legislative change workshop" which was part of IOPC Operations Training.

22 At that training session, the claimant received training in relation to the changes arising from new Regulations and Statutory Guidance that applied from 2020. This included matters relating to the definition of misconduct. The definition of gross misconduct was not changed.

23 In addition, the training was in relation to severity assessments (which are carried out during an investigation process into the circumstances of a complaint), and also relating to the fact that the investigating officer was under a duty to refer the case to the Director General as soon as reasonably practicable in order that a severity assessment could be made.

24 Whilst the relevant legal provisions require that any decision was made in the name of the Director General, the respondent's Scheme of Delegation (dated 29

January 2020) provides that Paragraph 6A of Schedule 2 of the Police Reform Act 2002 ("the PRA") sets out how the IOPC Director General can delegate their functions. The Director General may authorise any IOPC staff or constable seconded to the IOPC to exercise any Director General function on behalf of the Director General.

Claimant's emails relating to Ms Williams and Mr Dos Santos case

25 A high-profile incident relating to Ms Bianca Williams and Mr Ricardo Dos Santos (two well-known athletes) during which Metropolitan Police Service ("MPS") officers had stopped and searched a vehicle which was driven by Mr Dos Santos on 04 July 2020, had been featured on the national media. In addition, material had been shared on social media.

26 The claimant sent an email to Robert Mann, Operations Team Leader on 06 July 2020 at 08.56am expressing an interest in the case:
"If we get this case or if it's called in, could I have it? I know we can't pick n choose but if possible?"

27 Mr Mann replied by email that morning sent at 09.35am stating:
"I'll have a go, but they'll ask me why you want it so can you just send me a brief idea?"

28 At 09.41am on the same day, the claimant responded as follows:
"It might not arrive but we could call it in.
Just because I have huge experience of dealing with such cases from when I was in casework and I feel really strongly about the way the police do this sort of thing. I'm sure others would feel the same but I feel I would have a bit of a head start as I dealt with so many similar cases. Would hate it to be overlooked and again wait to see it come in as an appeal as so many times before."

29 Mr Mann (who was the claimant's line manager at the time) forwarded the claimant's request to Mr Colin Dewar, Operations Manager (who was Mr Mann's line manager at the time) on the same morning, who replied:
"I've flagged this to Sal.
He was already aware and had some dealings with this over the weekend.
We'll see where it goes, and as soon as I know, I'll let you know."

Claimant's involvement in Ms Williams and Mr Dos Santos investigation

30 The claimant was appointed the Lead Investigator in relation to the investigation involving Ms Bianca Williams and Mr Ricardo Dos Santos, which the MPS had referred to the IOPC on 07 July 2020 as this was a matter of significant level of public interest (as exhibited through both social and mainstream media). Brett Gerrard, Head of Assessment Unit of the respondent confirmed in his email sent on the same day at 5.17pm that he was declaring this as an independent investigation in the absence of a summary and assessment being completed due to the significant public interest/media attention and alleged police discrimination.

31 Mr Sal Naseem was Interim Regional Director for London from 2019 (prior to that role he was Head of Assessment for the IOPC since January 2018 and Senior Assessment Manager in 2015, and he had worked for the IPCC prior to that date). In the past, Mr Naseem had also worked for the Audit Commission, Ombudsman, OFCOM, and he had decision making experience at judicial review level.

32 Mr Naseem prepared a statement on behalf of the IOPC in terms that they were investigating the incident in question on 07 July 2020 (a copy of which appears at pages 501-504 of the Hearing Bundle).

33 Mr Naseem stated at that time, within the mediate statement, that:
""Ensuring public confidence in policing is a vital part of our role. We will be independently investigating a stop and search incident that took place in Maida Vale, London, on Saturday 4 July . Video footage of the incident was widely shared on social media and a voluntary referral has now been made to us by the Metropolitan Police.

"We recognise this incident has attracted considerable public interest based on the partial footage that has been circulated, we will be independently examining whether the use of stop and search on this occasion was appropriate and proportionate in line with approved police policies.
"We will also investigate if racial profiling or discrimination played a part in the incident."

34 He sent an email to Colin Dewar and other individuals on 07 July 2020 at 4.09pm stating, "incoming independent…heads up so you can think about where this needs to go."

35 Mr Dewar replied the same day at 5.42pm advising that the claimant had expressed an interest in taking on the investigation. He stated:

"If at all possible, Trisha has expressed an interest in taking this one on. Not sure if she's on the list, but she will definitely make space to do this one. I'm off on Weds, so please liaise with Rob."

36 On 08 July 2020 at 09.18am Adam Stacey sent an email advising that the claimant would be Lead Investigator, Mr Mann the Supervisor, and Mr Dewar the Operations Manager/Decision Maker.

<u>Claimant's initial assessments</u>

37 The claimant was provided with evidence including Body Worn Video footage from officer's cameras, Cleartone camera footage from the police carrier and copies of statements provided by the officers involved in the incident.

38 The claimant, in her role as Lead Investigator, reviewed the initial evidence and prepared a Severity Assessment.

39 The claimant sent an email on Saturday 11 July 2020 at 7.57pm to Mr Dewar copied to Mr Naseem, Mr Mann, and Isabella Velody (Investigations Support Unit):

"Just to give a heads up ahead of the initial meeting on Monday. As you know the MPS put out press lines which I believe went out as follows:
'In this instance, officers from the Directorate of Professional Standards Unit have reviewed both footage from social media, and the body-worn video of the officers on scene, and are satisfied that there is no concern around the officers' conduct'.
Having looked at the BWV and reviewed the statements and other evidence, I am of the view that this investigation will become subject to special procedures because there is an indication that some of the officers might have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings. There is more evidence to come in and further review of what we have is necessary but this decision is not likely to change.
I thought it would be helpful to let you know my thoughts at this early stage since there is likely to be a pushback from the MPS."

40 Mr Naseem replied on 12 July 2020 advising the claimant:

"Thanks for sighting me on this Trisha. It will be good to understand your initial concerns based on what you've seen at the initial meeting as I'll need to brief Michael on this, given the profile of the matter."

41 The claimant attended an initial meeting on 13 July 2020 to discuss the Ms Williams and Mr Dos Santos investigation along with Mr Dewar, Mr Mann, Ms Emily Cairns (Discrimination Lead/Lead Investigator), and Isabella Velody. At this meeting there was an update on the case and progress of the investigation, along with legal matters (potential criminal offences under consideration), and general case management.

42 The claimant sent an email to Jules Carey, Partner at Bindmans LLP Solicitors (who were representing Ms Williams and Mr Dos Santos) on the same day at 4.40pm commenting that Michael Lockwood was being kept up to speed about the case by Mr Naseem as the case progressed. The claimant stated that they discussed the evidence so far, set a time frame of 3-6 months for the investigation and that she would draft the terms of reference by the end of the week. She also requested statements from Ms Williams and Mr Dos Santos.

<u>Sal Naseem's involvement/assessment</u>

43 Mr Naseem sent an email to Mr Dewar and Mr Mann on 14 July 2023 stating:
"I briefed Michael about this case and he was reassured everything at this early stage was in hand, he has however asked for a briefing ahead of any decision being made on this case. So I would say anything significant which might attract media attention we need to be sighting him.
I`m happy to do this alone and equally happy if you want to be part of the conversation, but if you can bear the above in mind that would be appreciated."

44 Mr Naseem sent an email to the claimant and other individuals on the same day advising that a press statement had been issued. That press statement made reference to the independent investigation that was ongoing, part of which would include investigating "…if racial profiling or discrimination played a part in the incident."

46 Mr Naseem had sought legal advice at the time.

47 There was email correspondence between Emily Cairnes and the claimant on 15 July 2020 in relation to the investigation. The claimant stated in her email sent at 5.22pm (see page 530 of the Hearing Bundle):

"Thank you. I had thought about something similar especially due to the way they were handcuffed and held on the roadside for nearly an hour opposite their home and in clear sight of neighbours and passers by. It was humiliating and in my mind, deliberately so.
The fact of the officers making a Merlin record for the 3 month old baby is also worrying – whether this is something they do as a matter of course or just in this case."

48 On 16 July 2020, the claimant forwarded an email from Bindmans Solicitors dated 16 July 2020 (which detailed complaints about communications put out by the MPS and the hateful and hurtful reaction that has been caused by them) advising:

"This is an extraordinary thing for Mr Marsh to have given to the press and borders on interfering with our independent investigation in my view. I told Jules Carey I would pass it on. (see page 547 of the Hearing Bundle)"

49 On 17 July 2020 the claimant sent an email to Sandhya Kapila, Presenting Lawyer advising that the claimant would discuss their advice with Mr Mann and Mr Dewar and do the necessary to make a referral to the CPS.

<u>Radio interview between Nick Ferrari and Former Commissioner Cressida Dick</u>

50 On 22 July 2020 Cressida Dick, Former Commissioner of the MPS stated during a radio interview with Nick Ferrari (who at the material time hosted a weekday breakfast show on the LBC radio station and a question had been asked by a caller named "Sasha"):

"Thank you Sasha. So first of all, I don't personally accept that what we have seen so far on the video in relation to the stop of Miss Williams reveals racism. As you may know, the Independent Office of Police Conduct are looking at this and I of course wait to see what they say; however, having seen some of the footage myself, I would say that any officer worth their salt would have stopped that car that was being driven in that manner and secondly, my professional standards people have looked at it and they don't see any misconduct but –"

51 Thereafter Mr Ferrari asked a further question and the radio interview continued. The remainder of the transcript of that interview appears at pages 555 to 557 of the Hearing Bundle.

52 Jules Carey of Bindmans LLP sent an email to the claimant on 23 July 2020 advising her about the Former Commissioner's comments during that interview.

53 The claimant sent an email to Mr Dewar on 24 July 2020 to advise him about those comments. The claimant referred in her email to, "Further unhelpful MPS comments on air, this time from the Commissioner, in case like me, you were unaware."

Terms of Reference

54 On 28 July 2020 the claimant received a document from the complainant's solicitor setting out the basis of their complaints (see page 559 of the Hearing Bundle).

55 The claimant sent the complaint summary to Mr Dewar by email on 28 July 2020 copied to Mr Naseem and other individuals. In the same email she stated that the issue of racial profiling could be added to the Terms of Reference to help capture the full extent of the complaint. The claimant sought advice by email dated 29 July 2020 from Sandhya Kapila in relation to adding this to the Terms of Reference (the revised Terms of Reference were sent by email dated 29 July 2020, a copy of which is at pages 563-565 of the Hearing Bundle).

56 The revised Terms of Reference sent by the claimant included details of the Director General (DG) Delegate (decision maker) who was Mr Dewar, Lead Investigator (the claimant), and the target timeframe of 3 to 6 months for the investigation.

57 The claimant prepared draft Severity Assessments which were due to be discussed at the meeting on 05 August 2020. Sundhya Kapila and Andrew Truby (a lawyer working within the respondent's legal team) were not working at the time and they could not review the claimant's draft assessments.

58 On 04 August 2020 Mr Dewar sent an email to the claimant copied to Mr Mann and Sophie Horner advising:
"Due to the high profile nature of this incident and organisational risk involved, I have asked David Emery to assign a senior lawyer to work with you on this case. Sandhya will remain involved but Danny will the senior lawyer for this.
Also, because of the above, Sal will take the role of DM going forward. This will probably not take place until next week, so we can arrange for him to be fully briefed at that stage."

59 Mr Dewar sent an email on the same date to David Emery, General Counsel copied to Mr Naseem advising Mr Emery that Mr Naseem had decided that the Decision Maker role for the ongoing investigation would best sit with him. It was

also stated that Mr Lockwood was aware of the investigation and he had asked to be kept up to speed every step of the way.

60 The claimant sent three draft Severity Assessments to Danny Simpson, Senior Lawyer on the afternoon of 04 August 2020. The claimant advised that officers A, B and D's conduct had been assessed as amounting to gross misconduct (if proven or admitted). The claimant set out her rationale in each instance.

61 Later that day the claimant sent two further draft Severity Assessments to Andrew Truby relating to Officers C and I in which she stated that their conduct had been assessed as amounting to gross misconduct (if proven or admitted).

62 Mr Truby reviewed the claimant's assessments and made a number of amendments, which were sent to the claimant by email.

63 The claimant thereafter provided officer's F's severity Assessment in draft form stating that their conduct had been assessed as amounting to gross misconduct (if proven or admitted).

64 There were a number of correspondences during which the draft Severity Assessments were discussed between the claimant, Mr Simpson, and also, Mr Truby.

65 Following advice from Mr Simpson on 11 August 2020, Mr Naseem sent an email to the clamant on that date requesting that (if she had not done so already) she sends the complaint to the Directorate of Professional Standards ("DPS") of the MPS and also to the Mayor's Office for Policing and Crime ("MOPAC") for their respective recording decisions.

66 Mr Dewar sent an email to the claimant and other individuals copied to Mr Naseem on 12 August 2020 advising:
"On Monday, Sal and I met with Michael to give him an update on where we are with this investigation. As you know, Michael is interested in this case due to its high profile nature, so much so that he spent a couple of hours on Sunday watching BWV!
Michael wanted me to let you all know how much confidence he has in the team, and that he doesn't underestimate some of the challenges that this investigation may bring.
We will be keeping Michael updated on a weekly basis, and we will give him notice of any important milestones as we approach them."

67 The claimant sent an email on 13 August 2020 to Mr Truby copied to Mr Naseem and other individuals as follows:
"I previously made reference to my concerns that this was a training exercise to give officer A an opportunity to practice s1 stops – it looks very like it on the BWV

and Officer Ds recent Trainer course adds to this suggestion as it is he who is talkin Officer B through everything. Whilst officers might need to practice their skills it shouldn't mean people are stopped just for the sake of it. I have seen this before with unsuspecting black men picked up for no good reason. (Commissioner Mike Franklyn actually got one such person in to meet him and said he would get the MPS to apologise but Debra Glass blocked this.)
The reason I mention the 'training' aspect of this is because they appear to be going through everything they can think of – weapons, drugs, driving offences, stolen car – trying to pin something on him but also getting Officer B used to dealing with each area. And they persist with going through the motions even when they are told these people are international athletes etc.
Very happy to take as much time as it takes to get these watertight. My name will be on them after all :)"

68 An email was sent from Mr Mann to Mr Sahodree copied to the claimant and other individuals stating: "Just wanted to say thank you for your continued support for exhibit management on the above case, it's really appreciated. As you'll be aware the DG is very much interested in this case, as is Sal who is now the DM."

69 Mr Mann sent an email to Mr Simpson copied to Mr Dewar, the claimant and Mr Naseem on 19 August 2023 advising that it was taking longer than anticipated to send the draft Severity Assessments to Mr Simpson. It was proposed that two of the Severity Assessments would be sent to Mr Simpson by the claimant. He expressed that he did not want to draw any criticism from the MPS about any delays that they were causing in this investigation. He stated:

"As our current opinions on the actions of these officers goes directly again statements from the MPS, I think there is potential for any criticism they can make to be made."

70 Thereafter, the claimant sent two Severity Assessments to Mr Simpson copied to Mr Mann by email on 19 August 2020 at 1.49pm relating to Officers D and B.

71 On 20 August 2020 Mr Truby advised the claimant by email copied Mr Naseem, Mr Dewar, Mr Mann and Mr Simpson under the heading of 'criminality':
"This is an issue which we have yet to consider and no doubt, as the DM, is something which Sal will want to give some thought to in due course. However, it may be helpful if I were to share my initial views on this issue now. And then we can discuss in more detail at the case review meeting scheduled for next week"

72 Mr Truby provided legal advice in his email and recorded what he described as his legal notes and observations in the attachment to that email after having reviewed the Body Worn Video footage (see pages 850-853 of the Hearing Bundle).

73 On 20 August 2020 the claimant sent an email to Mr Truby copied to Mr Naseem and other individuals advising:
"Thanks for the advice note. I attach the three SAs as agreed and await Officer Cs when you have reviewed it.

I have already alerted the CPS to the case as the STL needed to be flagged. They will provide early advice if needed.

None of the officers are on restricted duties, as you recall the MPS said they reviewed the matter and no issues of conduct were found. I would only expect this to happen when the SAs hit the AAs desk.
I will forward the revised three SAs after I have added the lines as per your advice note."

Sal Naseem's Review

74 On 21 August 2020 Mr Naseem sent an email to Mr Simpson requesting a 15-minute call to discuss the case and some initial thoughts on the Severity Assessments. Mr Simpson replied by email on the same day agreeing to have a call with him.

75 Towards the end of August 2020 an undated letter was sent from Matthew Horne, Deputy Assistant Commissioner to Mr Naseem in relation to the MPS response to the IOPC's learning recommendations made under paragraph 28A, Schedule 3 to the Police Reform Act 2002 (see pages 891-900 of the Hearing Bundle). It was confirmed that all of the learning recommendations were accepted by the MPS.

76 On or around 24 August 2020, having reviewed the evidence including the Body Worn Video footage, Mr Naseem spoke to Mr Simpson about the draft Severity Assessments.

77 On 25 August 2020 at 12.55pm Mr Naseem advised Mr Simpson by email that he had reviewed the three Severity Assessments he had been provided with and that he would aim to review the 4 outstanding assessments prior the meeting on the next day.

78 On 25 August 2020 Malin Cleightonhills, Lead Investigator sent an email to Mr Simpson copied to Mr Truby advising that the claimant had asked Malin Cleightonhills to prepare and send the Regulation 17 notices for the officers whose severity assessments had been reviewed/agreed with Legal and attached draft Regulation 17 notices for three officers (Officers D, B and A) for his review.

79 On the same date Mr Simpson sent an email to Malin Cleightonhills copied to Mr Truby advising:
"Thank you, I understand Sal is considering the severity assessments, so it might result in unnecessary work if we provide any advice on these now, so no hurry."

80 Following Mr Naseem's request, the claimant sent a copy of the severity assessments to Mr Naseem by email dated 25 August 2020 at 3.12pm. The claimant advised that three severity assessments had been sent to him previously. She also advised in relation to four further severity assessments that they had not been reviewed by Mr Truby, and that Malin Cleightonhills had been preparing the

Regulation 17 notices. Mr Naseem replied at 3.13pm thanking the claimant and advised that he would review these as drafts in any case.

81 Mr Truby sent an email on 25 August 2020 at 6.34pm to the claimant copied to Mr Naseem, Mr Dewar, Mr Mann and also to Malin Cleightonhills containing the revised severity assessments for officer's D, B and A.

82 That evening, at 6.51pm, Mr Naseem sent an email to Mr Simpson expressing initial concern around the Severity Assessments he had been reviewing in the following terms:
"An initial concern of mine around these severity assessments is the level of detail we have entered into here. From my limited knowledge, it feels quite intrusive for a SA. Obviously, I`m going to discuss these tomorrow but conscious of the level of any potential rework that might be required.
Anyway, will carry on working through them all."

83 Mr Naseem's use of the word "intrusive" was a reference to the unexpectedly rather detailed content of the Severity Assessments.

84 On 26 August 2020, Mr Naseem met with Mr Mann, the claimant, Mr Dewar, Mr Truby and Mr Simpson and he informed them that he had taken over the Decision Maker role for this case formally that week. Mr Naseem explained that he would be making the final decisions on the Severity Assessments due to the profile and risk of the case. The plan was that Mr Naseem would look at everything and complete the Severity Assessments by close of play on the Sunday of that week and then send them across to Danny Simpson. It was then agreed that Danny Simpson would look at these with Mr Naseem with a view to getting them out the following week. One of the action points also included Mr Naseem thinking about a referral to the CPS.

85 Rezwana Khanom, Executive Assistant to Mr Naseem sent an email on 26 August 2020 at 11.58am to Mr Mann, the claimant, Mr Dewar, Mr Truby, Mr Simpson, and Mr Naseem had attended containing the actions from the meeting that took place that day (see pages 1044 to 1045 of the Hearing Bundle).

86 Two of key points from the record of that meeting were recorded as follows:
"SN to take over decision maker role for this case formally this week. This is one of the top three cases for the DG in terms of profile.

Severity assessments (SA)
Due to the profile and the risk SN will make the final decision on the SA."

87 There were correspondences thereafter (from 27 August 2020) between the claimant and Mr Truby in relation to the Severity Assessments. Mr Truby sent an email to the claimant on 27 August 2020 at 2.37pm advising:

"In light of the fact that Sal will be reviewing all of these over the long weekend. Following which Danny will be undertake a 'high level legal review'; unless there are any glaring omissions or suggested revisions which you fundamentally

disagree with, it probably doesn't make sense for you to update this document further at this stage.

I hope you will agree that would be a sensible way forward?"

88 The claimant replied on the same day by email sent at 2.38pm stating "agreed."

89 On 28 August 2020 Mr Naseem sent three Severity Assessments (Officers A, D and B) to Mr Simpson with amendments and his rationale. He stated:

"While I note the inconsistencies between what [name redacted] has stated in her UoF form and what the BWV shows, I cannot state with any certainty that this equates to operational dishonesty as set out in the College of Policing Guidance on outcomes in police misconduct proceedings. At this stage I am not persuaded that it is clear that these differences are so great that they could not be down to a difference of perception at the time by Officer A in terms of the short pursuit and the "tactical communication" given. In terms of the other two points, I consider one to be a clear factual inaccuracy and the other around the potential presence of a weapon an area to be further explored in terms of the SPoBs where we have identified an indication of a potential breach.

It is my view, that these inconsistencies rather than being a breach of the SPoB in of themselves at this stage, instead can be used to lend further weight to the potential breaches of the SPoB for; Authority, Respect and Courtesy, Use of force and Duties & Responsibilities.

In terms of Equality & Diversity, I am not persuaded that an indication is made out unlike the rationale provided in respect of Officer B and Officer D. There is no evidence to support Officer D an infringement of this SPoB on the basis of the vehicle stop. Equally, the concerns around officer A's role in this incident focus on her supervisory role and the application of handcuffs in the circumstances and the length of time these were kept on Ms Williams. Based on the available evidence, I cannot at this stage find an indication that discrimination played a role in the aforementioned SPoBs where concerns have been identified.

In the absence of any potential breaches of the SPoBs for; Honesty & Integrity and Equality & Diversity, I have then reviewed the overall level of the severity assessment.

I am not of the view this now remains at potential Gross Misconduct if proven but rather it is now at the level of Misconduct if proven or admitted. This assessment should of course be kept under review for the duration of the investigation."

90 Mr Naseem also commented in his email (at pages 1071 to 1073 of the Hearing Bundle) on his rationale relating to the other two Severity Assessments.

91 On 29 August 2020 Mr Truby sent an email to Mr Naseem copied to the claimant and other individuals attaching clean copies of the severity assessments and advising in the following terms:

"In the meantime, we have discussed at some length already the issue of 'honesty and integrity' in relation to the officer's completion of their MG11's and/or UOF forms. As I advised during our meeting earlier in the week, my view is that honesty and integrity allegations are very difficult to prove. But in
any event, in this case, my provisional view is that the threshold for misconduct is already met in relation to ALL these officers, without any reliance on a breach of the SoPB for honesty and integrity. However, in relation to some of the officers, the disparities between what they have said in their MG11's and/or UOF forms and/or other documentation is so divergent from the available evidence (in particular the BWV), that I do not believe they can be accounted for simply by mis-recollection or difference of perception/interpretation. In any event, I have no doubt you will pay particular attention to this 'thorny' issue when considering matters."

92 Mr Naseem sent an email to Mr Truby on the same date copied to the claimant and other individuals advising that he will be looking at these over the weekend and he will then forward them to Danny Simpson.

93 On 30 August 2020 Mr Naseem sent the outstanding Severity Assessments for officers E, I and C with amendments and his rationale. He also commented on Officer F's Severity Assessment and explains the rationale for his disagreement.

94 On 01 September 2020 at 6.09pm Mr Simpson advised Saiqa Shaffi: "I noticed you had opened a file for Bianca Williams concerning the referral of Cressida Dick, I have added "referral of Cressida Dick" after her name so we don't record time etc on the wrong one."
95 Mr Simpson also sent an email that day to Mr Truby setting out his views in relation to the Severity Assessments.

96 In reply to Mr Simpson's email sent at 01.36am that day, on 02 September 2020 at 7.54am Mr Naseem sent an email to Mr Simpson agreeing with his comments and advised that he was happy to go with his advice and that for him the biggest concern was ultimately with the use of force and the general manner in which the stop and search was conducted.

97 By an email dated 02 September 2020 sent at 1.17pm Mr Simpson advised Mr Truby that he had a few concerns about the way the evidence is recited in the Severity Assessments having reviewed the Body Worn Video transcripts and he particularised his concerns in his email.

98 On 02 September 2020 at 4.55pm Mr Mann sent an email to Mr Dewar and Mr Naseem:
"I've spent some time talking with Trisha and then Danny to go over what he is going to have another look at. Its extremely unlikely that he will change his advice around honesty and integrity and I completely understand his reasons for doing so. I mention this as not including the honesty and integrity in the SAs has

been something that Trisha is struggling with, well that amongst other case issues.

As such I firmly believe that it is better for the organisation and Trisha that this case is given to another LI very quickly, if not immediately. You are both aware that Trisha has other personal issues, I am concerned that the direction of this case is so different to her own wishes/views that we run a personal and organisational risk that we must not take.

Unfortunately I cannot give this to either of my other two LIs, who both have high pressure sexual gain cases due at court very soon., but will obviously still case supervise anyone else Colin may be able to allocate this to."

99 Mr Naseem replied to that email on the same day at 5.06pm advising that he respected Mr Mann's advice and he agreed that it seemed the best way forward in this situation. He asked that the claimant should ensure that there is a robust handover/document in place.

100 There had been a meeting on 02 September 2020 between Mr Naseem and the investigation team including the claimant. Mr Naseem communicated the final decisions on the Severity Assessments, which were still provisional at the time because they had to be sent to MPS for final comment. As the Director General's delegate under the Police (Conduct) Regulations 2020 ("the 2020 Regulations"), Mr Naseem was required to consult with the MPS as the Appropriate Authority ahead of finalising his decision on the provisional Severity Assessments. The reason that his final decision differed from the claimant's decision was because, at that time, he had not found that there was sufficient evidence to support the presence of potential breaches for the Standards of Professional Behaviour for Honesty and Integrity and Equality and Diversity. Mr Naseem's rationale was that there were some discrepancies in the account given by the officers and the evidence as revealed by Cleartone and Body Worn Video material. However, Mr Naseem was of the opinion that such discrepancies may have been explained by errors in recollection and/or perception and it did not appear to him that there was sufficient evidence at that time to indicate deliberate lies or fabrication of the account in a manner which would breach the honesty and integrity standard.

101 It did not appear to Mr Naseem that the decision to stop the vehicle indicated any breach of the Standards of Professional Behaviour. Both Ms Williams and Mr Dos Santos believed that they were stopped due to their ethnicity and that they were in an expensive car. On the evidence available, the officers denied knowing the ethnicity of those in the car prior to the stop. The account was that the decision to stop arose out of the manner of Mr Dos Santos' driving. The evidence was that the driver of the vehicle may have been visible to the officers but there was also some support for the officers' account about Mr Dos Santos' driving. Mr Naseem stated in his explanation provided at that meeting that these matters would be further investigated, which was part of the ongoing review, but it did not seem to Mr Naseem that there was sufficient evidence for an indication of a breach of the Equality and Diversity Standard at that stage.

102 The claimant sent an email to Mr Naseem and Mr Simpson on the morning of 03 September 2020 (at 8.33am) stating:

"Following the call yesterday I am at a loss to understand how you can ignore the comments made by the seven officers in their statements which is in clear conflict with the Cleartone footage. I said at the beginning when I first looked at the case that the officers might be able to explain away their actions but the fact that they had lied in their statements was the killer breach. When Jules Carey sees the statements- which he will at some point - what do you think he will say if we haven't included honesty and integrity in the notices?"

103 Mr Dewar sent an email on 03 September 2020 at 08.45am to Mr Naseem as follows:

"I'm disappointed Rob didn't speak to me about this, but I'll take that up with him when he returns from a/l.

I have to say that I think this is wrong and risky on so many levels. The bottom line appears to be that Rob thinks Trisha should be replaced because she doesn't like the direction of travel of the investigation, and disagrees with your decision. I appreciate that Trisha has had a recent bereavement, but she was happy to continue when she was driving the investigation. We are supposed to be a professional organisation, and I really do take issue with this kind of reaction to unfavourable decisions.

To replace Trisha now means discarding her in depth knowledge of the case and the relationship she has built up with the complainants and DPS. There is also the perception this course of action creates, both internally and externally.
As I said, I'll speak to Rob next week, I'm not sure there's any merit in rushing to find a replacement now, so if you are in agreement, I will wait until next week before we move on."

104 Mr Naseem replied by email that day advising:

"Sorry I didn't know Rob hadn't spoken to you about this.
I was reflecting on this last night and agree that LIs cant in essence dictate what jobs they take on/continue with. Just because Trisha didn't agree with my decision isn't a good enough reason for her not to continue. But, I am also mindful of the level of risk posed by this investigation and also from Rob's email I took the welfare considerations to be becoming a stronger concern. I am a bit worried following yesterday's meeting whether this is impacting Trisha's performance on this case, given the nature of her observations.

On balance, I felt it was the right course of action for a new LI to be assigned to this, but in fairness you should have been sighted ahead of this email trail."

105 Mr Naseem responded to the claimant's email on the same day at 9.39am in the following terms:

"I`ve explained the position clearly in our meeting yesterday, as has Danny, as such this is not something I am prepared to set out again over email.
I appreciate you have a different view but as the decision-maker for the severity assessments I am comfortable the position that I have reached, and which will be articulated in the severity assessments, is defensible and rationale.
I note the anticipated challenge by the solicitor, and will deal with this if it arises."

106 Mr Naseem advised in an email that day, at 1.36pm, sent to Mr Truby and copied to the claimant and other individuals that the matters he referred to should be recorded and saved to Perito as his decision in terms that the matter is not to be investigated as a criminal matter. Mr Dewar responded to that email on the same day at 1.45pm advising that a further decision in terms of whether this was a criminal investigation (and as to whether to refer the matter to the CPS) would need to be taken at the end of the investigation. Mr Naseem replied that day at 2.59pm advising he had made adjustments to make this clearer.

107 Mr Truby advised in his email sent to Mr Naseem and copied to the claimant and other individuals that Mr Naseem's policy decision was absolutely fine, and he set out the rationale for this (rationale for non-CPS referral).

108 On 04 September 2020 at 2.49pm Brett Gerrard sent an email to Mr Naseem and the claimant advising:

"The complaint against the Commissioner will be RTF as the indication test is not met. I have sighted Michael and David Emery has agreed the legal advice. I will be adding some wording to the letter suggesting the Commissioner and senior officers may wish to be careful with what they say so as not to prejudice investigations.
We will write a letter to the complainants which we are looking to go out early next week. Anything you would like me to consider re the complainants or anything else before the decision goes out?"

109 The claimant replied to Mr Gerrard's email that day at 3.12pm stating that she did not understand the rationale for that decision and she believed that Mr Lockwood was having a meeting to discuss it next week. She expressed that in her view things seemed to be changing in an irrational way. Mr Gerrard replied to the claimant's email as follows:

"The decision is done so I did not want to delay another week for this to go out. Michael just wanted to understand it which he does. We have to apply the Indication test to Chief Officer referrals so treat them differently to others. David Emery has agreed with the advice that the test is not met and so we are required by the PRA to RTF it."

110 A telephone call took place between Mr Dewar and the claimant on 07 September 2020. The record of that call (which we accept is an accurate record) at page 1556 of the Hearing Bundle records that:

"Called Trisha at 12.18pm for about 10 minutes. At the end of last week Rob informed Trisha that Sal had agreed to change lead investigator. I explained that Rob had not spoken to me, and Sal assumed he had when he came to this decision, and that we had a meeting later in the week to discuss. I asked why Trisha couldn't continue to be LI. Trisha said repeatedly that it's not her case anymore and so she cannot continue. The SA decisions made by Sal are non-sensical, and are not backed up by the evidence. She disagrees with them in the strongest possible way and feels this is just Sal letting Cresida Dick off the hook. I asked again, probably about 3 times, why, just because she disagreed with the decision, she could still not be the LI. Trisha repeated that it's not her case anymore, and she feels extremely strongly about this. I suggested that she was still the best person to investigate as these elements, mainly the honesty and integrity, still form part of the ToR and will need to be examined. Trisha said it was a matter of principle and if she was not replaced, she would resign."

111 Mr Dewar sent an email to the claimant on 08 September 2020 at 11.48am advising:

"Following on from our conversation yesterday, Dave King and his team will take over the Williams and Dos Santos investigation. Can you please ensure that Perito is up to date and liaise with Dave, regarding a handover and what form this should take.

Thanks for all your work on this case.
I will prepare a response for Bindmans. I would like to run it by you before I send it."

112 The claimant responded by email on the same day at 11.50am stating "Cheers Thank you Colin."

113 On 08 September 2020 at 2.07pm Jules Carey of Bindmans Solicitors advised Mr Naseem that the obvious inference from the inordinate delay and absence of an explanation, is that the Severity Assessments became a political issue at the IOPC.

114 Mr Naseem informed Jules Carey at Bindmans Solicitors on 08 September 2020 at 2.49pm by email that:

"I have recently taken over as decision-maker on this investigation and would like to apologise for the delay in this matter. We are at the minute in the process of reassigning this to another Lead Investigator and once this process has taken place you will return to having that consistent point of contact. We will update you as soon as we can on this point."

115 Mr Naseem sent a further email on 09 September 2020 at 3.51pm providing his substantive reply to Jules Carey's email sent the previous day, and within his response he addressed the following matter:

"Finally, I am unclear as to the point you seek to make in relation to "political [issues] at the IOPC" and do not consider it would be productive to enter into a

dialogue with you about this. I can only reiterate that all cases of this nature (including of course your client's) are treated fairly and consistently."

116 Jules Carey sent further emails on 09 and 10 September 2020 raising concerns about the changes to the Severity Assessments.

Nishan Sahordree email correspondence

117 Nishan Sahordree, Lead Investigator sent an email to Karina Griggs, Operations Team Leader on 10 September 2020 at 3.16pm stating:

"As a disclosure manager, I have had access to and viewed the detailed summary of the van CCTV footage, BWV logs and the statements from the officers, where there are glaring discrepancies between the footage and the officers' accounts. It has been brought to my attention that honesty and integrity has been removed from the severity assessments for the officers and they have been downgraded to misconduct without much input from the Lead Investigator.

Whilst I understand under the scheme of delegation a senior member from the IOPC can ultimately overrule and make the final decision with regards to the severity assessments, it sits uncomfortably with me that the investigation, which had well founded serious allegations that amounted to gross misconduct, is being downplayed for the purpose of politics and I don't wish to become involved with that. That to me are actions which lack honesty and integrity and calls into question the overall independence of the IOPC and their attitude towards discrimination cases."

118 Earlier that day at 2.39pm he advised that he would be removing himself from the investigation due to lack of integrity associated with the decision making. He had stated in an email sent at 11.32am that morning, "I had a telephone conversation with Trish Napier this morning, whereby unbeknownst to me, the case has taken a disturbing change of direction with no input from Trish." Karin Griggs had advised him by way of an email sent at 3.06pm that that was not a decision for him to make.

Claimant's concerns

119 The claimant sent an email on 09 September 2020 at 4.47pm making a complaint to Mr Lockwood (see pages 1584 and 1585 of the Hearing Bundle).

120 Mr Dewar sent an email to Mr Naseem on 10 September 2020 at 4.38pm setting out his disagreement with the claimant's characterisation of events. He stated that the plan was clear right from the time that Mr Naseem had taken the Decision Maker role.

121 Mr Mann sent an email to Mr Dewar on 11 September 2020 recording the following notes of discussions with the claimant (which we accept are accurate records of the relevant discussions):
"10/9/20 - Telephone call with Trisha. She wants to take Sal down, the organisation is corrupt. He is part of a cover up to save Cressida Dicks' job and the MPS

embarrassment. She hasn't given any other info to Bindmans other than that relating to the case (SAs) when asked. She wants to hand notice in but cannot until she gets another job. Told her to be careful and not tell Bindmans anything. Bindmans have told her that they have other decisions that Sal has made that they are unhappy with.

11/9/20 - Telephone call to Trisha, asked her for blue book back but doesn't have one.

11/9/20 - Met Trisha in office, went to have lunch in Cabot square. Still wants to give her notice in but wants to 'go out with a bang'. Is intending to put grievance about Sal, surrounding the decision on the SAs. Believes he is corrupt and part of a cover up to protect Cressida Dick and the MPS. Unsure when will put notice in but is expecting the grievance process will elongate the time period as process takes some time. Advised her not to talk to Bindmans, asked to say that the case was no longer hers and that she couldn't help, point them to the new LI. She said grievance could get in the public domain, I asked how, she said she wouldn't leak it but things have been leaked before, no details forthcoming on how she is aware of this. She is also unhappy with another decision Sal took in the past when he decided that we should not independently investigate a referral, she said this was also corrupt and was made to protect the MPS. She also stated that Jules from Bindmans told her that his clients are considering withdrawing the complaint as they have no confidence in the IOPC, I asked her if she thought they would then go public, she thought they would.

As Trisha was leaving Alex J Hall spoke to me, apparently Trisha has been talking to him and most likely other staff about the corruption in the IOPC, she couldn't say too much as I had approached her and the group she was with at the time, so she stopped talking. She also stated she wanted to 'go out with a bang' to him."

122 Mr Naseem sent a further email to the complainant's solicitors on 11 September 2020 advising:

"Patricia Napier did not agree with my provisional severity assessments which have been submitted to the AA for consultation.
As a result of this disagreement Patricia asked to step down as Lead Investigator in this matter as she did not consider it appropriate for her to continue in the role. This has been agreed and on 9 September 2020 Nathalie Harvier was appointed as the new Lead Investigator.

As you may expect, disagreement within the investigation team on key decisions does sometimes occur. This does not always result in a new investigator being appointed but, in the circumstances, considering Patricia's own views, it was considered to be the most appropriate course of action."

123 Colin Dewar sent an email to Carolina Duque Valdes, People Business Partner copied to Mr Mann on 14 September 2020 setting out a number of concerns in relation to the claimant's actions (see page 1611 and 1612 of the Hearing Bundle).

124 Natalie Harvier sent an email to Bindmans Solicitors in relation to further investigation matters on 17 September 2020.

Claimant's grievance

125 The claimant's grievance was raised on 23 September 2020 (see pages 1714 and 1715 the Hearing Bundle). As part of her grievance the claimant stated:

"…However during a 3pm Skype meeting on Wednesday 2 September Sal suddenly announced that he had been discussing the assessments with Danny and had decided to remove the Honesty and Integrity SoPB breach, without discussion with me. I was completely blindsided by this as no criticism had previously been made of the scope of the assessments, nor the critical inclusion of Honesty and Integrity which I had raised from the outset and at the initial case meeting as being the 'killer' breach. I vigorously challenged this decision but was not given adequate rationale for it either during the meeting or the next day when Sal said he would not provide further explanation by email.

This was clearly a decision Sal had taken with no explanation of the legal basis of taking over the decision which was mine as lead investigator. Paragraph 19, Schedule 3, PRA and Regs 16 and 17 Police (Complaints and Misconduct) Regulations 2020 say the decisions on special procedures and content of notices should be made by the 'person investigating'. The legislation does not allocate this power to the Director General or his delegate. I have asked for rationale for this decision and its legal basis but have been given neither.

I would like an explanation as to why the decisions on severity assessments were given to someone with no IOPC investigating experience, training or accreditation. I feel that I have been undermined, ignored and my integrity has
been seriously compromised such that my position within the organisation has been rendered untenable. This is in serious conflict with the values of an organisation I have worked for tirelessly and with absolute dedication for over 16 years and raises questions as to the motivation for the actions described."

126 The claimant stated in relation to informal processes: "I have raised the matter of failure to provide rationale with RD Sal Naseem. I also forwarded a complaint to DG Michael Lockwood, forwarded to DDG Claire Bassett. I have discussed at length with OTL Rob Mann. To date no rationale or explanation has been provided to me. I am left with no alternative but to raise a grievance."

127 The outcome that the claimant sought was as follows:

"A full examination of decisions made, by whom they were made and the rationale for them, both in regard to the replacement of Colin Dewar as Decision Maker and the decision to overrule assessments written by lead investigator
Patricia Napier

Explanation and legality of decision to overrule assessments made by lead investigator"

128 By emails dated 23 to 25 September 2020, Mr Dewar (with the agreement of Mr Mann) advised that he intended to email the respondent's HR team suggesting that they supply the explanations that the claimant was seeking.

129 In response to Mr Dewar's email correspondence to the respondent's HR team that day updating them about the claimant's grievance and making a proposal in terms of the claimant being provided with an explanation, Mr Dewar was sent an email on 23 September 2020 from Claire Bassett stating:

"Thanks
For info this is what I sent her a little while ago

Dear Tricia

Thank you for speaking to me last week and apologies for the delay in following up. I would like to start by reiterating that I am sorry this has caused you so much concern and upset. I am sorry you felt that decisions in the case were not communicated to you clearly. I have spoken to Sal and Colin about this and understand your line manager has had further conversations with you and you are considering how to take this forward.

Given the nature of the concerns you raise I have asked Sarah Green to conduct a peer review of the severity assessment. This is a desktop review of the decision and the evidence so that I can have assurance that the decisions taken were reasonable and it should be concluded next week. In the meantime the investigation will progress as planned."

130 Mr Dewar sent an email to the claimant on 28 September 2020 at 5.33pm advising:

"Following on from the grievance you lodged last week, HR and Claire Bassett have asked that I address as many of your concerns as I can.
You have stated that the outcome you seek is;

"*A full examination of decisions made, by whom they were made and the rationale for them, both in regard to the replacement of Colin Dewar as Decision Maker and the decision to overrule assessments written by lead investigator Patricia Napier*
Explanation and legality of decision to overrule assessments made by lead investigator".
With this in mind I will attempt to provide you with as much information and explanation as I can regarding the decisions made and the timeline of events.
Once I have provided you with this, we can discuss next steps.
I will endeavour to provide this to you in the next couple of weeks or so, but I will keep you in the loop."

131 The claimant replied on the same day at 5.35pm stating, "Thanks Colin."

132 Having received the draft conduct submission/severity assessments for Officers H and F from Ms Harvier at 6.24pm that day, Mr Naseem sent an email to

Ms Harvier on 28 September 2020 at 6.45 advising: “Thank you for sending this through. I’d like to look at these and then discuss at our meeting on Weds if that’s ok. I`ve had an initial review and have to say that they look really well articulated and the point on pursuit in the police carrier, is not something I had considered previously or actually was an issue presented to me. Lets discuss on Weds with a view to me making a decision.”

133 Paul Betts, Commander – Professional Standards (MPS) sent a letter to Mr Naseem dated 23 September 2020 responding to the IOPC’s draft misconduct Severity Assessments, disagreeing with Sal Naseem’s assessments (see pages 1629 to 1713 of the Hearing Bundle).

134 Sarah Green, an IOPC Director (and Hillsborough Decision Maker), conducted a review of Mr Naseem’s Severity Assessments, deeming them to be reasonable (see pages 1905 to 1919 of the Hearing Bundle). The concluding paragraph of the report states: “I agree with the assessments made by the final decision maker post consultation with the AA. I have made some recommendations for further action as set out above.”

135 On 01 October 2020 Mr Naseem sent an e-mail to Paul Betts and Jay Franklin-Lester of the MPS attaching his final decision on the severity assessments, along with a copy of the revised severity assessments which had been under previous consultation. He responded to the observations from the MPS, rejecting them and set out the next steps in relation to the continuing misconduct investigation (see pages 1836 to 1841 of the Hearing Bundle).

136 The claimant sent an email to Roger Kerr, People Business Partner on 20 October 2020 advising that it was her wish for her grievance to be investigated fully and formally and she did not wish to proceed with the informal stage. The claimant requested that her grievance be progressed forthwith, and she indicated that there are a number of witnesses who wish to provide statements in support.

137 Mr Dewar prepared a report dated 03 November 2020 setting out the relevant chronology of events, Mr Naseem’s decision to become Decision Maker, the legal basis for making Severity Assessments, the decisions relating to the Severity Assessments and summarising their rationale, and he set out a summary of the different conclusions of Mr Naseem and the claimant. He states at the end of his report:

“In the severity assessments that Patricia prepared, you felt that the conduct, if proved or admitted, would amount to gross misconduct. Sal decided that the alleged breaches described in the final Severity Assessments would amount to Misconduct, not Gross Misconduct. The reason for this being:

“In the absence of any potential breach of the SoPB for Honesty and Integrity I have then reviewed the overall level of the severity assessment. I am not of the view this now remains at the level of potential Gross Misconduct if proven but rather it is now at the level of Misconduct, if proven or admitted. This assessment should of course be kept under review for the duration of the investigation.””

138 In relation to the claimant's position that there was a breach of the Regulations, Mr Dewar states (attaching a copy of the respondent's Scheme of Delegation):

"The Decision Making Framework (found on the front page of The Hub) states that the decisions relating to severity assessments can be made by any person from the Lead Investigator through to the Regional Director. This is based on the Scheme of Delegation (attatched), Section 10 refers."

139 The respondent's Scheme of Delegation stated:

"Paragraph 6A of schedule 2 Police Reform Act 2002 (the ***PRA***) sets out how the IOPC Director General can delegate their functions. It is annexed to this document in full at Annex A. The legal principles derived from paragraph 6A are as follows:

a. The Director General may authorise any member of IOPC staff or constable seconded to the IOPC, to exercise any Director General function on behalf of the Director General;"

140 Thereafter, Steve Noonan, Director in the Directorate of Major Investigations (presently Acting Director of Operations) was appointed to Chair the claimant's grievance.

141 Mr Noonan sent an email an e-mail to Mr Naseem on 16 November 2020 at 08.51am advising:

"There have been 2 reports compiled relevant to the matter I am hearing – a peer review by Sarah Green and a report by Colin Dewar answering some questions raised by Patricia – both of which I consider contain information that I would like to gain your consent to disclose to Patricia to expedite this grievance. I would be grateful if you could confirm your consent by way of response to this email.

I understand the sensitivities of the independent investigation and prior to any disclosure you seek reassurance that I will ask that the documents are only disclosed to Patricia and those who are assisting her with this grievance; they are not to be further disclosed to ensure the integrity of the investigation. Prior to disclosure I will seek such a reassurance from Patricia."

142 Mr Naseem replied that morning to confirm that he was happy to provide his consent to the same.

143 A grievance meeting took place which was chaired by Mr Noonan and the claimant attended along with Glynis Craig, Lawyer and Union Representative on 25 November 2020 at 10:00am via Skype. A copy of the record of that meeting is at pages 2100 to 2106 of the Hearing Bundle.

144 It was stated on the claimant's behalf during that meeting that:

"PN's belief is, and this takes us possibly into whistleblowing territory, is that this decision was made for political reasons. It enabled Cressida Dick (CD) the Commander of the Metropolitan Police, to get away with saying what she said in public statements, that the officers were right to have done what they did. And that's because we were saying that we're not taking a look at, what PN maintained were lies in the officers statements. So it's those two things,
that the whole decision was changed out of the blue, without warning and without proper rationale, in PN's view. And PN's belief that this was done for political reasons. That is a summing up."

145 During the meeting, Mr Noonan replied in the following terms:

"SN says he's started it from the perspective that this was presented to him as a grievance. The first matter that PN has raised, SN fully understands and can understand why PN has raised that part as a grievance, that she feels undermined. The rationality of the decisions would fall out of anything that SN looks into it and he would need to take some views on that, to be able to answer that part. The second part, about this potentially being politically motivated, if that is what PN is going to say, that isn't a grievance matter. That would potentially stray into whistleblowing territory. Whilst the matter hypothetically could come back to SN, he probably isn't the right person to receive that. SN has taken a note of it today and it has been recorded, but thinks it will need to be passed onto Karen Jamieson (KJ) under the current process or whoever supports her to look at that."

146 It was also said on the claimant's behalf:

"GC says if you look at PN's grievance it might help to separate this out. Her grievance was that she had been removed as the decision maker in respect of severity assessments and wasn't given any explanation as to why that happened. Part of her grievance will be exploring why that actually happened and why she was never told. She's never been told that it was a political decision, that's a hypothesis that she has reached because she wasn't given any explanation as to why she was no longer to make those decisions. From the scheme of delegations and decisions, the PRA is quite clear that it's the Lead Investigator who makes the special procedures severity assessment decision, that's their role. From the scheme of delegations also reads it's in unusual circumstances that that decision would be passed to another decision maker, so it's even more important in this case that we have the rationale as to why that was done. PN has never been told why it was done, never been given as explanation."

147 Later in the meeting, it was also stated on the claimant's part that:

"PN says just to be clear, and thinks she has said it in the grievance, PN was removed as decision maker on the severity assessments. PN then said she cannot remain as Lead Investigator on a case where she doesn't believe in the way it's going, so it was PN that stepped down from being Lead on the case. Somebody else was approached and then somebody else was approached and finally they gave it to somebody else, just to make that clear."

148 Mr Noonan stated towards the end of the meeting that he proposed to contact the claimant regularly to keep her updated, he would try to get some terms of reference prepared and would expect them to be with the claimant within two weeks. He stated that he would provide a progress update to the claimant within two weeks, and thereafter the claimant was to receive monthly updates.

149 The claimant stated that she had deliberately tried to keep it quite simple and straightforward so there was not a huge amount to do, and that it was only a matter of what Mr Noonan "…is able to dig out of the weeds really."

150 The Terms of reference relating to the grievance investigation were prepared by Mr Noonan and they were dated 07 December 2020. There were correspondences thereafter in relation to the Terms of Reference between Mr Noonan and the claimant.

151 The claimant sent Mr Noonan an email on 16 December 2020 making representations in respect of relevant witnesses and also setting out her position under the heading "'political decision' hypothesis":

"To put this hypothesis in context, at the start of the investigation we knew that senior officers of the MPS had issued press statements seeking to downplay the actions of the officers involved in the stop and search of Bianca Williams and Ricardo Dos Santos and Commander Cressida Dick had gone on record as stating that 'any officer worth his salt would have stopped that car'. This statement flew in the face of the evidence we already had and the written complaint from the couple's solicitor specifically included a complaint about these communications. It was however decided to separate this element from my case, with no reason provided. Commander Dick's comment could be said to be supported by the officers' statements but neither her comment nor the officers' statements were supported by the visual evidence from the TSG van's cameras."

152 An email was sent to the claimant from Mr Noonan on 18 December 2020 advising that he had hoped to provide an update but unfortunately he had been off work and he was not able to make any further progress. He stated that he will require further information from the claimant in order to progress this matter and he set out three numbered points of further enquiry within his email. In his second point he stated:

"Political Hypothesis Decision – I now have an understanding of this, but only from the perspective of it being a hypothesis you have raised. As you know the decision making has been reviewed already (Sarah Green's review) and as a natural consequence of this matter I will be requesting decision makers to provide a rational for their decision making, and I would hope that this would sufficiently explain any decision and rationale. I am afraid, at this this juncture, that as part of this (grievance) process I am not prepared to take your hypothesis forward without any evidence, and should any evidence be presented, I would have to pause and very carefully consider under advice what would be the appropriate mechanism to then dispose of the matter. In my opinion the hypothesis is tantamount to a serious allegation and I am not prepared to take this forwards

speculatively without any evidence. If you have any evidence to support this I would be grateful if you could forward it to me."

153 In his email Mr Noonan advised that with regards to the witness list the claimant had provided, he shall keep this under review along with the Terms of Reference, until such time as the claimant provides the requested information.

154 Mr Noonan was on annual leave between 18 December 2020 until 29 December 2020. On 29 December 2020 he sent the claimant an email advising that he hoped that the claimant was feeling better and that he had been through the attached grievance meeting notes and made minor tracked changes. The claimant was requested to suggest any changes and return these to Mr Noonan.

155 Mr Noonan sent a list of questions to Mr Dewar by email dated 29 December 2020. Mr Dewar replied to the questions with supporting documentation by email dated 31 December 2020 sent at 4.54pm (see pages 2133 to 2139 of the Hearing Bundle).

156 On the same date, on 29 December 2020 Mr Dewar had sent a number of questions to Mr Naseem, to which he responded and provided supporting documentation by way of an email dated 04 January 2021 sent at 3.40pm (see pages 2140 to 2147 of the Hearing Bundle). Mr Naseem responded on 05 January 2021 to a further enquiry sent to him from Mr Noonan by email on the same date.

157 The claimant had sent Mr Noonan a detailed email response on 31 December 2020 at 4.27pm in relation to his email dated 18 December 2020. The claimant responds under the heading "political hypothesis decision" in detail and as part of her reply she states, "You say you are not prepared to take this hypothesis forward without evidence to support it, however I was kept out of the decision making chain and blocked from viewing the case record on perito so I can have no idea of the reality behind the decision making nor can I provide evidence to support my hypothesis, which is shared by many. I agree it is serious which is why I have raised it and want it investigated. I would point out the definition of the word 'hypothesis' is, 'A supposition or proposed explanation made on the basis of limited evidence as a starting point for further investigation'."

158 Mr Noonan sent the claimant an email in response dated 12 January 2021 apologising for the delay in responding. He stated, "In relation to the point on training and experience, the statutory scheme does allow for these decisions to be taken by those to whom the DG has delegated authority, a point I have already clarified with General Counsel." He also indicated the points that his grievance outcome report will cover. With regards to the claimant's "political hypothesis", he stated that whilst he had a strong sense that the claimant considers this to reflect what happened, he was not minded to amend the scope of the Terms of Reference (beyond their current scope).

159 Mr Noonan contacted potential witnesses that were named including Richard West by email dated 25 January 2021. After Richard West had confirmed that he was happy to write up a full statement, Mr Noonan sent a further email on the same date providing a copy of what was sent to him previously and asked him to confirm that this captured the information he had given. Although Mr Noonan had put questions to Richard West, as a result of his responses he declined to meet with him. He indicated that he had no involvement in the case and would not have anything to say about what actually happened.

160 On the same day, Mr Noonan contacted Nishan Sahodree by email to arrange a meeting and to confirm his account of events. Mr Noonan also contacted Emily Carines by emails dated 25 and 27 January 2021.

161 Having contacted Abigail Gallagher, a Lead Investigator by email on 25 January 2021, Mr Noonan met with her on 2 February 2021.A copy of the note of that meeting is at pages 2176 to 2179 of the Hearing Bundle. Ms Gallagher was a Technical Advisor within the Discrimination Subject Matter Network. Mr Noonan also met with Emily Cairns on 2 February 2021 (who was a Technical Advisor on the Discrimination Network and Domestic Abuse Network). A copy of the note of that meeting is at pages 2172 to 2175 of the Hearing Bundle. In addition, Mr Noonan had a meeting with Nishan Sahodree on 04 February 2021 (see pages 2180 to 2184 of the Hearing Bundle). All three of these individuals were interviewed at the request of the claimant.

162 There were a number of correspondences with Abigail Gallagher between 19 February 2021 and 24 February 2021 (see pages 2206 to 2210 of the Hearing Bundle).

163 During the grievance investigation Mr Noonan also had a conversation with David Emery, General Counsel, regarding the respondent's Scheme of Delegation and Decision Making Framework. His conversation with Mr Emery took place in order to discuss the technical issues within these, given their importance to the matters raised by the claimant.

164 Mr Noonan sent an email to Mr Dewar on 01 March 2021 requesting further information, and he followed up his request by email dated 09 March 2021. Mr Dewar replied by email dated 09 March 2021 advising he did not have much more to add, his concerns were outlined in an email of 14 September 2021 to Carolina Duque Valdes (a copy of which was attached). He states, "I was just very concerned about what I felt to be a disproportionate and offensive response to a decision made by Sal that was by no means perverse, ill considered or ill advised."

165 On 19 March 2021 at 4.22pm Mr Noonan sent an email to Mr Naseem stating:

"I write to update you that I have concluded the grievance investigation into the matters raised by Patricia. I have some process steps to complete, one of which is to redact the report having received some representations in this regard. I

anticipate being in a position to share the redacted report with you shortly after 1st April 2021."

166 Mr Noonan kept the claimant updated regularly during the grievance process.

167 The grievance outcome report was finalised in March 2021 (see pages 2259 to 2274 of the Hearing Bundle). On 01 April 2021 Mr Noonan met with the claimant to discuss the grievance findings.

168 On 06 April 2021 the claimant was sent a letter from Mr Noonan confirming the outcome of her grievance and setting out the rationale for his decision. The claimant's grievance was not upheld. Mr Noonan stated that he made a number of recommendations in the report which he will pass on for consideration. The claimant was advised that she had a right of appeal, which must be sent in writing by 22 April 2021.

169 In deciding not to uphold the grievance Mr Noonan stated: "I have found no evidence to support that SN was influenced in his decision making by any external factor, and no evidence has been offered to support this allegation."

170 He considered the following matters:

"**The legality of the decision to 'overrule' the assessments made by the lead**

investigator and an explanation for the basis of this;

15. In his response SN relied upon the current IOPC scheme of delegation as the basis upon which he assumed the role as final decision maker for the severity assessments stating, '*Under the new legislative regime, there is a 'single line of accountability' for all decision making, which flows from the DG down the IOPC line management hierarchy. However, clearly it would not be feasible for the DG to make all operational and/or policy decisions, therefore, by virtue of paragraph 6A of Schedule 2 of the PRA, the DG has the power to delegate responsibility for operational and policy decisions downwards as s/he sees fit. Under the new legislative regime, the power to reach a decision on severity is no longer reserved to the Lead Investigator. The DG has delegated the power to make operational and policy decisions, such that:*

(i) More senior grades can be consulted by more junior decision makers to assist

them in making decisions;

(ii) More senior grades can decide to take decisions in the stead of more

junior grades.'

It was therefore under the current scheme of delegation that SN made the decisions he did in respect of the severity assessments."

171 Mr Noonan stated in his findings:

"10. I have found it a somewhat erroneous view that SN has an apparent lack of investigatory experience – he is employed as an RD not a lead investigator.
11. In actual fact SN has significant IOPC decision making experience having been the head of the IOPC Assessment Unit (AU). He has also undertaken IOPC decision maker training."

172 He concluded in his findings (at paragraph 8) that the evidence suggested that this matter amounted to professional disagreement.

173 He stated at paragraph 6 of his report under the heading "Introduction":

"6. PN raised a hypothesis that the decisions may have been politically motivated. During the meeting and emails that followed I explained that this hypothesis would not fall within the scope of a grievance matter, it would more appropriately be disposed of by way of 'Whistleblowing', and that this was a serious allegation for which PN must be able to produce some evidence to substantiate, if the matter were to be taken forward. PN did not provide any evidence to substantiate the allegation."

174 Mr Noonan made the following observations in relation to the organisation's development under the heading "Learning for Consideration" and he also included a number of "Recommendations" including:

"72. There is clearly a balance to be struck between allowing staff to raise a grievance and holding this process over leaders and managers at all levels of our organisation as a lever to prevent them performing their role. I am not sure the balance is right in this particular instance and we should take the opportunity to learn from this.

73. SN has himself highlighted that he could have handled elements of this differently and reflected on this already. In interviewing staff from the SMN and CW teams as part of this process, SN's communication has been highlighted more than once, and it is apparent this has led to a difficult situation for some of those involved. Although this may be symptomatic and within the context of the situation, this may offer an opportunity for SN to reflect on his communication moving forwards.

Recommendations

74. **Those managing PN and NS may wish to take time and speak with them** regarding how they challenge decisions, register dissatisfaction, make requests to be re-allocated from work and what it is/is not appropriate to allege a colleague may have done and their motivation for doing so, particularly when there does not appear to be an evidential basis for making such allegations.

75. I can find no evidence to support the allegations against SN, and consider this to be a professional disagreement that could have been addressed through different channels. As such we should **carefully consider whether any new**

policy strikes the right balance in allowing appropriate grievances to proceed, whilst allowing leaders, managers and decision makers to perform their role without fear or favour, or we will be a worse organisation for it."

175 The findings of the report are set out at paragraph 71 within 11 subparagraphs (see page 2269-2270 of the Hearing Bundle).

Revising Severity Assessments

176 On 20 April 2021 Mr Naseem revised the Severity Assessments to include an indication that the Honesty and Integrity Standard of Professional Behaviour may have been breached, on the basis of having considered all the evidence which had come to light since the first set of Severity Assessments were sent to the Appropriate Authority in October 2020. There were statements from Ms Williams and Mr Dos Santos and evidence from the analysis of the stop and search records of each of the officers who were subject to special procedures. Mr Naseem decided having sought advice from counsel that the conduct of the officers, given the new evidence constituted a finding of gross misconduct.

Grievance appeal

177 By email dated 22 April 2021 the claimant sent a document setting out her grounds of appeal against the grievance investigation conducted by Mr Noonan and she stated that she reserved the right to call witnesses in support of her appeal. Her grounds of appeal are at pages 2332 to 2337 of the Hearing Bundle.

178 The claimant had a meeting with Lianne Corris, Head of Private Office Group on 30 June 2021. Lianne Corris was conducting the investigation into the claimant's allegations of political interference.

179 On 13 July 2021 the claimant attended an appeal meeting with Derrick Campbell, Regional Director for the Midlands, who had been appointed as the appeal handler. A record of that meeting can be found at pages 2390-2399 of the Hearing Bundle.

180 Thereafter, on 19 July 2021, the appeal process concluded, and the outcome of the appeal was sent to the claimant from Derrick Campbell, a copy of which is at pages 2409 – 2412 of the Hearing Bundle. He stated that the claimant's appeal had been partially upheld and he also made a number of recommendations.

181 Under the heading "Point One - Information - covering new or existing material and how this was handled", he states that he was satisfied that Mr Noonan gathered the relevant information, considered the evidence presented to him and reflected this within his decision. He set out his reasons for that conclusion. He further stated: "As noted above, you have claimed that you do not believe that sufficient weight was given to the evidence that was provided. I would like to offer my assurance that my decision is solely based on the evidence provided to me and is not subjective. Therefore, on this point of your appeal, it is **not upheld**."

182 In terms of the second heading "Policy & procedures and whether were any concerns around this", he set out eight concerns that were raised by the claimant. This included "Possible political interference affecting Michael Lockwood (The Director General) and Salman Naseem (interim Regional Director) was possibly present."

183 In respect of his conclusion on that matter, he states:

"I have considered the above point and again sought advice from our HR department who have informed me that this matter is being considered under our Raising Concerns policy. Therefore, I will not be making a decision on this point."

184 In relation to the decision to replace the Claimant and Mr Dewar as Decision Maker, he states: "I have reviewed the report produced by SN alongside the accompanying information and I am satisfied that SN within points 20-25 provides his rational and also his considerations. Therefore, this point is **not upheld**."

185 He upholds the following aspect of the claimant's grievance appeal:

"**7. That SN seemed to only summarise his findings and what he had considered, however this summary did not allow you to fully understand how he came to his decisions.**

I have considered your point above and agree that a more robust explanation should have been provided to you to enable you to understand how SN's decisions were reached. Therefore, **this point is upheld**."

186 Mr Campbell stated that he was unable to make a finding in relation to the eighth matter and he says:

"**That following your grievance a number of staff are left demoralised and now have an issue with working with Sal Naseem going forward due to his communication style and behaviour, and that Stephen Noonan did not follow this up, hence staff are left feeling unsupported.**

Within the report, it appears that in points 73, 77 & 78, SN did give consideration to the above and did make recommendations to address these important issues. As it stands, I am unable to make a decision on this matter as it falls outside of my remit, however I will refer this to our HR department for them to progress."

187 Mr Campbell also advised in his outcome letter that:

"On a final note, I would like to acknowledge and capture the interesting point you made within your appeal hearing, regarding your concerns around the Honesty & Integrity point you originally made being removed from the TOR by Sal Naseem, which subsequently downgraded the Severity Assessment from Gross Misconduct to Misconduct. You stated that these elements which were once removed have now not only been accepted but restored back into the TOR. I can confirm that I have verified these points and they are true."

Report of Lianne Corris

188 There was a further meeting between the claimant and Lianne Corris on 18 October 2021 to discuss Ms Corris' findings.

189 Following the meeting, Ms Corris sent an email to the claimant dated 21 October 2021 summarising her findings against each of the concerns raised, a copy of which is at pages 2452 to 2454 of the Hearing Bundle.

190 At the end of that email Ms Corris stated:
"We are continuing to discuss potential disclosure of the report (as you know there are individuals named in the report that I need to consult with). I will be back in touch on that matter in due course."

191 Account was taken as to the sensitivity of the issues in relation to the ongoing investigation in respect of this matter.

192 The claimant sent an email on 22 October 2021 at 2.57pm stating:

"Glynis is on leave until Tuesday so I have not been able to discuss this with her. I assume I am going to receive your report documenting your actions in the course of the investigation. Can you let me know when that will be forthcoming please?

I am also awaiting legal advice from union lawyers but have not shared your email with them."

193 Mr Emery replied on the same day at 4.07pm stating:

"Further to your email below and as per the end of Lianne's email, we will be reverting to you and Glynis in relation to whether you will be given access to Lianne's full report. We need to liaise with people named in the report first – as per Lianne's email – before I can take this decision.

You will see from the 'IOPC Raising Concerns Policy' that is says, *"Whenever possible, we will give you feedback on the outcome of any investigation. Please note, however, that we may not be able to tell you about the precise actions we take where this would infringe a duty of confidence we owe to another person."*
We have given you feedback – both in the meeting earlier this week and in Lianne's email below – and therefore, we are properly adhering to this policy. But we are going through the process of engaging with people mentioned in the report which in my view we are obliged to do to ensure whatever further disclosure is made, is fair.

Once we have done this, I will revert.
I am away next week for half-term and so I hope to revert the week after (assuming everyone has been spoken with in the interim)."

194 On 26 October 2021 the claimant advised Lianne Corris in her email that she assumed she would not receive the report until at the earliest the following week. The claimant also raised further queries in her email.

195 Mr Emery sent an email to Ms Corris and Ms Jervis on 03 November 2021 at 08.12am advising:

"Thanks Lianne. I agree re updating Trisha. I'll do that later today – indicating what we intend to do re reviewing a physical copy in CW, but that we are awaiting confirmation from 2 out of 4 people mentioned in the report re whether they object to their inclusion and would like redactions – if so, I will consider these requests and make a final decision. But I'll say that the first two are content with provision of the report."

196 On the same date at 2.47pm the claimant was advised by Mr Emery by email:

"In relation to accessing Lianne's report, I have decided (after consultation with our overseeing NED Catherine Jervis and having reviewed the 'Raised Concerns' policy) that we will give you and Glynis confidential access to the report. I would like to do this in the office by giving you and Glynis a physical copy of the report to read and which I will take back from you at the end of the session. I know this may require travel by one of you – I don't mind which office you want to do this in but CW is, Trisha, your usual office, but I am equally happy to go to Sale which is Glynis' usual office (or indeed any other IOPC office).

Before this takes place, Lianne is engaging with 4 people who are referred to in the report, to see whether they have any objections to references to them remaining in the report. Lianne has received responses from 2 of them indicating no objections and is awaiting responses from the 2 remaining people. Once we have these responses and if no redactions are required, then we can set up the meeting asap. If redactions are requested, then I will need to make an assessment and then make what redactions I think are appropriate (if any)."

197 The clamant sent a response to that email on 05 November 2021 in the following terms:

"I do not understand why I am not allowed to have a copy of the report to go over in my own time. I was given copies of the grievance and appeal outcome reports so why not this one?

I raised this complaint over a year ago and my hypothesis that there had been politics involved in the decision making was raised at that point. This was not pursued by Steve Noonan because he said there was no evidence to support it and I pointed out that a hypothesis does not require evidence. It was only recently that Liz Booth determined that there should have been a whistleblowing investigation and instructed one to take place. Now I am being denied the outcome of the investigation of my complaint for no apparent reason.
I do not understand why Lianne has reached the conclusion she has and so I need the time to go through the report in detail in my own time, rather than being

obliged to sit in the office to read the report and then have it removed from me which seems to me to be unnecessarily oppressive and strangely secretive for an organisation which professes to be open and transparent."

198 Mr Emery replied to the claimant and her representative (copied in) the same day by way of an email sent at 2.01pm setting the rationale for the respondent's decision:

"A 'raised concern' is different from a grievance and appeal against that grievance. The policy / procedures underpinning their investigation, and what is provided at the end, are different. This affects people's expectations as to what will happen with these reports at the end of the investigation – and by 'people', I include both the person who raised the concern/grievance but also the people who provide information in relation to those investigations. As per my email
below, I am applying the 'raised concerns' policy and procedure – not the policy/procedure for grievances or appeals against grievance outcomes.
I note what you say about your 'raised concern' hypothesis and not requiring evidence before you raised the hypothesis. But this hypothesis has been investigated and as per Lianne's email summarising her investigation and conclusions (dated 21/10/2021) no evidence has been found to substantiate the hypothesis.

You are not *"…being denied the outcome of the investigation of my complaint for no apparent reason".*

First, you met with Lianne on Monday 18th October 2021 at which Lianne outlined at some length how she had conducted her investigation, what she had found and her conclusions.

Second, Lianne sent you a detailed email on 21st October 2021 setting this out in writing.

Third, I am giving you (and Glynis) the opportunity to read and digest Lianne's full report.

In my view this is far from 'denying you the outcome'.

At the read through you will be given time to digest the report. The report itself is only 10 pages long. The Annex which relates to the data breach report is only 5 pages, with a few further pages of supporting emails. I do not anticipate that

this will be too much for you to digest.

I do not agree that this approach is in any way 'oppressive' or secretive or indeed not open or transparent. As per the above, you have been given the outcome of the investigation – in a number of different ways – this certainly translates to

'transparent' in my view. But I am being very careful to ensure that this report is handled confidentially. FYI – one person has asked for their name to be redacted from the report and bearing in mind that this, in my view, will not diminish your

understanding of the report's contents, I will be putting through this redaction."

199 On 11 November 2021 the claimant sent an email chasing the matter relating to access to the report. The claimant stated, "When is the report going to be available to view? I would like Glynis to see it as well as she is my union advisor in this matter so how can this be facilitated?"

200 Following the claimant's proposal, Mr Emery agreed that the claimant and her union representative could attend the respondent's Canary Wharf office to review a copy of the report on the following Wednesday, 16 November 2021, at 1.30pm. Mr Emery stated in his email of 11 November 2021: "Sure. That works for me. I've asked Legal Admin to arrange a room in CW for that afternoon and it will be booked for the entire afternoon and you can have as long as you both need / want. Legal Admin will send a meeting invite." Accordingly the claimant attended the respondent's office along with her union representative and reviewed the report on 16 November 2021.

201 A copy of the report prepared by Lianne Corris dated 05 October 2021 is at pages 2468 to 2478 of the Hearing Bundle.

202 In terms of the allegation made by the claimant that there was a motivation or influence by external stakeholders, the analysis and findings of the report (which were at paragraphs 29 to 36 of the report) stated:
"29. Based on the enquiries that I have conducted, I find no evidence to support the hypothesis that decision-making in the Williams/Dos Santos case was motivated or influenced by external stakeholders.
30.There is no evidence to suggest that the Williams/Dos Santos case was subject to any external discussion with senior stakeholders by either the Director General or the Regional Director, London in the timeframe where decisions around terms of reference and severity assessments were taking place."

203 The analysis and findings into the second strand of the investigation was reported as follows:

"51.I am satisfied that the investigation into the matters raised by Patricia was

thorough and that the allegations put forward were treated seriously by both the DPA/FOI and ICT Teams.

52.It is unfortunate that the investigation was unable to identify a definitive cause

for the issues that Patricia experienced though I do consider there to be a fair

degree of certainty that Patricia's H Drive was not accessed by someone maliciously given there was no footprint of this on the system.

53.In addition, given the further enquiries that were conducted as a result of this

investigation, there is no evidence that anyone within the ICT Team nor ICT's

external supplier (Core Azure) was asked to access Patricia's system on behalf of someone else (to note I take this on trust from the responses received by all those asked).

54. I do not consider it to be proportionate or likely even possible for any further

investigations into this matter to be conducted though clearly if there were to

be any future reports by users of similar issues recurring then this may need re-visiting."

204 A number of recommendations were also made in the report under the heading "areas for learning" at paragraphs 55 to 57.

205 The claimant's union representative sent an email on 19 November 2021 at 08.48am to David Emery and Lianne Corris setting out a number of detailed comments on the report that had been prepared within a 3-page attachment (see pages 2480 to 2482 of the Hearing Bundle). The email stated:

"Thank you for facilitating access for Trisha and I to read the report. As indicated we have some comments which are attached.

I would be grateful for an early response as Trisha is currently considering whether she feels able to remain in the employ of the organisation."

206 Mr Emery replied on the same day at 10.39am advising:

Thanks for this. Noted re. content. I suspect that I wont be able to respond to your letter by next Wednesday, not least because we have Unitary Board for much of Monday (amongst other meetings) and I'm at a funeral on Tuesday. I will also need to discuss this letter with Lianne and other necessary people NB the request at the end of the letter about an external review (I appreciate that it is put in the hypothetical, but I will need to consult as necessary before responding to this).

I will revert as swiftly as a I can."

207 There were further email correspondences exchanged between Lianne Corris, Myles Jordan, Richard Coombe, Tom Whiting and David Emery from 17 November 2021 and 21 November 2021, copies of which are at pages 2483 to 2486 of the Hearing Bundle. Lianne Corris had requested by email dated 17 November 2021 that the three recommendations made in her report be considered by Myles Jordan. Myles Jordan replied on the same date advising they are happy to pick op items 1 and 3 with Richard Coombe's support and will consider them on their next call with Tom Whiting and enquired whether item 2 could be passed to the DPO. There were further email correspondences thereafter in respect of storage of material on the work system and whether this can be considered as private.

Claimant's resignation

208 The claimant submitted her resignation (with immediate effect) to David Emery by a letter sent by email dated 24 November 2021, and a copy of her correspondence sent to the respondent in relation to this matter can be found at page 2491 of the Hearing Bundle. The claimant's letter included the following paragraphs:

"As you are aware, I submitted a complaint in September last year regarding management interference in the Bianca Williams/Ricardo dos Santos case. My

hypothesis was that the decision-making by Sal Naseem/Michael Lockwood, was

political in order to favour the MPS, specifically Commander Cressida Dick.

…

I gave the organisation ample opportunity to properly investigate my concerns,

shared by many, but it did not and frankly showed that it had no intention of doing so.

The whole process has left me feeling demoralized and disrespected. However the

whistleblowing report and failure to consider my request that it be immediately

reviewed is the breaking point. My trust and confidence in the organisation has been completely shattered and I find my position within it to be untenable. For this reason I am left with no alternative but to leave a job I have loved for the past 17 years.

It is therefore with a heavy heart and the deepest regret that I submit my resignation from the IOPC with immediate effect."

209 The claimant forwarded a copy of her resignation letter to Mr Dewar by email of the same date.

210 On 24 November 2021 at 6.26pm Mr Emery enquired whether Ms Craig had intended to refer to Lianne Corris's investigation or the Williams/Dos Santos investigation itself, and Ms Craig replied by email on the following day advising she meant to refer to the Raising Concerns investigation. Mr Emery replied by email dated 26 November 2021 advising he had drafted a reply which he needed to circulate to the overseeing NED and Lianne Corris, and he hoped to send it to her by the end of the next week. On 01 December 2021 Ms Corris provided Mr Emery with a copy of the documents/emails relating to the Raising Concerns investigation.

211 On 10 December 2021 Mr Emery sent an email to Ms Craig in response to her letter dated 19 November 2021, he apologised for the delay and he suggested making contact about the matter the following week. The letter of response is at pages 2505 to 2510 of the Hearing Bundle. Mr Emery states he cannot see any

justification for an external review. The final paragraph of the letter states: “I hope this response has addressed the issues in your letter, although by virtue of Trisha’s resignation letter, it is clear that the various investigations undertaken have unfortunately not satisfied Trisha and I’m very sorry this is the case.”

Observations

212 On the documents and oral evidence presented, the Tribunal makes the following essential observations on the evidence restricted to those necessary to determine the List of Issues.

213 The standard of proof is on the balance of probabilities, which means that if the Tribunal considers on the evidence that the occurrence of an event was more likely than not, then the Tribunal is satisfied that the event did occur.

214 This was a case where there were a number of issues that we were required to determine, in which we were helpfully assisted by the documents that we were referred to within the Hearing Bundle.

215 Each of the respondent’s six witnesses sought to provide their evidence as best they could and there were no real issues arising. In addition, the Tribunal were taken to several documents which we were able to use to assist us in terms of formulating our findings of fact.

216 We made our essential findings of fact on the balance of probabilities. Where there was a conflict of evidence, based on the above findings of fact and observations, on the whole, the Tribunal preferred the respondent’s evidence including in particular the evidence of Mr Naseem, particularly in relation to evidence that was supported by contemporaneous correspondences or other documents.

217 We found the evidence of Mr Naseem to be of particular assistance and his evidence was particularly credible. We found that considered as a whole his evidence was both clear and consistent with the contemporaneous documents. He also acknowledged the limitations of his evidence, where appropriate.

218 We contrasted this with the claimant’s evidence. There were a number of issues in terms of the claimant’s recollection of events. By way of example, the claimant could not recall the fact that she attended the respondent’s training event providing important legal updates on 30 January 2020, despite the fact that her name appeared on the list of attendees. Her name appeared on the participants’ list in the Hearing Bundle, but her signature had been redacted. When produced with the unredacted participants’ list, the claimant’s signature appeared on the document. The claimant accepted that that was her signature.

219 We were also provided a number of presentation slides depicting in detail the changes to the legal framework in 2020 under which the claimant was required to operate (for a number of months prior to her resignation) in relation to her duties.

220 By way of further example, the claimant said she could not recall attending the team meeting on 26 August 2020 nor receiving the email on the same day as the meeting containing the action points. The claimant maintained that if she received that email, she would have complained about the matters raised. However, the claimant was listed as an attendee on the document attached to the email dated 26 August 2020 and she was on the email distribution list. In addition, Mr Dewar, Mr Simpson, and Mr Naseem were present during the meeting (all of whom confirmed in their evidence that the claimant had attended, and we accepted their evidence in respect thereof).

221 We noted that the claimant had displayed a keen interest in being appointed as Lead Investigator in the Ms Williams/Mr Dos Santos matter, even before the respondent had formally received a referral to investigate any complaint. The claimant stated in email correspondence dated 06 July 2020 that she had huge experience in dealing with similar cases previously when she worked in the Casework team, and she felt really strongly about the way the police did this sort of thing.

222 We further noted the claimant's awareness of the Decision Maker structure from the outset. The claimant was aware of the respondent's Scheme of Delegation, which clearly detailed the same. The claimant attended training on 30 January 2020 and we noted the information provided to the claimant within the presentation slides. The Terms of Reference of 29 July 2020 prepared by the claimant clearly stated the details of the Delegated Decision Maker.

223 It was apparent that the claimant had been copying in Mr Naseem into email correspondences relating to the Ms Williams/Mr Dos Santos case since at least 11 July 2020 and Mr Naseem had said at that early stage that he would keep Mr Lockwood updated. In an email dated 14 July 2020 Mr Naseem had stated that he had briefed Mr Lockwood and he was reassured that everything at that early stage was in hand.

224 We noted that Emily Cairns had attended the meeting on 13 July 2020 who was the Discrimination Lead.

225 On 19 August 2020 Mr Mann wrote to the claimant about his concerns relating to the delay. Despite the fact that Mr Naseem had internal email communications recording the fact that as the new Decision Maker he would be reviewing the Severity Assessments over the bank holiday weekend, he had not communicated the work he would be undertaking to the claimant in advance. On 26 August 2020 the claimant became aware that Mr Naseem was reviewing the Severity Assessments. No whistleblowing allegations were made by the claimant at that time.

226 Mr Naseem communicated his initial thoughts following his review. He provided a reasonable rationale for those, and these were recorded in writing. On 03 September 2020, it became apparent that there was disagreement about the weight to be given in terms of evidential issues.

227 There were stark differences between the claimant's perspective and Mr Naseem's findings in respect of the Ms Williams/Mr Dos Santos investigation

at the time in question. The claimant explained in email correspondence that she would do the necessary to make a CPS referral. In contrast, Mr Naseem concluded that no criminal offences had occurred. Mr Naseem did not change his overall outcome relating to the Severity Assessments following receipt of the detailed letter from the MPS.

228 We noted that the outcome sought within the claimant's grievance was a full examination of the decisions made, who made the decisions and the rationale for them. In terms of the claimant's grievance, Mr Dewar provided a detailed report early in the process setting out the decisions made and their rationale relating to the Severity Assessments. Mr Dewar included a copy of the Scheme of Delegation and a short explanation of this in his report dated 03 November 2020. We noted with concern that the claimant stated during her oral evidence that she did not read Mr Dewar's report in the course of her cross examination. Sarah Green also conducted a peer review of Mr Naseem's Severity Assessments.

229 We accepted that the conversation on 07 September 2020 with Mr Dewar took place as described in Mr Dewar's evidence. This was consistent with the contemporaneous note of that call which we were taken to within the Hearing Bundle. We considered the content of Mr Dewar's witness statement and his email communications at around that time, and we found that his approach was both fair and balanced. He had made genuine attempts to resolve any issues arising.

230 It was suggested that Mr Naseem did not have the required skills, knowledge, or experience to be Decision Maker in relation to the Ms Williams and Mr Dos Santos complaints. In this regard, we noted both the fact that Mr Naseem confirmed he had undertaken training when he took on his role, and update training at the start of 2020 (which we accepted he had attended), and we further noted Mr Naseem's extensive relevant career history as outlined in our findings of fact.

231 We also considered Mr Mann's note of the conversations on 10 and 11 September 2020 which are recorded in the email he sent to Mr Dewar on 11 September 2020. This stated, "Met Trisha in office, went to have lunch in Cabot square. Still wants to give her notice in but wants to 'go out with a bang'." Although Mr Mann was not called to give evidence (he no longer works at the IOPC), Mr Dewar gave evidence that he received the email dated 11 September 2020 from Mr Mann and he had raised the claimant's allegations in his email sent to Carolina Duque Valdes on 14 September 2020 (which was copied to Mr Mann). We note that Mr Dewar states the claimant had been articulating her thoughts (as set out at paragraph 27 of his witness statement) to other members of staff. The claimant did not seek to detail her own account of the relevant conversations recorded by Mr Mann in his email in her witness statement.

The Law

232 To those facts, the Tribunal applied the law –

<u>Constructive unfair dismissal</u>

233 The Tribunal had regard to the terms of section 95(1)(c) of the Employment Rights Act 1996 ("the ERA 1996") which provides that an employee is dismissed by his or her employer for the purposes of claiming unfair dismissal if the employee terminates the contract under which he or she is employed (with or without notice) in circumstances in which he or she is entitled to terminate it without notice by reason of the employer's conduct. This is known as constructive dismissal.

234 The Tribunal also had regard to the case of *Western Excavating Ltd v Sharp 1978 ICR 221* where it was stated that:- "*if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed*."

235 An employee pursuing a claim of constructive dismissal must establish that:-
- there was a fundamental breach of contract on the part of the employer;
- the employer's breach caused the employee to resign and
- the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

236 The claimant asserted the employer had, by their actions, breached the implied duty of trust and confidence. This term is implied into all contracts of employment, and means that employers will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee (*Courtaulds Northern Textiles Ltd v Andrew 1979 IRLR 84*).

237 In W A Goold (Pearmak) Ltd v McConnell [1995] IRLR 516 the EAT held that the Tribunal had not made an error of law in holding that the employers' failure to provide and implement a procedure to deal with the respondent employees' grievances relating to a reduction in take home pay, amounted to conduct entitling employees to resign and be treated as constructively dismissed. It was, according to the EAT, an implied term in a contract of employment that employers will reasonably and promptly afford employees a reasonable opportunity to obtain redress of any grievance they may have.

238 In Blackburn v Aldi Stores [2013] IRLR 846 EAT it was held that a failure to adhere to a grievance procedure is capable of amounting to or contributing to a breach of the implied term of trust and confidence, but whether it does is a matter for the Tribunal to assess on the facts. For example, the fact that an indicative timetable is not met will not necessarily contribute to or amount to a breach of the term of trust and confidence. On the other hand, a wholesale failure to respond to a grievance may amount to or contribute to such a breach, when assessed against the relevant test.

239 In the case of *Woods v WM Car Services (Peterborough) Ltd 1981 ICR 666* it was stated that "to constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract: the tribunal's

function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it."

240 This was developed further in the case of *Malik v BCCI 1997 IRLR 462* where it was stated that "in assessing whether or not there has been a breach of the implied obligation of mutual trust and confidence, it is the impact of the employer's behaviour on the employee that is significant – not the intentions of the employer. Moreover, the impact on the employee must be assessed objectively."

241 In Hilton v Shiner Limited [2001] IRLR 727, it was held that the implied term of trust and confidence is qualified by the requirement that the conduct of the employer about which a complaint is made must be engaged in without reasonable and proper cause. Thus, in order to determine whether there has been a breach of the implied term two matters have to be determined. The first is whether ignoring their cause there have been acts which are likely on their face to seriously damage or destroy the relationship of trust and confidence between employer and employee. The second is whether there is no reasonable and proper cause for those acts.

242 In London Borough of Waltham Forest v Omilaju [2005] IRLR 35, the Court of Appeal held that a final straw, if it is to be relied upon by the employee as the basis for a constructive dismissal claim, should be an act in a series whose cumulative effect amounts to a breach of trust and confidence. The act does not have to be of the same character as the earlier acts, and nor must it constitute unreasonable or blameworthy conduct, although in most cases it will do so. However, the final straw must contribute, however slightly, to the breach of the implied term of trust and confidence. An entirely innocuous act on the part of the employer cannot be the final straw, even if the employee genuinely, but mistakenly, interprets it as hurtful and destructive of his trust and confidence in the employer.

243 In Wright v North Ayrshire Council [2014] IRLR 4, the EAT found that the Tribunal had been wrong to rely on the principle that, where there was more than one cause, it was only the main (i.e. effective) cause of the resignation which should be considered to decide whether there had been a constructive dismissal.

244 Charles Gordon v J & D Pierce (Contracts) Ltd UKEATS/0010/20/SS, the Tribunal held that even if there was a fundamental breach of contract that entitled the claimant to resign, the claimant could not succeed because he had affirmed the contract of employment by engaging in the respondents' grievance procedure. The EAT decided that this was an error of law. In the EAT's view in that case where an employee intimates that he considers the contract has come to an end, he is not to be taken to affirm that the contract has come to an end for all purposes. The EAT stated at paragraph 23 "In particular I do not consider that the parties can be presumed to intend that a clause designed to procure the resolution of differences should be regarded as being evacuated because one party asserts that the implied obligation of trust and confidence has been breached." At paragraph 24, the EAT

stated, “Although pragmatic considerations are not always a sure guide, it would be unsatisfactory if an employee was unable to accept a repudiation because he or she wished to seek a resolution by means of a grievance procedure.”

245 If the dismissal is established, then the Tribunal must also consider the fairness of the dismissal under Section 98 of the ERA 1996. This requires the employer to show the reason for the dismissal (i.e. the reason why the employer breached the contract of employment) and that it is a potentially fair reason under Sections 98 (1) and (2) of the ERA 1996; and where the employer has established a potentially fair reason, then the Tribunal will consider the fairness of the dismissal under Section 98 (4), that is: (a) did the employer act reasonably or unreasonably in treating it as a sufficient reason for dismissal; and (b) was it fair bearing in mind equity and the merits of the case. A constructive dismissal is not necessarily an unfair dismissal: Savoia v Chiltern Herb Farms Ltd [1982] IRLR 166.

246 If an employer does not attempt to show a potentially fair reason in a constructive dismissal case, relying on an argument that there was no dismissal, then a Tribunal is under no obligation to investigate the reason for the dismissal itself. The dismissal will be unfair because the employer has failed to show a potentially fair reason for it: Derby City Council v Marshall [1979] ICR 731.

Qualifying disclosures – s 43A and 43B ERA 1996 and automatically unfair dismissal s 103A ERA 1996

247 In relation to the claimant’s claim that his dismissal was for the reason or principal reason that he had made a protected disclosure the relevant sections of the ERA 1996 state:

43A Meaning of “protected disclosure”: In this Act a “protected disclosure” means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

43B Disclosures qualifying for protection: In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following – (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject…

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

103A Protected disclosure: An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

248 The word ‘disclosure’ does not necessarily mean the revelation of information that was formerly unknown or secret. Section 43L(3) of the ERA 1996 provides that: ‘*any reference in this Part to the disclosure of information shall have effect, in relation to any case where the person receiving the information is already aware of it, as a reference to bringing the information to his attention*.’

249 Accordingly, protection is not denied simply because the information being communicated was already known to the recipient. This was confirmed by the EAT in *Parsons v Airplus International Ltd EAT 0111/17*.

250 Not all disclosures are protected under the ERA 1996. For a disclosure to be covered, it has to constitute a ‘protected disclosure.’ This means that it must satisfy three conditions set out in Part IVA of the ERA 1996: a. it must be

-a ‘disclosure of information,’
-b. it must be a ‘qualifying’ disclosure — i.e. one that, in the reasonable belief of the worker making it, is made in the public interest and tends to show that one or more of six ‘relevant failures’ has occurred or is likely to occur,
-c. it must be made in accordance with one of six specified methods of disclosure.

251 The worker’s reasonable belief must be that the information disclosed tends to show that a relevant failure has occurred, is occurring, or is likely to occur, rather than that the relevant failure has in fact occurred, is occurring, or is likely to occur. In other words, the worker is not required to show that the information disclosed led him or her to believe that the relevant failure was established, and that that belief was reasonable — rather, the worker must establish only a reasonable belief that the information tended to show the relevant failure.

252 This point was considered by the EAT in *Soh v Imperial College of Science, Technology and Medicine EAT 0350/14*. It was explained that there is a distinction between saying, ‘I believe X is true’ and ‘I believe that this information tends to show X is true.’ As long as the claimant reasonably believed that the information provided tends to show a state of affairs identified in section 43B(1) ERA, the disclosure will be a qualifying disclosure for the purposes of that provision even if the information does not in the end stand up to scrutiny.

253 The wording of S.43B(1) indicates that some account is to be taken of the worker’s individual circumstances when deciding whether his or her belief was reasonable. The statutory language is cast in terms of ‘the reasonable belief of the worker making the disclosure’ not ‘the belief of a reasonable worker.’

254 Thus, the focus is on what the worker in question believed rather than on what a hypothetical reasonable worker might have believed in the same circumstances. However, this is not to say that the test is entirely subjective — S.43B(1) requires a reasonable belief of the worker making the disclosure, not a genuine belief. This introduces a requirement that there should be some objective basis for the worker’s belief. This was confirmed by the EAT in *Korashi v Abertawe Bro Morgannwg University Local Health Board 2012 IRLR 4, EAT*, which held that

reasonableness under S.43B(1) involves applying an objective standard to the personal circumstances of the discloser, and that those with professional or 'insider' knowledge will be held to a different standard than laypersons in respect of what it is 'reasonable' for them to believe.

255 If the claimant reasonably believed that the information tends to show a relevant failure, there can be a qualifying disclosure of information even if they were later proved wrong. This was stressed by the EAT in *Darnton v University of Surrey 2003 ICR 615*. The EAT held that the question of whether a worker had a reasonable belief must be decided on the facts as (reasonably) understood by the worker at the time the disclosure was made, not on the facts as subsequently found by the Tribunal. This case was cited with approval by the Court of Appeal in *Babula v Waltham Forest College 2007 ICR 1026*, when it made clear that a worker will still be able to avail himself or herself of the statutory protection even if he or she was in fact mistaken as to the existence of, for example, any criminal offence or legal obligation on which the disclosure was based. Paragraph 75 of the Court of Appeal's Judgment stated "However, I agree with the EAT in *Darnton* that a belief may be reasonably held and yet be wrong. I am reminded, in a different context, of the well-known speech of Lord Hailsham of St. Marylebone LC in the adoption case of *Re W (an infant)* [1971] AC 682 at 700D when discussing whether or not a parent could be said to be unreasonable in withholding consent to adoption. He said: - "Two reasonable parents can perfectly reasonably come to opposite conclusions without either of them forfeiting their title to be regarded as reasonable." In my judgment, the position is the same if a whistle-blower reasonably believes that a criminal offence has been committed, is being committed or is likely to be committed. Provided his belief (which is inevitably subjective) is held by the Tribunal to be objectively reasonable, neither (1) the fact that the belief turns out to be wrong – nor, (2) the fact that the information which the claimant believed to be true (and may indeed be true) does not in law amount to a criminal offence - is, in my judgment, sufficient, of itself, to render the belief unreasonable and thus deprive the whistle blower of the protection afforded by the statute."

256 In *Kilraine v London Borough of Wandsworth 2018 ICR 1850*, the Court of Appeal held that 'information' in the context of S.43B can cover statements which might also be characterised as allegations - 'information' and 'allegation' are not mutually exclusive categories of communication. The key principle is that, to amount to a disclosure of information for the purposes of S.43B the disclosure must convey facts. The Court of Appeal stated at paragraphs 35 and 36:

35. "The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a "disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the [matters set out in sub-paragraphs (a) to (f)]". Grammatically, the word "information" has to be read with the qualifying phrase, "which tends to show [etc]" (as, for example, in the present case, information which tends to show "that a person has failed or is likely to fail to comply with any legal obligation to which he is subject"). In order for a statement or disclosure to be a qualifying disclosure

according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1). The statements in the solicitors' letter in *Cavendish Munro* did not meet that standard.

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

257 In relation to a purported disclosure under S.43B(1)(d), as with the other categories of relevant failure, a worker will be expected to have provided sufficient details in the disclosure of the nature of the perceived threat to health and safety. However, this duty does not appear to be too onerous. In *Fincham v HM Prison Service EAT 0925/01*, for example, the employee perceived herself to be the subject of a campaign of racial harassment. She wrote a letter to her employer containing the statement: '*I feel under constant pressure and stress awaiting the next incident*.' Although an employment Tribunal held that this was not sufficient to amount to a qualifying disclosure, the EAT thought otherwise. It said: '*We found it impossible to see how a statement that says in terms "I am under pressure and stress" is anything other than a statement that [the employee's] health and safety is being or at least is likely to be endangered… [That] is not a matter which can take its gloss from the particular context in which the statement is made*.'

258 There is no requirement that to attract the protection of the statutory scheme, disclosures must be made in good faith. However, S.49(6A) of the ERA 1996, gives the Tribunal the power to reduce compensation in successful claims under S.103A by up to 25% where 'it appears to the Tribunal that the protected disclosure was not made in good faith'. The leading case on good faith (in a slightly different context under earlier whistleblowing legislation) is *Street v Derbyshire Unemployed Workers' Centre 2005 ICR 97* where the Court of Appeal equated 'good faith' with acting with honest motives. It was held that where the predominant reason that a worker made a disclosure was to advance a grudge, or to advance some other ulterior motive, then he or she would not make the disclosure in good faith.

259 In *Kuzel v Roche Products Ltd [2008] ICR 799*, the Court of Appeal considered the operation of the burden of proof as regards the reason for the dismissal in an unfair dismissal case brought by reference to both section 98 and section 103A. Mummery LJ envisaged that the Tribunal will decide first whether it accepts the reason for the dismissal advanced by the employer before turning, if it

does not find that reason to be proved, to consider whether the reason was the making of the protected disclosure:

260 In his judgment Lord Justice Mummery also rejected the contention that the burden of proof was on the claimant to prove that the making of protected disclosures was the reason for dismissal. However, Mummery LJ agreed with the EAT that, once a Tribunal has rejected the reason for dismissal advanced by the employer, it is not bound to accept the reason put forward by the claimant. He proposed a three-stage approach to S.103A claims: a. First, the employee must produce some evidence to suggest that his or her dismissal was for the principal reason that he or she had made a protected disclosure, rather than the potentially fair reason advanced by the employer. This is not a question of placing the burden of proof on the employee, merely requiring the employee to challenge the evidence produced by the employer and to produce some evidence of a different reason;

a. Second, having heard the evidence of both sides, it will then be for the employment Tribunal to consider the evidence as a whole and to make findings of primary fact based on direct evidence or reasonable inferences;
b. Third and finally, the Tribunal must decide what was the reason or principal reason for the dismissal on the basis that it was for the employer to show what the reason was. If the employer does not show to the Tribunal's satisfaction that it was its asserted reason, then it is open to the Tribunal to find that the reason was as asserted by the employee. However, this is not to say that the Tribunal must accept the employee's reason. That may often be the outcome in practice, but it is not necessarily so.

261 The Tribunal bears in mind that an employer may fail in its case of fair dismissal for an admissible reason, but that does not mean that the employer fails in disputing the case of automatically unfair dismissal advanced by the employee.

262 Whistle-blower protection is analogous to the victimisation provisions in antidiscrimination legislation, in that both seek to prohibit action taken on the ground of a protected act. This has led courts and Tribunals considering claims under S.103A to refer to the substantial body of case law concerning causation under the victimisation provisions in what is now the EqA for guidance. In *Chief Constable of West Yorkshire Police v Khan 2001 ICR 1065, HL*, a claim concerning victimisation contrary to the former Race Relations Act 1976, Lord Nicholls stated that the causation exercise for Tribunals is not legal but factual. A Tribunal should ask: 'Why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason?' This approach was expressly approved in the context of S.103A by the EAT in *Trustees of Mama East African Women's Group v Dobson EAT 0220/05*.

263 Lord Denning MR in *Abernethy v Mott, Hay and Anderson 1974 ICR 323, CA* held that the principal reason for the dismissal is the reason that operated on the employer's mind at the time of the dismissal, it is the: '*set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the*

employee'. Lord Justice Underhill adopted this approach in *Croydon Health Services NHS Trust v Beatt 2017 ICR 1240, CA*, stating that 'the "reason" for a dismissal connotes the factor or factors operating on the mind of the decision-maker which cause them to take the decision — or, as it is sometimes put, what "motivates" them to do so'.

Detriments on the ground of making protected disclosures

264 Section 47B of the ERA 1996 says:

47B(1): "A worker has the right not to be subjected to any detriment by any act or any deliberate failure to act by his employer done on the ground that the worker had made a protected disclosure."

265 The case of London Borough of Harrow v Knight 2003 IRLR 140 EAT set out the correct approach to apply under section 47B(1) and section 47B(1A) which is:

• the Claimant must have made a protected disclosure and
• they must have suffered a detriment
• the employer/worker/agent must have subjected the Claimant to that detriment by some act/deliberate failure to act and
• the act or deliberate failure to act must be done on the ground that the Claimant made a protected disclosure.

266 As far as detriment is concerned the Tribunal took account of the Court of Appeal decision in the case of *Ministry of Defence v Jermiah 1980 ICR 13* where the court said that: "*Detriment meant simply putting under a disadvantage and that a detriment exists if a reasonable worker would or might take the view that the action of the employer was in all the circumstances to his detriment. What matters is that compared with other workers, hypothetical or real, the complainant has shown to have suffered a disadvantage of some kind. Someone who is treated no differently than other workers even if the reason for an employer's treatment is perceived to arise from or be connected to the act of making a protected disclosure will find it difficult to show that he or she has suffered a detriment*."

267 Thus, a 'detriment' arises in the employment law context where, by reason of the act(s) complained of a reasonable worker would or might take the view that he has been disadvantaged in the workplace. The assessment of whether a reasonable worker would take the view that the action taken was in all the circumstances to his detriment must be viewed from the perspective of the worker (*Shamoon v Chief Constable of the RUC 2003 ICR 337 HL*). For example, there did not necessarily have to be any physical or economic consequences for there to be a detriment. An unjustified sense of grievance cannot amount to a detriment: see also *Shamoon*.

268 Examples of detriment can include suspension, disciplinary action, moving the whistle blower as in the case of *Merrigan v University of Gloucester ET 1401412/10* and *Keresztes v Interserve FS (UK) Ltd ET 2200281/16*. It can also

include being subjected to performance management as in the case of *Chief Constable of West Yorkshire Police v B and anor EAT 0306/15*.

269 The Tribunal must deal with the test of causation in the following order:

■was the worker subjected to a detriment by the employer/ worker/ agent?
■Was the worker subjected to a detriment because they made a protected disclosure?

270 This is what section 48 of the ERA 1996 says:

"48 Complaints to employment tribunals
(1) An employee may present a complaint to an [employment tribunal] that he has been subjected to a detriment in contravention of section 43M, 44(1), 45, 46, 47, 47A, 47C(1), 47E, 47F or 47G.
…
(1A)A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B
…
(2) On a complaint under subsection (1), (1XA), (1ZA), (1A) or (1B) it is for the employer to show the ground on which any act, or deliberate failure to act, was done.
(5) In this section and section 49 any reference to the employer [includes—
[(a) where] a person complains that he has been subjected to a detriment in
contravention of section 47A, the principal (within the meaning of section 63A(3));
(b) in the case of proceedings against a worker or agent under section 47B(1A), the worker or agent]."

271 The necessary link between a protected disclosure and any detriment relied upon is established if the former was a material influence upon the latter: see *Fecitt v NHS Manchester [2012] ICR 372 CA*.

272 The question of whether the making of the disclosure was the reason (or principal reason) for the dismissal is distinct from the question of whether the disclosure was protected under the statutory scheme — *Croydon Health Services NHS Trust v Beatt 2017 ICR 1240, CA*. The former question requires '*an enquiry of the conventional kind into what facts or beliefs caused the decision-maker to decide to dismiss*.' The latter, however, is '*a matter for objective determination by a Tribunal*' and '*the beliefs of the decision-taker are irrelevant to it*.' Furthermore, as Lord Justice Elias confirmed in *Fecitt and ors v NHS Manchester (Public Concern at Work intervening) 2012 ICR 372, CA*, the causation test for automatically unfair dismissal under S. 103A is stricter than that for unlawful detriment under S.47B — the latter claim may be established where the protected disclosure is one of many reasons for the detriment, so long as the disclosure materially influences the decision-maker, whereas S.103A requires the disclosure to be the primary motivation for a dismissal. Thus, if the fact that the employee

made a protected disclosure was merely a subsidiary reason to the main reason for dismissal, then the employee's claim under S.103A will not be made out.

Submissions

273 The claimant's representative and the respondent's representative prepared written submissions and they supplemented those by making oral submissions after the conclusion of the evidence, which the Tribunal found to be informative. We considered those submissions fully. References are made to those submissions in this Judgment where necessary.

274 We also referred to the authorities in parties' representatives' written submissions and those referred to in oral submissions including but not limited to the following:

a) Western Excavating (ECC) Ltd v Sharp [1978] ICR 221 (per paragraph 3 of claimant's representative's submissions and paragraph 3 of the respondent's representative's submissions)
b) Bliss v South East Thames Regional Health Authority [1987] ICR 700, CA, confirmed in Leeds Dental Team Ltd v Rose [2014] ICR 94, EAT (per paragraph 4 of claimant's representative's submissions)
c) Lewis v Motorworld Garages Ltd [1986] ICR 157 (per paragraph 5 of claimant's representative's submissions)
d) Malik v Bank of Credit and Commerce International SA [1997] ICR 606 (per paragraph 5 of claimant's representative's submissions)
e) Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 (per paragraphs 5 and 6 of claimant's representative's submissions)
f) Logan v Customs and Excise Commissioners [2004] ICR 1, CA, §33 (per paragraph 5 of claimant's representative's submissions)
g) Omilaju v Waltham Forest London Borough Council [2005] ICR 481 (per paragraph 7 of claimant's representative's submissions and footnote 1 at page 3 of the respondent's representative's submissions)
h) Weathersfield Ltd t/a Van and Truck Rentals v Sargent [1999] ICR 425, CA (per paragraph 8 of claimant's representative's submissions)
i) Kaur v Leeds Teaching Hospitals NHS Trust [2018] 4 All E.R. 238 (at §55 *per* Underhill LJ) (per paragraphs 9 and 10 of claimant's representative's submissions)
j) IBM UK Holdings Ltd v Dalgleish [2017] EWCA Civ 1212, [2018] IRLR 4 (per paragraph 6 of the respondent's representative's submissions)
k) Harrow London Borough v Knight [2003] IRLR 140, EAT (per paragraph 71 of the respondent's representative's submissions)

l) Kilraine v London Borough of Wandsworth [2018] ICR 1850 at §35 (per paragraph 12 of claimant's representative's submissions)

m) Babula v Waltham Forest College [2007] ICR 1026, CA (per paragraph 13 of claimant's representative's submissions)

n) Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4 (per paragraph 14 of claimant's representative's submissions)

o) Chesterton Global Limited and (2) Verman v Nurmohamed (Public Concern at Work intervening) [2017] ICR 731 at §27 (per paragraph 15 of the claimant's submissions)

p) NHS Manchester v Fecitt [2012] ICR 372, §45 *per* Elias LJ (per paragraph 17 of the claimant's representative's submissions)

q) Ministry of Defence v Jeremiah [1980] ICR 13 (per paragraph 18 of the claimant's representative's submissions)

Discussion and Decision

275 On the basis of the findings made and having applied the law to those facts, the Tribunal disposes of the issues identified at the outset of the hearing as follows.

Constructive (unfair) dismissal

Issue 1.1 Was the claimant dismissed?

276 We have considered all of the facts in the round and have assessed the aggregate effect on the relationship of trust and confidence between the claimant and the respondent. We have carefully applied the definition of the implied term of trust and confidence set out in the Malik and Courtaulds cases (referred to above). Our approach has been to consider the facts objectively and not from the subjective perspective of either side, since that is how breaches of contract must be assessed. The important words used to describe the implied term in the above cases must be applied, and it is certainly not a question of simply seeking to identify objectively unreasonable behaviour.

277 Thus, the first issue for this Tribunal to determine is the complaint of constructive dismissal. The claimant asserted that the employer had, by their actions, breached the implied duty of trust and confidence. The claimant argued that the respondent had breached the implied duty of trust and confidence by reason of the acts and/or omissions of the respondent that are set out in paragraphs 1.2 (a) to 1.2 (j) of the agreed List of Issues set out in this Judgment (at Annex A). We considered each of those matters in turn.

Issue 1.2 Alleged breaches of the implied term of trust and confidence

Issue 1.2 (a) The decision to overrule her Severity Assessment;

278 Mr Dewar sent an email to the claimant on 04 August 2020 advising that due to the high-profile nature of this incident and organisational risk involved, a senior lawyer will be involved and Mr Naseem will take the role of Decision Maker going forward. The claimant had not objected to this at the time in question. The

claimant's representative points out that there was no suggestion at that time that Mr Naseem would be making the final decision on the Severity Assessments.

279 On 26 August 2020 Mr Naseem advised the investigation team that he would be conducting the Severity Assessments. We accepted Mr Naseem's evidence in relation to this matter which was consistent with the evidence of Mr Simpson and Mr Dewar, and the written action points which were issued to attendees on the same day as the meeting (by email).

280 The written action points from the meeting on 26 August 2020 stated, "Due to the profile and the risk SN will make the final decision on the SA". Those were sent to the investigation team, including the claimant, by email on the same day and there was no email or other correspondence from the claimant (in response) to state that the action points were not accurate.

281 The claimant's representative also submits that the claimant was not told at the meeting on 26 August 2020 that her Severity Assessments would be overruled. Reliance is placed on the claimant's reaction at the meeting on 02 September 2020 and her subsequent email correspondences with Mr Truby. The subsequent email correspondences are not inconsistent with the fact that the claimant remained part of the investigation team in relation to the Ms Williams/Mr Dos Santos case at that time.

282 Mr Naseem reviewed the Severity Assessments prepared by the claimant at the end of August 2020. He did so in conjunction with members of the respondent's legal team and he had received legal advice. We noted that under the respondent's Scheme of Delegation, the Director General could properly appoint Mr Naseem to review the Severity Assessments. Although this was unusual according to the respondent's witnesses (whose evidence in relation to this matter we accepted), it was not unprecedented on the basis that the complaint was of a sensitive matter and of a high profile, with significant public interest. We further noted that Severity Assessments are organic documents that evolve and develop as information arrives (even to the extent that the Authorising Authority provides information following which the assessments are reviewed). The relevant Regulations had been revised in early 2020 and both the claimant and Mr Naseem had attended legal update training relating to the same.

283 In relation to the meeting on 02 September 2020, we refer to our findings of fact above. At that meeting, Mr Naseem provided the investigation team which included the claimant with an explanation in relation to his decision. We found that the explanation provided was clear. The claimant's representative states that when the claimant asked for a written explanation of Mr Naseem's reasoning, he refused to provide the same (reference is made to page 1463 of the Hearing Bundle).

284 The respondent's representative argues that, in the circumstances, Mr Naseem did not overrule the claimant's Severity Assessments.

285 Even if it was considered that Mr Naseem was overruling the claimant's Severity Assessments (in terms that he reached different conclusions from the

claimant's findings), we noted that Mr Naseem had taken legal advice and he had clearly set out his decisions and his rationale in writing (in the emails to which we were referred) in respect thereof. The claimant's representative says that Mr Naseem's decision was unusual because of the disparity in terms of experience between the claimant and Mr Naseem and in circumstances where the claimant's conclusions had been approved and reviewed by a legal officer. However, we accept that the decisions made by Naseem were well within his discretion as a decision maker and they did not amount to a breach of contract in the circumstances. We took into account Mr Naseem's previous experience as outlined in our findings of fact.

286 Moreover, as the respondent's representative points out "It was clearly not a decision no reasonable decision-make could have made, given the support and agreement from Danny Simpson and the positive peer review of Sarah Green, who is plainly not an *unreasonable* decision-maker." It is submitted on behalf of the respondent that the need not to stifle the exercise of the respondent's discretion is heightened in the context of a professional independent regulator, seeking to weigh the evidence, law and public interest factors without fear or favour.

287 In all the circumstances and on the evidence before us, to any extent that Mr Naseem made a decision to overrule the claimant's Severity Assessments, we did not find that this amounted to a breach of the implied duty of trust and confidence.

Issue 1.2 (b)The failure to inform the claimant prior to the meeting on 2 September 2020, that Mr Naseem would be overruling her Severity Assessment

288 We noted that the claimant prepared the Severity Assessments in draft form within August 2020. There was significant input from the respondent's legal team. As indicated above, the claimant was advised at the meeting on 26 August 2020 that Mr Naseem would be making the final decision in relation to the Severity Assessments.

289 The Severity Assessments were reviewed by Mr Naseem over the bank holiday weekend in August 2020 and he sought legal advice from the respondent's legal team in relation to these.

290 Firstly, we consider that there was no obligation on Mr Naseem to share any revisions with the claimant, but as a matter of courtesy, Mr Naseem could have engaged in better communications with the claimant (even in an informal way prior to the meeting on 02 September 2020). It is clear that Mr Naseem would have preferred to have communicated his decision to conduct the severity assessments to the team before 26 August 2020 but had wanted to do so properly within a meeting. Considering the timing and exigencies of the matter (and the delay to date), he had informed the investigation team (including the claimant) of his decision and his reasons at the same time on 02 September 2020. We find that this was a reasonable approach considering all the circumstances.

291 In any event Mr Naseem was not required to consult the claimant prior to amending the Severity Assessments or submitting them to the Appropriate Authority given the role he was carrying out under delegated authority. However he held the meeting on 02 September 2020 during which he explained his decision and the reasons for the same (we note that paragraph 17 of the respondent's representative's submissions refers to relevant evidence in this regard).

292 In the claimant's email dated 09 September 2020 she states that she expected to receive a full written explanation, which we consider was unnecessary in the circumstances. Mr Naseem acknowledged in his evidence that he could have kept the claimant better updated about the situation and he wished he had communicated his intention earlier, but he had worked over the bank holiday weekend on this matter and a meeting was arranged on 02 September 2020. There was a finding in the appeal outcome letter in terms that a more robust explanation should have been provided to enable the claimant to understand how Mr Naseem's decisions were reached. Although the communication could have been better (and no doubt the communication issues would have been upsetting for the claimant), we do not find that Mr Naseem conducted himself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the claimant and the respondent. Mr Naseem had provided details of his decision at the meeting on 02 September 2020 (and we note this was arranged soon after the bank holiday weekend given that the bank holiday fell on Monday 31 August 2020). The claimant had the opportunity to discuss any concerns during the meeting on 02 September 2020 and thereafter (including within written correspondences that were exchanged between the parties thereafter).

Issue 1.2 (c) The failure to consult with the claimant prior to announcing the decision to overrule her Severity Assessment

293 The claimant's representative states that other Lead Investigators agreed with the claimant's concerns that the matter had become political and that it was unreasonable for Mr Naseem to overrule her Severity Assessments and in terms of the manner in which he did so (without consultation and without giving her advance notice of the decision until 2 September 2020). Reference is made to Mr Naseem's acceptance in cross examination that he did not consult the claimant prior to making changes to the Severity Assessments.

294 As indicated above, Mr Naseem was not required under the respondent's Scheme of Delegation or any other written rules or policy to which we were referred, to consult the claimant prior to announcing any decision he made in relation to the Severity Assessments.

295 We noted that Mr Naseem consulted the respondent's legal team and he sought advice about his intended revisions a number of times. There had been substantial delays to the investigation and the process to date. Mr Naseem communicated his decision, his assessment, and his reasons to the investigation team (including the claimant) at the meeting on 02 September 2020 (soon after the bank holiday weekend). Whilst it would have been unrealistic to expect Mr Naseem to communicate with the claimant at every juncture, as we indicated above, Mr Naseem could have communicated a summary of his work to the claimant earlier.

We have taken account of the fact that he was working expeditiously and the exigencies of the circumstances. Mr Naseem was acting in his capacity as Decision Maker as per the 2020 Regulations and the training that had been delivered in early 2020.

296 At the time of the meeting on 02 September 2020 the Severity Assessments had not yet been sent to the Metropolitan Police. The claimant had a reasonable opportunity at that meeting and in correspondences thereafter to make any comments.

297 The respondent's representative submits that the evidence establishes that the claimant was consulted, shared her views and they were considered, and further, that the real issue is not the fact the provisional decisions were not explained on 2 September 2020, it is that they were not in keeping with the view the claimant arrived at very early on, i.e. that the officers had lied.

298 On the evidence we heard and considered, and in the circumstances, we do not find that Mr Naseem conducted himself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the claimant and the respondent.

Issue 1.2 (d) The unreasonable delay in providing an outcome to her grievance

299 The claimant's representative sets outs that the claimant submitted her grievance on 23 September 2020. This was sent two months before she attended a grievance meeting with Mr Noonan on 25 November 2020, and she did not receive the grievance outcome until March 2021. It Is submitted that the delay of approximately six months was unreasonable, in particular given that Mr Noonan did not investigate a core part of the complaint, namely the political interference issue.

300 We accepted that there was a delay in providing the claimant with Mr Noonan's outcome report. However, we did not accept that this was an unreasonable delay in all the circumstances.

301 There was an attempt to address the claimant's request for a further explanation informally in the first instance (see page 1808 of the Hearing Bundle), which the claimant had rejected on 20 October 2020. Mr Dewar spent time preparing his report dated 03 November 2020 and a review was conducted by Sarah Green following receipt of the claimant's grievance (provided to the claimant before her grievance meeting). Mr Noonan was appointed to Chair the claimant's grievance in mid-November 2020 and met with the claimant on 25 November 2020. He prepared draft Terms of Reference which he sent to the claimant on 07 December 2020 and there were email correspondences between him and the claimant relating to this matter.

302 We considered that Mr Noonan was conducting his work during the COVID-19 pandemic, which gave rise to practical issues which he mentioned in his oral evidence. We took into account that Mr Noonan was absent from work for some time in December 2020 and he also had a period of annual leave in December 2020, there was a Christmas break, Mr Noonan sought and obtained detailed

further information from the claimant towards the end of December 2020 and there were some questions asked by Mr Noonan in December 2020 (including to Mr Naseem) in relation to which he received responses in January 2021. Mr Noonan also conducted interviews in February 2021 (and he had sought input from additional witnesses at the claimant's request). The grievance report was prepared in draft in around mid-March 2021. Mr Noonan had sought advice from the respondent's legal team, including advice from David Emery concerning the Scheme and Delegation and Decision Making Framework.

303 Furthermore, Mr Noonan kept the claimant updated at regular intervals. He met with the claimant on 1 April 2021, and Mr Noonan reported the outcome of the grievance in writing on 6 April 2021.

304 Having considered all the evidence, we do not accept that there was an unreasonable delay in terms of providing an outcome to the claimant's grievance. In any event we do not find that in respect of this matter Mr Noonan conducted himself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the claimant and the respondent.

Issue 1.2 (e) The decision not to investigate the allegations that Mr Naseem's decision to overrule the severity assessment was influenced by external factors

305 The claimant's representative suggests that the allegation in question was not considered by Mr Noonan. During the claimant's appeal she stated "At the outset, I challenged the TOR for the grievance investigation as they did not cover all points raised in my original complaint. The TOR were not revised but I was given assurance it would all be covered. 5. The investigation conducted by Steve Noonan (Steve) did not, however, examine all points of the grievance, notably the hypothesis that decision making had been politically motivated."

306 The respondent's representative contends that if the alleged breach is the decision not to investigate the claimant's hypothesis with the grievance, that criticism is unfair. Reference is made to the claimant's hypothesis being raised during the meeting on 25 November 2020, and that it was not contained in the grievance document itself. It is suggested that they agreed a way forward in terms that an investigation would take place into how Mr Naseem came to his decision but if evidence came to light suggesting interference in decision-making, Mr Noonan would act (reference is made to page 2012 of the Hearing Bundle). Furthermore if the claimant was concerned about the agreed way forward, it was open to the claimant to invoke the Raising Concerns policy, but she did not do so at that stage.

307 Mr Noonan noted that the claimant raised a hypothesis that the decisions made may have been politically motivated. Mr Noonan stated in his grievance outcome report that this matter was not part of his remit, and this should be disposed of more appropriately by way of whistleblowing. He further observed at paragraph 6 of his grievance report that the claimant did not provide any evidence to substantiate this allegation.

308 Notwithstanding the position set out at paragraph six of his report, Mr Noonan proceeded to set out at paragraph six of his findings (page 2269 of the Hearing Bundle) that he had found no evidence to support that Mr Naseem was influenced in his decision making by any external factor, and no evidence had been offered to support the claimant's allegation.

309 The claimant subsequently raised her concerns under the respondent's Raising Concerns policy, and she reviewed the outcome report that was prepared following that process. Lianne Corris' report sets out the investigative steps she took as well as her conclusions.

310 Accordingly, we do not accept the claimant's allegation in terms that Mr Naseem's decision to overrule the Severity Assessments was influenced by external factors was not investigated.

311 In any event we did not find that in these circumstances and on the basis of the evidence we read and heard, that Mr Noonan conducted himself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the claimant and the respondent.

Issue 1.2 (f) The criticism of the claimant within the grievance for raising a formal grievance and for questioning the motivation of Mr Naseem for overruling the claimant's Severity Assessment

312 Reference is made by the claimant's representative to the content of Mr Noonan's grievance report in which he states: "There is clearly a balance to be struck between allowing staff to raise a grievance and holding this process over leaders and managers at all levels of our organisation as a lever to prevent them performing their role. I am not sure the balance is right in this particular instance and we should take the opportunity to learn from this" and "Those managing PN and NS may wish to take time and speak with them regarding how they challenge decisions, register dissatisfaction, make requests to be re-allocated from work and what it is/is not appropriate to allege a colleague may have done and their motivation for doing so, particularly when there does not appear to be an evidential basis for making such allegations." The claimant's representative argues that this amounted to a criticism of the claimant for raising a grievance and questioning Mr Naseem, the implication being that the claimant should not have brought a grievance.

313 It is also argued on behalf of the claimant that the comments by the other Lead Investigators interviewed were not given sufficient weight by Mr Noonan, that Mr Noonan sought to deter Ms Gallagher from making critical comments about Mr Naseem, and reference is made to a threat allegedly made to the claimant by Claire Bassett during a telephone call. We did not accept that the evidence before us supported that there was a consistent theme of staff within the respondent being critical of the claimant raising serious allegations against Mr Naseem, as suggested by the claimant's representative.

314 The respondent's representative invites us to find that Mr Noonan's evidence on this issue was cogent and seeks to remind us that he rejected the framing of his learning recommendations as a criticism of the claimant, explaining,

"I don't agree because it's not intended to be a criticism of anybody." He explained that when you look at all matters in the round, he felt it was better to discuss it, not raise a hypothesis. He was asking the IOPC to reflect: "The IOPC is a learning organisation and we encourage reflection" and that he explained that looking at things fairly applies to all parties.

315 Furthermore it is argued on behalf of the respondent that Mr Noonan's words (which appear at page 2270 of the Hearing Bundle) were with reasonable and proper cause and as such they cannot be a breach of the implied term of trust and confidence, and that alternatively, Mr Noonan did not act in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence between the respondent and the claimant. His recommendations included consideration of the respondent communicating the February 2020 changes in the law more effectively to staff (reference is made to Mr Noonan's re-examination about this matter).

316 We did not accept that the comments in the grievance report relating to the claimant having raised a grievance was a criticism. Mr Noonan was cognisant when questioned about this matter of an employee's right to bring a grievance. He said that the IOPC is a learning organisation, and they encourage reflection. As part of this process, he suggested that the claimant could have sought to obtain redress through different routes prior to raising a grievance. We considered the claimant's acceptance during her evidence that she had not read Mr Dewar's report and, in this context at the very least, it may have been helpful for the claimant to have reviewed Mr Dewar's report prior to continuing with the grievance process.

317 We also did not accept that the claimant was criticised for questioning the motivation of Mr Naseem for overruling the claimant's Severity Assessments.

318 Mr Noonan sought to convey the point that there was no evidence in support of the claimant's hypothesis, the claimant had presented no evidence in support of her hypothesis and that the honesty and integrity of the claimant's colleagues were at stake (and in the worst case the organisation's reputation).

319 Accordingly, we did not find that in these circumstances and on the basis of the evidence we read and heard, that Mr Noonan conducted himself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the claimant and the respondent. Mr Noonan's words had a reasonable and rational basis viewed in their proper context (and considering the background of the email correspondences and documents that we were referred to). In any event, Mr Noonan's words which form the subject of the claimant's complaint, were with reasonable and proper cause based on the evidence we heard and that we were referred to.

<u>Issue 1.2 (g) The decision to not uphold the claimant's grievance</u>

320 The claimant's representative notes that when considering the decision to overrule the claimant's assessment, Mr Noonan relied on the Scheme of Delegation and that Mr Noonan had not questioned Mr Naseem about his training.

Furthermore, it is submitted that Mr Noonan had not referred to the Lead Investigators' comments about Mr Naseem's experience in terms of investigations, but he had referred to Mr Dewar's comments.

321 The respondent's representative contends that Mr Noonan's legitimate conclusions were reached following a fair and thorough process, and that disagreeing with a grievance outcome did not amount to a breach of contract, nor was there any fair criticism to be made about the grievance outcome when viewed objectively. It is argued that Mr Noonan's decision was certainly not irrational or so wrong that it amounted to a breach of contract.

322 Whilst Mr Noonan decided not to uphold the claimant's grievance, he had done so having carried out a full investigation into the claimant's concerns. This included reviewing the relevant material including Mr Dewar's and Sarah Green's reports, meeting with the claimant, preparing the terms of reference, obtaining further information from the claimant, obtaining further information from Mr Dewar and Mr Naseem, making enquiries with the respondent's legal team, interviewing potential witnesses identified by the claimant, and preparing a detailed grievance outcome report.

323 In terms of the points made in relation to Mr Naseem's training, the respondent's representative refers to Mr Noonan's cross examination. It is contended that Mr Noonan correctly answered that there was a clear difference between investigative skills and those required of a decision-maker. Mr. Naseem's training had been in decision-making, which was the exercise he was conducting. It is submitted that the point missed by the claimant is that Mr. Noonan was acting diligently in speaking with the respondent's HR department and not merely asking Mr. Naseem for his own account, and that he displayed investigative rigour entirely inconsistent with the claimant's case theory of the respondent failing to look at her grievance adequately.

324 We find that Mr Noonan's conclusions were clearly supported by the evidence, and he explained those conclusions with care. He investigated and determined both the legal aspects and the substantive reasons behind Mr Naseem's decisions. Mr Noonan cross referenced the witness evidence and Mr Naseem's work with that of independent assessments (referred to above). His conclusions are consistent with the contemporaneous documents to which we were referred.

325 The claimant may have disagreed with Mr Noonan's conclusions, or the weight attached to certain matters, but we concluded that ultimately his analysis and conclusions were reasonable and that they were open to a reasonable decision maker (in the position of Mr Noonan) based on the evidence that was before Mr Noonan at the relevant time.

326 He found that Mr Naseem's conduct in taking over the role as Decision Maker was within the scope of the relevant Regulations and that training had been attended in respect of the relevant Regulations in early 2020.

327 As indicated earlier, Mr Noonan had found no evidence to support that Mr Naseem was influenced in his decision making by any external factor, and no evidence had been offered to support the claimant's allegation.

328 Additionally, he advised that the claimant's concerns about external influence could more appropriately be raised as a whistleblowing matter, notwithstanding his findings in relation to this matter.

329 Accordingly, in those circumstances, we did not find that in these circumstances and on the basis of the evidence we read and heard, that Mr Noonan conducted himself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the claimant and the respondent.

Issue 1.2 (h) The decision to not uphold the substantive aspects of the claimant's appeal

330 Mr Campbell was assigned to deal with the claimant's grievance appeal. He heard the claimant's appeal on 13 July 2021 and the claimant was informed about the outcome of her appeal on 19 July 2021.

331 The claimant's representative criticises Mr Campbell for failing to explore the point relating to Mr Naseem's investigatory experience with him, despite the claimant having explained as part of her appeal that the training he had received was different from the Lead Investigators' training. It is suggested that Mr Campbell did not consider whether Mr Naseem had sufficient competency/expertise and training. Concern is also raised about the fact that he did not provide a copy of the notes of his meeting with Mr Noonan and his failure to uphold the point that the respondent should have progressed the claimant's concerns about political interference at an earlier stage.

332 The respondent's representative states that Mr. Campbell explored the issue of the weight to be given to the Lead Investigators' evidence in some detail with the claimant but, more importantly, it was not within his remit to revisit the weight to be attached to evidence which Mr. Noonan had clearly and expressly considered in his report. It is also contended that the corollary of the claimant's argument is that grievances should necessarily be susceptible to being reversed on the facts on appeal, but, as a matter of law and natural justice, this is incorrect. It is suggested that the contention that Mr Campbell had not considered the issue of training is demonstrably wrong, and that he had correctly referred during the appeal meeting to Mr Noonan's report on that matter (see page 2394 of the Hearing Bundle).

333 We noted that Mr Campbell appeared an even-handed appeal chair. He partially upheld the claimant's appeal. He was impartial in terms that he was a senior member of staff working in a different region. He sets out his conclusions clearly and we considered that they had a reasonable basis. He identified an issue of terms the content of the grievance report and the need for further explanation. He also made recommendations (as set out in our findings above). His exploration of issues during the appeal meeting and his final report must be viewed at the same time.

334 In addition, he noted in his appeal outcome letter that the Severity Assessments were subsequently changed.

335 In all the circumstances, we do not find that either in terms of the decision to not uphold the substantive aspects of the claimant's appeal (or in terms of the basis of Mr Cambell's decision) that Mr Campbell conducted himself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the claimant and the respondent. The appeal outcome was a decision that a reasonable decision maker in the position of Mr Campbell could properly reach on the basis of the available evidence. Accordingly, we find that there was no breach of the implied duty of trust and confidence.

Issue 1.2 (i) The refusal to allow the claimant to take away and keep a copy of Ms Corris' report.

336 The claimant's representative submits that the failure to allow the claimant to take away and keep a copy of Ms Corris' report was unreasonable and disrespectful, in particular, in circumstances where the claimant was a long-standing member of staff who had been waiting more than a year for her complaints to be considered.

337 We considered that the respondent had a valid reason (and a reasonable explanation) for refusing to allow the claimant to take away and keep a copy of Ms Corris' report. In this context we considered that the Ms Williams/Mr Dos Santos investigation was at a critical stage. We considered the timing and manner of this.

338 We noted that the respondent's Raising Concerns policy did not state that the outcome report would be provided in every case. The respondent's representative explains that due to the public interest engaged, as well as the interests of other subjects, the policy promises feedback but not necessarily the report itself. We were assisted by David Emery's evidence in this regard, who had explained that other individuals would have a legitimate expectation that the policy would be followed.

339 The claimant had the benefit of a meeting that was arranged to discuss the report findings and a summary of the report which was sent to her in October 2021.

340 Furthermore, following the input of Non-Executive Director Catherine Jervis, the claimant was afforded an opportunity to review the report with her union representative in the respondent's offices (of her choosing) from 1.30pm (on an agreed date) and she was advised she could take as long as she required to review the report. There were no restrictions placed on the claimant in terms of her ability to review the report at the respondent's offices. The claimant did not request any additional time to review the report.

341 We note that the claimant's union representative provided a detailed reply in respect of Ms Corris' report shortly after the meeting. The respondent's representative points out that the determinative feature, however, is that the claimant and her union representative cannot have been deprived of the ability to understand and digest the report because they provided a detailed letter in

response, to which Mr. Emery responded in detail (reference is made to page 2505 of the Hearing Bundle).

342 Therefore, we did not find that in these circumstances and on the basis of the evidence we read and heard, that the respondent conducted themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the claimant and the respondent.

Issue 1.2 (j) The inadequacy of Ms Corris' report

343 The respondent's representative says that Lianne Corris' report was focussed and addressed the relevant evidence including the chronology (which the claimant had contended was suspicious); and evidence from Mr Naseem, Mr Lockwood, the claimant and Abigail Gallagher (obtained at the claimant's request). Further, it is contended that Mr. Emery was right to say that the investigation did not start at ground zero and that Mr. Corris' investigation built upon the detailed work already undertaken, particularly on strand 2 of the concern (the IT issue).

344 The respondent's representative states, "Crucially, she had also considered the features of the evidence which pointed away from the hypothesis being true. She was right to do so."

345 It is further contended by the respondent's representative that: "As before with the grievance and appeal, it is respectfully contended that the Tribunal should not be asked to revisit judgements on the direction of an investigation or its proportionality unless they reach a particular threshold of procedural or substantive irregularity. Investigators should be permitted some investigatory discretion if the system is going to work without recourse to the Tribunals across the country."

346 The claimant's representative criticises the summaries provided (in respect of witness interviews) within the report, including in relation to the brevity of the interview with the claimant.

347 It is also contended by the claimant's representative that the length of the report did not include the level of detail to be expected in the circumstances.

348 Ms Corris' report considered the claimant's hypothesis in respect of potential external or political interference. She set out her reasoning for her conclusion in terms that she could not support that hypothesis. Her reasoning was detailed, consistent with her chronology and the previous work she undertook.

349 Ms Corris also provided her conclusions in relation to the ICT concerns raised by the claimant. She set out her reasoning fully and clearly which we referred to in our findings in fact earlier in this Judgment.

350 We considered both Ms Corris' conclusions to be reasonable considering all the circumstances. The conclusions had a rational basis and they were supported by the analysis of the evidence. We noted that Ms Corris also made recommendations to assist the respondent's organisation moving forwards. We

considered that Ms Corris was an impartial decision maker in terms of her role within the respondent's organisation.

351 The claimant clearly disagreed with the report which is clear from the comments made by her union representative (having read the outcome report). Ultimately, none the documents or the oral evidence we heard supported the claimant's allegations, and accordingly, there was no evidence in support of the claimant's hypothesis.

352 We did not accept that the report prepared by Ms Corris was inadequate nor did we accept that the conclusions of the report or the reasoning therein amounted to conduct on the part of Ms Corris in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the claimant and the respondent.

Issue 1.3

353 We did not find that the matters listed at paragraph 1.2 of the List of Issues either considered individually or cumulatively amounted to a breach of the implied duty of trust and confidence, nor (in the alternative) did we find that any alleged breach was sufficiently fundamental to allow the claimant to resign and treat herself as dismissed.

354 On the evidence we heard and considered, we found that the respondent did not conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the claimant and the respondent.

355 Our function is to look at the respondent's conduct as a whole and decide whether it was such that its effect judged reasonably and sensibly, was such that the employee cannot be expected to put up with it. We decided, judging the respondent's conduct reasonably and sensibly, we could not conclude that the claimant could not reasonably be expected to put up with it: we concluded that the respondent had not conducted themselves in a manner calculated or likely to destroy or seriously damage the employment relationship; they had taken reasonable steps to address the claimant's grievance, the claimant's grievance appeal, and also, under the respondent's Raising Concerns policy. It is clear to us that notwithstanding the significant number of steps taken by the respondent to address the claimant's concerns, the claimant remained dissatisfied with the outcomes of those processes.

356 If we are wrong to so find, in the alternative, we would have concluded that there was a reasonable and/or proper cause in respect of the respondent's conduct (on the basis of our reasons set out above).

Issues at paragraphs 1.4-1.6 of the List of Issues

357 In view of our conclusions above we did not consider it necessary to determine the issues at paragraphs 1.4 to 1.6 of the List of Issues.

Conclusion –Constructive (unfair) Dismissal complaint

358 As we have found that the claimant was not dismissed by the respondent in terms of section 95(1)(c) of the ERA 1996, the claimant's complaint of unfair dismissal (constructive) is not well founded, and it is hereby dismissed.

Claimant's alleged protected disclosures
Issue 2.1 Did the claimant make one or more protected disclosures?
Issue 2.2(a) The claimant's first alleged protected disclosure

359 The claimant asserts that her formal grievance submitted on 23 September 2020 in which she made the allegation set out at paragraph 1.1 of her Further and Better Particulars of 01 September 2022 was a protected disclosure ("PD1").

360 The specific wording of the allegation that the claimant relies upon in relation to PD1 is set out at paragraph 1.1 of the claimant's Further and Better Particulars of 01 September 2022 as follows:

"…during a 3pm Skype meeting on Wednesday 2nd September Sal suddenly announced that he had been discussing the assessments with Danny and had decided to remove the Honesty and Integrity SoPB breach, without discussion with me.

This was clearly a decision Sal had taken with no explanation of the legal basis of taking over the decision which was mine as lead investigator. (Paragraph 19, Schedule 3, PRA and Regs 16 and 17 Police (Complaints and Misconduct) Regulations 2020 say the decisions on special procedures and content of notices should be made by the 'person investigating'. The legislation does not allocate this power to the Director General or his delegate."

361 Firstly we considered whether PD1 was a protected disclosure. A protected disclosure means a qualifying disclosure as defined by section 43B of the ERA 1996.

362 Schedule 3 of the Police Reform Act 2002 relates to the handling of complaints and conduct matters. It is the duty of the Director General to determine the form of an investigation. The 2020 Regulations referred to by the claimant make provisions in terms of the appointment of persons to carry out investigations (see Regulation 12). There was a Scheme of Delegation operated by the respondent which we have referred to in our findings of fact. The respondent's Scheme of Delegation stated that Paragraph 6A of Schedule 2 Police Reform Act 2002 sets out how the respondent's Director General can delegate their functions and the legal principles derived from paragraph 6A (including the fact that the Director General may authorise any member of IOPC staff to exercise any Director General function on behalf of the Director General).

363 We accept and take into account that although the 2020 Regulations were relatively new at the material time, the respondent provided training to employees in January 2020, which the claimant attended. Thereafter, the claimant worked in her role as Lead Investigator for a number of months prior to the material events in this case occurring.

Issue 2.3 (a) Did the claimant make a disclosure which included information?

364 The claimant's representative submits in relation to the claimant's disclosure (PD1), "This disclosure tended to show a person has failed, is failing or is likely to fail to comply with the following legal obligations." There are three legal obligations set out at paragraphs 79, 80 and 81 of the claimant's representative's submissions.

365 The respondent's representative argues that the claimant's disclosure (PD1) was not a protected disclosure. It is submitted that it is clear that the nub of the first alleged disclosure was a misconceived assertion as to the law, and that the fact some information is interspersed into the mainstay of the disclosure does not cure the defect.

366 In relation to PD1, we accepted that the claimant made a disclosure which included information in terms that it was her belief that the law provided that decisions on special procedures and contents of notices should be made by the 'person investigating'. She also stated that it was her belief that the legislation did not allocate this power to the Director General or his delegate. The claimant's representative states, "Mr Noonan accepted that C understood herself to have the right to make and retain those decision under the elements of the law quoted in the grievance."

367 The claimant also advised that she was dissatisfied with the sudden announcement that Mr Naseem would be revising the Severity Assessments that she had prepared. As we noted earlier in our Judgment, there was no legal obligation for Mr Naseem to inform the claimant about this matter prior to the meeting on 2 September 2020. The claimant could not have held a reasonable belief that the respondent had breached, were breaching, or were likely to breach any legal obligation in relation to Mr Naseem's decision being announced at the meeting on 2 September 2020. In any event we found that Mr Naseem was performing his duties in the required manner, and whilst his communication could have been better, this matter clearly did not (and it could not) amount to any breach of a legal obligation.

Issue 2.3(b) Did the claimant reasonably believe that the disclosure was in the public interest?

368 The respondent disputed whether the claimant reasonably believed that the disclosure (PD1) was made in the public interest.

369 We accepted that the claimant believed that that disclosure made by her in relation to PD1 was made in the public interest.

370 The purpose of the legal framework is to ensure that the IOPC conducts its business fairly and transparently in the context in which it operates. From the claimant's perspective, any potential breach of the legal framework, would therefore be contrary to the public interest.

371 We considered that the claimant's belief that it was in the public interest for her to make the disclosure (PD1) could be said to be a reasonably held belief on the basis that a potential breach of the legal framework, is likely to be contrary to the public interest and could well undermine public confidence in the IOPC in the context of the claimant's grievance matters and her complaints.

Issue 2.3 (c) Did the claimant reasonably believe that the disclosure tended to show that a person has failed, is failing or is likely to fail to comply with a legal obligation to which he/she is subject.

372 The claimant suggested in relation to her disclosure (PD1 as set out above) that the respondent had failed, was failing or was likely to fail to comply with a legal obligation.

373 The claimant's representative submits, "The third legal obligation is the requirement that decisions on special procedures and the content of notices should be made by the "person investigating". This is C's interpretation of Regulations 16 and 17 Police (Complaints and Misconduct) Regulations 2020. In her grievance, C is providing information tending to show a breach of this legal obligation as she asserts the decision had been taken from as LI impermissibly. Mr Noonan accepted that C understood herself to have the right to make and retain those decision under the elements of the law quoted in the grievance."

374 The respondent's representative contends, "the Respondent had provided the Claimant with detailed training on the change in the law [454A]. Further, and importantly, she was informed that Mr. Naseem would be making the severity assessment decisions on 26 August 2020 and raised no issue with it **until** his assessments differed from her view. Thus, this was not reasonably or even subjectively about the Respondent not complying with its legal duties, rather it was about the Claimant's embedded view of the case and how it should be run."

375 In addition, the respondent's representative states that the respondent does not accept that the claimant's disclosures tended to show that a person has failed, is failing or is likely to fail to comply with a legal obligation to which they are subject. It is submitted that these matters were explored with Mr Noonan, when he was asked what he understood the claimant to be meaning when she said certain things and that his confusion was palpable. The example provided is where it was put to Mr Noonan that failing to add a Standard of Professional Behaviour to the Severity Assessments on the facts of this case could lead to other officers in the future breaching the Standards (and he eventually accepted the theoretical premise). However the respondent's representative submits that this type of

speculation does not meet the test (and that the information must tend to show a person has failed or is likely to fail to comply with a legal obligation).

376 In cross examination, the claimant ultimately accepted that she did not know the 2020 Regulations in their entirety. Furthermore, it was put to the claimant in cross examination that within the grievance outcome sent to her in April 2021, the respondent set out the basis upon which it had not acted in a manner that was legally wrong (and the claimant still had not accepted the respondent's explanation). The claimant responded, "No I accept that is what law says. What is written in statute and what is done in practice are conflicting things." Mr Dewar explained in his oral evidence the practice at the end of the Severity Assessments process (and we accepted his evidence in this regard which was credible and consistent).

377 The claimant clearly had a belief (albeit a mistaken belief) in terms that the respondent had failed to comply with a legal obligation (at the material time when she had formed her belief). We reminded ourselves of the Judgment of the Court of Appeal in Babula v Waltham Forest College [2007] EWCA Civ 174, in particular at paragraphs 74-82 of Lord Justice Wall's decision (with whom Lord Justice Thomas and Lord Justice Thorpe agreed). Accordingly, we took into account that a mistaken belief can still be a reasonable belief depending on the facts of a particular case.

378 However, in the context of this case and on the facts before us, we did not accept that the claimant's belief that the respondent had failed (or any belief on the claimant's part that the respondent was failing or was likely to fail) to comply with any legal obligation to which they were subject was reasonably held. We took into account that the changes introduced by the 2020 Regulations had taken effect in the early part of 2020. However, the claimant received detailed training in January 2020, and she worked within the new legal framework for a number of months thereafter. The respondent set out the delegated powers of the Director General in its Scheme of Delegation which the claimant had access to. We took into account that the claimant is an experienced investigator. The claimant had a union representative present during her grievance and grievance appeal meetings (and, in addition, she supported the claimant with the claimant's Raising Concerns complaint). On the evidence before us and in all the circumstances, we find that the claimant did not reasonably believe that the disclosure (PD1) tended to show that a person has failed, is failing or is likely to fail to comply with a legal obligation to which he is subject.

379 On the facts before us, we find that an employee in the position of the claimant should have known that pursuant to the relevant legislation (including the 2020 Regulations and the Police Reform Act 2002) the Director General was able to authorise any member of the IOPC staff to exercise any Director General function on behalf of the Director General. The respondent's Scheme of Delegation which we are satisfied that the claimant was aware of, stated that Paragraph 6A of Schedule 2 Police Reform Act 2002 sets out how the respondent's Director General can delegate their functions (and also the legal principles derived from paragraph 6A). An employee in the claimant's position would have had knowledge

that Mr Naseem had the ability to undertake the Severity Assessments at the relevant time.

380 If we were wrong to so find, and the claimant held a reasonable belief in relation to this matter as at the date when she raised her grievance (contrary to our earlier findings), we would have decided that that the claimant did not reasonably believe that the disclosure (PD1) tended to show any of the matters set out at section 43B(1)(b) from the date when Mr Dewar provided his report dated 03 November 2020 (which contained details of the respondent's Scheme of Delegation). The claimant said in her oral evidence that she had not read Mr Dewar's report. Any employee in the claimant's position, we find, could have been reasonably expected to have read Mr Dewar's report prepared in response to the claimant's grievance. Accordingly, in the alternative, we would have found that that the claimant did not reasonably believe that the disclosure (PD1) tended to show that a person has failed, is failing or is likely to fail to comply with a legal obligation to which he is subject from the date that the claimant was in possession of Mr Dewar's report.

381 In relation to PD1, in the circumstances and on the facts before us, we do not find that the claimant made a qualifying disclosure as defined at section 43B of the ERA 1996. Accordingly, we conclude that the claimant did not make a protected disclosure in respect of PD1.

382 We noted that the claimant's representative included details of further particulars in relation to the claimant's alleged disclosure (PD1) at paragraphs 79 and 80 of the claimant's representative's submissions. We did not consider those matters separately as they did not form part of the agreed List of Issues relating to PD1 (and no application was made to amend the claimant's claim or the List of Issues). However, had we been required to consider the additional alleged protected disclosures, we would not have found that the claimant made a protected disclosure in terms that they amounted to a qualifying disclosure (as defined at section 43B of the ERA 1996) in relation to those matters based on the evidence that we were referred to and heard at the Final Hearing. We would have concluded in relation to those matters that the claimant did not hold a reasonable belief that the respondent has failed, is failing, or is likely to fail to comply with any legal obligation to which they are subject. We note that the claimant's representative also refers to paragraphs 80 and 81 of her submissions in respect of PD2, which we consider (below).

<u>Issue 2.2 (b) The claimant's second alleged protected disclosure</u>

383 In respect of the claimant's second disclosure, this related to the matters that the claimant raised in her grievance interview meeting with Mr Noonan on 25 November 2020 when she alleged that the respondent's decision was made for political reasons as stated at paragraph 2.1 of her Further and Better Particulars as served on the respondent on 1 September 2022 ("PD2").

384 We considered paragraph 2.1 of the claimant's Further and Better Particulars dated 01 September 2022 that is referenced at paragraph 2.2(b) of the List of Issues which states:

"2.1. The Claimant relies on the following wording taken from the 25th September 2020 minutes:
"*PN's belief is, and this takes us possibly into whistleblowing territory, is that this decision was made for political reasons. It enabled Cressida Dick (CD) the Commissioner of the Metropolitan Police, to get away with saying what she said in public statements, that the officers were right to have done what they did. And that's because we were saying that we're not taking a look at, what PN maintained were lies in the officers' statements. So it's those two things, that the whole decision was changed out of the blue, without warning and without proper rationale, in PN's view. And PN's belief that this was done for political reasons*."

Issue 2.3 (a) Did the claimant make a disclosure which included information?

385 The claimant's representative explains that it was suggested within the claimant's disclosure (PD2) that the decision was made for political reasons and that there was a failure to look into lies within the officer's statements. With reference to PD2, the claimant's representative says that the claimant was providing information tending to show a breach of the second legal obligation set out in their submissions (at paragraph 80).

386 It is contended (on the claimant's behalf) that in terms of the claimant's suggestion that the decision was changed relating to the Severity Assessments out of the blue without warning and proper rationale, the claimant was providing information tending to show breach of the third legal obligation (at paragraph 81 of the claimant's representative's submissions). It is further submitted that it is clear that Mr Noonan considered that the claimant had made protected disclosures because Mr Noonan considered the claimant's complaints strayed into whistleblowing (reference is made to page 2101 of the Hearing Bundle)

387 The respondent's representative points out that espousing a hypothesis is not a statement of information and that the claimant's alleged disclosure set out at PD2 was about the ventilation of theory. It is submitted (as noted above) that the fact some information is interspersed into the mainstay of the "disclosure" does not cure the defect.

388 Firstly, we noted that the claimant's union representative referred to the claimant's alleged disclosure as a hypothesis during the grievance meeting on 25 November 2020. Secondly when it was put to the claimant in cross examination whether this was still part of the claimant's claim and whether the claimant accepted that she got it wrong in terms of her point that the respondent was appeasing the MPS and succumbed to political interference, the claimant replied, "This is a hypothesis in this particular case." We also considered that the point that the claimant was seeking to make was put in rather generalised terms within the grievance meeting itself.

389 We note that Mr Noonan had stated in his grievance outcome report that he did not find any evidence to support that Mr Naseem was influenced in his decision making by any external factor, and he also found that no evidence had been offered to support this allegation. In addition, we find that the claimant did not present any evidence that supported her hypothesis during the first instance grievance process, the grievance appeal or as part of the respondent's Raising Concerns process.

390 We took into account relevant case law including Lord Justice Sales's Judgment sitting in the Court of Appeal (with whom Lord Justice Kitchen agreed) in Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436, in particular we reminded ourselves of the discussion at paragraphs 27-37. In order for a statement or disclosure to be a qualifying disclosure according to the language at section 43B(1) of the ERA 1996, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1) (as, for example, in the present case, information which tends to show "that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject"). The statements in the wording taken from the 25 September 2020 minutes (per paragraph 2.1 of the claimant's Further and Better Particulars dated 01 September 2022 quoted above) did not meet that standard. We considered the claimant's Claim Form, the Further and Better Particulars, the Response, the claimant's evidence and all the other evidence to which we were referred in reaching our decision.
391 Having reviewed the evidence before us, and the relevant case law, we did not accept that the claimant had made any disclosure of information in respect of PD2 which in her reasonable belief tended to show any of the matters at section 43B(1)(b) of the ERA 1996.

Issue 2.3 (b) Did the claimant reasonably believe that the disclosure was in the public interest?

392 If we had found that there was a disclosure of information in terms of section 43B(1) of the ERA 1996, we would have also determined that, on the evidence before us, the claimant believed that the disclosure (PD2) was made in the public interest. The claimant's representative submits that the claimant reasonably believed that the information she disclosed was in the public interest with reference to the respondent's duty to impartially and thoroughly investigate potential misconduct on the part of the police.

393 In addition, we would have found that the claimant's belief that the disclosure (PD2) was made in the public interest was reasonably held. This is because it is a matter a matter of public interest for public bodies such as the respondent to be operating impartially.

Issue 2.3(c) Did the claimant reasonably believe that the disclosure tended to show that a person has failed, is failing or is likely to fail to comply with a legal obligation to which he/she is subject.

394 We note that the matters relating to PD2 were based on the hypothesis put forward by the claimant in relation to which she did not present any information or evidence.

395 We further note that whilst the claimant may well have believed in her hypothesis, we did not understand the basis of her belief (nor did we find that there was any evidential basis in support of this). We considered all the matters put forward in the evidence before us and in the claimant's representative's submissions and we did not find that there was any evidence to support the claimant's hypothesis.

396 Although the claimant maintained that the documentary evidence and the Body Worn Video footage were inconsistent, we do not accept that this matter alone (or any of the other circumstances referred to in the claimant's evidence and in the claimant's representative's submissions) would be sufficient rationale on the part of the claimant to support the claimant's hypothesis.

397 In addition, although Mr Naseem disagreed with the claimant's Severity Assessments, we find that his rationale was clear and consistent (and both within the legal framework and supported by legal advice) and there was nothing to suggest or show that that his decision were influenced by political reasons as suggested within the disclosure (PD2).

398 The respondent's representative states, "By the time she made the second alleged disclosure, she had received a full explanation from Colin Dewar, addressing both the law and the substantive explanation [2094], and a peer review from Sarah Green. She had declined to properly read them. The Claimant accepted in evidence she got on well with Colin Dewar. She did not think he was "in on it." It is wholly unreasonable to assert a theory on the law and substance without reviewing a detailed document from a trusted manager, which answered both matters in clear terms."

399 The respondent's representative also points out (as noted earlier) that these matters were explored with Mr Noonan when he was asked what he understood the claimant to be meaning when she said certain things and his confusion was palpable. An example was provided where Mr Noonan had accepted the theoretical premise put to him, but it is submitted by the respondent's representative that this type of speculation did not meet the statutory test.

400 Therefore, in the circumstances, if we had found that there was a disclosure of information in terms of section 43B(1) of the ERA 1996, we would not have concluded that the claimant held a reasonable belief that in making the disclosure (PD2) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

401 On the facts before us, we find that an employee in the position of the claimant (at the time of her grievance meeting on 25 November 2020) should have known that pursuant to the relevant legislation (including the 2020 Regulations and the Police Reform Act 2002), Mr Naseem was able to conduct and make any

decisions in relation to the Severity Assessments, and further, that there was no evidence that his decisions were not made for political reasons. Mr Naseem had explained his rationale at the meeting on 02 September 2020 during which the claimant was present. We took into account that Mr Dewar prepared a report setting out the position following receipt of the claimant's grievance. In addition Sarah Green had also conducted a peer review of the Severity Assessments.

402 In relation to PD2, in the circumstances and on the facts before us, we do not find that the claimant made a qualifying disclosure as defined at section 43B of the ERA 1996. Accordingly, we conclude that the claimant did not make a protected disclosure in respect of PD2.

Issue 3.1 Section 103A ERA 1996 automatically unfair dismissal claim

403 Having considered the evidence before us and the parties' representatives' submissions, we did not conclude that the claimant was dismissed. We set out our reasons for our decision in respect of this matter earlier in our Judgment.

404 In addition, we concluded that the claimant did not make the alleged protected disclosures (PD1 or PD2) and, accordingly, did not make any qualifying disclosures as defined by section 43B of the ERA 1996.

405 In the circumstances, the claimant's complaint of unfair dismissal pursuant to section 103A of ERA 1996 is not well founded and it is hereby dismissed.

Issue 4 Public interest disclosure detriments – s 47B of the ERA 1996

406 In the event that we are wrong to conclude that the claimant's disclosures did not amount to protected disclosures in terms that there were not qualifying disclosures as defined in section 43B of the ERA 1996, we proceeded to consider the claimant's complaints that she suffered detriments by the respondent done on the ground that the claimant had made the alleged protected disclosures (PD1 and PD2) pursuant to section 47B of the ERA 1996.

Issue 4.1 (a) The unreasonable delay in providing an outcome to her formal grievance

407 The claimant's representative submits, "C submitted her grievance on 23 September 2020. It was two months before she attended a grievance meeting with Mr Noonan on 25 November 2020, and she did not receive the grievance outcome until March 2021. This delay of approximately six months was unreasonable, in particular given that Mr Noonan did not investigate a core part of the complaint, namely the political interference issue."

408 The respondent's representative says that Mr Noonan said the following (or similar) in his oral evidence, *"I think I'm probably upset by the suggestion that the reason this took time was because of what she said. I did the best I could."*

409 For the reasons we indicated earlier in our Judgment, based on our findings of fact, we did not accept that there was any unreasonable delay in terms of the

period of time taken to provide the grievance outcome to the claimant by Mr Noonan. In view of that determination, we do not find that the claimant suffered a detriment in respect of this matter.

410 Even if we had found that the delay in providing the grievance outcome to the claimant had been unreasonable, and further, that this amounted to a detriment, we would not have accepted any detriment by Mr Noonan was done on the ground that the claimant had made any of the alleged protected disclosures. The reasons for any delays in terms of issuing the grievance outcome were explained in Mr Noonan's evidence (which we accepted) and we are satisfied that those reasons had no connection whatsoever with any of the claimant's alleged protected disclosures.

411 Whilst the grievance appeal outcome held that the claimant was not provided with a satisfactory explanation for the delay in resolving her grievance, we found that the explanation provided by Mr Noonan in his witness statement and his oral evidence was both satisfactory and reasonable taking account of all the relevant facts.

Issue 4.1 (b) The decision not to investigate the allegations that Mr Naseem's decision to overrule the severity assessment was influenced by external factors

412 Paragraph 6 of Mr Noonan's grievance outcome report states: "I have found no evidence to support that SN was influenced in his decision making by any external factor, and no evidence has been offered to support this allegation."

413 We considered that Mr Noonan had made a finding in his grievance outcome report in relation to whether there was evidence to support whether Mr Naseem's decision making was influenced by any external factor. In addition, the claimant appealed against the outcome of her grievance (the appeal outcome response refers to the fact that the matter is being considered under the Raising Concerns policy) and the claimant's concerns were considered as part of the respondent's Raising Concerns policy. We did not find that a decision was made not to investigate the claimant's allegations that Mr Naseem's decision to overrule the Severity Assessments was influenced by external factors. In any event we do not find that the respondent's decision to investigate or their approach to the investigation into to the said allegations amounted to a detriment in the circumstances.

414 Even if we had found that the claimant had suffered a detriment in respect of the alleged decision not to investigate the claimant's allegation, there was no evidence to show that any alleged detriment was done on the ground that the claimant had made any of the alleged protected disclosures.

Issue 4.1 (c) The criticism of the claimant within the grievance for raising a formal grievance and for questioning the motivation of Mr Naseem for overruling the claimant's Severity Assessment

415 The claimant's representative submits that "This amounted to a criticism of C for raising a grievance and questioning Mr Naseem. The whole point of a

grievance is to investigate allegations made by an employee. The implication behind Mr Noonan's comments is that C should not have brought a grievance." It Is said that the comments made by the Lead Investigators were not given sufficient weight by Mr Noonan, and that it Is clear that Mr Noonan was concerned about staff making accusations against Mr Naseem.

416 The claimant's representative also submits that there is a consistent theme of staff within the respondent being critical of the claimant raising serious allegations against Mr Naseem and cites an example (at paragraph 111 of the claimant's representative's submissions).

417 The respondent's representative contends that a reasonable worker would not deem the respondent's actions to constitute a detriment and repeats their earlier points made in respect of the claimant's constructive (unfair) dismissal complaint.

418 We did not accept that the claimant was criticised as asserted at paragraph 4.1(c) of the List of Issues. Mr Noonan considered the claimant's grievance; he communicated his outcome and his rationale in respect of the same to the claimant on 06 April 2021. As part of the recommendations and the learnings for consideration, he made a number of suggestions to assist the respondent's organisation. Viewed in their proper context, we did not accept that Mr Noonan's comments were a criticism of the claimant as alleged. In any event we do not find that the claimant suffered a detriment as a result of Mr Noonan's comments in the grievance outcome report in the circumstances (and in construing the content of Mr Noonan's report as a whole and viewed in their proper context).

419 The respondent's representative further submits that, even if there was a detriment, there is no evidence that they occurred on the grounds that the claimant made a protected disclosure. It is submitted that it was put to Mr Noonan that his actions and decisions were because of what the claimant had said and that on each occasion, he denied it.

420 Even if we had found that Mr Noonan's comments amounted to a detriment, we would not have concluded that the alleged detriment was done by Mr Noonan on the ground that the claimant made any of the alleged protected disclosures. We were satisfied that the reason for Mr Noonan's comments were that he was attempting to assist the organisation moving forwards (to protect the IOPC and its standing) and he also bore in mind the ongoing employment relationship between the claimant and the respondent (and the need to protect and foster ongoing professional working relationships). This, in our Judgment, had no connection whatsoever with any of the claimant's alleged protected disclosures.

Issue 4.1 (d) The decision to not uphold the claimant's grievance

421 We accepted that, in principle, the failure to uphold the grievance could amount to a detriment. The claimant's representative states that Mr Noonan had failed to address a number of matters at paragraph 112 of their submissions, including in respect of the extent to which he questioned Mr Naseem's training,

that he did not state whether he found Mr Naseem had sufficient training, and that Mr Naseem was given the benefit of doubt over the Lead Investigators.

422 We also considered that the claimant's grievance appeal was partially upheld.

423 On that basis, considering all the facts before us, we decided that the decision not to uphold the claimant's grievance amounted to a detriment. We did not, however, consider that the decision not to uphold the claimant's grievance was done on the ground that the clamant had made any of the alleged protected disclosures.

424 On the evidence before us, we were satisfied that the reason why the claimant's grievance was not upheld were the reasons set out in Mr Noonan's detailed report to which have referred earlier in our Judgment. His rationale was clear, based on the evidence before him, and his findings and conclusions were reasonable in all the circumstances. His decisions and the reasons in respect thereof had no connection whatsoever with any of the claimant's alleged protected disclosures. We noted that Mr Noonan suggested to the claimant that her concerns may be considered and raised as whistleblowing concerns.

425 In relation to the elements of the claimant's grievance appeal that were upheld, we were satisfied that any defects identified by Mr Campbell had no connection whatsoever with any of the claimant's alleged protected disclosures.

Issue 4.1 (e) The decision to not uphold the substantive aspects of the claimant's appeal

426 The claimant's representative points out that Mr Campbell failed to uphold the substantive aspects of the claimant's appeal and a number of observations are made about his findings (for example he did not explore the critical comments made in respect of Mr Naseem's experience by the Lead investigators and did not consider whether Mr Naseem had sufficient competency/expertise and training). We accepted that in principle the decision not to uphold the substantive aspects of a grievance appeal could amount to a detriment.

427 We considered the fact that the claimant's grievance appeal was partially upheld and Mr Campbell's reasons for this. We also considered the parts of the claimant's appeal that were not upheld. In addition, as indicated above, Mr Campbell noted that certain aspects of the claimant's complaints, such as her complaints relating to alleged external influence, were being considered separately under the respondent's Raising Concerns policy.

428 The respondent's representative invites us to accept Mr Campbell's evidence and to find that he was plainly doing his best to navigate the tasks assigned to him. It is submitted that there is no evidence to support the contention that his decision was influenced by what the claimant had said in her grievance notice and meeting.

429 On the facts before us, we did not find that any decision not to uphold the substantive aspects of the claimant's grievance appeal was done by Mr Campbell on the ground that the claimant had made any of the alleged protected disclosures. We found that the appeal outcome letter was clear, and that this was based on reasonable grounds, and indeed, it was supported by the evidence that was before Mr Campbell (and furthermore, his findings and conclusions were within the scope of his terms of reference). We accepted Mr Campbell's evidence and we were satisfied that Mr Campbell's decision in relation to the grievance appeal outcome had no connection whatsoever with any of the claimant's alleged protected disclosures.

Issue 4.1 (f) The refusal to allow the claimant to take away and keep a copy of Ms Corris' report.

430 The claimant's representative says that on 5 November 2021, the claimant made it clear that she wanted to have access to Ms Corris' report and to take it away with her (and not simply to read it in the respondent's office). It is submitted that the claimant did not leak the report, and the respondent did not have any good reason to think that the claimant would leak the report, and that the respondent's decision in this regard was unreasonable and disrespectful.

431 We did not consider that the refusal to allow the claimant to take away and keep a copy of Ms Corris' report amounted to a detriment. The report was approximately 10 pages, and the claimant visited the respondent's office (of her choosing) at 1.30pm on an agreed date and she was permitted to review that report in the presence of her union representative. The time permitted for reviewing the report was not restricted by the respondent. The claimant did not request additional time. We note that the claimant's union representative was in a position to send a detailed document in the early part of the morning on the following day, setting out the claimant's points in relation to the content of the report. The respondent's internal policy did not provide that the claimant would be sent a copy of the report.

432 Moreover, even if we had considered that the refusal to allow the claimant to take away and keep a copy of Ms Corris' report amounted to a detriment, we would not have found that this was done by the respondent on the ground that the claimant had made any of the alleged protected disclosures. The claimant's representative suggests that Mr Emery was aware of the protected disclosures made in the claimant's grievance against Mr Naseem which led to the Raising Concerns investigation, and further that, the reason for this failure is that the claimant made protected disclosures and it was considered by Mr Emery and Ms Corris that the claimant ought not to be making such serious allegations against a senior member of staff. We were satisfied that the reason for the claimant not being provided with a copy of Ms Corris' report was due to the sensitive nature of the internal investigation relating to the ongoing Ms Williams and Mr Dos Santos complaint (which was the reason put forward in Mr Emery's evidence which we accepted). Ms Corris met the claimant to discuss the report and sent an email summarising the report to the claimant and her representative (prior to the claimant and her union representative reviewing a copy of the report at the respondent's office).

Issue 4.1 (g) The inadequacy of Ms Corris' report.

433 The claimant's representative refers to interviews mentioned in Ms Corris' report, and that the investigation notes from those were not provided. It is submitted that it was not possible for the claimant to assess whether appropriate questions were asked as a result of this, or whether her summaries were accurate. Reference is also made to the brevity of the report which was to deal with two very serious allegations. It is submitted that those matters were unreasonable conduct on the respondent's part and that Ms Corris would have been aware of the claimant's alleged protected disclosures.

434 We did not accept that Ms Corris' report was inadequate. The report clearly sets out Ms Corris' findings in terms of the claimant's allegations, including in addition, in relation to the ICT issue and the concerns in respect thereof that were raised by the claimant.

435 Having reviewed the conclusions and the reasoning of the report, we did not consider that the report was inadequate. We were satisfied that conclusions were reached on the material issues and that the reasoning provided within the report was clear, rational, and showed how the conclusions had been reached.

436 We did not conclude that the outcome (or the reasoning) of the report prepared by Ms Corris amounted to a detriment in the circumstances.

437 In the event that we are wrong to so conclude, we also considered the claimant's representative's contention that, "The reason Ms Corris' report was so adequate (sic) was because C had raised protected disclosures in the grievance and grievance meeting and R was not happy C had made such serious allegations against a senior member of staff." Considering the evidence before us and the claimant's representative's submissions, we did not accept that there was evidence to support this contention.

438 Accordingly, in the event that we are wrong, even if we concluded that Ms Corris' report was inadequate, and further, that this matter amounted to a detriment, we would not have determined that this was done by Ms Corris on the ground that claimant had made the alleged protected disclosures. We were satisfied on the evidence before us that the content of Ms Corris' report was based on the chronology of events and the evidence presented at the material time.

Conclusion – protected disclosure detriments

439 On the evidence before us, we did not find that either of the claimant's alleged protected disclosures (either PD1 or PD2) amounted to a protected disclosure (meaning a qualifying disclosure [as defined by section 43B of the ERA 1996]). Therefore, we dismissed the claimant's complaints that she was subjected to detriments by the respondent done on the ground that the claimant made the alleged protected disclosures.

440 However, had we found that the claimant made the alleged protected disclosures (PD1 and/or PD2) [which we did not find], we would have concluded

that the claimant's complaints that she was subjected to detriments by the respondent done on the ground that the claimant made the alleged protected disclosures were not well founded, and we would have dismissed those complaints for the reasons provided above. It was not argued by the respondent's representative that the alleged protected disclosures (PD1 and PD2) were not made to the claimant's employer in terms of section 43C of the ERA 1996.

Conclusion

441 The claimant's complaints of unfair dismissal (constructive), unfair dismissal pursuant to section 103A of the ERA 1996, and protected disclosure detriments pursuant to sections 47B and 48 of the ERA 1996 are not well-founded and they are therefore dismissed.

442 In light of the above, we vacate the additional hearing dates that were listed.

Employment Judge B Beyzade
Dated: 03 June 2024

Annex A – List of Issues

1 Constructive unfair dismissal

1.1 Was the Claimant dismissed? In particular, did the Respondent breach the implied term of trust and confidence (i.e. did it, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence between it and the Claimant?

1.2 The conduct the Claimant relies on as breaching the trust and confidence term is:

(a) The decision to overrule her Severity Assessment;

(b) The failure to inform the Claimant prior to the meeting on 2 September 2020, that Mr Naseem would be overruling her Severity Assessment;

(c) The failure to consult with the Claimant prior to announcing the decision to overrule her Severity Assessment;

(d) The unreasonable delay in providing an outcome to her formal grievance;

(e) The decision not to investigate the allegations that Mr Naseem's decision to overrule the severity assessment was influenced by external factors;

(f) The criticism of the Claimant within the grievance for raising a formal grievance and for questioning the motivation of Mr Naseem for overruling the Claimant's Severity Assessment;

(g) The decision to not uphold the Claimant's grievance;

(h) The decision to not uphold the substantive aspects of the Claimant's appeal;

(i) The refusal to allow the Claimant to take away and keep a copy of Ms Carris' report.

(j) The inadequacy of Ms Carris' report.

1.3 Was the alleged breach sufficiently fundamental to allow the Claimant to resign and treat herself as dismissed?

1.4 Did the Claimant resign in response to the Respondent's conduct (to put it another way, was it a reason for the Claimant's resignation – it need not be the reason for the resignation)?

1.5 Did the Claimant affirm the breaches?

1.6 If there was a dismissal, was that dismissal fair in all the circumstances of the case?

2 Public interest disclosure

2.1 Did the Claimant make one or more protected disclosures (ERA sections 43B) as set out below. The Claimant relies on subsection(s) b of section 43B(1).

2.2 The Claimant asserts that she made two protected disclosures. The disclosures the Claimant relies upon are:

(a) Her formal grievance submitted on 23 September 2020 when she alleged the wording as set out at paragraph 1.1 of her further and better particulars as served on the Respondent on 1 September 2022.

(b) The matters she raised in her interview meeting with Mr Noonan on 25 November 2020 when she alleged that the decision was made for political reasons as stated at paragraph 2.1 of her further and better particulars as served on the Respondent on 1 September 2022.

2.3 In respect of each alleged protected disclosure:

(a) Did the Claimant make a disclosure which included information?

(b) Did the Claimant reasonably believe that the disclosure was in the public interest?

(c) Did the Claimant reasonably believe that the disclosure tended to show that a person has failed, is failing or is likely to fail to comply with a legal obligation to which he/she is subject.

3 Automatically Unfair Dismissal under section 103A of the Employment Rights Act 1996

3.1 If there was a dismissal, was the reason (or, if more than one, the principal reason) for the alleged dismissal of the Claimant by the Respondent because the Claimant had made a protected disclosure?

4 Detriment claim - section 47B of the Employment Rights Act 1996

4.1 Was the Claimant subjected to detriments by the Respondent? The detriments the Claimant relies upon are:

(a) The unreasonable delay in providing an outcome to her formal grievance;

(b) The decision not to investigate the allegations that Mr Naseem's decision to overrule the severity assessment was influenced by external factors;

(c) The criticism of the Claimant within the grievance for raising a formal grievance and for questioning the motivation of Mr Naseem for overruling the Claimant's Severity Assessment;

(d) The decision to not uphold the Claimant's grievance;

(e) The decision to not uphold the substantive aspects of the Claimant's appeal;

(f) The refusal to allow the Claimant to take away and keep a copy of Ms Carris' report.

(g) The inadequacy of Ms Carris' report.

4.2 If so, was this on the grounds that the Claimant had made a protected disclosure for the purposes of section 47B?

5 <u>Remedy</u>

5.1 If the Claimant has been successful in her claim for constructive dismissal, what remedy is she entitled to?

(a) Is a basic award appropriate?

(b) What compensatory award is just and equitable in the circumstances?

(c) Has the Claimant mitigated her loss and should there be a deduction of sums earned for such mitigation, or to reflect a failure by the Claimant to take reasonable steps in mitigation?

(d) If the Claimant was constructively dismissed and such dismissal was procedurally unfair, what are the chances that the Claimant would have been dismissed in any event had a fair procedure been followed?

(e) Should there be an increase or reduction in any award on the basis of the Respondent's/Claimant's failure to comply with the ACAS Code of Practice on Discipline and Grievance Procedures?

(f) Has there been any contributory fault on the part of the Claimant entitling a reduction in any award?

(g) Does the statutory cap apply?

5.2 If the Claimant has been successful in her claim for automatic unfair dismissal, what remedy is she entitled to?

(a) Is a basic award appropriate?

(b) What compensatory award is just and equitable in the circumstances?

Has the Claimant mitigated her loss and should there be a deduction of sums earned for such mitigation, or to reflect a failure by the Claimant to take reasonable steps in mitigation?

(c) If the Claimant was automatically unfairly dismissed and such dismissal was procedurally unfair, what are the chances that the Claimant would have been dismissed in any event had a fair procedure been followed?

(d) Should there be an increase or reduction in any award on the basis of the Respondent's/Claimant's failure to comply with the ACAS Code of Practice on Discipline and Grievance Procedures?

(e) Has there been any contributory fault on the part of the Claimant entitling a reduction in any award?

5.3 What compensation, if any, would it be just and equitable the Claimant entitled to recover in respect of any alleged detriment that she has been subjected to by the Respondent?

(a) What financial loss has the detrimental treatment caused the Claimant?

(b) Has the Claimant mitigated her loss and should there be a deduction of sums earned for such mitigation, or to reflect a failure by the Claimant to take reasonable steps in mitigation?

(c) What injury to feelings has the detrimental treatment caused the Claimant and how much compensation should be awarded for that?

(d) Should there be an increase or reduction in any award on the basis of the Respondent's/Claimant's failure to comply with the ACAS Code of Practice on Discipline and Grievance Procedures?

(e) Has there been any contributory fault on the part of the Claimant entitling a reduction in any award?