



EMPLOYMENT TRIBUNALS

Claimant

Respondent

(1) Mr Phillip Turner-Robson; v The Chief Constable of Thames valley
(2) Ms Kirsteen Bishop; and Police
(3) Mr Graham Horton

Heard at: Norwich (by CVP)

On: 2, 3 and 4 April 2024

In Chambers: 5 April 2024

Before: Employment Judge Postle

Members: Miss S Morgan and Miss L Durrant

Appearances

For all three Claimants: Mr Stephenson, Counsel

For the Respondent: Mr D Patel, Counsel

RESERVED JUDGMENT

1. The unanimous Judgment of the Tribunal is that the Claimant's claims that they were directly discriminated by reason of the protected characteristic of race are well founded.
2. The harassment claim for the protected characteristic of race was withdrawn by the Claimants during the course of the Hearing.

REASONS

Background

1. All three Claimants bring claims under the Equality Act 2010 for the protected characteristic of race, originally for direct discrimination and harassment. During the course of this Hearing the claim for harassment was withdrawn.

2. The Respondents operate a Positive Action Scheme named the “Positive Action Progression Scheme” (PAPP). As part of that scheme it offered a post by way of a lateral move to one of the candidates on that scheme Miss Sidhu. The three Claimants were interested in the relevant post and were not offered the opportunity to apply for the post, the post having been withdrawn from being advertised.
3. The Respondents do not pursue any jurisdictional arguments regarding time.
4. In this Tribunal all three Claimants gave evidence through prepared Witness Statements.
5. For the Respondents, evidence was given by:
 - 5.1. Mark Taylor, at the time the Delivery Manager with the Personal Development and Leadership Team;
 - 5.2. Miss Emma Baillie, Chief Superintendent with the Respondent; and
 - 5.3. Mr Hogg, Chief Constable of the Respondents.All giving their evidence through prepared Witness Statements.
6. The Tribunal also had the benefit of a helpful opening note from Mr Stephenson, the Claimant’s Counsel and a Bundle of documents consisting of 981 pages. It has to be said, during the course of this Hearing very few documents were actually referred to out of the total number.

The Findings of Fact

7. The facts in this case are relatively uncontentious in that the Claimants are all white British and Police Officers, the subject of this dispute is Inspector Sidhu, as she is ranked now. The Respondents were only able to describe Inspector Sidhu as Asian rather than a specific nationality.
8. In relation to the Claimants, the First Claimant Mr Phillip Turner-Robson commenced working for the Respondents on 21 July 2003 and is currently employed as a Detective Inspector in CID at Aylesbury since 15 August 2023. This Claimant became a Trainee Detective Constable in October 2007 and was promoted to acting Detective Sergeant in October 2009. He was promoted and transferred to several roles and clearly built up experience over the years. He passed his Sergeant’s Exams in March 2012 and scored exceptionally highly and was promoted to Substantive Sergeant in April 2013. During that time he developed various

specialisms, particular Sexual Assault Investigator in CID. He passed his OSPRE Part 1 Inspector examinations scoring 74%, before passing the Inspector Promotion Board in March 2019 and obtained the rank of Inspector on 3 January 2020. He was then posted to a Uniform ICR role in Milton Keynes where he was second Line Manager to over 40 Police Officers, apparently turning around a poorly performing Team. When the Claimant left the ICR Team in August 2023, apparently their performance was described as excellent and achieving excellent results within a culture that created high performance, effective supervision and management.

9. In relation to the Second Claimant, she commenced working for the Respondents on 12 August 1996 and is currently employed as a Custody Inspector in the Criminal Justice Department. She has substantial investigative experience having been identified as a pro-active Officer with strong investigative skills and obtained a place on the Area Support Team within a year of her probation ending. She has various specialist skills including foot surveillance, photography and observation post work and apparently receiving two Chief Constable Commendations for her work on Operation Jeopardy in 1999 until 2001. She was promoted to Uniform Shift Sergeant in July 2013 in Aylesbury, before successfully applying for a Detective Sergeant post in the Domestic Abuse Unit in June 2014. She was promoted to Uniform Inspector in ICR Aylesbury in January 2021 and is due to start as Detective Inspector in Domestic Abuse on 15 April 2024.
10. In relation to the Third Claimant, Mr Horton commenced working for the Respondents on 12 May 2003 and currently holds the rank of Inspector and has done since June 2018. Additionally he was a Temporary Inspector before promotion in 2017. Acting Chief Inspector from April 2020 to January 2021 and has been a Substantive Inspector since 11 June 2019, and a qualified Detective. He has considerable Detective experience having worked on Local and Force crimes as Detective Constable and Detective Sergeant for six years before being promoted. He is apparently recognised as a highly competent and effective Detective Inspector.
11. The relevant undisputed facts are that on 19 August 2022, Detective Chief Inspector Steven Jones submitted a form internally asking for a job advert for a Detective Inspector in the Priority Crime Team to be put out as soon as possible, (pages 778 – 781 of the Bundle).
12. On 19 August 2022, the First Claimant expressed an interest in the impending vacancy for a Detective Inspector role at Aylesbury Priority Crime Team.
13. On 23 August 2022, Superintendent Mears acknowledged the First Claimant's interest in the role indicating that the vacancy would be advertised imminently.

14. Around 8 September 2022, the Detective Inspector role had yet to be advertised by the Respondent.
15. On or around 8 September 2022 the then Superintendent Baillie made the decision to move Police Sergeant Sidhu into the Detective Inspector role at Aylesbury without undertaking any competitive process.
16. On 27 September 2022, the First Claimant enquired as to when the advert would be published. Detective Chief Inspector Jones informed him that there would be no advert as someone had been posted in the role as part of a black Asian minority ethnic positive progression progress (pages 451 – 453).
17. On 30 September 2022, the Claimant by email to DCI Jones (page 452) questions why after having expressed interest in the role and obviously disappointed that equal opportunity had not been given or applied to it and he requested to be pointed in the right direction to obtain clarity surrounding the decision making. He further went on to question his understanding of positive action, the context around providing encouragement and support for under represented individuals or groups to apply to such roles through targeted mentoring and development.
18. He further questioned how the post not being made available to all if advertised could be deemed positive action. He questioned whether the decision appeared to be compatible with the TVP Diversity and Inclusion Policy, TVP's Police Officer Posting Policy and the Equality Act 2010.
19. DCI Jones then emailed Superintendent Baillie, on 30 September 2022, querying whether there had been some consultation with Legal Services regarding the decision to offer the Aylesbury PCT DI post being deemed as positive action, he enclosed the First Claimant's email, asking if she could respond to his questions.
20. Superintendent Baillie's response was as follows,

“Yes Legal Services have assisted me and the Deputy Chief Constable on the overall decision to offer lateral moves to those at Inspector Rank on the BAME Progression Program in certain limited circumstances. It wasn't thought specifically for this move, it just happened to be the first one.

Despite the fact the candidates have passed the L3 process which is C1 Level, it is true that it would be positive discrimination should I have given them acting up or promotion without going through the Force competitive process, but we can move them across lateral roles as we use to for HPDS [reference to Disabled Officers].

I completely recognise the risk around the perception of inclusivity here, however, this has been confirmed as being compliant with the Law with regards to not being positive discrimination. I am able to post into any of our

roles on behalf of the Chief and the Police Regulations. However, this doesn't happen very often, mostly due to the re-deployment panel but sometimes as a result of operation necessity, of course all the time for custody and ICR and SRTs. It is a Force decision which roles we do this for. However, I am very live to how frustrated you must be when you're working towards this particular role for a while.

Emma Baillie.”

21. That response was copied to the First Claimant.
22. His response on 5 October 2022 (page 449) to Emma Baillie was as follows,

“I appreciate you responding to the previous email sent to DCI Jones and providing further clarification on the matter.

Firstly, I'd like to say I understand the importance of the organisation seeking to address under representation of Officers with protected characteristics across all areas of policing and the role we play within this.

Your response, however, has raised further questions so in order to obtain greater understanding of the decision making, I was wondering if you would be able to assist in clarifying the following points?

In relation to you providing opportunities for the development by utilising lateral moves at Inspector Rank in certain limited circumstances, would you be able to expand on the criteria for such limited circumstances? Additionally my understanding is that this role was offered to the candidate prior to her commencing her Inspector role. If this were the case, would offering a Sergeant a Detective Inspector role prior to taking up the substantive Inspector role still be deemed as a lateral move?

The BAME Progression Program is not a Policy I have previously heard of. Where can I obtain further information surrounding this? Is this a local TVP Policy or a National / College of Policing Guidance? Understanding of the BAME Progression Program may assist my understanding as this does not appear to be referred to anywhere within the Police Officer Posting Policy, Recruitment Policy, Equality Act 2010, Public Sector Equality or TVP Diversity and Inclusion Policy.

Furthermore, if positive discrimination was to arise if an individual with a BAME background was provided with an opportunity for acting up or promotion without going through the Force competitive process, how does this differ when placing an individual into a permanent role?

Finally, in terms of placing an individual into a role on behalf of the Chief as a result of operational necessity, what is the criteria for assessing the operation necessity? In this case, what consideration was given to operation experience of the individual placed in comparison to others who may have had equal skill set and experience? From the information available to me,

decisions surrounding operational necessity appears to be based on the career progression of a BAME member of staff. How does this not meet the threshold for positive discrimination?

I apologise for the length of this email, but as you identified in your reply with regard to my frustration I would appreciate some clarification to understand how I have not been provided the equal opportunity to compete for a post and how this process will impact upon any future career opportunities now this precedent has been set?"

23. **Superintendent Baillie's response came nine days later. It was a curt and a brief response not addressing the questions raised, simply saying,**

"I have attached the latest version of the BAME Progression Program for you to read. Probably easier for you to get back to me with specific questions once you have read it.

When I refer to moving people for operational necessity this is not relevant in this case, I was merely saying that there are numerous reasons as to why moves happen on behalf of the Chief Constable, operational necessity is another one of them."

24. **It has to be said this is a rather unconvincing and unhelpful response. Superintendent Baillie having accepted that her decision around 8 September 2022 had been partly influenced by Police Sergeant Sidhu's race.**
25. **To be clear, Sergeant Sidhu's promotion confirmed as the 31 May 2022 was an offer of new terms in being promoted to the rank of Inspector with a commensurate pay increase. It is also clear at the time when this decision was made to offer Sergeant Sidhu Detective Inspector PCT role in Aylesbury, she was de facto in the rank of Sergeant. The reasons being she was promoted to the Rank of Inspector on the ICR Team 3 at Milton Keynes to take effect on 19 September 2022.**
26. **When the decision by Superintendent Baillie on 8 September 2022 was made, Sergeant Sidhu held the Rank of Sergeant. This is clear from page 293 which shows her as a substantive Sergeant on 18 September 2022 in the ICR Response Team at Milton Keynes.**
27. **Sergeant Sidhu did not take up the offer of promotion of Inspector on the ICR Team at Milton Keynes. Rather, she was given the Detective Inspector role on 8 September 2022 before her promotion had taken effect. The fact that she had not started until a later date is irrelevant. Superintendent Baillie should have delayed her decision to give Sergeant Sidhu the Detective Inspector vacancy until after her promotion to Inspector had taken effect on 20 September 2022.**

28. It was clear, for reasons best known to the Deputy Chief Constable and Superintendent Baillie, that they jumped the gun. Superintendent Baillie acting on the instructions of the Deputy Chief Constable who had said previously words to the effect “make it happen”, in her eagerness took the decision without thinking it through. She then tried to retrospectively justify it by saying lateral moves were part of the BAME Progression Program which clearly did not exist at the time. Superintendent Baillie and no doubt the Deputy Chief Constable had been warned of the risk of operating such a Policy.
29. Indeed, Mr Taylor noted in his email as far back as April 2020 to his then Line Manager Alison Sercum and others (page 579) that their aim to fast track BAME Officers from Sergeant to Chief / Inspector constituted positive discrimination rather than positive action.
30. The decision also went against Thames Valley Police’s own procedures in that all internal posts should be advertised. A fact that seemed lost in cross examination on the Chief Constable. He seemed to give the impression that it was within his discretion and indeed Superintendent Baillie’s as to whether to advertise a post or not. Contrary to the Respondent’s Diversity and Inclusion Policy and the Police Officers Posting Guidance Policy. It should also be noted that the BAME Progression Program, with the subsequent amendments regarding lateral moves, was not available on Thames Valley Police’s intranet prior to the decision being made to promote and move Sergeant Sidhu. It only became available in October 2022 on the Respondent’s Sharepoint and one of its portals. Previously there had only been three Positive Progression Programs: Talent Management, Women and Ethnic Minorities.
31. It was also surprising that before making the decision that Superintendent Baillie made, i.e. reference to Miss Sidhu’s promotion from Sergeant to Inspector and the de facto transfer to Aylesbury, there was no attempt to instruct someone to carry out an Equality Impact Assessment. The Tribunal acknowledged that it may not be Chief Constable Hogg or Superintendent Baillie’s job to carry out such an assessment, but it was a rather cavalier approach to equal opportunities by both of them in failing to instruct someone in HR to carry out a proper Equality Impact Assessment as to the effect this decision would have.
32. In fact, the Tribunal were also surprised by clearly the lack of equality and diversity training both Chief Constable Hogg and Superintendent Baillie had not received, on Superintendent Baillie’s admission in recent times. The last real training was received 21 years ago. Chief Constable Hogg reiterated Superintendent Baillie’s evidence that it is intertwined with other training, but no specific training has been undertaken which the Tribunal found astonishing.

The Law

Direct Discrimination – s.13(1) Equality Act 2010 (“EqA”)

33. This provides,

13. Direct Discrimination

- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

34. Section 23 of the EqA 2010 provides insofar as it is relevant,

23. Comparison by reference to circumstances

- (1) On a comparison of cases for the purposes of section 13, there must be no material difference between the circumstances relating to each case.

35. Section 39(2)(b) of the EqA 2010 provides,

39. Employees and applicants

- (2) An employer (A) must not discriminate against an employee of A’s (B) –
 - (a) ...
 - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service.

Positive Action

36. Section 158 of the EqA 2010 provides,

158. Positive action: general

- (1) This section applies if a person (P) reasonably thinks that-
 - (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic,
 - (b) persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or
 - (c) participation in an activity by persons who share a protected characteristic is disproportionately low.

- (2) This Act does not prohibit P from taking any action which is a proportionate means of achieving the aim of-
 - (a) enabling or encouraging person who share the protected characteristic to overcome or minimise that disadvantage,
 - (b) meeting those needs, or
 - (c) enabling or encouraging persons who share the protected characteristic to participate in that activity.
- (3) Regulations may specify action, or descriptions of action, to which subsection (2) does not apply.
- (4) This section does not apply to-
 - (a) action within section 159(3), or
 - (b) anything that is permitted by virtue of section 104.

37. The explanatory notes state that,

“525. This clause provides that the bill does not prohibit the use of positive action measures to alleviate disadvantages experienced by people who share a protected characteristic, reduce their under representation in relation to particular activities and meet their particular needs. It will for example allow measures to be targeted to particular groups, including training, to enable them to gain employment or health service, to address their needs. Any such measures must be a proportionate way of achieving the relevant aim.

526. The extent to which it is proportionate to take positive action measures which may result in people not having the relevant characteristics being treated less favourably will depend, among other things, on the seriousness of the relevant disadvantage, the extremity of the need or under representation and the availability of other means of countering them. This provision will need to be interpreted in accordance with European Law which limits the extent to which the kind of action it permits will be allowed.”

38. The Equality and Human Rights Commission Code of Practice on Employment, Chapter 16, deals with avoiding discrimination in recruitment. Paragraph 16.19, 16.21 and 16.22 insofar as is relevant, states:

16.19 The employer must not discriminate in arrangements for advertising jobs or by not advertising a job;

16.21 Before deciding only to advertise the vacancy internally, the employer should consider whether there is any good reason for doing so. If the workforce is made up of people with a particular

protected characteristic, advertising internally will not help diversify the workforce. If there is internal advertising alone, this should be done openly so that everyone in the organisation is given the opportunity to apply.

16.22 Employers should ensure that people absent from work (including women on maternity leave, those on long term sick leave and those working part time or remotely) are informed of any jobs that become available so they can consider whether to apply. Failure to do so may amount to discrimination.

39. It is therefore clear the underlying principal is that job vacancies should be advertised widely so that everyone in an organisation is afforded an opportunity to apply. This is entirely consistent with the Respondent's own Diversity and Inclusion Policy (pages 259 – 262) and their Police Officers Posting Guidance (pages 263 – 273).

40. The Code goes on to explain at paragraphs 1225 – 1229,

“... The question of proportionality is the same that which applies in indirect discrimination claims. It will involve a balancing of competing factors such as the extent of low participation in the activity against the impact of the action on the other protected groups and the relative disadvantage, need or participation of those groups. Organisations need to consider if the action is appropriate way to achieve the stated aim, it is reasonably necessary to achieve the aim, whether it would be possible to achieve the aim as effectively by other actions that are less likely to result in less favourable treatment of others.”

41. Paragraphs 1230 to 1231 of the Code emphasise that,

“... When undertaking positive action measures it is advisable to indicate their intent to take actions only so long as the relevant conditions apply and that they should review progress towards their aim.

Therefore the correct approach when assessing proportionality is to weigh the relative benefits and disadvantages of the favoured group covered by the measuring question as against the disadvantage group, rather than comparing the worst affected individual not covered by the measure and comparing higher with the most favourably affected individual who is covered by it.”

42. The Code does permit action to be taken to enable or encourage people who share a protected characteristic to participate in that activity, provided that the action is a proportionate means of achieving the aim of enabling or encouraging participation the Code does not limit what action could be taken. But it could include:-

- Setting targets for increasing participation of the targeted group;

- Providing bursaries to obtain qualification in professions such as journalism for members of the group whose participation in that profession might be disproportionate;
 - Outreach work such as raising awareness of public appointments within the community;
 - Reserving places on training courses for people with protected characteristics for example in management;
 - Targeting network opportunities for example in banking;
 - Working with the local schools and further education colleges and inviting students from groups whose participation in the workplace is disproportionately low to spend a day at the company; and
 - Providing mentoring.
43. The Tribunal note that the list of examples are supportive measures rather than transferring, moving or promoting an individual into a vacant role without undertaking any competitive exercise.
44. Section 159, EqA 2010,
159. Positive action: recruitment and promotion
- (1) This section applies if a person (P) reasonably thinks that-
- (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic, or
 - (b) participation in an activity by person who share a protected characteristic is disproportionately low.
- (2) Part 5 (work) does not prohibit P from taking action within subsection (3) with the aim of enabling or encouraging persons who share the protected characteristic to-
- (a) overcome or minimise that disadvantage, or
 - (b) participate in that activity.
- (3) That action is treating a person (A) more favourably in connection with recruitment or promotion than another person (B) because A has the protected characteristic but B does not.
- (4) But subsection (2) applies only if-
- (a) A is as qualified as B to be recruited or promoted,

- (b) P does not have a policy of treating person who share the protected characteristic more favourably in connection with recruitment or promotion than persons who do not share it, and
 - (c) taking the action in question is a proportionate means of achieving the aim referred to in subsection (2).
45. Therefore as explained in the EHRC Supplement to the employment Code of Practice, this provision allows positive action in recruitment promotion as a tie breaker.
46. It is also true there is no statutory definition of promotion within the Equality Act 2010 and no Case Law Guidance as to the scope of the term.
47. In this Tribunal we have had most helpful skeleton arguments by both Mr Stephenson, Counsel for the Claimant and Mr Patel Counsel for the Respondents. Their submissions were further amplified orally before the Tribunal. As those submissions are in writing, no disrespect is intended, but it is not necessary to rehearse them.

Conclusions

48. It would appear that the Respondent's case is they accept that on or around 8 September 2022, the Superintendent made a decision to move Police Sergeant Sidhu into the Detective Inspector PCT Aylesbury role without any competitive assessment process taking place.
49. It is further the Respondent's case that they had in place a Positive Action Progression Program (PAPP) which provided the candidates at the substantive rank of Sergeant who belong to an ethnic minority group and met certain other conditions were eligible to apply. The PAPP tried to arrange for additional courses to be provided to Officers who are on the Program to enable them to achieve the rank of Inspector and subsequently Chief Inspector.
50. The Respondents contend that the appointment of Police Sergeant Sidhu into the Detective Inspector PCT vacant role was an act of positive action pursuant to s.158 of the Equality Act 2010.
51. Specifically they advance:-
- a. The Respondents reasonably thought that the number of Officers at Senior ranks within the Respondent who are from minority ethnic backgrounds was disproportionate (s.158(1)(c) Equality Act 2010);

- b. The Respondents claim that their actions were a proportionate means of achieving a legitimate aim of enabling or encouraging persons from minority ethnic backgrounds to reach senior ranks within the Respondent (s.158(2)(c) Equality Act 2010); and
 - c. The Respondents deny that the actions fell within s.159(3) of the Equality Act 2010, the appointment of PC Sidhu does not amount to a recruitment or a promotion and she was not treated more favourably than the Claimants in connections with recruitment or promotion.
52. However, the Tribunal conclude that Superintendent Baillie's decision to move PC Sidhu into the Detective Inspector PCT vacant role without undertaking any competitive exercise did constitute positive discrimination in that it went beyond mere encouragement, disadvantaging those Officers who did not share Sergeant Sidhu's protected characteristic of race and who were denied the opportunity to apply for the role. It was not a proportionate means of achieving a legitimate aim.
53. Clearly, the Claimants were not afforded the opportunity to apply for and be considered for and be appointed to the Detective Inspector role. Furthermore, the Claimants were treated less favourably than Sergeant Sidhu in that they were simply not afforded the opportunity to apply for the role having expressed interest in doing so.
54. The Tribunal therefore conclude that the Claimants' claims for direct race discrimination is made out.
55. It is clear that the actions taken by Superintendent Baillie on 8 September 2022 constitute an appointment of the vacant Detective Inspector PCT role and therefore does fall clearly to be considered under s.159 EqA 2010 because it was an appointment of an individual to a job vacancy and that falls under recruitment and promotion.
56. As has been said, recruitment is defined by s.159(5)(a) EqA 2010,
"A process such as deciding whether to offer employment to a person"
57. That is consistent with s.39(2)(c) EqA 2010 which provides,
"An employer must not discriminate in the way he affords access or not by affording access to opportunities for promotion, transfer or training."
58. Therefore, Superintendent Baillie admitting in cross examination that Sergeant Sidhu's promotion confirmation dated 31 May 2022 was an offer of a new role on new terms. Those new terms being promotion to the rank of Temporary Inspector with a commensurate pay increase and added pension benefits.

59. To the Tribunal's mind it matters not whether it is a lateral move, transfer or promotion. Appointment to a vacant job role that had been earmarked for recruitment is recruitment within the meaning of s.159 of the Equality Act 2010. It is clear that the decision therefore to slot Sergeant Sidhu into the Detective Inspector PCT vacancy did constitute promotion and therefore falls within s.159. It is also clear at the time when the decision was made to offer Sergeant Sidhu the Detective Inspector PCT role in Aylesbury, she did still hold the rank of Sergeant. The reasons for that are as follows:-
- 59.1. Firstly, she was promoted to the rank of Temporary Inspector on the ICR Team 3 at Milton Keynes to take effect on 19 September 2022 (page 527);
- 59.2. Secondly, the decision about which the Claimants' complaint occurred on 8 September 2022 when Sergeant Sidhu held the role of Sergeant. This is made clear from Sergeant Sidhu's full data prints her as a substantive Sergeant on 18 September 2022 in the ICR Response Team 1 in Milton Keynes (page 293).
- 59.3. Thirdly, it is noted that Sergeant Sidhu did not take up the offer of promotion as Temporary Inspector on the ICR Team 3 in Milton Keynes. Instead she was given the Detective Inspector PCT vacant role on 8 September 2022 before her promotion took place. The fact that she did not start until a later date is irrelevant. Clearly, Superintendent Baillie jumped the gun and ought to have delayed her decision to give Sergeant Sidhu the PCT vacancy until after her promotion to Temporary Inspector had taken effect on 20 September 2022.
60. Even Mr Taylor in cross examination eventually accepted that giving someone a vacant role when there was better candidates was likely to constitute positive discrimination.
61. The Tribunal conclude that the case does fall within s.159 EqA 2010. Again, the claim for direct discrimination is made out.
62. Bearing in mind the balancing exercise of proportionality, the Tribunal conclude the following:-
- a. It was not necessary to give Sergeant Sidhu the PCT Detective Inspector vacant role on 8 September. Sergeant Sidhu applied for the Detective Inspector CAIU role through open competition in August 2022. DCI Glistler recorded the following in his email dated 18 August 2022 (page 485),

“DS Sidhu scored 63, DCI Darnell scored 62, total 125b+, DI Mounting scored 72, DC Arnold scored 71, total 143a-.”

So having narrowly missed out as the successful candidate, Detective Inspector Mounting and DCI Glistler both encouraged Sergeant Sidhu to apply for an Aylesbury vacancy. Accordingly, it was not necessary to give her the role when she stood a very good chance of being successful on merit.

- b. The Claimants maintain that Superintendent Baillie was steadfast in her decision to “slot” Sergeant Sidhu into the PCT Detective Inspector vacant role because she did not want Sergeant Sidhu to have to wait another year for a role.

It should be noted that Sergeant Sidhu was newly promoted to Temporary Inspector and it is not unusual for Temporary Inspectors to be posted to ICR Response Team to develop in the rank before moving or applying for specialist roles.

- c. Deputy Chief Constable Hogg made it clear to Superintendent Baillie that he wanted her to, “make it happen”. In other words she had to find a way to make the PAPP Scheme work. Clearly, Superintendent Baillie was only focused on “making it work” rather than carrying out a balancing exercise of competing factors and considering whether her actions or the Respondent’s actions were proportionate.
- d. The Respondents failed to carry out an Equality Impact Assessment despite noting the following in an email dated 25 August 2022, (pages 408 – 409),

“... I am going to have to reiterate that being put in a role for a lateral move without a competitive process might be ambiguously legal, but it won’t land well so there will be a role for them to manage the impact this will have.”

- 63. Notwithstanding this being sent, a request to prepare an Equality Impact Assessment by Mark Taylor expressing concern this case could end up in the Employment Tribunal and the Respondents would need to provide an explanation to justify their decision.
- 64. The Tribunal therefore conclude that the Respondents failed to demonstrate that the act of slotting in Sergeant Sidhu into the Detective Inspector PCT vacancy was a proportionate means of achieving a legitimate aim.
- 65. The Tribunal conclude that Superintendent Baillie’s decision to move PC Sidhu into the Detective Inspector PCT vacant role without undertaking any competitive exercise, clearly constituted positive discrimination and it went beyond mere encouraging, disadvantaging those Officers who did not share PC Sidhu’s protected characteristic of race and who were

**Case Number:- 3314825/2022;
3315403/2022;
3301897/2023.**

denied the opportunity for the role and was not a proportionate means of achieving a legitimate aim.

Employment Judge Postle

Date: 25 July 2024

Sent to the parties on: 30 July 2024

For the Tribunal Office.

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>