EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**Respondent**
Ms Moore	Chief Constable of West Midlands Police

AND

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Midlands West **ON** 15 – 21 August 2023, 18 – 24 January 2024 (23 -24 January in chambers)

EMPLOYMENT JUDGE Harding **MEMBERS** Ms Campbell, Mr Howard

RESERVED JUDGMENT

Representation
For the Claimant: In Person
For the Respondent: Ms Greasley, Counsel

The unanimous judgment of the tribunal is that:

The claimant's claims of victimisation contrary to sections 27 and 39(4) of the Equality Act 2010 fail and are dismissed.

REASONS

Case Summary

1 The claimant is a serving police officer. She pursues claims of victimisation. In 2018, following an investigation, the respondent decided that there was a misconduct case for the claimant and two colleagues, Police Sergeant Marnell and Police Sergeant Ali, to answer in relation to allegations of gaining an unfair advantage in a promotion process. Pending these matters being dealt with the claimant was placed on restricted duties. Her claims all relate to the handling of her misconduct case, in particular the delay that has occurred in dealing with it (the matter was still outstanding as at June 2023), and the implications that this has had for the claimant within the workplace. Throughout the entirety of the events with which this case is concerned the claimant's colleague, PS Ali, has faced, and continues to face, a criminal trial for corruption and perverting the course of justice, amongst other matters, which is something that the respondent asserts is central to the decisions it has made in respect of the claimant's disciplinary case.

Preliminary matters

2 We started this hearing by dealing with what was effectively a joint application for an anonymity order in respect of one of the claimant's witnesses, who the claimant told us was currently working as an undercover officer. We heard submissions from the respondent, which were supported by the claimant, and we granted the application for the reasons that we announced orally at the time. This officer is referred to as Officer B in this judgment.

3 Regrettably, the bundle of documents for this hearing had been poorly prepared by the respondent. Emails had repeatedly been inserted into the bundle completely out of chronological order, which made it extremely hard for us to pick up the narrative of this case. For example, there was an email about an important matter sent from Mr Harper to Ms Greasley of the respondent which appeared at page 284 of the bundle and yet the response to this email, sent the very same day, appeared at page 843 of the bundle.

4 The respondent, it transpired as the hearing progressed, had also carried out the disclosure exercise poorly. Numerous additional documents were produced by the respondent during the course of this hearing, but even this late disclosure was piecemeal. The claimant, having been given on each occasion time to consider the additional documents, did not object to their inclusion. We ended up with in excess of 100 additional pages, all of which had to be inserted into the back of the bundle, once again out of chronological order. Considering that the respondent was well represented and the claimant, in contrast, was representing herself, this was a less than satisfactory state of affairs.

The Issues

5 As set out above, the claimant pursues claims of victimisation. There is one protected act; namely a complaint of sexual harassment and race discrimination that the claimant made internally to the respondent on 19 August 2017. It is accepted by the respondent that this is a protected act. Relevantly to the issues, tribunal proceedings which related at least in part to this were bought by the claimant and settled under a COT 3 on 19 June 2020.

6 A list of issues had been agreed by the parties which contained a list of the asserted detriments. These were reviewed with the parties during a case management hearing that took place on 11 August 2023. Some minor amendments/clarifications were made. The agreed list is as follows (using the same numbering system as had been adopted in the list of issues):

> 4(a) The police conduct investigation and procedure which commenced in 2018 has not been completed and/or has not been actioned expeditiously,
>
> 4(b) The claimant has not been told why that is so and/or has not been updated properly with regards to the alleged failure to complete or progress the police conduct investigation and procedure.
>
> 4(c) That as a result of the ongoing police conduct investigation and procedure;
>
> > (i) the claimant's vetting lapsed and was not renewed,
> >
> > (ii) little or no work and no overtime was given to the claimant,
> >
> > (iii) the claimant has not received training or one-to-one's,
> >
> > (iv) she has been unable to apply for/and be promoted for other jobs,
> >
> > (v) she suffered financial loss by reference to the failure for her to obtain and be paid for overtime and/or a higher rank and the commensurate higher rate of pay,
> >
> > (vi) the involvement of Yvonne Bruton in the conduct matter when she was conflicted having been involved in addressing the claimant's original complaint in August 2017.

7 There is factual dispute between the parties in relation to point 4(b) and (c)(ii) above, but that aside it is accepted by the respondent that the conduct alleged occurred and the principal dispute between the parties is as to the reason why these matters happened.

8 The respondent asserts that the detriments set out at points (i) and (vi) are out of time. It is also the respondent's case that the lapsing of the claimant's vetting, and the decision not to renew it, occurred on 28 April 2020 and that, accordingly, this claim cannot be considered because it falls within the terms of the earlier COT 3 agreement. The claimant agreed that if we were to conclude that this act happened on 28 April 2020 then it fell within the terms of the COT3 and could not be considered by us.

9 As set out above, the COT3 was signed on 19 June 2020. Before us it was agreed that whilst it was permissible for us to make findings of fact in relation to events that occurred prior to this date, 20 June 2020 was the earliest date in respect of which we could consider any of the claims that were before us.

10 Many of the claims on the list of issues had no date identified for when it was asserted that the detriment had occurred and some of the claims related to matters which clearly were asserted to have been continuing acts (for example the delay in dealing with the claimant's misconduct case). It also became apparent to us once we had started the hearing that both the claimant's and the respondent's witness statements dealt with events which post-dated submission of the claimant's claim form. We discussed this with the parties during the hearing and the parties reached an agreed position that the relevant time period for the claims before us was 20 June 2020 - June 2023. To the extent that this amounted to an application by the claimant to amend her claim it was agreed by the respondent that this should be permitted. The claimant's position, as we understood it, was that all of her complaints formed part of a continuing act over this period.

11 It is the respondent's case that the reason why it has not been able to progress the disciplinary case against the claimant is because it has consistently received legal advice that to progress the disciplinary case against the claimant risked prejudicing the criminal trial of her colleague, PS Ali. The respondent chose not to waive legal privilege in respect of this advice, as was its right. However, given that it was hard to see what linkage there could be, at least on the face of it, between disciplinary proceedings concerning cheating in a promotion process and a criminal trial for corruption and perverting the course of justice (amongst other matters), we asked the respondent during the course of the hearing if any further information could be provided on what advice the respondent had received and when. A note was produced by James Curtis KC, which was put before us without objection, which confirmed that since mid-2019 advice had been provided that progressing the internal disciplinary proceedings against the claimant and/or PS Ali risked compromising the criminal trial, and a brief explanation was given as to why this was perceived to be the case. The precise interpretation of this note, however, became something of an issue during this hearing, and we will deal with that in our conclusions below.

Evidence and Documents

12 There was an agreed bundle of documents, running to 1125 pages, to which numerous additions were made by the respondent during the course of the hearing. We had witness statements from the respondent for; Police Constable Andy Harper, Chief Inspector Philip Cape, a statement plus supplementary statement for Yvonne Bruton, Force Lead for Victims, a statement plus supplementary statement for Karen Greasley, Senior Investigations Manager, and a statement from Donna Marks Solicitor appending the note from James Curtis KC. For the claimant we had a statement and supplementary statement from the claimant plus statements from Officer B, Claire Ryan, Jackie Beavan, Susan Mason, and Lee Priestner, although of these witnesses only Officer B works or has worked for the respondent and only she was called to give evidence.

13 Note: at the end of the hearing the parties provided written submissions. The claimant's submissions ran to 28 pages. There were a number of issues with the claimant's written submissions. She had on occasion misquoted witnesses' evidence and/or only given a partial account of their evidence. More significantly, she had referred to a number of documents which, although contained within the bundle, we had not been asked to read at the start of the hearing or taken to during the hearing. We reminded the claimant that we had explained at the outset of the hearing that only documents which we were asked to read, either as we read the statements, or that we were taken to during the hearing, would be treated as being in evidence before us. We explained to the claimant that if she wished to rely on further documents she would need to ask for these to be included as part of the evidence in the case and read by us. As we went through the documents with the claimant it turned out that two of the documents referred to were not relevant and one reference was a wrong page number and the correct one we had already seen, which left five new documents. The claimant made an application for these additional documents to be included in the evidence and to be read and considered by us. The respondent did not contest this application, and accordingly, we read and considered these documents.

14 Additionally, the claimant had, via her written submissions, introduced or sought to introduce some entirely new asserted facts, which were not based on information contained in documents, and so were facts which could only have been introduced via oral evidence. We explained to the claimant the difference between evidence and submissions and we explained that new factual matters raised in submissions for the first time did not form part of the evidence in the case. The claimant applied to be recalled to give this new evidence. We refused the claimant's application as we did not consider it proportionate to permit the claimant at this late stage to introduce new oral evidence. The hearing, by this point, was in its ninth day, evidence had concluded and written submissions had been read, permitting this application would almost certainly have caused the hearing to go part heard for a second occasion, and there was no good

explanation for why this evidence was not included in the claimant's witness statements in the first place.

Findings of Fact

15 We have set out the majority of our findings of fact in the section below but some findings, particularly where they also form a conclusion, appear in our conclusions section. The majority of our findings of fact have been set out chronologically but in relation to some of the more discrete claims we found it most convenient to deal with those matters thematically. The thematic findings appear between paragraphs 15.116 – 15.156 of these reasons. From the evidence that we heard and the documents we were referred to we make the following findings of fact:

15.1 The Professional Services Department (PSD) is a department within the respondent that monitors the standards of police officers at work and investigates any issues that arise in relation to their conduct. Ms Bruton worked in PSD between January 2017 and September 2019 before leaving to work elsewhere for the respondent. She returned to the department as deputy head of PSD between January and November 2021 with responsibility for the investigation and misconduct teams. She left PSD again in November 2021 to work in another department. One of the units in the PSD is the Counter Corruption Unit (CCU). Whilst a part of PSD it is separately located and does a different type of work to the rest of the PSD; specifically the unit investigates allegations of corruption in the police, whereas the PSD investigates more general police misconduct issues.

The Police Conduct Regulations

15.2 Under the heading "Outstanding or possible criminal proceedings" Regulation 9(1) of the Regulations states that subject to the provisions of this Regulation proceedings under these Regulations shall proceed without delay, pages 395 - 396. Regulation 9(2) states that before referring the case to misconduct proceedings… "the appropriate authority shall decide whether misconduct proceedings…. would prejudice any criminal proceedings", page 396. Regulation 9(3) states that for any period during which the appropriate authority considers any misconduct proceedings would prejudice any criminal proceedings, "no such misconduct proceedings …. shall take place", page 396. Regulations 9(2) and 9(3) are therefore mandatory in their terms; an appropriate authority "shall decide" whether misconduct proceedings would prejudice criminal proceedings and if so then no such misconduct proceedings "shall" take place. Regulation 9 (4) states that where a witness who is or may be a witness in any criminal proceedings is to be or may be asked to attend

misconduct proceedings the appropriate authority shall consult the relevant prosecutor before making its decision under paragraph (2).

Home Office Guidance

15.3 Home Office Guidance relating to police officer misconduct issued in 2018, pages 446 - 447, states that where there are possible or outstanding criminal proceedings against a police officer these will not normally delay any misconduct proceedings. However, it goes on to say that proceedings will be delayed under the Police Conduct Regulations where the appropriate authority considers that misconduct proceedings would prejudice the outcome of the criminal case. The guidance states that the presumption is that action for misconduct should be taken prior to, or in parallel with, any criminal proceedings and where it is determined that prejudice to the outcome of the criminal case would result, then this decision shall be kept under regular review to avoid any unreasonable delays to the misconduct proceedings. The Guidance also makes clear that where potential prejudice is identified then misconduct proceedings will take place as normal up until the submission of the misconduct investigation report, paragraph 2.66, page 446. If at this point it is identified there is a misconduct case to answer then no referral to misconduct proceedings will take place if this would prejudice the criminal proceedings, paragraph 2.66.

15.4 The Guidance states that the investigator is required to notify the police officer of the progress of the investigation at least every 4 weeks from the start of the investigation, page 849. We accept the claimant's evidence and find that she was informed by her Federation representative that this is what would happen.

The Protected act

15.5 In August 2017 the claimant made a complaint of harassment related to race and sex against a sergeant working in the Counter Corruption Unit of the PSD. This triggered a number of similar complaints from other police officers and a large scale investigation was started by the PSD. Whilst it is standard practice for officers in PSD to investigate fellow officers in the Force the claimant was unhappy about this; she felt that PSD were investigating "one of their own", as the sergeant in question worked in the CCU. She requested an investigation by an independent force. This request was refused; albeit this was not a decision of the then Chief Inspector Bruton, it was a decision of the Chief Constable.

15.6 An investigation report and supporting evidence were presented to Chief Inspector Bruton around 12 February 2018. She was acting as the appropriate authority; in other words she was tasked with making a

decision as to whether the sergeant against whom the claimant (and others) had made a complaint had a case to answer, and if so whether the matter should be pursued as a misconduct or gross misconduct. We accept Ms Bruton's evidence and find that she had no knowledge of the sergeant prior to this complaint; as he worked in the Counter Corruption unit in PSD in a different location to Ms Bruton and carrying out a different type of work.

15.7 Ms Bruton decided in March 2018 that there was a case for the sergeant to answer. Her recommendation was that it should proceed as a misconduct matter. On balance we accept the evidence of Ms Bruton that her initial reaction was, in fact, that it should proceed as a gross misconduct matter but she was somewhat influenced in her decision-making process by recent complaints that had been made against her from the Federation to the effect that she was progressing too many complaints as gross misconduct matters, and consequently she took a cautious view on this recommendation.

15.8 The claimant was very unhappy about the decision that it would proceed as a misconduct matter not gross misconduct and she emailed Detective Chief Superintendent Mark Payne, the then Head of Professional Standards, on 22 March 2018 to explain her concerns, page 976. Ms Bruton was made aware that these concerns had been raised and she met with the claimant to explain her decision. Internal debates then followed within PSD about whether the matter should proceed as a misconduct or gross misconduct case and eventually a decision was made by Deputy Chief Constable Rolfe that the allegations should be progressed as gross misconduct. Ms Bruton had no involvement with the disciplinary case after that. They claimant felt disappointed and let down by Ms Bruton, she described it before us as a fractured relationship, and we accept that this was the claimant's view. Ms Bruton we accept, however, did not view matters in this way; in her view following considerable internal debate a more senior officer had simply made a different decision to her on what was a difficult matter.

15.9 The sergeant against whom the claimant had made a complaint was disciplined and, after a lengthy disciplinary process, received a final written warning. Whilst the claimant repeatedly asserted in her evidence that what she described as her "victim status" in relation to this matter was removed from her in October 2019, it transpired from the answers that the claimant gave in cross examination that what she in fact meant by this was that she was removed as a witness from the disciplinary investigation concerning the sergeant at this point. The claimant was told at the time that she was being removed as a witness because she herself was under investigation for a disciplinary matter, for which see below.

15.10 In the meantime, the claimant had been promoted to sergeant in November 2017

The start of the misconduct investigation against the claimant

15.11 Around July 2018 allegations had come to light that the claimant had deliberately and unfairly obtained an unfair advantage during her police sergeant promotion process. This happened following the arrest of Police Sergeant Ali in respect of a separate matter; at the time he was under investigation by the Counter Corruption Unit in relation to allegations of corruption. His arrest led to the seizure and search of a number of items including his personal mobile phone. Based on what was contained on PS Ali's phone it was suspected that the claimant and one other officer, Mr Marnell, had received information from PS Ali, who was due to act as an assessor during the promotion process, about the recruitment process, and thus potentially had received an unfair advantage. In particular it was alleged that the PS Ali had informed the claimant during a series of WhatsApp messages of what type of questions would be asked and the scenarios that would be used. We pause to note that the claimant made it clear on several occasions during both evidence and submissions that she took no issue with the fact that an investigation against her was started, on the basis of the evidence that was presented. It was also alleged that Mr Marnell had been involved in a similar conversation with PS Ali.

15.12 DI Lowe was appointed the Investigating Officer and she in turn appointed PC Harper and DC Davis, both officers in the PSD, as Assistant Investigating Officers. PC Harper worked in the Counter Corruption Unit (which as set out was part of PSD), and accordingly he worked in the same unit as the sergeant about whom the claimant had previously complained. The CCU was a relatively small department; there were about 20 police/detective constables, two sergeants and two Inspectors. PC Harper knew the sergeant about whom the claimant had complained, although he had only worked with him on one occasion. Mr Harper had not had any prior involvement with the claimant; he did not know her. He was, however, informed by Mr Davies, when the investigation into the claimant was started, that she had made a complaint of sexual and racial harassment in 2017.

15.13 The claimant asked us to infer from the fact that PSD officers were appointed to investigate her that the investigation against her was set up not to be fair from the start. We do not draw this inference because;

(i) the allegations against the claimant had arisen from a corruption investigation which was being run by the CCU (which as set out above was part of the PSD), and it seemed unsurprising that a linked investigation would also be run by the PSD,

(ii) the whole purpose of the PSD was to investigate allegations against fellow officers, and accordingly it did not appear to us that there was anything particularly unusual in the respondent taking this approach and,
(iii) it requires to be remembered that the claimant herself did not challenge the appropriateness of the investigation.
The claimant also asked us to draw an inference about this because, she asserted, two "sterile" officers (to use her phraseology) had been appointed to investigate the claimant's 2017 complaint. We have made no findings of fact in this regard (and it follows from this that we cannot draw any inferences from such facts) because there was virtually no evidence led about this. The claimant made a fleeting reference during cross examination to sterile officers having been appointed, but did not explain what she meant by this; who was appointed, who made the decision to appoint them, when they were appointed, where they worked, and how their appointment came about. In fact, the claimant only provided us more detail about this in her written closing submissions. As we have already set out above, we explained to the claimant that closing submissions was not the place to seek to adduce new oral evidence.

Service of the Regulation 15 notice

15.14 In October 2018 the claimant was served with what is known as a Regulation 15 notice, page 955. This sets out the matter that is under investigation, and in the claimant's case it was said that between 7 October 2017 and 7 November 2017 the claimant had engaged in a text conversation with PS Ali in which she had asked and received questions that were to be used in the promotion process. It was said that she had actively sought information that would give her an unfair advantage during the sergeant's promotion process, thus breaching standards of professional behaviour relating to honesty and integrity, as well as discreditable conduct, page 955. PS Marnell was served with the same Regulation 15 notice. PS Ali, we understand, was also served with a Regulation 15 notice in respect of his involvement in the matter in relation to both the claimant and Mr Marnell. The claimant's complaints of race and sex harassment were still being dealt with internally at this time.

Restrictions

15.15 The claimant was at this time (October 2018) working in the Regional Covert Investigation Unit, which, we understand, was part of the Regional Organised Crime Unit (ROCU). As we will set out in more detail below, see paragraph 15.116, she was responsible for leading and conducting investigations. She remained in ROCU after service of the Regulation 15 notice but, because the allegations against her raised issues concerning honesty and integrity, she had restrictions imposed on

her work pending the outcome of the investigation; namely that she was not permitted to carry out work in any investigation which related to the evidential chain. This is a restriction that the respondent imposes on all individuals whenever they face an allegation relating to their honesty and integrity. It is imposed in order to ensure that such an individual will not be required to give evidence in criminal proceedings and to prevent defence challenges/legal arguments and questions in relation to that person's honesty and integrity as a police witness. We find, based on the oral evidence of Ms Greasley, that the decision maker in terms of imposing restrictions on the claimant at these early stages of the investigation was the appropriate authority at the time, DCI Little.

15.16 We reject the claimant's evidence that Mr Marnell was at this point (October 2018) left in a role which entailed working in the evidential chain because that was inconsistent with what was recorded in the claimant's welfare log. At page 1046 the entry for 19 March 2019 stated:
"AM reiterated that Barry a sergeant on BE has been allowed to return to operational duties. This is causing AM further stress as she is unaware of why this is not replicated with her".
There then followed an extract of an email written by the claimant in which she wrote that Mr Marnell had been served with the same regulation notice as her, that she was told he had also been moved out of the evidential chain at the time, but that *last week* (our emphasis) he was allowed to go back to his role, page 1046.
We find, based on this document, that Mr Marnell was initially removed from operational duties, albeit he had clearly been returned to operational duties in the week preceding 19 March 2019.
We would add that it was also evident from the log, page 1049, that this was queried with Ms Bruton who stated that neither officer's case had been reviewed by PSD and so any decision to return Mr Marnell to the evidential chain was not a PSD decision.

15.17 In the course of the investigation PC Harper carried out a number of interviews, including interviewing the claimant twice. PS Ali declined to be interviewed.

15.18 On completion of his investigation report, PC Harper, recommended that there was a case for the claimant, PS Ali and PS Marnell to answer. Very early on in this process a welfare officer, Julie Woods, was appointed to support the claimant throughout the disciplinary case.

The process for allocating cases to an appropriate authority for a determination of whether there is a case to answer

15.19 In 2019 there were four designated appropriate authorities within PSD, one of whom was Ms Bruton. Once an investigating officer had completed their investigation report and it had been checked by a supervisor the report and its supporting evidence were electronically submitted into a workflow queue of cases which were waiting for an appropriate authority determination. Ms Bruton had overall functional responsibility for this workflow queue. The decision that required to be made by an appropriate authority at this point was whether there was a case to answer and if so whether the case should proceed to a misconduct or gross misconduct hearing. Ms Bruton would deal with most of these decisions but on occasion she would allocate cases to other designated appropriate authorities for this to be done. In the early part of 2019 there were around 20-30 cases being handled by Ms Bruton and delays were not uncommon.

15.20 On 14 February 2019 PC Harper's investigation report into the conduct of the claimant and PS Ali, together with the supporting evidence, was forwarded to the workflow queue of cases to await an appropriate authority determination.

15.21 A separate investigation report in relation to the conduct of PS Marnell and PS Ali was also submitted to the queue, albeit we do not know the date when this was done.

15.22 On balance we prefer the account of events that Ms Bruton presented in her first witness statement, as opposed to the differing account presented in her supplementary witness statement. We find that Ms Bruton decided that given that she had been involved in the claimant's earlier 2017 complaint against a PSD officer, and that the claimant had made some complaints about how she had handled this matter, it would be "cleaner" to have a completely independent person review the claimant's disciplinary case. Ms Bruton disputed in her oral evidence that this amounted to her concluding that there was a conflict of interest. We find that Ms Bruton was aware that she might not be viewed by the claimant as a completely independent person and that she perceived that the claimant might lack trust in her.

15.23 Accordingly, Ms Bruton contacted her colleague, Chief Inspector Greasley, who was a senior investigations manager in the PSD, and asked her to manage the case moving forward, telling her that she had a conflict of interest. She did this around 8 April 2019. On balance, we accept the evidence of Ms Bruton and Ms Greasley and find that Ms Bruton did not inform Ms Greasley of the precise reasons why she felt the

case would best be dealt with by her; and in particular she did not inform Ms Greasley that the claimant had previously complained of race/sex harassment.

15.24 The claimant asked us to find as a fact that Ms Bruton had, at this point, told Ms Greasley about the details of her 2017 complaint. She asserted this could be inferred from the fact that there was a handover of her case from Ms Bruton to Ms Greasley; it was inconceivable, the claimant suggested, that this handover would have taken place without there being discussion about the 2017 complaint. Whilst, of course, it is possible that Ms Bruton told Ms Greasley of the details of the complaint at this point, we decide factual disputes on the basis of what is more likely than not, which means that we can perfectly legitimately have an element of doubt, as we do here. But there was nothing within the voluminous documentation to suggest that Ms Greasley had any knowledge of the details of the claimant's complaint at this time, Ms Greasley was consistent in her evidence that she did not know, and Ms Bruton was consistent in her evidence that she had not told Ms Greasley about it. The only point advanced by the claimant in this regard was that it should be inferred from the fact of the handover, but, it seemed to us, the handover could equally well have taken place without any reference to the complaint at all; for example Ms Bruton could have simply told Ms Greasley that she had had previous dealings with the claimant (without mentioning what those were). Accordingly, on the basis of the evidence that was put before us, we preferred the respondent's evidence.

The decision the claimant had a case to answer

15.25 Having been assigned as the appropriate authority responsibility for the case around 8 April 2019, Ms Greasley reviewed the evidence and the report and decided that there was a case for the claimant to answer and that the matter should be dealt with as gross misconduct, page 121. This decision was communicated to the claimant on 17 April 2019, page 121. The disciplinary charge that the claimant was facing was that she had gained an unfair advantage in the police sergeant selection process ("the cheating allegation"). Ms Greasley considered that the evidence against the claimant potentially showed that the claimant had, over a period of several months, actively sought to elicit information from PS Ali via Whatsapp about the selection process, in particular she had asked for and received the questions that were to be used during the promotion process. This was considered to be a breach of professional standards in relation to honesty and integrity.

15.26 This decision meant that the claimant was required to attend a misconduct hearing. Ms Greasley informed PC Harper of this on 16 April 2019 and he in turn communicated this decision to the claimant by email

on 17 April 2019, page 121. On 29 April 2019 the claimant was informed that based on current workload and availability it was unlikely that her hearing would take place before the summer, page 122.

The decision it should be a joint hearing with PS Ali

15.27 It was decided by Ms Greasley that there should be a joint misconduct hearing for the claimant and PS Ali in relation to the allegation of cheating.

15.28 This is because she was of the view that;
(i) WhatsApp exchanges between the claimant and PS Ali provided evidence that over a period of two months there was ongoing engagement between the two with regard to the recruitment process. Ms Greasley considered this to be a very important reason for keeping the two cases together. She considered that the actions of the claimant and Police Sergeant Ali were intertwined and it would be difficult to deal with one in isolation from the other.
(ii) The claimant had denied any wrongdoing,
(iii) PS Ali, as set out above, had yet to provide any account of his version of events, and,
(iv) The respondent would need to ensure consistency of outcome between the two.

15.29 PS Ali's position by this point was complicated. In addition to the cheating allegation, he was, as set out above, facing the prospect of a criminal prosecution and he was also facing other, potentially very serious, disciplinary matters which directly overlapped with the matters being dealt with as part of the criminal case.

15.30 At the point that Ms Greasley made her decision about how to deal with the cheating allegation against the claimant and PS Ali she was not aware that PS Ali was likely to be the subject of a criminal prosecution. Additionally, the other, very serious, disciplinary matters which he was facing, which overlapped with the criminal case, had been kept separate from the disciplinary case that Ms Greasley was dealing with, and she had no knowledge of these either.

PS Marnell

15.31 Ms Bruton acted as the appropriate authority in respect of the decision to be made on the disciplinary case against Mr Marnell and PS Ali. It was at this point that the disciplinary cases against the claimant and Mr Marnell started to diverge. Ms Bruton considered that the evidence against Mr Marnell (which took the form of a covert recording of one conversation) demonstrated that there had been one brief conversation

between Mr Marnell and Police Sergeant Ali about the selection process. During this conversation Mr Marnell had listened to what Police Sergeant Ali had been willing to tell him about the process but had not, in her view, actively engaged with him or asked him questions. Ms Bruton was of the view that a misconduct case against Mr Marnell should proceed on the basis that he had failed to challenge or report improper conduct on the part of Police Sergeant Ali. He was not charged with gaining an unfair advantage in the selection process. He had also already admitted that he had failed to report the conversation, meaning that a contested hearing would not be needed.

15.32 Ms Bruton therefore recommended that the case against Mr Marnell should proceed as a misconduct matter and that there should be a misconduct meeting (as opposed to a misconduct hearing). In contrast to misconduct hearings, which are usually held in public, page 383, misconduct meetings are held in private. Whilst a misconduct meeting is still a formal disciplinary hearing the disciplinary outcomes available after such a meeting are a written warning or a final written warning; dismissal is not a possible outcome. Contested evidence is not generally taken at these hearings. In Mr Marnell's case, as set out above, he had already admitted failing to report an improper conversation meaning that, in Ms Bruton's view, no hearing was required at which evidence would be heard or tested.

PS Ali

15.33 By July 2019 PS Ali was awaiting a criminal trial for conspiracy to pervert the course of justice, misconduct in public office, corruption and Data Protection Act offences. As set out above, there were disciplinary proceedings ongoing which directly overlapped with the criminal case, but these were in addition to, and kept separate from, the misconduct cases concerning the police sergeant's recruitment process. He faced two sets of disciplinary proceedings in relation to the promotion process; one concerning his interactions with Mr Marnell and one concerning his interactions with the claimant.

The case against Mr Marnell can proceed

15.34 We find, based on Ms Bruton's oral evidence, that, at some point, we were not told when, officers dealing with the criminal investigation against PS Ali considered whether it could be said that dealing with Mr Marnell's disciplinary case would prejudice the criminal investigation and we find, based on the evidence of Ms Marks, that advice on this was taken from the CPS. The misconduct team subsequently informed Ms Bruton that she could proceed with Mr Marnell's disciplinary case. Ms Bruton decided, following this, that Mr Marnell's disciplinary case would go ahead

and would be dealt with separately from PS Ali's. There was, in particular, in Ms Bruton's view no risk that evidence would be required from Police Sergeant Ali in order for Mr Marnell's misconduct matter to be dealt with, and therefore no risk of prejudice to the criminal trial. Mr Marnell's disciplinary case proceeded; he was issued with a written warning on 18 November 2019.

Events after it was decided there was a case for the claimant to answer

15.35 As set out above, Ms Greasley made her decision that there was a case for the claimant to answer in April 2019. Once a decision has been made by the appropriate authority that there is a case to answer the paperwork is sent back to the investigations team who then generate a file which is sent through to the respondent's legal department for review. Once the file has been reviewed external counsel will be instructed who will draft what is known as the Regulation 21 notice (which sets out the charges and a summary of the evidence). Regrettably, this process often takes several months.

15.36 On 24 June 2019 the claimant wrote to the respondent's misconduct support team pointing out that it had been over two months and she still had not received anything, page 124. Ms Cooke from the misconduct support team emailed back the next day to say that the file was currently with legal services for advice and it was expected it would be returned within the next 3 weeks. She stated that once the file had been returned a date for the hearing would be looked at and the papers would be served on the claimant 30 working days before the start of the hearing. She stated that she would update the claimant when the file had been returned from legal services, page 123. On 9 July 2019 Mr Harper emailed Julie Woods, the claimant's welfare officer, to say that her matter was currently being reviewed by legal and that an update was expected in the next few weeks, page 125. The claimant wrote requesting an update from the misconduct support team again on 23 July 2019, page 129. On 24 July 2019 the claimant was informed by the misconduct support team that there had been a delay due to unforeseen circumstances, page 129.

15.37 On 1 August 2019 Ms Greasley was made aware by the respondent's misconduct support team that Police Sergeant Ali was facing serious criminal charges and was awaiting trial for conspiracy to pervert the course of justice, misconduct in public office and Data Protection Act offences. The trial, by this point, had been listed to take place in January 2020, for 8 weeks. Ms Greasley requested advice from the CPS as to whether the misconduct hearing involving the claimant and PS Ali could go ahead in light of the impending criminal trial.

15.38 On 6 August 2019 the claimant emailed the misconduct support team asking for an update on her case, page 131, and she was told by the misconduct support team that the file was with legal services and a Regulation 21 notice was being prepared, page 130.

15.39 On 18 September 2019 Mr Harper received an email from Ms Woods requesting an update on the claimant's case and he responded to say there had been a recent case management meeting and he was still waiting to hear from Ms Greasley, page 132. Also in September 2019, as set out above, Ms Bruton left PSD to undertake a different role in another department. She did not return to PSD until January 2021 when she secured a promotion to the role of Deputy Head of PSD.

The decision to delay the misconduct hearing

15.40 In October 2019 (we know not when) Ms Greasley was advised by the CPS that if the misconduct hearing for the claimant and PS Ali went ahead there was a risk of it prejudicing PS Ali's criminal trial. On 16 October 2019 an email was sent on behalf of Ms Greasley to George McDonnell, the claimant's Federation Representative, page 133. In this email it was explained that advice had been taken from counsel for the prosecution who had been asked to provide his views as to the effect of holding the misconduct hearing for PS Ali prior to his criminal trial.

15.42 It was explained that having considered the views of the prosecutor Ms Greasley had decided that the misconduct hearing for both officers must take place after the criminal trial. It was explained that the disciplinary process must not prejudice the integrity of the prosecution case and given the information that she had received from the prosecutor about the criminal proceedings her decision was to hold the misconduct hearing after the criminal trial. It was said that Ms Greasley had considered whether the hearing for the claimant could take place separately but "due to the whole case and evidence involving communications and engagement between the claimant and PS Ali this is not possible nor appropriate", page 133.

15.43 This decision was immediately challenged by Mr Nick Terry, the claimant's legal representative, pages 134 -135, by way of email dated 17 October 2019. Mr Terry wrote that PS Ali faced a raft of more serious allegations which were not in any way linked to the claimant and whilst it was accepted that misconduct proceedings for PS Ali should follow the criminal proceedings insofar as they involved the same wrongdoing (as the criminal trial) there was no such requirement in respect of the claimant's matters which did not, it was said, in any way impinge on the criminal case. He wrote that he considered that the claimant's case should be separated from the many potential allegations that PS Ali faced. He

pointed out that it was understood that another officer was due to have a misconduct meeting surrounding similar circumstances and that this was not being delayed (this was a reference to Mr Marnell's case), page 134.

15.44 An email in response was sent on Ms Greasley's behalf on 24 October 2019, page 136. In this email it was confirmed that the more serious allegations faced by PS Ali were not to be dealt with alongside the alleged misconduct concerning the claimant and PS Ali and it was confirmed that the allegations concerning gaining an unfair advantage during the selection process did not form part of the criminal allegations. It was said that nevertheless the "firm view" of the CPS was that there would be a substantial risk to the criminal process were the misconduct proceedings to go ahead before the criminal trial. It was said that the delay to the misconduct proceedings was therefore "self-evidently necessary and justifiable given the position of the CPS", page 136.

15.45 On 12 November 2019 Mr Harper emailed the claimant's welfare officer to say that he was still waiting for an update re progress of the misconduct hearing, page 138.

15.46 Mr Terry continued to challenge Ms Greasley's decision, emailing the respondent on 18 November page 139, again pointing out that there was no link between the allegations of misconduct concerning cheating in the selection process and the criminal trial.

15.47 Ms Greasley responded to Mr Terry by email on 25 November 2019, page 141. In this email it was explained that the CPS had clearly expressed the view that PS Ali's misconduct hearing could not take place before his criminal trial. It was further explained that the claimant's alleged misconduct was linked to the misconduct of PS Ali and that a hearing against the claimant could not be effectively conducted without PS Ali's conduct also being considered alongside it. It was stated that for these reasons a further delay of some 2 to 3 months was not unreasonable.

<u>The criminal trial is adjourned</u>

15.48 Having originally been scheduled to take place in January 2020, the trial got underway in March 2020. However, on 17 March 2020 the trial was postponed due to the illness of PS Ali and defence counsel. PC Harper informed Ms Greasley of this on 17 March 2020, page 836, who immediately confirmed to PC Harper that in her view this did not impact the decision concerning the requirement to conclude the criminal case before the misconduct case, page 835. Ms Greasley forwarded this email onto the respondent's lawyer asking for advice on how to communicate this information to the claimant and her legal team, page 835.

15.49 No update was provided to the claimant about the postponement of the trial this at this time.

15.50 On 3 April 2020, however, an email was sent on behalf of Ms Greasley to Mr McDonnell, the claimant's Federation rep, in which it was explained that the respondent had been informed that the jury had been discharged following both PS Ali and defence counsel becoming unwell and that there was due to be a mention hearing at the Crown Court on 9 April to discuss re-listing the trial, page 144. Ms Greasley reiterated her position that the claimant's misconduct case was closely linked to the misconduct case of PS Ali, and reminded Mr McDonnell that the advice from the CPS had been that PS Ali's misconduct hearing could not take place before his criminal trial. Mr McDonnell responded by email that day saying that he was aware the trial had been postponed and it was disappointing news, page 144.

Case Conference 21 April 2020

15.51 The trial was re-listed for January 2021**.** On 21 April 2020 a case conference took place between Ms Greasley, the respondent's lawyer, DC Harper and DI Lowe to discuss the situation. It was decided that nothing had changed and therefore the misconduct case would continue to be delayed pending the outcome of the criminal trial.

15.52 On 22 April 2020 Mr Harper emailed Ms Lowe, saying that he did not intend to send an email to either the claimant or Mr McDonnell until legal services had provided their written response, page 145.

15.53 A further email was sent to Mr McDonnell on 23 April 2020, on behalf of Ms Greasley, in which he was informed that the respondent had been told that the trial had now been listed to start on 4 January 2021, page 148. It was set out in this email that the reasons why the claimant's misconduct hearing could not take place before the criminal trial remained unchanged.

15.54 This decision was once again challenged by Mr Terry, the claimant's lawyer, by way of email dated 23 April 2020, page 147. In this email it was suggested that Ms Greasley benefited from allowing the claimant to remain under a cloud given the proceedings that were ongoing involving a former member of PSD (a reference to the internal investigation triggered by the claimant's complaints in 2017). It was also said that a delay that may at one point have been appropriate must be continually assessed and it was no longer acceptable to cause a further delay particularly of such significant length. Complaint was made that the claimant had been removed from her post, was being starved of work and her career was grinding to a halt.

15.55 An email response was sent on Ms Greasley's behalf on 6 May 2020, page 159 -160, reiterating that for the claimant the misconduct hearing would consider allegations that she had cheated in the police sergeant selection process by repeatedly asking PS Ali, who she knew to be an assessor in the process, for questions and scenarios about which she might be asked during the promotion process. It was explained that PS Ali was to face allegations of supplying such information to the claimant. It was said that the CPS had determined that were a misconduct hearing for PS Ali and the claimant to take place this could seriously prejudice the criminal trial. It was further said that in Ms Greasley's view it would be impossible for the two officers to be dealt with at separate hearings due to the case against them being based on communications which they had had with each other. Ms Greasley explained that in her view PS Ali would be a key witness in the case against the claimant and vice versa. Ms Greasley also wrote that the suggestion that her actions were influenced by the fact there were other proceedings against another officer who was a former member of PSD was completely unfounded.

15.56 In June 2020 the employment tribunal proceedings, which related at least in part, to the claimant's complaints of race and sex harassment were settled. We find, based on Ms Greasley's evidence, that she first became aware that the claimant had brought her first employment tribunal claim in June 2020. Mr Todd, the head of the department, was emailed by legal services who informed him that the claimant had a tribunal claim which had just settled. Mr Todd forwarded that email to Ms Greasley as there was a suggestion within the email from legal services that the claimant had evidence which she might seek to present to Ms Greasley with regard to the outstanding disciplinary process.

15.57 There was correspondence between the claimant, PC Harper and her welfare officer, Detective Woods, in May, July and August 2020. Much of this focused on the claimant's health. It was suggested that the delay in dealing with the misconduct matter was negatively impacting the claimant's mental health. PC Harper in turn raised this with Ms Greasley who on 5 August 2020 asked PC Harper to respond reminding the claimant and Detective Woods that legal advice had been taken in relation to the situation and the respondent was not able to progress matters, page 178.

15.58 On 24 September 2020 PC Harper emailed Mr McDonnell and Detective Woods stating that he was unable to confirm a date for the misconduct hearing but that once he had a date he would share it with them, page 180. PC Harper emailed the claimant again on 14 October 2020 to inform her that the date had not yet been confirmed and that once he had more information he would let her know, page 182. The claimant

responded that it was her understanding that the criminal trial was starting on 4 January 2021 and that after this she would be allowed to have her hearing, page 181. PC Harper emailed the claimant on 14 October 2020 saying that it was his understanding that the trial was starting on 25 January 2021 and that whilst the claimant's hearing would take place after this he was not yet able to provide her with a set date, page 181.

15.59 The claimant had also raised a question with PC Harper concerning disclosure of documentation and on 3 November 2020 he emailed the claimant to confirm that all papers would be served on her once the formal notice of hearing was produced, which would take place as soon as the trial had been concluded and it was appropriate to proceed, page 183. PC Harper emailed the claimant again on 25 November 2022 to let her know that he had not yet had a date confirmed for her hearing, page 184, and he emailed her again on 17 December 2020 confirming that the court case was due to commence on 25 January 2021 and the misconduct matter would be heard at the conclusion of the case but there was as yet no exact date for the hearing, page 185.

Further delays to the trial and the misconduct case

15.60 On 25 January 2021 Ms Greasley was informed that the trial of PS Ali, due to start that day, had been adjourned as a result of backlogs caused by the Covid 19 pandemic. Ms Greasley informed PC Harper of this in order that he could tell the claimant. On 26 January 2021 Mr Harper emailed the claimant informing her that the trial had been adjourned as a result of Covid. He went on to say that urgent discussions were taking place on how to best progress the misconduct matter, page 192. Mr Joyce, who at this point was supervising the claimant, sent an email later on that day to a colleague, David Twyford, pointing out that the claimant's misconduct case had yet to be heard whereas the case against Mr Marnell had been dealt with. He acknowledged that PSD had been waiting for the criminal case to be finalised but queried whether, as some 2 ½ years later this was still outstanding and the claimant was now pregnant, the disciplinary hearing could proceed, page 194. Mr Twyford in turn emailed Mark Longden stating that he was not briefed on the claimant's case but that he probably did not have the appetite to wait another 12 to 18 months, page 194. He asked whether it would be possible to move to an accelerated gross misconduct conduct hearing that would not jeopardise the criminal prosecution and if the answer to this was no whether there was anything else that could be done to finalise only the case against the claimant, page 194. Mr Longden responded on 26 January saying that following a misconduct review there were potentially some opportunities to progress both disciplinary cases. He wrote that they would need the CPS on board but that the CPS seemed a little more sympathetic given the length of this further delay, page 193.

15.61 On 28 January 2021 PC Harper emailed the claimant to inform her that discussions on how to progress the misconduct matter were now taking place as a priority, page 196. He reiterated this message to her by email dated 3 February 2021, page 196.

Further advice is sought from the CPS

15.62 In the meantime Ms Greasley had set up a case conference concerning the claimant's situation and that of PS Ali with DC Harper, DI Lowe and the respondent's solicitor, and this took place on 28 January 2021. There was a discussion about various options, including progressing the misconduct case against the claimant alone or holding proceedings in private with restrictions on reporting. There was also discussion about the fact that the claimant was pregnant and what the impact was on her of the delays. It was agreed that further advice should be sought from the CPS prosecutor and on 16 February 2021 an email was sent requesting advice. This included requesting advice, specifically, on whether a separate misconduct hearing could be held for the claimant and what the risk would be if PS Ali was involved as a witness in this disciplinary matter.

15.63 In the meantime, on 3 February 2021 Mr Terry had written to the respondent complaining about the delay and pointing out that it had been made clear that the current issue before the court in PS Ali's case did not form part of the misconduct hearing against the claimant, page 199. It was said that further delays would be detrimental to the claimant's pregnancy and the respondent was invited to progress the matter urgently, page 200.

15.64 On 16 February 2021 DC Harper received a request for an update from Mr McDonnell and he emailed Mr McDonnell to say that the matter was still with Ms Greasley and that discussions were ongoing, page 201.

15.65 On 19 February 2021 Ms Greasley emailed Superintendent Joyce to confirm that she was waiting to hear back from the CPS, pages 839 - 840. It was agreed that Superintendent Joyce would pass this onto the claimant. Ms Greasley wrote that as she was anticipating a response soon she was holding off on taking her annual leave so that no additional delays that could be prevented and were within her control occurred, page 839.

15.66 On 22 February 2021 Detective Woods emailed Mr Cape, who at that point was the claimant's line manager, saying that the claimant had still not had an update, page 202. Mr Cape requested an update from PC Harper and on 22 February PC Harper emailed him to say that clarification was still being sought on how best to progress the matter, page 206. Mr Cape passed this onto Detective Woods, page 206.

15.67 On 25 February 2021 the claimant emailed PC Harper asking for an update. She stated out that it had been coming up to a month and she had not received any news about what was taking place, page 208. PC Harper emailed the claimant that day saying that he had spoken to Ms Greasley but some of the detail (re what was going on) had not been shared with him as there were discussions ongoing between Ms Greasley and Legal. He stated that once he had an update he would let the claimant know, page 208. On 26 February Ms Greasley emailed Mr Joyce stating that it appeared that her update to him the previous week, which it had been agreed he would pass directly onto the claimant, had caused the claimant to give negative feedback about PC Harper as she had questioned why an update had come via him rather than Mr Harper. She pointed out that the respondent was currently updating 5 separate individuals on the claimant's case and that the respondent was trying to help and reassure the claimant in every way they could, page 216. She stated that legal work was ongoing and there was no update to share.

15.68 On 26 February Ms Woods emailed PC Harper to say that she was becoming increasingly concerned about the claimant's welfare, page 211, and she asked for regular, meaningful updates to be provided to the claimant. PC Harper responded to that email the same day acknowledging that the delay was both upsetting and frustrating, page 213.

15.69 On 4 March PC Harper emailed the claimant to say that Ms Greasley had been considering holding a separate hearing for the claimant alone and had received comments from the prosecutor about this with further comments expected to be received from the CPS during the course of the next week, page 218. The claimant was told that the matter was being actively progressed. On 12 March 2021 he emailed the claimant to say that it was his understanding that communication between Ms Greasley and the CPS was still ongoing, page 219. He also informed the claimant's line manager, Superintendent Joyce, of this, page 220.

<u>Ms Greasley becomes unwell</u>

15.70 Ms Greasley has multiple sclerosis and on 10 March 2021 she unexpectedly suffered a relapse. She was not fit for work and remained off work until 30 May 2021. During her absence Ms Bruton took over as the appropriate authority for the misconduct case involving PS Ali and the claimant. There were four appropriate authorities within the department at this time, including Ms Bruton and Ms Greasley, and so it would have been possible for someone completely unconnected with the cases of the claimant/Mr Marnell/PS Ali to have been allocated as the appropriate authority whilst Ms Greasley was off sick. However, on balance we accept the oral evidence of Ms Bruton and find that she decided that she should

take over this role whilst Ms Greasley was off sick because she was Ms Greasley's line manager, she already had some knowledge of the case and there were workload capacity issues within the department which would have made it hard to allocate the case to someone else.

Criminal trial re-listed for May 2022

15.71 Around this time, we were not told exactly when, the respondent was informed that PS Ali's criminal trial had been re-listed to take place over 10 weeks starting on 2 May 2022.

The decision to separate the claimant's misconduct case from PS Ali's misconduct case

15.72 We reject the evidence of Ms Bruton, which was that she made no decisions about the claimant's case during this period, as this was inconsistent with the content of an email Ms Bruton wrote to Mr McDonnell on 18 March 2021, page 221.

15.73 We find, based on this email, that Ms Bruton decided that (i) given the length of the delay it would be appropriate to have separate misconduct proceedings for the claimant and PS Ali, but that (ii) the claimant's matter was still unable to proceed because even proceeding against the claimant alone risked prejudice to the criminal proceedings. We accept the evidence of the respondent and find that the CPS had advised that there remained a real risk of prejudice to the criminal trial if misconduct proceedings against the claimant alone went ahead, because that is consistent with what was written in Ms Bruton's email of 18 March, page 221.

15.74 Ms Bruton informed Mr McDonnell of her decision by email dated 18 March, page 221. She explained that the prosecutor had advised in very clear terms that there was a real risk of prejudice to the criminal proceedings and this advice in turn meant that Ms Bruton, as the appropriate authority, had once again had to consider Regulation 9. She explained that she was of the view that Regulation 9 (3) still applied to the misconduct proceedings against the claimant alone, and that the language of the statutory instrument was mandatory and therefore the claimant's case was unable to proceed. Ms Bruton also informed Mr McDonnell that the criminal trial had been listed to start on 2 May 2022 for 10 weeks and that the matter would be kept under regular review in the intervening period.

The Claimant's maternity Leave

15.75 In June 2021 the claimant started maternity leave and was on maternity leave for a period of one year. Neither the respondent nor the claimant sought to progress the claimant's misconduct case during this period. Prior to her maternity leave starting Mr Harper emailed the claimant on 17 May 2021 informing her that he had not received any update about her misconduct matter, page 236. She informed him that she was shortly going on maternity leave and stated that if there were any meaningful updates they should be sent to her personal email address, page 235. PC Harper responded asking if the claimant would like a monthly update even if there was nothing meaningful to communicate and she stated that she only wanted meaningful updates, page 235.

Promotion process Sergeant to Inspector

15.76 In October 2020 the claimant had sat her Inspector's exam and passed, page 228. Sitting the exam was, however, only one stage of a four stage Inspector promotion process.

15.77 In March 2021, just before she was due to start maternity leave, the claimant decided to apply for Stage 3 of the Inspector's promotion process, which was due to take place in May. This involved an assessment at an assessment centre. If successful at that there was a stage 4 to the process, which was being temporarily deployed into the role of Inspector for a work based assessment.

15.78 She informed her line manager, Superintendent Joyce, in writing that she would be applying. We cannot make findings of fact as to what she wrote because, so far as we are aware, the actual document was not contained within our bundle.

15.79 On 26 March 2021 Mr Joyce contacted Graham Bradley, Resourcing Manager, by email asking him what his thoughts were on the claimant attending the assessment centre, page 226. Mr Bradley emailed back that day to say that he would need to get a view from PSD as they would have the detail around the investigation and whether it would be a barrier to the claimant being promoted, page 225. The College of Police Guidelines, page 783, states that if an officer becomes the subject of misconduct investigations as they progress through a promotion process the force must decide whether the officer should be removed from the promotion process or whether it is possible for them to proceed. It further states the officer must also be informed whether or not they will be allowed to proceed to the next steps whilst the investigation is live, page 783. Both of these decisions are said to be subject to the right of appeal.

15.80 On 29 March 2021 Mr Bradley emailed Jonathan Beach, an Inspector in PSD, stating that he had had a query from the claimant's line

manager and asking Mr Beach if he was able to advise on whether the fact that the claimant was currently subject to an investigation would impact on her entering the next Sergeant to Inspector promotion process, page 224. Mr Beach forwarded that email on to Ms Bruton copying in Mr Bradley and asked her to provide advice on the question raised as he did not know the full circumstances nor whether there was a process to allow/refuse officers going for promotion, page 224. This was on 30 March. Ms Bruton responded by email that day saying that she had tried to call Mr Bradley and that it was "probably one to talk through" but it would be a POD (i.e. HR) decision, page 223.

15.81 The claimant became aware that the views of PSD were being sought, we know not how as no evidence was led on this. She emailed Mr Joyce again. The actual email was not in our bundle, there was simply a copy and paste of the text that was sent, page 228. Consequently, we do not know the date on which the email was sent. In this document the claimant wrote that she would like to apply for the Sergeant/Inspector promotion process in May/June that year and that she understood that she was required to mention that she was currently subject to a gross misconduct hearing. She stated that if she was denied the opportunity to participate in the promotion process this would amount to an obstruction to her career through no fault of her own and she requested that she be allowed to participate.

15.82 Superintendent Joyce emailed Mr Bradley again on 1 April 2021, page 227. He wrote that he understood that PSD had sent back views on whether the claimant should be allowed to enter the process and commented that it would be odd for someone under investigation for an alleged abuse of the prior promotion process to be allowed to enter another one without that allegation being resolved. He went on to say, however, that in his view this was an exceptionally unusual misconduct case and the claimant's representations that she should be allowed to participate required careful consideration. He wrote that what made the claimant's case particularly challenging was that another officer who was also caught up in this investigation was administered a written warning "for ostensibly the same offence" some time ago, and would be entering the process. That was a reference to Mr Marnell.

15.83 On 8 April 2021 Mr Bradley emailed Ms Bruton to confirm that he was setting up a case conference to discuss the claimant's eligibility to enter the process for the week beginning 19 April, page 223. He commented that he was aware that Ms Bruton was on leave then and asked if there was anyone else from PSD with knowledge of the case who could attend.

15.84 Mr Bradley forwarded Superintendent Joyce's email of 1 April on to Ms Bruton on 9 April, page 227. On 9 April 2021 Ms Bruton spoke to Mr Bradley, briefed him on the case and outlined her concerns about the claimant applying for promotion. These concerns were that the claimant would be applying for another promotion when the misconduct matter still outstanding related to her being accused of cheating during the earlier promotion process. She explained that in her view there was conflict between the claimant being able to apply for a promotion to Inspector when it had not been established whether she had obtained her promotion to Sergeant fairly.

15.85 It was raised during this discussion that there was no guidance or policy that covered this particular issue and it was suggested that this should be resolved. There was already a policy dealing with promotions during misconduct investigations but this policy dealt with what would happen if a person applied for promotion whilst they were under a live written warning (they could not apply) and what would happen if an allegation of misconduct was made after the application for promotion had been submitted (the individual would not be able to progress their application for promotion). However, a view was taken that the policy did not cover the claimant's specific scenario; namely that an allegation of misconduct had been made, and a decision made that there was a case to answer in respect of this, but no formal determination of the allegation had been made at the point when the application for promotion was submitted. Ms Bruton felt that this was a gap in the policy.

15.86 On 20 April 2021 the claimant emailed Mr Bradley saying that she had applied for stage four of the Inspector's process and unfortunately there was no section in the application form in which to state that she was currently under investigation by PSD, page 232. The claimant wrote that she believed Mr Joyce had already informed Mr Bradley of this and she also stated that she understood that Mr Bradley was having a meeting with PSD that week to discuss if she could participate in the process.

15.87 Mr Bradley responded to this email the same day, page 231, confirming that Mr Joyce had informed him of the claimant's situation and forwarded him a copy of her written notes on the subject. He went on to say that the respondent had now had the opportunity to discuss the claimant's situation and on the basis that the misconduct case was still to be heard the respondent was happy for the claimant to proceed with the selection process and her application for the role of Inspector.

15.88 The claimant attended the assessment centre for the Inspector's role while she was on maternity leave in June 2021. She was successful. As set out above, this was stage three of the selection process. If

successful at Stage three Stage four involved a temporary promotion for 12 months to the rank of Inspector and a work-based assessment.

15.89 In the meantime work to resolve what the respondent considered to be the policy gap it had identified in the promotion process proceeded very slowly. The issue did not find its way onto the POD/PSD senior leadership team meeting agenda until 14 July 2021, pages 243 - 244. In advance of this meeting the specific recommendation from Hinna Awan of HR about the claimant was that she be notified that although she had passed the promotion process at stage three they were deferring her posting until the outcome of the PSD investigation was finalised, page 241. In this email Ms Awan also wrote that she had spoken to Ms Bruton who had stated that the view of PSD was that the claimant should not progress through the promotion process, page 241. However, Ms Awan commented that with no live warning issued to the claimant under the Police Conduct Regulations she had assumed this did not make the claimant ineligible, page 241.

15.90 There was a discussion about the situation during the meeting, at which Ms Bruton was present, and it was decided by Nicola Price, the Director of POD, that if a person was subject to an investigation in which it had been decided that there was a case to answer then the individual would be allowed to put themselves through the selection process but if successful any decision to post would be deferred until the outcome of the misconduct case was known. If the misconduct case was upheld the promotion process would be rescinded, page 247.

15.91 This outcome was communicated by Amy Smith, Head of Employee Relations and Well-Being, to Hinna Awan of HR by email on 14 July, page 240. It appears that no one communicated this outcome to the claimant at this point.

15.92 In July 2021 the claimant was told by colleagues who had also been successful at Stage 3 of the Inspector promotion process that they were being allocated to their new temporary roles. The claimant had heard nothing from the respondent about this and so on 19 July 2021 she contacted Mr Bradley by email, page 249. She informed Mr Bradley that she was currently on maternity leave and had passed the Inspector's promotion process but had not had a placement yet. She stated that she understood that everyone had received their placements and asked to be notified of her role.

15.93 On 23 July Ms Bruton (who as set out above had been present at the meeting with Ms Price) emailed Mr Bradley explaining that the proposal was that candidates who were under investigation or awaiting misconduct proceedings, but who did not have a live written warning or

final written warning, would be eligible to participate in the promotion process but should they be successful their promotion would be paused until the outcome of the misconduct matter was known, page 252.

15.94 On 3 August 2021 Ms Awan emailed the claimant asking the claimant to call her or provide her with a mobile number so that she could update the claimant with regard to her promotion posting, page 265. Contact details were provided and the claimant was verbally informed by Ms Awan that as a result of the ongoing investigation the claimant would not progress to Stage 4 until the misconduct investigation had been resolved.

The criminal trial is delayed again

15.95 As set out above, PS Ali's criminal trial was due to start in May 2022 and once the claimant had started her maternity leave in May 2021 little was done by either the respondent or the claimant to progress the disciplinary case. However, following a pre-trial review that took place around February/early March 2022 the criminal trial was vacated and relisted for April 2023 due to the backlog created by Covid. On 9 March 2022 Mr Harper emailed the claimant and informed her of this, page 273. He acknowledged in this email that the news would cause the claimant concern and stated that he wanted to reassure her that he had made contact with Ms Greasley and that discussions were ongoing about how to best progress the matter. On the same day Mr Harper also sent emails to Mr McDonnell and Mr Rushton (who was by now the claimant's line manager) to inform them of this news, pages 274 and 275. Mr Rushton emailed Mr Harper later that day to say that the claimant was pretty devastated and he asked Mr Harper to keep him in the loop, page 275.

15.96 Mr Harper chased Ms Greasley for an update on the claimant's misconduct case on 28 March 2022, page 284, stating that he would like to provide the claimant with an update. Ms Greasley responded to Mr Harper by email that day, page 843. She stated that she had not received any further information to alter her decision and that "every possible legal conversation" took place to explore the position last year. She asked Mr Harper to share with the claimant that the date had been altered through no one's fault and was out of her control. In the same email but in a separate section of it headed "For your understanding only" Ms Greasley told Mr Harper that unless the prosecution barrister altered their opinion and legal advice surrounding the prejudice to the criminal trial she personally was not in a position to alter her decision as she could not dismiss advice that could compromise a criminal trial of such significance due to time delays out of the respondent's control.

15.97 On the same day, 28 March, and after he had received this response from Ms Greasley, Mr Harper emailed Mr Rushton stating that he had not yet had any further information regarding the claimant but that as soon as he did he would pass this on, page 285. Mr Rushton confirmed that he would let the claimant know this. Mr Harper sent a further email on 14 April 2022 to the claimant to say he had not had any updates, page 301.

April 2022 case conference: CPS change of advice

15.98 In the meantime, a case conference took place on 5 April 2022. We do not know who arranged this or when as we were not told. Following this the respondent took further advice from the CPS and on 19 April 2022 the CPS confirmed that they were now of the view that the misconduct cases could proceed. The CPS stipulated, however, that if at any point evidence came to light during the misconduct process which could prejudice the criminal trial then this would need to be disclosed to the CPS in order for them to review the situation. Ms Greasley then took further advice from the respondent's lawyer before deciding to progress the cases of PS Ali and the claimant to a misconduct hearing.

15.99 On 25 April 2022 Mr Harper emailed Mr McDonnell of the Federation to inform him that a decision had been made to progress the misconduct case for the claimant and PS Ali, page 155. Mr Harper stated that he did not have a date for the meeting but that it would be progressed as quickly as possible. On the same date he emailed the claimant to inform her that after liaising with Counsel a decision had been made that the conduct matter could now be progressed, page 306. On 9 May 2022 Mr Harper emailed the claimant to confirm that she would be having a joint hearing with PS Ali, page 309. The claimant immediately queried this, pointing out that her understanding was that he was not allowed to have his hearing prior to the criminal trial and raising a concern that he might not cooperate and this would cause delay. Mr Harper responded to the claimant that day, page 308, explaining that Counsel had said that the disciplinary hearing could take place before the criminal trial. Mr Harper also emailed Mr McDonnell about this, page 311.

15.100 Of course, it had been decided by Ms Bruton back in March 2021 that the claimant's misconduct case would be dealt with separately from that of PS Ali, paragraph 15.73 above. No evidence was led as to who decided that both would now be dealt with together or when this decision was made and no questions were asked about it, although we infer that more likely than not it was Ms Greasley as she was the appropriate authority.

Acting Inspector Cybercrime

15.101 In March 2022 the claimant had seen an advertisement for the role of Acting Inspector in the Cybercrime unit in ROCU. She was due to return to work from her maternity leave in May and so on 29 March 2022 she emailed Mr Cape informing him that she had passed the Inspector's exam and assessment. She reminded him that last time they had spoken he had said there would always be a job for her at ROCU and she asked him to let her know if she could be considered for the role, page 287. Mr Cape was on leave at the time but he responded to the claimant when he returned to work on 4 April copying her into an email that he sent to Mr Rob Anderson, Head of ROCU Enabling Services, asking him to confirm what the position was with regard to the claimant's application, page 287. He also emailed the claimant to suggest that she did not wait for a response but apply for the role and then let the organisation respond, page 288.

15.102 Mr Anderson, Head of ROCU Enabling Services, subsequently contacted Mr Cape to say that the claimant was ineligible to apply for the temporary Inspector role as her MV vetting had expired and had not been renewed. Mr Cape telephoned the claimant and explained this to her. She said that she was disappointed but that she "got it", page 291. (Detailed findings about the claimant's vetting status follow below).

15.103 The claimant then forwarded to Mr Cape an extract from an email that Andrew McHugh had sent to her back in July 2020 about his interpretations of the restrictions placed on her and what duties and responsibilities she could do.

15.104 Mr Cape in turn forwarded this onto Mr Rushton on 7 April 2022, pages 291 – 292. He confirmed to Mr Rushton in his email that he had been told that the claimant was not eligible for the temporary Inspector role because her MV vetting had expired. He stated that he had spoken to Ms Greasley to confirm what type of role the claimant could do and she had confirmed that it would be a role that did not require MV clearance and was not in the evidential chain. He stated that the audit role sounded right for this (which was where the claimant had been working before she started her leave). He commented that Mr McHugh's earlier interpretation of the claimant's restrictions "sounded a bit closer" to the evidential chain.

15.105 Mr Rushton sent an email response to Mr Cape a short while later to confirm that the claimant would return to work in the audit team, page 294. He stated that he would have a discussion with the claimant when she was ready but the plan was to let her enjoy her last bit of leave and then talk to her again. We do not know at what point the respondent told the clamant she could not apply for the temporary Inspector's role; no evidence was led on this.

The claimant's return to work from maternity leave May 2022

15.106 The claimant was due to return to work in May 2022 and prior to her return she contacted the respondent asking for clarity around the role she would be returning to. Detective Superintendent Bailey spoke to the claimant about this and a number of other matters on 31 March 2022, page 290. Ms Bailey subsequently emailed Ms Greasley and others stating that she thought that the claimant's vetting might have lapsed and asking for her vetting status to be checked so that she could understand what roles the claimant could potentially do, page 290. Ms Bailey also noted that the claimant had been moved out of the evidential chain. She wrote that the claimant had stated that her welfare support had fallen apart and she would prefer it to go back to Ms Woods. She also commented that Mr Harper had updated the claimant by text to say that the trial had been put off until next year and this was "not great" and the respondent needed to be satisfied they were making regular contact.

15.107 The claimant returned to work from maternity leave in May 2022. She returned to work on the audit team where she has been working prior to her maternity leave. Her line manager was Mr Rushton. He also remained the claimant's allocated welfare officer.

The disciplinary case is once again halted

15.108 In the meantime, very regrettably, matters had not proceeded at pace in relation to the disciplinary case. As set out above, the respondent's process for arranging a misconduct hearing involves a file being collated which is then sent to the legal department for review. A legally qualified chairperson is then instructed to review the case file and draft the Regulation 21 notice, which is the notice which sets out the disciplinary charges and the evidential basis for the allegations. In the claimant's case this took the best part of 3 months. We have accepted the oral evidence of the respondent and found that such delays are not uncommon, see paragraph 15.35 above.

15.109 It was not until 19 July 2022 that Mr Harper emailed the claimant to confirm that her gross misconduct hearing had been arranged to take place on 31 October - 4 November 2022, pages 328 - 329. The claimant's Regulation 21 notice was served on 5 August, page 967.

15.110 Under the respondent's processes, once an individual has been served with a Regulation 21 notice they are required to file a Regulation 22 response, which sets out their defence to the allegations. Both the claimant and Police Sergeant Ali submitted Regulation 22 responses; the claimant's was submitted on 12 October 2022. Ms Greasley was

immediately concerned by the content of the Regulation 22 responses. Both responses made reference to the criminal trial. For example in the claimant's response it was said that there was a suspicion that the desire to try PS Ali now together with the claimant was an attempt to secure a finding against PS Ali that might be deployed as bad character in the criminal proceedings, page 963. The claimant also asserted at paragraph 15 of her Regulation 22 notice that the proceedings were an abuse of process and the respondent was using the claimant to "bring down PS Ali", page 965. We accept the oral evidence of Ms Greasley and find that PS Ali, in his Regulation 22 notice, asserted that it was unfair to proceed with the disciplinary case in advance of the criminal trial, he made a request for disclosure of information directly relating to the criminal proceedings and it was made clear that he wanted to call one of the witnesses for the criminal trial as a witness in the disciplinary case.

15.111 Ms Greasley arranged for a case conference to take place with the respondent's lawyer, Ms Lowe and Mr Harper. After discussion she decided that the misconduct case could not proceed because there was a risk of prejudice to the criminal trial. She did so based on the content of the Regulation 22 notices, which in her view demonstrated several areas of overlap with the criminal trial. On 18 October 2022 Ms Greasley wrote to Mr Terry to inform him that having received the Regulation 22 notices from both officers she considered that the misconduct proceedings would prejudice the outstanding criminal proceedings and therefore no misconduct proceedings would take place pursuant to Regulation 9(3) of the Police (Conduct) Regulations 2012, page 335.

15.112 On 20 October 2022 Mr Harper emailed the claimant's then line manager, Mr Rushton, to say that a decision had been made to suspend the misconduct hearing due to take place on 31 October 2022, pages 338 - 339. On 27 October Mr Rushton spoke to the claimant to discuss a plan going forward. The claimant told him that the misconduct case was having a significant impact on her health and she stated that she did not want any further direct contact from the PSD, and specifically from Mr Harper. It was agreed that PSD would contact Mr Rushton who in turn would relay any updates to the claimant. They also agreed that Mr Rushton would contact her once a month unless there were any significant updates, in which case these would be relayed immediately. Mr Rushton emailed Mr Harper on 27 October to inform him that the claimant no longer wanted him to make direct contact with her and that if PSD needed to communicate with the claimant they should do so via him, page 336.

15.113 On 23 November 2023 Mr Harper emailed Mr Rushton to say that there were no further updates to share with the claimant, page 1251. He stated that he would send Mr Rushton monthly updates for Mr Rushton to pass onto the claimant, page 1249. He also confirmed that in the event

that there was a significant development he would inform Mr Rushton of this straightaway. Mr Harper emailed Mr Rushton again on 2 December 2023 to confirm there were no updates to share, page 1257, on 3 January 2023 to confirm that there were no further updates to share with the claimant, page 1239, and on 1 February 2023 once again confirming there were no updates to share with the claimant, page 1238. He emailed again on 1 March 2023, confirming there were no updates, page 1258. He emailed again on 2 May 2023 confirming on this occasion that the trial had got underway on 19 April, page 1247. The claimant confirmed in evidence that she was aware of these updates and we infer and find from this that Mr Rushton was passing these updates onto the claimant.

PS Ali's trial April/May 2023

15.114 Whilst PS Ali's trial got underway in April 2023 it collapsed nearly 8 weeks later during closing submissions. Currently, the trial is listed to take place in March 2025. Mr Rushton, who as set out above by this point was responsible for liaising with the claimant, first learnt about this from the newspapers. The claimant learned that the trial had collapsed via an article on the Birmingham live website and also via telephone calls from colleagues. This was on 27 June 2023. The claimant learned from the Birmingham live website that the trial had been re-listed for 2025.

15.115 Mr Harper emailed Mr Rushton on 3 July 2023 to inform him that the trial had collapsed, page 1240.

Thematic findings of fact

Workload/roles/restrictions

15.116 As we set out briefly at paragraph 15.15 above, in the early part of 2018 the claimant was working as a detective in the Regional Covert Investigation Unit, which, we understand, was part of the Regional Organised Crime Unit (ROCU). In this role she supervised a team of detectives and was required to direct and lead investigations and make decisions about what would go into the evidential chain. Hers was a front line investigative role. Whilst she was not herself working as an undercover officer she might on occasion also be required to work with undercover officers from the Regional Undercover unit. She remained in ROCU after service of her Regulation 15 notice in October 2018 but with restrictions imposed, see paragraph 15.15 above.

15.117 The restrictions that were placed on the claimant meant that she had to be moved from her front line role to work in the ROCU Confidential Unit in a role that was outside the evidential chain. This move took place in October 2018. We accept the claimant's evidence and find that during

this time only limited amounts of work were allocated to her and she did not have a team to supervise. We accept this evidence because the claimant told her welfare officer in August 2019 that she was concerned that she did not have enough work and was becoming deskilled, page 1068, and because, on 29 April 2020, the claimant emailed Catherine Tyler stating, amongst other matters, that in the last 16 months she had had no development and limited amounts of work, page 158. Effectively, the claimant was de-skilling whilst in this role. She complained to both her welfare officer and Superintendent Holmes that she was de-skilling.

15.118 The claimant was not told when she was moved, we find, what the restrictions were that had been placed on her. We accept the claimant's evidence, which was not challenged by the respondent, that at the time all that she was told was that she was being moved because she was under investigation.

15.119 Towards the end of April 2020 the respondent started to have discussions with the claimant about moving her out of the Confidential Unit of ROCU. This was because the claimant had raised concerns about lack of development opportunities and the limited work available to her, pages 158 and 1083 but also, most likely, because issues had recently come to light about whether the claimant had the correct vetting to work in ROCU, see paragraphs 15.134 – 15.142 below. There were internal discussions about a possible move with Superintendent Morey writing to HR on 23 April 2020 to say that he was a little torn about what to do; the respondent needed to balance the claimant's welfare and how to manage her in the workplace, but the respondent had not made the best use of her. He queried what sergeant vacancies there were and ended his email by saying that any vacancy would need to be assessed in terms of what would best suit the claimant from a welfare perspective given that matters could take one to two years to conclude. He suggested that there might be benefit in moving her into a longer term role rather than moving her from job to job internally, page 1081.

15.120 The thought of a move made the claimant, who was already suffering with anxiety, increasingly anxious and she was signed off sick with what was termed work related stress, page 158. Whilst the claimant was very unhappy in her current role she was also anxious that moving somewhere else would mean that she would have to explain to more people that she was under investigation. She emailed Katherine Tyler on 29 April 2020 stating that her understanding was that she was not allowed to be in the evidential chain but she asked if clarification could be sought from PSD as to the roles she was able to do and whether this had been reviewed, page 158. She asked not to be moved from ROCU. By this point, on the advice of occupational health, the claimant had reduced her

working hours to 4 hours a day to help her manage her stress pending the disciplinary hearing.

15.121 On 15 May 2020 Ms Greasley emailed Darren Walsh, Superintendent of ROCU, and Sally Holmes, Chief Inspector of ROCU. The claimant's legal team had raised a number of points with Ms Greasley concerning the claimant's deployment and the delay with the misconduct case which led to Ms Greasley seeking clarification on the claimant's position within the department. She asked for confirmation of the claimant's current deployment, page 163. Mr Walsh responded to Ms Greasley that day, pages 837 - 838. He confirmed that the claimant had been posted to the Regional Covert Investigation Unit on her promotion to Detective Sergeant and shortly after that he had been informed that she was the subject of an allegation of honesty and integrity that was linked to the promotion process. He wrote that this ultimately meant that the claimant could not have a role within the evidential chain as any proven allegation would jeopardise court proceedings and would have to be disclosed. He stated that there were no evidential roles as a supervisor within the Regional Covert Investigation Unit and a decision was therefore taken to redeploy the claimant to a non-evidential role within the Regional Confidential Unit where she had remained up until the point that Mr Walsh left ROCU in July 2019. He asked Ms Holmes to comment on the period of time after that. Ms Holmes emailed to say that the claimant was still working in the Confidential Unit and had been tasked with different work including county lines work and modern slavery, page 163.

15.122 A decision was then made that the claimant would need to move out of the Confidential unit of ROCU. On 2 June 2020 Chief Inspector Holmes offered the claimant a move to the Public Protection Unit, specifically the domestic violence department within that unit which was led by Ms Holmes, page 165. The claimant was told that this move would utilise her detective and supervisory skills and that she would be supervising crime reports, page 165. The claimant contacted Philip Asquith, the Detective Chief Inspector of the domestic violence unit, on 11 June 2022 to say that she wanted to discuss how she could assist the department without breaching her restrictions, page 166. She asked Mr Asquith if he was able to share what restrictions PSD had placed on her.

15.123 Mr Asquith responded by email on 11 June, page 167, saying that the restrictions were that she was not to work in the evidential chain which included:

- no public facing roles
- no contact with victims, witnesses or suspects - includes in person, via telephone or in writing
- no involvement or decisions regarding an investigation - includes the making/reviewing of investigation plans and filing of reports.

15.124 We pause to note, therefore, that the restrictions remained very substantial, in the sense that they completely prohibited the claimant from carrying out the type of front line investigative work that she was used to. We would additionally note that this was the first time that the restrictions had been clarified to the claimant by the respondent in this level of detail despite the restrictions having been in place for 20 months. This lack of clarity and poor communication style from the respondent must have created immense worry for the claimant.

15.125 On 15 June 2020 the claimant contacted Karen Geddes, a Federation representative, about the restrictions, page 168. She stated that no one had told her that these restrictions had been placed on her. She stated that she felt that the restrictions as explained contradicted the email that Ms Holmes had sent to her (this was a reference to the email about the role in the PPU).

15.126 A review of the claimant's restrictions was then undertaken with PSD, page 1087, and by 6 July 2020 there was a small degree of change made to the restrictions imposed on the claimant, or at the very least there was a change to the interpretation of those restrictions, page 292. Detective Inspector McHugh emailed the claimant to say that he had received an update regarding her restrictions, page 292. The email was headed "PSD update" and there then followed in his email what appeared to be a quote, presumably from PSD;

"I am now satisfied that it would be appropriate for DS Moore to review investigations, make filing decisions, create investigation plans and allocate investigations. From a disclosure manual point of view, creating investigation plans is not likely to lead to CPS needing to disclose pending matters to the defence and even if they did it is then also unlikely that the defence would be able to meet the criteria of section 100(1) of the Criminal Justice Act 2003 to enable them to cross examine DS Moore on her outstanding conduct matters".

15.127 We accept the oral evidence of Mr Cape and Ms Greasley and find that whilst this was an interpretation of the claimant's restrictions that moved the type of work that the claimant could do closer to the evidential chain, the tasks and responsibilities set out still fell outside of the evidential chain.

Claimant's moves to the PPU and the Audit Team

15.128 The claimant was moved to the Public Protection Unit in June 2020. We do not know the exact date of the move but we do know from the claimant's welfare log that she had moved by 16 June 2020, page

1087. We do not find, as the claimant asserted before us, that she was given very limited work to do, we consider that the claimant's contemporaneous reports to her welfare officer about her situation would have most accurately reflected what was happening at the time, for which see more below. But we do find that her restrictions limited what work she could do. In particular we find that when the claimant first moved into the team her restrictions meant that she could not deal with crime reports as a supervisor normally would, page 1087, and we accept her verbal evidence that she also could not deal with victims or suspects (as this was prohibited by her restrictions).

15.129 After there was a degree of change in the claimant's restrictions in July, see paragraph 11.126 above, the claimant reported to her welfare officer that she was happy with her posting and enjoying working with her colleagues, page 1088. Accordingly we find that the claimant was happy with the work that she was being allocated at this time. In October 2020, however, the claimant was moved from the domestic violence team to the audit team, which was also part of the Public Protection Unit. The audit team is a wholly non-operational team which monitors how well the police are complying with their policies and procedures. It was not the claimant's choice to move to this team; she always wanted to be as close as possible to an investigative role. Her line manager became Superintendent Joyce, although between December 2020 and 26 February 2021 Chief Inspector Cape was also involved in line managing the claimant. She remained in the audit team of the PPU until she started her period of maternity leave in May 2021. She returned to this unit at the end of her maternity leave in May 2022 and has remained there since then. Mr Rushton became her line manager on her return to work. He also acted as her welfare officer. She was unhappy and dissatisfied in this role, which continued the de-skilling which the claimant had, by now, suffered for nearly two years.

15.130 Whilst the claimant had a full workload carrying out audit work prior to going on maternity leave by the time she returned from maternity leave her health had deteriorated. Since June 2022 the claimant has largely been carrying out no more than basic administrative tasks, a far cry from the skilled work that she was carrying out previously. Mr Rushton was of the view that this was appropriate given the claimant's poor health; he was worried about asking too much of her. This situation has continued over the remainder of the timeframe with which this case is concerned.

Vetting

15.131 The respondent has a number of different vetting statuses. The minimum requirement for all officers and staff working within policing is what is known as RV clearance. A more enhanced level of vetting is known as Management Vetting (MV) clearance. MV clearance is

necessary for certain roles within the Force. It is set out in the vetting code of practice, page 568, that all police personnel with long-term frequent access to secret assets and occasional top-secret assets should hold MV clearance and that in order to grant MV clearance the force should ensure that they have no reason to doubt the integrity of the individual or their susceptibility to improper external influences.

15.132 Prior to the commencement of events with which this case is concerned the claimant had MV clearance. The respondent's policy is that in order to work in ROCU a person needs to have MV clearance.

15.133 MV clearance lapses automatically after a period of 7 years. The claimant had been granted MV clearance in May 2012, page 376, and the parties were in agreement that her MV clearance lapsed automatically on 22 May 2019, page 376. We accept the claimant's evidence and find that she received an email from PSD (who are in charge of vetting) around this time reminding her to complete her vetting forms for renewal, which she did, although we do not know exactly when this was done. We accept the claimant's evidence because PC Harper confirmed in an email in April 2020 that this is what the claimant had done, paragraph 15.141 below. The claimant heard nothing more and assumed that she had been granted MV clearance again. In fact, the forms were not processed and it was not renewed, for which see more below.

15.134 On 22 April 2020 Ms Holmes, Chief Inspector of ROCU, queried the claimant's vetting status and whether vetting had been withdrawn. This led to Ms Lowe contacting Ms Greasley on 22 April 2020 and asking if the claimant's vetting status had changed as a result of the misconduct investigation and whether there were any restrictions to her deployment, page 153. As set out above, the claimant at this time was working in the ROCU Confidential Unit and MV clearance was required for roles in ROCU.

15.135 Ms Greasley forwarded this email on to Detective Chief Superintendent Todd, who worked in PSD. She queried what the situation was with regard to restrictions and vetting for colleagues awaiting misconduct hearings, page 152. She stated with regard to vetting that it had been established that morning that the claimant's vetting had expired, and had not been renewed. She clarified that the vetting had not been removed by her (Ms Greasley), it had lapsed because it had expired, page 152.

15.136 Detective Chief Superintendent Todd responded by email on 24 April, page 150, saying that vetting should not be affected by an officer becoming the subject of an allegation; the presumption of innocence should remain. He noted that the respondent had not, however, removed

the claimant's vetting and he also noted that it appeared that the ROCU senior leadership team had placed the claimant in a position where she was out of the evidential chain but gainfully employed. He concluded his email by saying that for the claimant and any other officer the force did not remove vetting once an allegation had arisen but would reconsider vetting once the outcome was known, page 151.

15.137 Ms Greasley forwarded this email onto Ms Lowe, PC Harper and David Jones, the respondent's vetting officer, page 149. Ms Greasley wrote that Mr Todd had clarified that the claimant's vetting should not be affected by the outstanding misconduct process and she asked for the claimant's vetting application to be progressed, page 150. She stated that the only requirement (arising out of the investigation) was that the claimant was kept out of the evidential chain.

15.138 Mr Jones responded by email dated 27 April 2020, pages 156 - 157. He wrote that the national vetting code of practice stated that in order to grant MV clearance the Force should ensure they had no reason to doubt the integrity of the individual. He wrote that the fact that there was an outstanding allegation against the claimant in itself showed that there were doubts. He pointed out that by granting clearance the Force was confirming that there were no issues relating to unreliability or dishonesty and he stated that if the allegations related to dishonesty, honesty or integrity this might lead to it being queried why MV clearance was granted. He asked whether it would be better to leave things as they were, namely that the MV clearance had not been renewed, but the claimant could remain in ROCU in a managed role until the misconduct allegation had been resolved.

15.139 Ms Greasley emailed Mr Todd that day, page 1022. She forwarded with this email the email that she had received from Mr Jones. In her email to Mr Todd she referred to the response from Mr Jones regarding vetting for the claimant and stated "I'm sorry to defer to you, but want to get this right and vetting not being my specialist arena, I reach out to you with more knowledge and oversight".

15.140 Mr Todd responded a few hours later on 27 April, page 1021. He stated that if the claimant was not MV cleared then the respondent would not move to doing that and Mr Jones would be right. He stated that if she was already MV cleared then they should await the outcome (of the disciplinary) before removing the clearance, if need be. He stated that if the plan was to obtain MV clearance for the claimant but that had not yet been done then they should await the outcome (of the disciplinary) and mitigate in the meantime.

15.141 Very shortly after Ms Greasley received this email she received an email from Mr Harper, page 120, in which he said that he had done a little more research around the claimant's vetting status. He confirmed that the claimant had been MV cleared from 2012 but this had come to a natural end and forms had been sent out to her for a renewal. He stated that these forms had been filled in and returned by the claimant and were being processed through vetting but they were unable to confirm the claimant's clearance given her pending PSD matter.

15.142 On 28 April 2020 Ms Greasley emailed Mr Jones and Ms Lowe, copying in Mr Harper, confirming that the appropriate approach, which was confirmed and supported by Mr Todd, was that the MV vetting for the claimant "would occur after the misconduct hearing process due to the natural expiry depending on the sanction and findings of the panel". She confirmed that as a result the claimant would remain at RV vetting status and therefore her role and responsibilities would need to mirror this vetting level. She added that Mr Todd had confirmed that ROCU had previously catered for another officer with RV status and that Mr Todd believed that this should be mirrored for the claimant. page 156. A similar email was sent by Ms Lowe, to Ms Holmes page 1082. Whilst Ms Greasley told us in her oral evidence that it was Mr Jones who made the decision about the claimant's vetting we find, based on this email exchange, that the decision-maker was Mr Todd, albeit the decision was based in part on the advice given by Mr Jones, and we find that Ms Greasley simply relayed the decision made. This is because when the issue of vetting is first raised Ms Greasley, having made some brief enquiries with Mr Todd, paragraph 15.135, actually requests that the claimant's vetting application is progressed, paragraph 15.137. She further clarified that from her perspective the only requirement arising out of the investigation was that the claimant was kept out of the evidential chain, paragraph 15.137. It is Mr Jones who then queries this suggesting that it would be better not to renew the vetting, paragraph 15.138 and Ms Greasley then forwards this email onto Mr Todd making it clear *that she is deferring to him* (our emphasis) to make a decision, paragraph 15.139. Mr Todd responded setting out his decision, paragraph 15.140. Ms Greasley then does no more than disseminate this decision, paragraph 15.142. We accept the claimant's evidence and find that no one then thought to inform the claimant of the decisions that had been made about her vetting, which was another example of poor communication on the respondent's part.

15.143 The issue of the claimant's vetting cropped up again in June 2020, just before her move to the PPU. The claimant emailed her Federation representative to say she was still at home waiting for a role to be identified for her and that she had been told when she moved out of ROCU that there were issues with her MV vetting. She asked Mr McDonnell to clarify the situation, page 1110. Mr McDonnell in turn passed

the query on to Chief Superintendent Todd who responded by email on 7 June 2020. He stated that he had asked for a review and given the delay with PS Ali's trial which is "beyond our gift to alter" he believed that whilst the claimant should be kept out of the evidential chain to protect both her and the organisation, the claimant should be given a role commensurate to her rank and skills, page 1109. He stated that if vetting status was preventing that then a conditional renewal could be considered. We heard very little about conditional vetting in evidence and cannot make any further findings about it save that conditional vetting for the claimant was not then progressed by the respondent.

One to ones

15.144 The respondent, as you might expect, regularly holds one to ones with employees (although we understand these are referred to as "conversations" by the respondent), during which employees will be set short, medium and long-term objectives and personal development plans.

15.145 We find based on the evidence of the claimant and the oral evidence of Mr Rushton that for all of the time with which this case is concerned the claimant has not had a formal one to one/conversation. We accept the oral evidence of Mr Rushton that for the period of time he was involved with the claimant, which was June 2022 onwards, this was because the claimant had been placed in a temporary role pending resolution of the misconduct hearing.

Training

15.146 We accept the claimant's evidence and find that she has not received any training since the misconduct case against her was started. The respondent relied on a note that the claimant had written at the time when she was asking to be permitted to apply for a promotion to say that she must have undertaken some training; in this note the claimant had written that she had continued with CPD, page 228. On balance we did not consider that this note undermined the claimant's evidence; she was trying to persuade the respondent she should be allowed to apply for a promotion at this point in time and in this context it would be very unlikely, it seemed to us, that she would write that she had not had any training and/or was not up to date on her training. The respondent produced no training records for the claimant (or none that we were taken to), and accordingly we have accepted the claimant's evidence on this issue.

15.147 She has only applied for one course, which was in July 2020, and concerned covert operations. She did not get onto this course.

15.148 During the period of time that the claimant has worked on the audit team (June 2020 onwards), there has been no training available to any members of this team.

Overtime

15.149 The claimant has not worked overtime since the commencement of the disciplinary case. Requests for volunteers for overtime are frequently sent out by email. If a person is interested they will respond to the email to say that is the case. Depending on how many volunteers there are for the overtime it may then be necessary to pick a number of people from those who have volunteered, on other occasions the number of volunteers will be such that everyone is allocated overtime. But the vast majority of these overtime opportunities have been in relation to roles that are in the evidential chain. Accordingly, the claimant has not been eligible for these overtime opportunities and has not volunteered to undertake them. During the timeline of events with which this case is concerned the claimant had volunteered twice for overtime in respect of non-evidential roles and was not given it. The claimant's evidence was that she did not know why she was not given overtime on these two occasions but she accepted that if there were more volunteers than there were overtime opportunities then sometimes you would not be picked.

15.150 The claimant has not carried out any overtime whilst working on the audit team. There is no requirement for overtime for this type of work.

Knowledge of the Protected Act

15.151 Ms Bruton was aware that the claimant had made a complaint of sexual and racial harassment in the late summer of 2017, as she was appointed as the appropriate authority to progress the case against the alleged perpetrator.

15.152 As to Ms Greasley's knowledge of the protected act, we did not find this a straightforward factual issue to resolve. Ms Greasley's evidence was that she knew of the fact of the complaint but did not know the specifics about the details of the complaint or allegations made within it until she was preparing for this tribunal claim. Her evidence was that she first became aware that the claimant had brought her first employment tribunal claim in June 2020, see paragraph 15.56 above for the circumstances of this. The claimant's case, in essence, was that Ms Greasley must have known all along about the details of her 2017 complaint.

15.153 We have accepted Ms Greasley's evidence to this extent. We have accepted and found that when she first took over the case she had

no knowledge of the details of the claimant's October 2017 complaint, paragraphs 15.23 and 15.24 above. However, on balance we consider it more likely than not that by June 2020 Ms Greasley did know that the claimant had made a complaint of racial and sexual harassment. We make this finding of fact for two reasons. Firstly, as set out at paragraph 15.54 above, Mr Terry, the claimant's solicitor, emailed Ms Greasley on 23 April 2020 suggesting that Ms Greasley benefited from allowing the claimant to remain under a cloud given the proceedings that were ongoing involving a former member of PSD, which was a reference to the internal investigation triggered by the claimant's complaint in October 2017. Ms Greasley responded to this email stating that the suggestion that her actions were influenced by the other proceedings against a former member of PSD was completely unfounded, paragraph 15.55 above. Given that Mr Terry had directly suggested that Ms Greasley's actions were influenced by this matter we think it more likely than not that before she responded to Mr Terry she would have enquired into the background, and, at the very least, been told the nature of the claimant's complaint. Additionally, as set out at paragraph 15.56 above, in June 2020 she was told that the claimant had brought a tribunal claim, and that this had been settled by the respondent. The tribunal claim, at least in part, related to the claimant's October 2017 complaint. Again we think it more likely than not that, once armed with this information, Ms Greasley would have made enquiries about it to understand the background to the claim.

15.154 Mr Rushton was aware that the claimant had made a complaint of sexual harassment and race discrimination and he became aware of this around the time that he started managing her (May 2022).

15.155 Mr Harper was informed by Mr Davies that the claimant had made a complaint of sexual harassment in 2017 and he was told this when the disciplinary investigation into the claimant was started around July 2018.

15.156 We cannot make findings as to the knowledge of Superintendent Joyce of the protected act (who managed the claimant between June 2020 - October 2020 and between October 2020 and May 2021 respectively) because no evidence was led by either the claimant or respondent in respect of this. It follows from this the claimant has not proved that he did have the requisite knowledge. Mr Cape had line management responsibility for the claimant between November 2020 and 26 February 2021. He first became aware of the claimant's 2017 complaints during these proceedings. David Jones, it was accepted, did not know of the protected act.

<u>Officer B</u>

15.157 Officer B is a serving police officer. She too made a formal complaint of sexual harassment in 2017.

15.158 On 30 March 2020 she was served with gross misconduct papers in relation to an incident which, she accepts, took place at work. In Officer B's case it took the respondent 3 years 2 months to complete her disciplinary case; the outcome of which was that on 25 May 2023 she was found guilty of one incident of misconduct. Officer B accepts that part of the reason for the delay was that part way through the disciplinary case it was decided that the grievance that she had raised in March 2017 had been inadequately investigated and the disciplinary case was paused for 18 months whilst this investigation took place.

15.159 We find, based on officer B's evidence, that the respondent regularly takes very long periods of time to deal with disciplinary matters. It was striking that the quickest determinations that she knew of had still taken 12 to 18 months. Sometimes disciplinary cases can go on for much longer. Officer B was herself aware of one case involving a white male officer (and it can be inferred from this on the balance of probabilities that he was an individual who likely had not raised a complaint of sexual or racial harassment) whose disciplinary proceedings had lasted for 7 years.

15.160 When officer B was served with her disciplinary charge she was at the time a Sergeant and had passed her Inspector's exam. The process at the time for promotion was that once the exam had been passed candidates would be notified of a date for an interview (known as a Board) as and when Boards were being held. The Board was the final stage of the selection process at this time. She was not invited to a Board and she queried the position in relation to her promotion in June 2021 when she learned that the claimant had been permitted to progress through to stage 3 of the Inspectors promotion process. In October 2021 she was informed that she could not continue forward to a Board whilst her disciplinary case was outstanding.

Note from James Curtis KC

15.161 Save in so far as is set out below, the respondent has not waived privilege in relation to the advice that was received from the CPS about the claimant and PS Ali.

15.162 In the note, prepared for the purpose of this hearing, James Curtis KC wrote this:

Paragraph 1; PS Ali faced 32 counts of conspiracy to the pervert the course of justice, misconduct in public office and data protection act offences.

Paragraph 2; the prosecution arose from PS Ali allegedly unlawfully accessing his employer's secure and highly confidential, sensitive computer records and then divulging this information to friends and associates.
Paragraph 3: from mid-2019 the respondent had made the prosecution aware of potential disciplinary action to be taken against PS Ali for matters not directly arising out of the criminal trial and others said to be connected with his conduct, such as the claimant.
Paragraph 4; from mid-2019 the prosecution had foreseen a real danger of such proceedings compromising the criminal trial.
Paragraph 5; the defence was attempting to convey that the investigation against PS Ali had not been conducted impartially and the mounting of further disciplinary proceedings against or concerning PS Ali, such as those brought against the claimant, could provide the defence with ammunition of substantial propaganda value with obvious potential danger to the integrity of the prosecution case.
Para 6; on more than one occasion it was confirmed in writing that any step taken against PS Ali by the police or anybody attached to them was likely to be presented to the court as part of deliberate institutional harassment and victimisation of PS Ali, thus prejudicing the integrity of the prosecution case.
Paragraph 7; it remained for the respondent to decide in accordance with regulation 9 (3) whether the disciplinary proceedings of PS Ali and the claimant could proceed.

The Law

16 Victimisation is defined in section 27 of the Equality Act 2010 as follows:

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

(a) B does a protected act

(b) A believes that B has done, or may do, a protected act.

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

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

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

(d) making an allegation (whether express or not) that A or another person has contravened this Act; or

Application to the field of work

17 Section 39(4) prohibits victimisation by employers and, insofar as is material, provides:

> "An employer (A) must not victimise an employee of A's (B) -
> …..
> (d) by subjecting B to any other detriment."

Section 39(4) concerns a prohibition on victimisation in the workplace and is worded the same way as 39(2) save that "victimise" is used rather than "discriminate".

18 The Equality Act definition requires a tribunal to make three findings: whether a protected act was done, and, if so, whether the claimant was subjected to a detriment, and, if so, whether that was because of doing the protected act. There is no requirement under the Equality Act for a comparator, although evidence of how a person in similar circumstances to the claimant who has not done a protected act was treated by the respondent might be something that moves the burden of proof across to the respondent.

Subjecting the claimant to a detriment "because" she has done a protected act

19 Section 27 uses the term "because". This replaces the terminology of the predecessor legislation, which referred to the "grounds" for the act complained of. It is well-established that there is no change in the meaning, and it remains common to refer to the underlying issue as the "reason why" issue. In a case of the present kind establishing the reason why the act complained of was done requires an examination of what Lord Nicholls in his seminal speech in **Nagarajan v London Regional Transport [1999] UKHL 36,** referred to as "the mental processes" of the putative discriminator (this was a race discrimination case);

"Section 1(1)(a) is concerned with direct discrimination, to use the accepted terminology. To be within section 1(1)(a) the less favourable treatment must be on racial grounds. Thus, in every case it is necessary to inquire why the complainant received less favourable treatment. This is the crucial question. Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job? Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator. The crucial question just mentioned is to be distinguished sharply from a second and different question: if the discriminator treated the complainant less favourably on racial grounds, why did he do so? The

latter question is strictly beside the point when deciding whether an act of racial discrimination occurred. “

20 Victimisation claims are subject to the provisions of section 136 of the 2010 Act relating to the burden of proof, which read (so far as material):

> "(1) This section applies to any proceedings relating to a contravention of this Act.
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

21 So far as the burden of proof is concerned, the proper approach has been addressed by the Court of Appeal in **Igen Ltd v Wong [2005 IRLR 258**, **Madarassy v Nomura International plc [2007] ICR 867** and **Laing v Manchester City Council [2006] IRLR 748**. Following a two stage approach, **Igen**; at stage one the tribunal must decide whether there are facts from which it could be concluded that the claimant was subjected to a detriment because of the protected act. If so, the respondent has to provide a stage two explanation satisfying the tribunal that the protected act was no part of the reason for the treatment alleged. It is open to a tribunal to move straight to stage two, or the “reason why” question, if that appears to be a more helpful way of determining the issue, **Amnesty International v Ahmed [2009] ICR 1450** and **Hewage v Grampian Health Board [2012] UKSC 37**.

22 The need for there to be something more than a difference in treatment and a difference in status, in the context of discrimination claims, has been emphasised repeatedly by the EAT, see for example **Hammonds LLP & Ors v Mwitta [2010] UKEAT 0026_10_0110** and Mr Justice Langstaff in **BCC & Semilali v Millwood UKEAT/0564/11**. This applies equally to victimisation claims, see for example the Court of Appeal in **Greater Manchester Police v Bailey [2017] EWCA 425** , paragraph 29, 'It is trite law that the burden of proof is not shifted simply by showing that the claimant has suffered a detriment and that he has a protected characteristic or has done a protected act”: see **Madarassy**, per Mummery LJ at paras. 54-56 (pp. 878-9).

Submissions

23 The respondent produced lengthy written submissions and supplemented these with oral submissions. We summarise only the main points here. The respondent submitted that the claimant’s written submissions contained many inaccuracies and misleading representations of the evidence, and gave examples of this.

24 The respondent reminded us of the wording of the Police Conduct Regulations, which are mandatory in their terms. These obligated an appropriate authority to consider whether any misconduct proceedings would prejudice criminal proceedings and if so no such misconduct proceedings could take place, Regulations 9(2) and 9(3). The respondent reminded us of the terms of Mr Curtis' advice, which, it was submitted, could not be ignored. The claimant, the respondent suggested, in reality did not agree with the premise of that advice but that was a separate matter to the issue of whether the advice, once given, could be disregarded. There was, the respondent submitted, no basis on which the advice could be ignored. The respondent submitted that there was no reason at all to doubt that it was this advice that was responsible for the subsequent delay in the claimant's disciplinary case. The respondent pointed to the fact that in April 2022, when the CPS confirmed that it had changed its position and the misconduct matter could now proceed, immediate action was then taken by the respondent to list a date for the gross misconduct hearing.

25 The respondent further submitted that the circumstances of Mr Marnell were largely irrelevant. The respondent reminded us that the claimant had accepted in evidence that Mr Marnell's circumstances were fundamentally different to hers; he faced misconduct allegations that were less serious than those faced by the claimant and, because he did not contest the misconduct charges, there was no evidence required in order to deal with his misconduct case. In contrast, PS Ali would need to be called as a witness in the claimant's case because the allegation was that they had worked "hand-in-hand". The respondent reminded us that the evidence of Ms Marks had been that the CPS were consulted about whether the misconduct case against Mr Marnell could go ahead and it was suggested we should infer from this that if there had been any objection raised the respondent would not have proceeded.

26 We were reminded that the claimant's protected act, for the purposes of this case, was the complaint of sexual and racial harassment made by the claimant in 2017. It was not, we were reminded, the subsequent tribunal claim or COT 3. The claimant had referred multiple times in her evidence, it was submitted, to the respondent's approach towards her changing after she had signed the COT 3, but that was not the protected act in question.

27 As to the other detriments, the respondent submitted that the decision to leave the claimant's vetting as lapsed took place before the COT 3 was signed and therefore was not an issue that this tribunal had jurisdiction to consider. The other asserted detriments, the respondent submitted, flowed from the fact that the claimant was under investigation in relation to misconduct charges relating to honesty and integrity, and this naturally placed some restrictions on the work she could undertake and the tasks she could do.

28 The claimant submitted that it was an unusual step for her to take in 2017, to complain about someone who worked in the Counter Corruption Unit. She

stated that she had then complained about the appropriate authority who was handling this complaint, and that this (her further complaint) was also unusual. She pointed out that she was then investigated by the CCU, even though this was the department in which the alleged perpetrator had worked. She stated that she had asked for an independent force to investigate the allegations against her on several occasions. She acknowledged that she had no issue with being placed under investigation.

29 The claimant reminded us of the specific wording of the KC's advice note; That any step taken against PS Ali "or anybody attached to them" would likely prejudice the criminal trial. She submitted that this rationale clearly impacted on PS Marnell's case also and yet this had gone ahead. She queried how it was that the case against PS Marnell had been allowed to go ahead and be dealt with by way of a written warning when that could be disclosed on the request of the defence. She reminded us that at one point Superintendent Joyce had stated that Mr Marnell's circumstances were "ostensibly the same" as hers.

30 She submitted that Ms Bruton was conflicted and could not make an independent decision on her case and that this conflict arose out of the complaint that the claimant had made about Ms Bruton's handling of the misconduct proceedings arising out of the claimant's October 2017 complaint. She submitted that Ms Bruton had been Ms Greasley's line manager in 2021 which meant that, in her view, Ms Bruton would have continued to oversee her investigation and have influence over it.

31 The claimant reiterated that she had no issue with being placed under investigation but, she submitted, she did have an issue with the unfair treatment that she had received as a result of the investigation. She stated that one of her biggest concerns was around the issue of the vetting. She stated that she thought she had vetting and queried why she had not been provided with an update as to the actual position. She stated that no one had explained the situation to her and that was a detriment as she could not apply for an acting inspector role because she had no vetting. She submitted that she had been allowed to remain working in ROCU with just RV vetting up to June 2020, but that as soon as she had settled her tribunal claim and signed the COT 3 the goalposts change. She stated that when new restrictions were set for her in July no one had sat down and explained this to her or explained what roles she could now apply for. She asserted that the College of Policing guidelines in relation to vetting had been ignored.

32 She described her settlement agreement as the "pinnacle point" and submitted that after she had signed her settlement agreement the respondent's treatment of her had changed.

33 She submitted that it was Ms Bruton who had intervened in June 2021 and prevented her from being allowed to participate in stage four of the Inspector

recruitment process. She queried why she had not been provided with clear feedback about not being allowed to proceed to stage four, which would then have enabled her to appeal the decision.

Conclusions

Complaint 4(a): the conduct investigation and procedure commenced in 2018 has not been completed and/or has not been actioned expeditiously

34 We wish to start our conclusions by expressing our sympathy for the situation that the claimant has found herself in. To have a serious disciplinary matter held in abeyance for not just months but years, and to be on restricted duties all the while, must have been devastating for the claimant.

35 Turning to our legal conclusions, this complaint is, of course, factually accurate. The investigation which was started in 2018 was outstanding right up until the end of the timeline with which this case was concerned (June 2023) and it clearly was not actioned expeditiously; it had been outstanding for nearly 5 years as at June 2023. The delay is inordinate.

36 The relevant decision maker was Ms Greasley and, for a period of time between March and end of May 2021, Ms Bruton, paragraph 15.70. The claimant's case was, in fact, that Ms Bruton exercised influence over her case for much longer than this; we will explain why we have rejected that part of the claimant's case shortly.

37 The respondent has conceded that the claimant's complaint of October 2017 was a protected act. Ms Bruton had knowledge of this protected act throughout the period of time with which this case is concerned, paragraph 11.151. Ms Greasley, on our findings, had knowledge of the protected act from June 2020 onwards, paragraph 11.153.

38 We concluded that the claimant had proved facts from which it could be concluded that she was subjected to this delay because of the protected act, and accordingly, we concluded, the burden of proof moved across to the respondent to prove that their treatment of the claimant was in no sense whatsoever because of the protected act. We did so for the following reasons.

38.1 Firstly, the complaint that the claimant raised in October 2017 triggered many more complainants to come forward and started a very significant investigation, paragraph 15.5. In other words it no doubt created a situation that was quite challenging for the respondent to deal with as there were multiple complainants and widespread allegations. The situation that the claimant's complaint generated made it more likely, in our view, that the respondent would react adversely to the complaint.

38.2 Secondly, the delay is completely inordinate and excessive. Looking solely at the length of the delay (and not the reasons for it) it goes far beyond a level of delay that is simply unreasonable. The length of the delay is so extraordinary that it is something in and of itself, in our view, that requires an explanation.

38.3 Thirdly, there is the fact that Mr Marnell's disciplinary case was not subject to this length of delay. For the purposes of a victimisation claim, of course, no comparator is required. However, evidence of how others were treated may be evidentially relevant. In this case, of course, Mr Marnell was under investigation, initially at least, for the same type of misconduct as the claimant and his case had some linkage to PS Ali, paragraphs 15.11 and 15.14. The fact that his disciplinary case was able to progress in such circumstances whereas the case against the claimant did not is something that requires an explanation from the respondent.

39 Accordingly, for these reasons we concluded that the burden of proof had moved across to the respondent and it was for the respondent to prove that the protected act was in no sense whatsoever the reason for the treatment alleged.

40 We concluded that the respondent had proved that the reason for the delay (i.e the reason for not completing the disciplinary case/not actioning it expeditiously) was in no sense whatsoever because of the protected act. We did so for the following reasons:

40.1 Firstly, the claimant on a number of occasions, very properly, emphasised that she did not seek to challenge the appropriateness of the initial decision to place her under investigation. We proceed, therefore, on the basis that this initial decision was genuine and made in good faith. It seemed to us to be somewhat unlikely, if there genuinely was a potentially serious misconduct issue to be investigated against the claimant, that the respondent would then delay that disciplinary case because of the October 2017 complaint. As Ms Greenley for the respondent put it, it was not in anyone's benefit for the status quo to be maintained in this situation. After all, given that the disciplinary case could have resulted in the claimant's dismissal it seemed to us that if the respondent was minded to subject the claimant to a detriment because she had made her protected act it would more likely have proceeded with the disciplinary case and dismissed the claimant.

40.2 Secondly, the initial part of the disciplinary case against the claimant progressed quickly. Having been assigned as appropriate authority with responsibility for the case around 8 April 2019, Ms Greasley reviewed the evidence and the report, decided that there was a case for the claimant to answer and decided that the matter should be dealt with as gross misconduct. This decision was communicated to the claimant on 17 April 2019, paragraph 15.25. If the respondent had been minded to deliberately delay the disciplinary case against the claimant then surely it would have done so from the start.

40.3 Thirdly, it is beyond doubt that the respondent received advice from the CPS that if the misconduct hearing for the claimant and PS Ali went ahead there was a risk of prejudicing PS Ali's criminal trial, see for example paragraphs 15.40, 15.69 and 15.73**.** If this was, and remained, the reason for the delay this is an explanation that is in no sense whatsoever because of the protected act. That this was the reason for the delay was demonstrated in our view by a number of factors:

40.3.1 Firstly, as set out in paragraph 15.2 above, Regulations 9(2) and 9(3) of the Police Conduct Regulations are mandatory in their terms. Regulation 9(2) states that before referring the case to misconduct proceedings the appropriate authority "shall decide" whether misconduct proceedings would prejudice any criminal proceedings. If the appropriate authority considers misconduct proceedings would prejudice any criminal proceedings "no such misconduct proceedings *shall* (our emphasis) take place", Regulation 9(3). Once the advice was provided to the respondent, that to progress the disciplinary case of the claimant and PS Ali would prejudice the criminal trial, the respondent, on the face of the Regulations, had no discretion to proceed.

40.3.2 Secondly, throughout the contemporaneous documentation the respondent is entirely consistent as to the reason for the delay. The claimant is repeatedly told that the disciplinary case could not go ahead because of the risk to the criminal trial, paragraphs 15.40 and 15.42, 15.44, 15.47, 15.50, 15.53, 15.55, 15.57, 15.74 and 15.111.

40.3.3 More significantly, in our view, the respondent is also consistent as to the reason for the delay in internal contemporaneous documentation that is *not* sent to the claimant, paragraphs 15.48, 15.60, and 15.96. In particular, for example, there is the email of 26 January 2021 sent by Mark Longden internally in which there was a discussion about potential opportunities to progress the claimant's disciplinary case and the comment was made that "we will need CPS on board but they seem a little more sympathetic given the length of this further delay", paragraph 15.60.
And the email from Ms Greasley to Mr Harper a section of which was marked "for your understanding only" in which she wrote;
Unless the prosecution barrister altered their opinion and legal advice surrounding the prejudice to the criminal trial she personally was not in a position to alter her decision as she could not dismiss advice that could compromise a criminal trial of such significance due to time delays out of the respondent's control, paragraph 15.96.

40.3.4 As the delay unfolded the respondent did, on occasion, go back to the CPS and confirm that their advice remained the same, which again suggested that the advice was the reason for the delay, paragraphs 15.62

and 15.98**.** Linked to this, as the delay progressed Ms Greasley took advice from the CPS about whether a separate misconduct hearing could be held for the claimant and what the risk would be if PS Ali was involved as a witness in that disciplinary matter, paragraph 15.62; actions which were inconsistent, in our view, with deliberate (i.e. unnecessary) delay.

40.3.5 It is also significant that when the CPS advice changed the respondent re-started the disciplinary process quickly and notified the claimant of this, paragraphs 15.98 and 15.99. On 19 April 2022 the CPS confirmed that they were now of the view that the misconduct cases could proceed, paragraph 15.98. By 25 April the respondent had decided to progress the claimant's case and the claimant was informed of the change in position, paragraph 15.99. The case did then get bogged down in the respondent's labyrinthine misconduct process, which entails the file going through legal services and a legally qualified chair being appointed amongst other matters, paragraph 15.108, but that does not detract from the fact that the part of the process that was in the control of the relevant decision maker (Ms Greasley) was dealt with quickly.

41 Fourthly, we took into account that at one point Ms Greasley delayed her annual leave in order to try to ensure that the case progressed, paragraph 15.65 above, which seemed fundamentally inconsistent with the respondent deliberately delaying matters.

42 One of the claimant's main complaints in relation to this claim concerned the alleged involvement of Ms Bruton in her disciplinary case, who, she asserted, was biased against her as a result of the October 2017 complaint and the commotion that followed Ms Bruton's decision that the allegations against the sergeant amounted to misconduct not gross misconduct, paragraphs 15.7 and 15.8. The claimant, of course, had complained about that decision. She suggested that we should infer from this that Ms Bruton had developed an animus against her and that Ms Bruton then intervened in the disciplinary case to delay it deliberately. We declined to draw such an inference, on the basis of the evidence that was before us. This is principally because Ms Bruton was not, in fact, working in any capacity in PSD for the majority of the time with which this case is concerned. Ms Bruton left PSD in September 2019 and undertook a different role in another department, paragraph 15.39. She did not return until January 2021, and yet for that period of 14 months the respondent's approach (i.e. PSD's approach) to the claimant's case remained the same. She left PSD again in November 2021, paragraph 15.1, but once again the respondent's approach to the disciplinary case after this remained the same.

43 But there were, in any event, no facts put before us to support the drawing of an inference of animus on the part of Ms Bruton. The *claimant* had clearly been very upset by Ms Bruton's decision, as is to be expected. It no doubt took courage to complain and the claimant clearly felt that a charge of misconduct

rather than gross misconduct underplayed the seriousness of what she had been through. But the claimant's perception, and how the claimant felt, is a very different matter from how Ms Bruton might have perceived the events. From Ms Bruton's perspective all that happened was that the claimant made an informal complaint about her decision making, Ms Bruton then met with the claimant to discuss her decision making rationale and at some later point a decision was made by Deputy Chief Constable Rolfe that the case should proceed as a gross misconduct matter, paragraph 15.8. People have work related decisions overturned by more senior managers all of the time; that may be annoying, but for many of us it is a fact of working life; there was nothing on the evidence that was put before us to suggest that from Ms Bruton's perspective it went any further than that.

44 Fifthly we took into account the evidence from Officer B, that delay in dealing with misconduct cases was not unusual, paragraph 15.159. It was striking that the quickest determination of a misconduct issue that she knew of was 12 to 18 months, a lengthy period of time. She also described a great deal of variation as to how long disciplinary cases took and was herself aware of one case that had taken 7 years, paragraph 15.159 above.

45 We turn next to the situation in relation to Mr Marnell. This was, perhaps, the main element of the claimant's case; she placed a great deal of weight on the apparent difference in treatment between her and Mr Marnell. But, of course, differences in treatment are only significant if the people concerned are in much the same situation and, on our findings of fact, there were very significant differences between the claimant's case and that of Mr Marnell. Whilst they were initially under investigation for the same misconduct, paragraphs 15.11 and 15.14, their cases quickly diverged, paragraph 15.31. The claimant was charged with having, over a period of months, engaged with PS Ali to gain an unfair advantage in the sergeant selection process. Mr Marnell was never charged with this; his disciplinary charge was a much lesser offence of failing to challenge or report improper conduct on the part of PS Ali, paragraph 15.31. He was charged with misconduct whereas the claimant was charged with gross misconduct**,** paragraph 15.31. Significantly, he admitted the conduct meaning that a contested hearing was not necessary, paragraph 15.32. Most significantly of all this also meant that there was no risk that evidence would be required from Police Sergeant Ali in order to deal with Mr Marnell's disciplinary case, paragraph 15.32. The claimant's case, in contrast, remained inextricably bound up with Police Sergeant Ali because she denied the charge and the evidence against her was based on WhatsApp messages sent between the two of them, paragraphs 15.27 and 15.28. Having started from similar beginnings, therefore, the two cases became fundamentally different. We pause to note that the claimant accepted in cross examination that her disciplinary charges were fundamentally different to those of Mr Marnell and, after some prevarication, she also accepted that there was no need for evidence to be called in Mr Marnell's disciplinary case whereas there would be for her case.

46 That was not the end of our considerations in respect of this matter however; the claimant relied on a further point which arose out of Mr Curtis KC's note. In particular, she relied upon the wording that had been used in paragraph 6 of the note; namely that the concern was that any step taken against PS Ali *or anybody attached to them*…… could prejudice the integrity of the prosecution case. The claimant submitted that this advice was very wide and must have covered Mr Marnell also. Effectively the claimant's position was that the respondent must have ignored the advice so far as it applied to Mr Marnell, but applied it in her case to determine that regulation 9 (3) applied. She asked us to infer from this alleged difference in treatment that it was the October 2017 complaint that was the cause of the respondent's actions (or in this case inaction) towards her.

47 But there were, in our view, a number of difficulties with this submission. Firstly, the note that was provided by Mr Curtis KC was not a contemporaneous document; it was provided at our request during the course of this hearing, see above, and the specific request that was made was whether any information could be provided in relation to the advice that was given about PS Ali and the claimant. It was not requested that further information be given as to the advice that was provided in relation to anyone else. Whilst the wording relied upon by the claimant was, indeed, on its face very wide, and *could have* covered others, we did not consider this was a safe inference that could be drawn from this note given the circumstances in which it arose.

48 Secondly, and more significantly, we have accepted the evidence of Ms Marks that the CPS *were* consulted about Mr Marnell's disciplinary case, paragraph 15.34. Ms Marks did not know what advice was subsequently received. Ms Bruton did not know that advice from the CPS had been taken; what she knew was that officers dealing with the criminal investigation considered whether it could be said that dealing with Mr Marnell's disciplinary case would prejudice the criminal investigation and the team then advised Ms Bruton that she could proceed with Mr Marnell's disciplinary case, paragraph 15.34. So the advice to Ms Bruton in respect of Mr Marnell's case (that the prejudice issue had been considered and she could proceed) was different to the advice given to Ms Greasley in respect of the claimant (that there would be prejudice to the criminal trial if the disciplinary case was to proceed). Regardless of the wording in the note and how this *could* be interpreted there is, therefore, another fundamental difference between the circumstances of Mr Marnell's case and that of the claimant; in that the advice to the respective AA's differed. For these reasons it cannot be concluded that there was an inconsistent application of Regulation 9(3) between the two cases, as the claimant asserted. Once again the circumstances between the claimant and Mr Marnell were materially different.

49 Under the Police Regulations, as set out above, it is for the appropriate authority to decide whether the misconduct proceedings might prejudice the

criminal trial, albeit clearly this will often, if not always, be decided based on advice. Ms Bruton concluded, having considered the advice she had received, that there was *no risk* of prejudice were she to proceed with Mr Marnell's case because (i) Mr Marnell was only charged with failing to report an improper conversation, as opposed to acting in concert with PS Ali to gain an advantage in the selection process, and (ii) he had admitted the misconduct and therefore there was to be no contested hearing and no witness evidence from PS Ali would be required, paragraphs 15.32 and 15.34. Ms Greasley, having considered the advice she received, took the opposite view; that there was a risk of prejudice. The AA's themselves, therefore, took a different view on the prejudice issue as between the respective cases. That is another material difference between the two cases.

50 The claimant also asserted in evidence and submissions that Mr Marnell was not removed from his role in the evidential chain when he was served with his regulation 15 notice, whereas she was. However, this contention has failed on the facts. As we set out at paragraph 15.16 above, we have found that Mr Marnell, initially at least, was removed from his role in the evidential chain. It is true that we have also found that he was returned to a role in the evidential chain, but this was 5 months later and we know nothing about the circumstances of his return other than that it was not a PSD decision, paragraph 15.16. Consequently, we did not consider that any adverse inference could be drawn from this.

51 There were two further matters that we weighed into the balance, albeit these were not factors specifically relied upon by the claimant herself. Firstly, there is the fact that at the very start of the misconduct investigation PC Davies told PC Harper that the claimant had made a complaint of sexual harassment, paragraph 15.12. Secondly, we were mindful that there was, to an extent, an absence of examples of the respondent robustly challenging the advice, or proactively seeking alternative ways to progress the claimant's case, particularly as the delay extended. As the delay grew worse and worse, with the claimant deskilling all the while, it might have been expected that the respondent would take some more proactive action. We considered whether the absence of this was something from which an inference could be drawn.

52 Fundamentally, we concluded that these matters did not undermine the cogency of the respondent's explanation. We do not know why PC Davies told PC Harper about the claimant's complaint, PC Davies was not called as a witness, but we do know that this happened back in 2018 which was relatively shortly after the complaint had been made and whilst the respondent was in the midst of a large-scale investigation arising out of that complaint. It seemed to us that there were a number of different possibilities as to why this complaint might have been mentioned to PC Harper ranging at one end from simple tittle tattle "did you know she was the one who…..", to, at the other end, something more sinister. But within that range there are a number of possibilities all of which are

equally likely, it seemed to us, and accordingly we concluded this did not undermine the cogency of the respondent's explanation.

53 As to the second point, it requires to be remembered that this is a respondent that operates in a strictly regulated environment. It has to apply the Police Conduct Regulations and, as we have already set out above, these Regulations mandate that a disciplinary case cannot go ahead where there is the risk of prejudice to a criminal trial. In such circumstances it seemed to us that taking what was effectively the easy option of accepting the advice and maintaining the status quo, thus ensuring there was no breach of the Regulations, was unsurprising conduct on the respondent's part even if, in an ideal world, they should, perhaps, have done more.

Complaint 2: the claimant has not been told why the case was delayed and/or has not been updated properly with regards to the failure to progress the disciplinary case

58 The first part of this complaint fails on the facts. The claimant, or her representatives, were told repeatedly why her disciplinary case was being delayed; that it was because of the criminal trial: in an email of 16 October 2019, paragraphs 15.40 and 15.42**,** in an email of 24 October 2019, paragraph 15.44, in an email of 25 November 2019, paragraph 15.47, in an email dated 3 April 2020, paragraph 15.50, in an email of 23 April 2020, paragraph 15.53, in an email of 6 May 2020, paragraph 15.55, in an email of 14 October 2020, paragraph 15.58, in emails of 3 November and 17 December 2020, paragraph 15.59, in an email of 26 January 2021, paragraph 15.60, in a verbal update around 19 February 2021, paragraph 15.65, in an email of 4 March 2021, paragraph 15.69, in an email of 18 March 2021, paragraph 15.74, in an email of 9 March 2022, paragraph 15.95, in an email of 25 April 2022, paragraph 15.99, and in an email of 18 October 2022, paragraph 15.111.

59 In our view what, in reality, the claimant disagrees with is the rationale for the delay, but that is a separate and distinct issue from whether the claimant was informed of why the case was being delayed.

60 The second part of this complaint was that the claimant was not updated properly with regards to the failure to progress the disciplinary case.

61 In addition to the updates set out above there were further updates, usually provided by PC Harper either directly or via the claimant's line manager. Sometimes these happened when there was something to communicate to the claimant and sometimes when there was no substantive information to communicate to the claimant. For example on occasion he would say that discussions were taking place and on other occasions that there was no update to be provided. There were also certain updates to the claimant from the misconduct support team. Communications of this nature took place on: 17 and

29 April 2019, paragraph 15.26, 25 June 2019 (in response to an enquiry from the claimant), paragraph 15.36, 24 July 2019 (in response to an enquiry from the claimant), paragraph 15.36, 6 August 2019 (in response to an enquiry from the claimant), paragraph 15.38, 18 September 2019 (in response to an enquiry from Ms Woods), paragraph 15.39, 12 November 2019, paragraph 15.45, 24 September and 14 October 2020, paragraph 15.58, 3 and 25 November and 17 December 2020, paragraph 15.59, 28 January 2021, paragraph 15.61, 16 February 2021 (in response to an email from Mr McDonnell), paragraph 15.64, 22 February 2021 (in response to an email from Mr Cape), paragraph 15.66, 25 February 2021 (in response to an email from the claimant), paragraph 15.67, 17 May 2021, paragraph 15.75, 9 March 2022, paragraph 15.95, 28 March and 14 April 2022, paragraph 15.97, 9 May 2022, paragraph 15.99, 19 July 2022, paragraph 15.109, 20 October 2022, paragraph 15.112 and 23 November 2022, 2 December, 3 January 2023, 1 February 2023, 1 March 2023, 2 May 2023 and 19 April 2023, paragraphs 15.112 and 15.113.

62 Looking at the dates there were two significant gaps when no updates were being provided to the claimant. The first of these was from October 2018 to April 2019, after the claimant had been informed that she was being charged with gross misconduct, paragraph 15.25. That is a period which pre-dates the settlement agreement and so, it was agreed, it did not fall as a complaint for determination by us.

63 There was also a gap from May 2021 to March 2022. We concluded that the claimant had not proved facts from which it could be concluded that she was not updated between May 2021 and March 2022 because of her protected act. Indeed, apart from asserting this to be the case the claimant herself did not point to any particular facts which she relied upon to move the burden across to the respondent. Even had the burden of proof moved across to the respondent we would have concluded that the reason why she was not updated over this period was because the claimant was on maternity leave, she had requested to be updated only if there was a meaningful update, paragraph 15.75, and there was nothing meaningful to communicate until March 2022, when the criminal trial was postponed, paragraph15.95. Which is a complete explanation that is in no sense whatsoever because of the claimant's protected act.

64 Before us the claimant's case in respect of this complaint became somewhat more nuanced; it was that Home Office Guidance required her to be updated every 28 days and this was not done. It is correct that the Guidance did state that investigators were required to notify the police officer of the progress of the investigation at least every 4 weeks from the start of the investigation, paragraph 15.4. In the claimant's case there were many occasions where updates were provided with this degree of regularity, for example between September 2020 and March 2021 and between October 2022 and April 2023.

65 However, this did not always happen. There were plenty of occasions when updates did not happen every 28 days. The two individuals primarily responsible for providing updates to the claimant during the relevant period were Ms Greasley and Mr Harper.

66 We concluded that the claimant has not proved facts from which it could be concluded that she was not always updated every 28 days because of her protected act. The only fact which the claimant identified which could move the burden across to the respondent was that the respondent failed to follow the Guidance consistently. But we did not consider that a procedural failing of this nature was sufficient to move the burden across, particularly in circumstances where there were also many occasions where the respondent did adhere to the guidance.

67 In any event, even had the burden moved across to the respondent what can be seen from the pattern of their contact with the claimant throughout the majority of the timeline with which this case is concerned is that when something was happening on her case there was often a flurry of communication and when nothing was happening on her case (for example because the respondent was waiting for the trial of PS Ali to take place) there would be little or no communication. (That only changed in October 2022 when it was agreed that monthly updates, even if there was no development, would be provided, paragraph 15.113).

68 By way of example towards the end of January 2021 the respondent was informed that the trial of PS Ali had been adjourned, paragraph 15.60. There then followed extremely regular communication with either the claimant or her representatives; communications took place on 26 January 2021, 28 January, 16 February, 19 February, 22 February, 25 February, 4 March, 9 March and 18 March, see above. Shortly after that there was a long period of waiting for the trial of PS Ali to take place, and no communication with the claimant.

69 Even had the burden of proof gone across to the respondent we would have concluded that the respondent has proved that the reason why the claimant did not always receive updates with the regularity suggested by the Guidance was that the respondent had a practice of providing updates when there was a development but, up until October 2022, often did not provide updates when there was nothing to update the claimant on. That may not be best practice according to the guidance but it is an explanation that is in no sense whatsoever because of the protected act.

70 There was one potential exception to this type of pattern, which relates to the collapse of PS Ali's trial in June 2023. The claimant did not learn of this until 27 June, and she saw the news on the Birmingham Live website, paragraph 15.114. This was clearly a very important development about which there was no communication by the respondent with the claimant until 3 July, paragraph

15.115. We did not, however, conclude that the respondent's failure to update the claimant about the collapse of the 2023 trial undermined this explanation. This particular failure is somewhat shrouded in mystery; quite possibly because it substantially post-dated the date of the submission of the claim form none of the respondent's witnesses led any evidence in relation this and the only witness who was asked about it was Mr Rushton, who said that he too was unaware the trial had collapsed until he saw it in the papers. Looking at what we do know about this, the length of the delay would appear to have been relatively short; the trial got underway on 19 April, paragraph 15.113, and it lasted for nearly 8 weeks, paragraph 15.114 so there was a likely a delay of about a week, possibly more, before Mr Harper provided an update on 3 July, paragraph 15.115. Of course, it was wholly inappropriate for the claimant to have learned about the collapse of the trial in the way that she did, but this single instance of a relatively short delay does not undermine the cogency of the explanation for the respondent's pattern of contact with the claimant in the months and years that preceded this. The length of time over which this issue is to be judged is also a relevant factor, in our view. Maintaining contact every 28 days is far harder over a 5 year period than it is over a more limited period of time. Mistakes will likely happen over such a lengthy timescale.

71 Lastly we note that the claimant's evidence on this issue was confused. When she was asked about the reason why the delays and failures in communication had occurred she initially said this was because Ms Bruton was the officer in charge of the investigation and she (the claimant) had complained about her (that complaint was not, of course, the protected act). Later on she said the reason why the updates were not provided was because she had complained about PSD not being impartial (again not the protected act), and later on she said that she was supported and given updates up until June 2020 but that things changed when she signed her settlement agreement (again neither the settlement agreement nor the tribunal claim it settled were the asserted protected acts). In such circumstances there was nothing put before us which undermined the cogency of the explanation.

Complaint (c)(i): the claimant's vetting has been removed

72 It is notable that in respect of this complaint, and indeed all the complaints that were set out in the list of issues under section 4(c), the acts or omissions complained about were all said to be "as a result of the ongoing investigation and procedure". This list of issues was an agreed list of issues, and this was confirmed with the claimant at the start of the hearing. The way in which the list of issues was drafted immediately raised the possibility that what, in fact, the claimant was seeking to do here was complain about things that had happened which the claimant herself accepted were a consequence of the ongoing investigation. That, of course, is not the same as whether a particular thing happened to the claimant because she had done her protected act.

73 On our findings of fact it was not factually accurate that the claimant's vetting was "removed". As the claimant herself accepted in cross examination it lapsed in May 2019, paragraph 15.133. We did not understand the claimant to be complaining about this, but for the avoidance of doubt it was abundantly clear that the reason why the vetting lapsed was because it does so automatically after a period of 7 years, paragraph 15.133.

74 What we understood the claimant was in fact complaining about was that her MV vetting was not then renewed. There was a factual dispute between the parties as to whether the claimant had re-submitted her MV vetting application forms, but we have resolved this dispute in the claimant's favour, paragraph 15.133**.** It is factually accurate, on our findings therefore, that these forms were not processed and the claimant's MV vetting was not renewed.

75 In closing submissions the claimant also complained about the failure to update her with regard to her vetting status but this was not the complaint as it was set out on the list of issues, the complaint was about the removal of her vetting status (we would include within that the non-renewal of her vetting status), and accordingly that is what we considered.

76 It was the claimant's case that Ms Greasley in some way orchestrated or influenced the decision not to renew her vetting. That, on our findings, fails on the facts.

77 On our findings of fact the relevant decision maker was Mr Todd, paragraphs 15.142. We have not found that Ms Greasley was also a decision-maker in relation to the decision to not renew the claimant's vetting, as the claimant had asserted, paragraph 15.142.

78 Analysing this complaint on the basis that the relevant decision maker is Mr Todd, the first point to be made is that there was no evidence led by either party to the effect that Mr Todd had knowledge of the claimant's protected act. Accordingly, the claimant has not proved that he did have the requisite knowledge, and this claim would fail on that basis.

79 However, even if were wrong on that, and on the assumption that the burden of proof had moved across to the respondent, we would have concluded that the reason why the claimant's vetting was not renewed was because Mr Jones advised that it might be better not to renew the claimant's vetting because there was reason to doubt the integrity of the claimant at that time (because of the outstanding disciplinary case), paragraph 15.138, and Mr Todd agreed with this advice, paragraphs 15.139 – 15.140. This is a complete explanation that is in no sense whatsoever because of the protected act.

80 We would add that this decision was made on 27 April 2020, paragraph 15.140, and accordingly it predates the 19 June 2020 COT 3. As set out above it

was an agreed position between the parties that we had no jurisdiction to determine any claim about a matter that predated the COT 3.

81 Finally, the claimant's supplementary witness statement also asserted that the respondent could have considered granting her conditional vetting as an alternative to granting her MV vetting. However, there was very little focus on this during the hearing itself, and we did not in any event consider that this fell under the terms of the claimant's complaint about non-renewal of her MV vetting, as set out in the agreed list of issues.

Complaint 4(c) (ii): little or no work and no overtime was given to the claimant

82 It is factually correct on our findings that the claimant has worked no overtime during the period of time with which this case is concerned, paragraph 15.149. The process for overtime is that requests for volunteers will be emailed out and people who want to put themselves forward for the overtime will respond to these emails, paragraph 15.149. The claimant's own evidence in relation to this was that due to the restrictions that were placed on her she was unable to volunteer, and so did not do so, see paragraph 32 of her main witness statement. Her oral evidence differed slightly from her witness statement in that she confirmed that most of the time she did not volunteer, because she was not able to. However, she also told us that there were 2 occasions when she did volunteer for overtime in a non-evidential role and she was not picked for it, paragraph 15.149. The claimant told us that she did not know why she was not picked on these two occasions.

83 We do not know who the relevant decision-maker/makers were; these were not identified by either the respondent or the claimant.

84 In relation to the two specific occasions when the claimant did volunteer, given that the claimant herself said that she did not know why she was not picked for overtime on these occasions and given the complete lack of context in terms of when this happened, who made the decision, how many overtime opportunities there were, how many volunteers there were, and so on, we concluded that the claimant had not proved facts from which it could be concluded that she did not get overtime on these two occasions because of her October 2017 complaint.

85 As to overtime more generally, we concluded that the claimant had not proved facts from which it could be concluded that she did not get overtime because of her October 2017 complaint and accordingly the burden of proof did not move across to the respondent. Even if it had moved across to the respondent, on the claimant's own case the reason why she did not get overtime was because she did not volunteer for it. This is an explanation that is in no sense whatsoever because of the protected act.

Little or no work was given to the claimant

86 The claimant was, of course, on restricted duties and not permitted to work in the evidential chain throughout the entirety of the period of time with which this case is concerned. In terms of the claimant's actual workload (i.e. amount of work as opposed to type of work) we have found as a fact that the claimant had limited amounts of work to do after she was moved to the ROCU Confidential Unit in October 2018, paragraph 15.117, where she remained for nearly 2 years. She moved to the Public Protection Unit in June 2020 and her move had taken place by 16 June 2020, paragraph 15.128. In the first few days her work there was very restricted, paragraph 15.128, but after the claimant raised concerns about this a small degree of change was made in the claimant's restrictions, paragraph 15.126, and we have found that after this she was carrying out a level of work that she was happy with, paragraph 15.129. She only remained in this unit for a few months, however, before moving to the audit team in October 2020, paragraph 15.129. Whilst this entailed a completely different type of work for the claimant (it was a wholly non-operational team) the claimant did not dispute that in terms of her workload she was kept fully occupied, at least until she went on maternity leave in May 2021, paragraph 15.130. However, on her return from maternity leave in June 2022 the claimant was suffering with stress and Mr Rushton made the decision to adjust the claimant's workload to basic administrative tasks, which situation continued up until June 2023, paragraph 15.130. Accordingly, on our findings of fact there have been two periods of time when the claimant had little or no work; the two years that she was in the Confidential Unit and since her return from maternity leave.

87 In relation to the first period, the claimant had moved out of the Confidential Unit at the latest by 16 June 2020 and as it was agreed between the parties that we had no jurisdiction to consider a claim in respect of any matter before 20 June 2020 (because this fell within the terms of the COT 3), we make no formal determination on this aspect of the claim.

88 In relation to the second period, which for the purposes of this claim was June 2022 to June 2023 it is factually accurate, as we set out above, that the claimant has had very little to do over this period of time. The relevant decision-maker was Mr Rushton. As set out above, Mr Rushton did know of the claimant's October 2017 complaint and he knew that this was a complaint of racial and sexual harassment. The claimant led no evidence about allocation of work by Mr Rushton nor did she ask him any questions about this. For the avoidance of doubt, however, even had the burden of proof moved across the respondent we would have concluded that the reason why the claimant was given very little work at this time was because Mr Rushton was concerned about the claimant's mental health. This is a complete explanation that is in no sense whatsoever because of the protected act.

Complaint 4(c) (iii) No training or 1 to 1's

89 This complaint is factually accurate, see paragraphs 15.145 and 15.146 above. However, it did not, in reality, appear to be the claimant's case that she did not have one-to-ones or training because of her October 2017 complaint. When she was asked in evidence why she thought she had not had any one-to-one's her answer was that she did not know why they had not happened. In fact, the thrust of much of the claimant's evidence was that she had not had any development (including training and one-to-one's) because she was facing a misconduct investigation.

90 Above and beyond this the evidence relating to this particular issue was very limited indeed. Doing the best that we can on the evidence that was before us even had the burden of proof moved across to the respondent we would have concluded that the reason why there was no training or one-to-one's was because the claimant was on restricted duties carrying out a series of temporary roles pending the resolution of the misconduct investigation. This is an explanation that is in no sense whatsoever because of the protected act.

91 We would add, for the avoidance of doubt, that the claimant clarified during this hearing that it was not her case that the lack of training whilst she was on the audit team was because of the complaint that she had raised in October 2017 and she also clarified that she was not asserting that Mr Rushton failed to carry out one-to-ones with her whilst she was on this team because of this complaint. Given that Mr Rushton managed the claimant from when she returned from maternity leave in May 2022 this means that any complaint in respect of this matter must have pre-dated the claimant's maternity leave, which started in May 2021. As the claimant's claim form was submitted on 12 January 2022 this means that any claims in respect of these matters are substantially out of time and there was no evidence led from which we might have concluded that it was just and equitable to extend time.

Complaint 4(c)(iv): Promotion

92 There were two aspects to this complaint; the respondent's decision to not allow the claimant to progress to stage four of the Inspector's promotion process and the way in which the respondent handled the claimant's expression of interest in the role of Acting Inspector Cybercrime.

93 As set out above, stage 4 of the Inspector's promotion process involved being deployed on a temporary basis into an Inspector's role in order for a work-based assessment to be carried out, paragraph 15.77. The respondent had allowed the claimant to take part in stage three of the selection process (the assessment centre) but then did not permit the claimant to progress through to stage four, paragraphs 15.88 and 15.94. This complaint was therefore factually

accurate. In essence, the claimant's case was that this was a decision made by Ms Bruton, because of her October 2017 complaint.

94 But, on our findings, this was not a decision made by Ms Bruton, it was a decision made by Ms Price, Director of HR, paragraph 15.90. Ms Bruton's views were sought, paragraph 15.89, and she expressed the view that the claimant should not be permitted to proceed, but this view was effectively countermanded by HR; Ms Awan of HR responded to Ms Bruton's email by saying that she did not think the claimant was ineligible, paragraph 15.89. We have no knowledge of whether Ms Price knew of the claimant's protected act, no evidence about this was led. The claimant has therefore failed to establish that she had knowledge of the protected act and this claim would fail on this basis.

95 However, for the purposes of our analysis we were prepared to assume that Ms Price did have the requisite knowledge and that the burden of proof had moved across to the respondent. It was, in our view, abundantly clear from the contemporaneous documentation that the reason why the claimant's promotion process was paused at stage four was because she had outstanding misconduct proceedings against her. That is the consistent theme of the written internal communications that went backwards and forwards about this issue at this time, see for example paragraphs 15.79, 15.80, 15.82,15.89 and 15.91, and the verbal communications, paragraphs 15.84. Whilst we have little doubt that the claimant genuinely felt exasperated that the outstanding misconduct proceedings were restricting her whichever way she turned, the fact of the matter is that this (the outstanding misconduct proceedings) is a complete explanation that is in no sense whatsoever because of the protected act.

96 We would add, for the avoidance of doubt, that even if we had found that Ms Bruton was one of the decision-makers our conclusion would not have been any different. The reason why Ms Bruton did not want the claimant to progress in this promotion process, as set out at paragraph 15.84 above, was because she was concerned about allowing the claimant to become promoted to Inspector in circumstances where there was a question mark over her promotion to the rank of Sergeant, which was still outstanding and which would be dealt with under the misconduct process. Given that the misconduct allegations themselves concerned allegations of cheating in the Sergeant's promotion process, upon which of course the application for Inspector was predicated, it seemed to us that it would have been surprising had Ms Bruton taken any other view.

97 The claimant relied on the fact that the college of police guidelines suggested that a decision to hold someone at a particular stage of the promotion process should be subject to appeal, paragraph 15.79, and in the claimant's case this was not done. This, is essentially, a procedural failing, however, and we did not consider that this in any way undermined the cogency of the respondent's explanation.

Acting Inspector Cybercrime

98 It is factually correct that the claimant was not allowed to apply for the role of acting Inspector cybercrime, paragraph 15.102. The relevant decision maker was Mr Anderson who worked in ROCU. We do not know whether Mr Anderson knew of the claimant's protected act; there was no evidence at all before us on this issue. The claimant has therefore failed to establish that he had knowledge of the protected act and this claim would fail on this basis alone.

99 Even if we were wrong on that, and on the assumption that the burden of proof had moved across to the respondent, we would have concluded that the reason why the claimant was not permitted to apply for the role was because she did not have MV vetting. Whilst we did not hear from Mr Anderson (he was not called as a witness) it was clear from the email that Mr Cape sent to Mr Rushton on 7 April 2022, paragraph 15.104, that this was the reason that Mr Anderson gave him at the time for the claimant not being permitted to progress and, the claimant accepted, this was also the explanation that was given to her contemporaneously. Additionally the claimant accepted that MV vetting status is required to work in ROCU, and the role was in ROCU. For these reasons we would have concluded that the respondent has proved a complete explanation that is in no sense whatsoever because of the protected act.

Complaint 4(c) (v)

100 This was recorded on the list of issues as being "whilst the claimant has been paid her basic salary she suffered financial loss by reference to the failure to obtain and be paid for overtime and/or a higher rank". This is not therefore a new claim; the actual complaint of detriments are that the claimant was not promoted and not given overtime, which we have already dealt with above. To the extent that this then caused the claimant financial loss this would have been a remedy issue, if appropriate.

Complaint 4(c)(vi); Ms Bruton became involved as an appropriate authority in the claimant's misconduct case

101 This complaint is factually accurate; between 10 March 2021 and the beginning of June 2021 Ms Bruton took over from Ms Greasley as the appropriate authority in the claimant's case, paragraph 15.70. The decision maker was Ms Bruton.

102 We did not consider that the claimant had proved facts from which we could conclude that Miss Bruton decided to appoint herself as appropriate authority over this period because of the claimant's protected act but for the purposes of analysing this complaint we were prepared to assume that the burden of proof had moved across to the respondent.

103 We concluded that the respondent had proved that the reason why Ms Bruton appointed herself as appropriate authority at this time was because Ms Greasley, who had been acting as the claimant's appropriate authority, had unexpectedly and at short notice gone off sick as a result of a relapse with her Multiple Sclerosis, Ms Bruton had some knowledge of the claimant's case and the other two appropriate authorities in PSD had workload capacity issues paragraph 15.70. That is a complete explanation that is in no sense whatsoever because of the claimant's protected act.

104 The claimant submitted that it was inexplicable that Ms Bruton would appoint herself as appropriate authority when there were two other appropriate authorities in the PSD department. But, as we have just set out, we accepted the evidence of Miss Bruton, that there were workload capacity issues which would have made it hard to allocate the claimant's case to someone else, paragraph 15.70. Moreover, what we considered supported the cogency of the respondent's explanation was the fact that back in April 2019 it was Ms Bruton who had made the decision that she should not act as appropriate authority in the claimant's case because she might not be viewed as independent, paragraphs 15.19 and 15.22. Importantly, she made this decision at a point when no one had objected to her being the appropriate authority. So she gave up the role of appropriate authority in the claimant's case freely and of her own choice, paragraphs 15.19 and 15.22 and 15.23. If Ms Bruton had really wanted to act as the appropriate authority in the claimant's case, in order to make the claimant's life difficult because of her complaint in October 2017, then surely she would not have given up this opportunity so readily. That seemed to us to wholly support the cogency of the respondent's explanation.

105 For these reasons we concluded that the claimant's claims fail.

Employment Judge Harding
Dated: 25 February 2024