EMPLOYMENT TRIBUNALS

Claimant:	**Mr D Hooper**
Respondent:	**The Chief Constable of Nottinghamshire Police**
Heard at:	Tribunals Hearing Centre, 50 Carrington Street, Nottingham, NG1 7FG
On:	7 to 10 October 2024
	11 October 2024 (deliberations, parties did not attend)
Before:	Employment Judge Adkinson sitting with
	Mr K Rose
	Mr C Bhogaita
Appearances	
For the claimant:	Ms R Mellor, Counsel
For the respondent:	Mr G Allsop, Counsel

JUDGMENT

For the reasons set out below it is the Tribunal's unanimous judgment that:

1. It is just and equitable to extend time so that all claims are deemed presented in time; but
2. All claims of harassment related to disability fail and are therefore dismissed;
3. All claims of victimisation fail and therefore and are therefore dismissed; and
4. All claims of direct discrimination because of disability fail and are therefore dismissed.

REASONS

Introduction

5. Mr Hooper brings claims of harassment related to disability and direct discrimination because of disability and also brings a claim of victimisation.

The disability is not his but is that of his wife and therefore he is relying on his association with her. The Police deny the allegations.

The hearing

6. The hearing proceeded as follows:

   6.1. Ms R Mellor, Counsel, instructed by Rebian Solicitors represented the claimant.

   6.2. Mr G Allsop, Counsel, instructed by East Midlands Police Legal Services represented the respondent.

   6.3. We heard the following oral evidence:

      6.3.1. On the claimant's behalf from the claimant himself,

      6.3.2. On the respondent's behalf from (and identifying them by the posts and ranks that they held at the times relevant to this claim): Insp Claire Gould, Inspector and Line Manager of Mr Hooper from April 2020, DCI Lee Sanders, Detective Chief Inspector and Second Line Manager of Mr Hooper, and DC Laura Gooch, Detective Constable who is the Investigator in the Professional Standards Department (PSD).

   We have taken into account all of the oral evidence when we made our decision.

   6.4. There was an agreed bundle of 264 pages. We have taken into account those pages to which the parties have referred us to in either evidence or submissions.

   6.5. The case was listed for 6 days. The evidence finished on the 3rd day and the parties made submissions on the 4th day. However, our deliberations took longer than envisaged. Therefore, we used 2 of the remaining days to deliberate.

   6.6. Because of the complexity of the issues, and with the parties' agreement, we have dealt only with liability. If remedy were required, the Tribunal would list another hearing.

   6.7. During the hearings, we took a 5-minute break every 30 minutes to accommodate Mr Hooper as a reasonable adjustment. We also took the other usual breaks, such as lunch. We sat from 10am to 4pm or thereabouts. No party requested other reasonable adjustments or appeared to require them.

7. No party has complained this was an unfair hearing. We are satisfied the hearing was fair.

8. We decided that we would reserve our decision. This is that decision. It is unanimous.

Issues

9. The agreed issues before the Tribunal at this hearing are as follows. The claimant took the approach of cross-referencing to the grounds of

complaint. For avoidance of any doubt or making a mistake summarising the claimant's complaints, we quote it in full.

Harassment

9.1. Did the Respondent engage in the conduct set out below?

9.1.1. Comments made by Insp Gould on 23 April 2020, informing the Claimant that he would be under more scrutiny;

9.1.2. Comments made by Insp Gould on 17 July 2020 during a telephone call, questioning the Claimant's ability to work regular overtime if he had to care for his wife and daughter;

9.1.3. Comments made by Insp Gould included in the Attendance Support Meeting (ASM) notes and sent to the Claimant on 21 July 2020:

9.1.3.1. "Dave has been asked to reflect on how he can alter this situation and to consider if there are any roles that he feels able to complete around this caring angle. It is not considered that he can discharge his duties adequately with the distraction of caring." The Claimant believes the reference to 'this situation' is his need to care for his wife and daughter.

9.1.3.2. "I have also asked him to consider adjustment to his working day (part time) and also if another department/role would be more suited to his home situation".

9.1.4. Having his ability to discharge his duties adequately being called into question;

9.1.5. Being asked to set out a 'typical day' by Insp Gould in July 2020;

9.1.6. The narrative set out in the Regulation 17 Notice, as set out at para 36 above;

9.1.7. Having his honesty and integrity called into question;

9.1.8. Being subject to an investigation by Professional Standards Department (PSD);

9.1.9. Being subject to the recorded interview on 19 November 2020;

9.1.10. Being given Performance Requires Improvement advice (PRI) by a Chief Inspector of PSD.

9.2. If so, was that conduct unwanted?

9.3. If so, was that conduct related to disability?

9.4. If so, did that conduct have the purpose or effect of

9.4.1. Violating the Claimant's dignity;

9.4.2. Create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

9.5. Was it reasonable in each in those circumstances for the conduct to have that effect?

Victimisation

9.6. There is no dispute that the claimant's email to Insp Gould on 28 July 2020 was a protected act within the meaning of **section 27 Equality Act 2010**?

9.7. Was the Claimant subject to detrimental treatment as a result, namely:

9.7.1. Being served with the Regulation 17 Notice on 2 September 2020 and subject to misconduct allegations and investigation by PSD;

9.7.2. Being sanctioned and provided with PRI on 25 January 2021.

9.8. If so, in each case did the Respondent subject the Claimant to the treatment because of the protected act or because he believed that he had or?

Direct Discrimination

9.9. Was the Claimant subjected to the following treatment?

9.9.1. Having his ability to carry out and discharge his full time duties called into question by Insp Gould in the ASM notes provided on 21 July 2020;

9.9.2. Being subject to Misconduct Proceedings under the **Police (Conduct) Regulations 2020** (the Conduct regulations) on 2 September 2020;

9.9.3. Being sanctioned and provided with PRI on 25 January 2021;

9.9.4. Having the sanction meted out by PSD on 6 December 2020.

9.10. If so, was the Claimant treated less favourably than DS PQ, Sgt ST, or a hypothetical comparator was treated or would be treated?

9.11. If so, was the less favourable treatment because of the Claimant's association with a disabled person?

Jurisdiction

9.12. Did the acts which occurred fall outside of the three months' timescale preceding the presentation of the Claimant's ET1 and/or did acts form a continuing act?

9.13. If so, should the Tribunal use its discretion to allow the claim if it is just and equitable to do so?

10. Issues of remedy do not arise at this stage.

Findings of fact

Witnesses

11. Our conclusions about the quality of the witnesses' evidence are as follows.

11.1. We are satisfied that each witness did their best to tell us what they honestly believed the situation to be.

11.2. We have concluded however that Mr Hooper is not a reliable witness. We were left with the impression that he is viewing offence with the benefit of re-interpretation and that his evidence therefore cannot be relied on. In his evidence in cross examination, he demonstrated to us that he had changed his mind on an interpretation of what happened. This is exactly the sort of revision of memory that Leggatt J cautioned tribunals to watch out for in **Gestmin SGPS SA v Credit Suisse (UK) Ltd and aor [2020] 1 CLC 428 HC(Comm)** at **[15]-[22]**. His Lordship's guidance has been applied in many jurisdictions and we see no reason it cannot apply to evidence to a Tribunal, provided we remember that it is not a rule of evidence (see **Martin v Kogan [2021] FSR 10 CA**) For example:

11.2.1. There was a meeting on the 20 July between Insp Gould and Mr Hooper. At the time he saw it as positive. Now he has a very different view which derives from how event played out much later.

11.2.2. He confirmed in answers to the Tribunals questions that it was only on 2 September when he was served the Regulation 17 Notice (as to which see below) that he saw things in a different light. Until that point everything was positive. Then on receiving the notice he reinterpreted everything that preceded this as being negative. However, he did not point to anything that showed that his view about events prior to the service of the Regulation 17 Notice was in fact wrong, and he did not persuade us that service of the notice cast a different light on prior events.

11.2.3. There was a lot where he said he could not remember various things being discussed but he had what can be described as (to use Leggatt J's words) "flashbulb" memories about particular things - all things that supported his case.

11.3. There are illogical aspects that in our view undermine the credibility of the case he presents in evidence:

11.3.1. He complained to us about the investigation. During the hearing outside of Tribunal, however, he told DS Gooch that the investigation was one that was fair and the outcomes of that were fair. She confirmed this in evidence and it was not challenged.

11.3.2. His case is in parts illogical. He says, for example, that he was "meted out" with a sanction of a PRI. This is not a sanction as the conduct regulations make clear, and so no such sanction was ever imposed. That he sees it as a sanction tells us that he is viewing this case in a negative rather than rational light.

11.4. We are satisfied that Insp Gould is a credible and reliable witness. During the course of her evidence, she did not try to fill the gaps, she was hazy about one or two matters, for example, she was not able to tell us how DCI Sanders came by certain information but it is important to note that she did not dispute that the information was provided by her to DCI Sanders. This is consistent with DCI Sanders own evidence. The significance is that when he gave his evidence on the topic, it was after Insp Gould had given her evidence and he had been absent when she did so. In addition, her evidence appears to tally with the documents in the bundle on the whole.

11.5. We found DCI Sanders to be credible. There was nothing in the manner in which he gave evidence or in his answers to questions that gave us any reason to believe that we should doubt or not accept his evidence.

11.6. DC Gooch was a credible witness. It is particularly difficult for Mr Hooper to criticise her because (as noted) he accepted that she conducted a fair investigation and the outcome of her investigation her conclusions were fair.

Introduction

12. We make the following findings of fact on the balance of probabilities.

Background

13. Mr Hooper is married. His wife is disabled within the meaning of the **Equality Act 2010**. Her disabilities are myalgic encephalomyelitis (ME) and fibromyalgia. They are variable conditions. Some days she will be barely able to care for herself. On other days she will be able to go to work and require little if any support or care from Mr Hooper. Often it is in between the two. Their daughter also has ME and also requires Mr Hooper's care. Mr Hooper however did not suggest that she was likewise disabled within the meaning of the **Equality Act 2010** at the times relevant to this case.

14. Mr Hooper has been a Police Officer since October 1996. In 2002 he transferred to the Nottinghamshire Police and was promoted to the rank of Sergeant.

Informal flexible working arrangements

15. While with Nottinghamshire Police, the Police have put into place various ad hoc arrangements over a long period of time to enable him to care for his wife. While they could be described as flexible working arrangements, those arrangements were informal. He never formally applied for flexible working and an entitlement to flexible working has never been formally granted.

Mr Hooper joins the Complaints and Learning Team

16. An opportunity arose in late 2018 for a sergeant to join the Complaints and Learning Team (CLT). This team dealt with various complaints from either the public or from within the Police. It was divided into 2 sections: City that dealt with complaints from Nottingham and County that dealt with complaints other than from Nottingham. Each had a Sergeant allocated to it. The relevant team leader was Insp Wilson. If successful she would be his line manager. Before applying formally for the posting, Mr Hooper met with Insp Wilson. They discussed his potential working arrangements if he were posted. Insp Wilson said that:

    "Flexible working was an option and that she was open to part-time, split shifts, sliding shifts and later shifts".

17. He applied for the post. In January 2019, the Police posted Mr Hooper to the CLT. Mr Hooper dealt with complaints from the County Section. His colleague who worked on the same role for the City Section was DS PQ.

18. His working pattern settled into an informal but long-term, flexible working pattern. The Police allowed him to work from home as and when required. However, if his wife and daughter were well enough, and so he did not need to provide care, he would go to a Police Station and work from there. He also went to a police station if his specific duties required him to attend a station.

19. While he was a sergeant in CLT, he often worked overtime. From the documents and evidence, we formed the impression it was almost as a matter of routine. The Police paid for the overtime. The value was significant.

20. The overtime system so far as relevant at the time worked as follows:

    20.1. If he undertook 2 hours or less in overtime, he would simply log it on the appropriate system, enter the claim, and the system would mark it automatically as approved; and

    20.2. If he worked for more than 2 hours, the claim would require Insp Wilson's approval. He could get that approval after the event or before the event. The emails show that he informed Insp Wilson of his claims and she approved them promptly.

21. While in the CLT, Insp Wilson remarked to others that he was a hard worker and was very flexible worker when it came to the many tasks required.

Introduction of the conduct regulations

22. The conduct regulations came into effect in February 2020. They provided a statutory scheme for the investigation of complaints.

23. The regulations generally provide for a structured process when dealing with any police misconduct. In summary (so far as relevant to this case) it is as follows:

    23.1. Scoping: In short, the investigations teams conduct a preliminary enquiry to see if the complaint is even worth investigating and if so, what should be investigated?

23.2. Formal investigation: In short, an officer investigates whether there is a case to answer. This results in a recommendation. The result could be a formal disciplinary process or no further action which may be accompanied by advice, or as happened here, PRI advice at a reflective practices meeting (RPM). While the regulations make it a more formal than a quick discussion over, say, a cup of tea in the kitchen, the regulations make it clear it is not a sanction – disciplinary or otherwise. Rather its purpose is to give guidance what improvement the recipient could make to his performance.

24. **Regulation 17** prescribes that an investigator must give to the officer under investigation a notice that contains certain information, as soon as reasonably practicable after appointment. These include the written terms of reference where practicable. There are certain qualifications to these obligations but it is not suggested they apply here. The notice is a Regulation 17 notice.

25. **Part 6** is entitled "Reflective practice review process" and is distinct from the parts that deal with misconduct proceedings and accelerated misconduct hearings.

26. **Regulation 65(1)** and **(2)** provides as follows:

""65.–(1) In this Part-

""participating officer" means the police officer whose actions or behaviour are subject to the reflective practice review process, and

""reviewer" means the person who is conducting the reflective practice review process.

"(2) The reviewer must be-

"(a) the line manager of the participating officer;

"(b) another officer who is senior to the participating officer, or

"(c) a police staff member who, in the opinion of the appropriate authority, is more senior than the participating officer."

27. **Regulation 66(3)** and **(4)** provide:

"(3) A participating officer must not be prevented from applying for or obtaining a promotion by reason of the officer's participation in the reflective practice review process.

"(4) Any account given by the participating officer under regulation 67(1)(b) or during the reflective practice review discussion held under regulation 69 is not admissible in any subsequent disciplinary proceedings brought against the participating officer, except to the extent that it consists of an admission relating to a matter that has not been referred to be dealt with under the reflective practice review process."

28. **Regulation 70(6)** provides as follows:

"The report and review notes must be discussed as part of the participating officer's performance and development review during the 12-month period following agreement of the report."

29. In our opinion the regulations show that an RPM or that PRI advice can be described reasonably as a sanction. Firstly, misconduct is dealt with separately in the regulations and apart from reflective practices. Secondly the prohibitions in **regulations 66(3)** and **(4)** are at odds with the idea that an RPM or PRI advice is a sanction. If they were, then they would be highly relevant to promotion or subsequent disciplinary proceedings. The Secretary of State was clearly keen to ensure that police officers could be given advice that improves their practice and performance without it impacting on their careers. Thirdly **regulation 70** is clearly aimed at securing the best outcome that benefits both the officer and the Police. This is far more consistent with PRI advice not being a sanction.

Covid-19

30. At the same time that the conduct regulations came into force, the Covid-19 pandemic (caused by a virus) had arrived in the United Kingdom. The virus was a respiratory virus. It could a serious risk to people with certain disabilities, illnesses and vulnerabilities. The government introduced various regulations and guidance to control the spread. One measure was to encourage working from home where appropriate to protect vulnerable people. Mr Hooper, his wife and daughter were vulnerable persons according to the regulations and guidance. Therefore, the Police agreed that for the duration of the pandemic, Mr Hooper should work from home full-time.

Implementation of the regulations

31. To give effect to the conduct regulations, the Police reorganised CLT by unifying it into a single department called the PSD. This was to be based at Police Headquarters. There would no longer be a City and County section. The Police transferred Mr Hooper and DS PQ to PSD. All members of the PSD were to work from headquarters. The Police appointed Insp Gould to lead the PSD, and so she became the line manager of both Mr Hooper and DS PQ.

Insp Gould meets DS PQ and Mr Hooper

32. On 23 April 2020, and before their transfer to PSD, Insp Gould met with DS PQ and with Mr Hooper. She made notes of the meeting afterwards for her own benefit. They are not contemporaneous but we have no reason to doubt they are reasonably accurate. Where they are disputed, we prefer her evidence over Mr Hooper's because she is more credible. In his meeting, DS PQ said he was ready and willing to move to the PSD.

33. The meeting with Mr Hooper was the same day, but far longer. Mr Hooper told Insp Gould that he had asthma, that is why he was working from home and this arrangement had been agreed by Inspector Wilson.

34. Insp Gould replied that his shift pattern will not be affected albeit his base station will change to Forces Headquarters. She confirmed this was because of the change brought about as a result of the conduct regulations. She made it clear to him that he could not work from home in this new role. In evidence it transpired that her superior officers had forbidden working from home in the PSD. At this point, Mr Hooper advised that he had a local agreement put in place by Insp Wilson to work from home because of his

wife's disability. He confirmed there was no formal agreement. He also gave Insp Gould a brief outline of a typical day. Insp Gould made it clear the informal arrangement could not continue. She advised him that if he wanted the arrangement to continue, he would need to submit a formal application for a flexible working pattern as a matter of urgency and it would require various approvals. He confirmed that he understood this and would give it some thought.

35. At this point Insp Gould already had some concerns about Mr Hooper's working pattern because it did not appear to reflect what was on the Duty Management System (DMS). She made it clear to Mr Hooper that all overtime would now have to authorised by herself and that she would only authorise weekend working if she were satisfied both that there was an organisational necessity and that his needs and wellbeing were being well managed. She said also that she would ensure that he was not swamped with work and therefore needing overtime daily.

36. Mr Hooper left the meeting with the view that it was a positive meeting. He felt that Insp Gould was listening carefully to him. We note while the informal arrangement could not continue, Insp Gould encouraged him to complete a flexible working request to see if the informal arrangement could be formalised.

37. Mr Hooper says Insp Gould told him he would be under more scrutiny. We find as a fact she did not. She denied the allegation and she is more credible than he was. The words do not appear in her note. It also is in contrast to the positive view he held at the time of the meeting. If she had said it, we do not think he would see the meeting as positive. The phrase also seems incongruous with the fact she encouraged him to complete a flexible working request. We think this more likely something arising from when he reinterpreted matters in September.

DS PQ and Mr Hooper's overtime in PSD

38. Upon commencing his posting Insp Gould and DS PQ agreed he would be able to work overtime so that he could act up as an Inspector in the Response Department, provided he prioritised work in the PSD. This was to allow DS PQ to gain experience to enable him to pursue his ambition to become an Inspector. DS PQ also undertook additional responsibilities to deal with persistent complainants to the Police. Mr Hooper did limited work on this and it did not give rise to a need for overtime.

39. DS PQ therefore undertook approved overtime when in the PSD. In contrast, Mr Hooper decided not to undertake any overtime work once he transferred to PSD.

Mr Hooper's flexible working request

40. Mr Hooper submitted his flexible working request on 29 April 2020. He wrote the request and lodged it without assistance from colleagues, a police federation representative or without checking his proposal with any senior offer e.g. Insp Gould. No-one applied any pressure on him to make any particular type of request or not request certain adjustments.

41. He requested his shift pattern to be changed so that he started half an hour later (at 8.30am rather than 8am) and finished work half an hour later (430pm rather than 4pm). Given his desire to be able to work from home to care for his wife, the freedom he had to put what he wanted on the request and Insp Gould's encouragement clearly focused on his desire to work from home, and having heard the evidence, we cannot understand why he chose only to seek that his shift be moved half an hour. What we can say is we are satisfied it was his own freely taken decision to request this minor adjustment.

42. The Police approved the request on 30 April 2020. In fact, because of the Covid-19 pandemic, Mr Hooper worked from home until 2 July 2020.

Restriction on overtime

43. On 14 May 2020 Insp Gould informed Mr Hooper and DS PQ by email that all overtime was to be authorised by her for the PSD, and that there was to be no more weekend working unless authorised specifically.

44. As noted, Mr Hooper had decided not to work since joining the PSD. Thus, he never sought any approval to work overtime or weekends. On the other hand, DS PQ did seek approval to work overtime, and his requests were all authorised by Insp Gould.

Mr Hooper's workload

45. In June 2020 it became apparent that Mr Hooper was building up a number of cases that he had to deal with. Insp Gould intervened. She told colleagues that Mr Hooper could not take any more work. In due course she reallocated work away from him to others in order to reduce his workload.

46. In late June 2020 Mr Hooper, in an email, explained that there were personal family circumstances in the background (the details of which are irrelevant) that were causing difficulties for him. Insp Gould responded similarly by reallocating tasks away from Mr Hooper to reduce his workload.

Requirement to return to the office

47. In July 2020, government regulations and guidance eased. Working from home was no longer mandatory, though it would be apt in some circumstances.

48. On 2 July 2020, Insp Gould informed Mr Hooper that she had been instructed by her superiors that Mr Hooper need to return to working from the office with effect from 4 July 2020. She confirmed his flexible working arrangement remained in place. She also confirmed that there would be arrangements to ensure social distancing and hand-sanitising.

Mr Hooper is signed off work

49. On 3 July 2020, Mr Hooper's doctor certified that Mr Hooper was unfit for work because of stress. In due course he did not return to his role.

ASM 17 July 2020

50. Insp Gould held an ASM with Mr Hooper on 17 July 2020 by telephone because he was working from home because of the risk arising from Covid-19.

51. At the time of the meeting, she did not know that Mr Hooper's wife was disabled or about previous informal flexible working arrangements. Rightly or wrongly, the Police had a policy of not revealing the contents of the human resources file to the new line manager when an officer moved to a new team, or their line manager changed. During the meeting, Mr Hooper did not make her aware that his wife (though not his daughter) was a disabled person within the meaning the **Equality Act 2010**, though he did refer to how their conditions affected them.

52. There is no transcript of the meeting or contemporaneous note. Instead, we have only a note she wrote on a report on 21 July 2020 and sent to Mr Hooper on 22 July 2020. The note also included thoughts which occurred to her after the meeting while writing the note up. There is a question about its accuracy, therefore. We find as a fact that is a reliable note for the following reasons. It may not be contemporaneous, but matters would be reasonably fresh in her mind. Secondly, Insp Gould has been clear about which parts are additions after the meeting and which are records of what was discussed at that meeting. Thirdly, Mr Hooper replied on 28 July 2020. Again, matters would be fresher in his mind than today. He raised 2 objections, which we set out below, but did not query the substantive notes or accuracy of the record. Finally, Mr Hooper's new objections are all as seen through a reinterpretation of events. He confirmed to us that at the time he thought it a supportive meeting and it was only later he changed his mind. As we noted above, this undermines his credibility and means we cannot accept any other objections or criticisms are valid.

53. The notes show that they discussed various matters.

54. Among the points discussed were that:

    54.1. Mr Hooper was the main carer for his wife;

    54.2. The need for care was constant. He was struggling to keep up with work, household chores and caring for his wife;

    54.3. He had to attend regularly to her during the night. This has led to increased tiredness to the point he feels exhausted; and

    54.4. He reported that his daughter now had ME and he had become her carer, which made things more difficult.

55. They discussed how he used to manage this demand. He explained that before joining PSD the work arrangements had allowed him to work flexibly to manage his day around caring issues. The flexibility to work from home was the reason he managed it. Insp Gould replied that in the PSD Team, working from home would be the exception and that working from the office was the rule because of the amount of work, increase in cases arising from the conduct regulations.

56. Mr Hooper explained that the request to work from the office had caused more stress and that is why he had was sick because he feared contracting the virus and taking this back home. Moreover, though his main stress remained caring for his wife and daughter.

57. Mr Hooper alleges that in the meeting Insp Gould questioned his ability to work and regular overtime if he had to care for his wife and daughter. We find this did not happen. In his own evidence-in-chief Mr Hooper said:

"37. The call was once again incredibly intimidating. DI Gould was asking about my caring responsibilities for both my wife and daughter, and I believe I was being totally honest with her balancing act I have had to do over many years.

"38. DI Gould again asked so again then asked me how I had managed to do regular overtime. I explained that it's usually done in the evenings, once I'd sorted things for [my wife] and my daughter."

In our view, this does not support Mr Hooper's case because his own evidence-in-chief does not evidence that Insp Gould said what he alleges she said.

Besides, there is no evidence of that comment in the detailed notes. Insp Gould cannot recall if they discussed it. We consider if it were part of the discussion, Insp Gould would have made a record of it. While we note Mr Hooper's apparent clear recollection, we note he has demonstrably revised his interpretation of the meeting - at the time he found it supportive but changed his mind later. We also note he did not complain about it in his email challenging some aspects of the notes.

58. Mr Hooper told us that Insp Gould asked how he had managed to do regular overtime previously. He replied:

"I explained that this was done in the evenings once I had sorted things for Sarah and my daughter."

59. The notes specifically contain the following text, on which Mr Hooper relies:

"Dave has been asked to reflect on how he can alter this situation and to consider if there are any roles that he feels able to complete around this caring angle. It is not considered that he can discharge his duties adequately with the distraction of caring."

"I have also asked him to consider adjustment to his working day (part time) and also if another department/role would be more suited to his home situation".

60. Mr Hooper says that he believes the reference to "this situation" is solely to his need to care for his wife and daughter, which would suggest that Insp Gould was asking him to reflect on he can alter the need to care for his wife and daughter. The tenor of his position to the Tribunal was this: he believed that Insp Gould was asking him to make some sort of arrangements regarding the care for his wife and daughter so he could then return to the PSD full time.

61. We reject that. His belief about the meaning of the "the situation" may be his belief now. However, it is not borne out by a reasonable and full reading

of the notes, in our view, or that the purpose of the meeting was to check on his welfare ultimately to get Mr Hooper back to working for the Police at least in some role (as evidenced by the later reference to an alternative role). It also does not sit well with his feeling at the time that the meeting was supportive. In our view the only reasonable interpretation is that Insp Gould was referring to the intersection of the need to care for his family and its impact on him with the requirements of his new role in the PSD to work from the office. She was not suggesting he needed in effect to prioritise his role in the PSD over care for his family. This is yet another example of Mr Hooper re-seeing events in a different light at a later stage.

62. Insp Gould added to her notes that she had asked Mr Hooper to reflect on how he can alter the situation and consider if there are any other roles compatible with his caring requirements, if he needed to reduce his hours or work part-time or needs to review his flexible working. She also wrote:

"It is not considered that he can discharge his duties adequately with distractions with caring".

63. Whatever Insp Gould's intention (which we accept was benign), we consider that a reasonable person would read that as the writer suggesting that the caring was in the writer's view incompatible with Mr Hooper's post in the PSD. Mr Hooper's email of 28 July 2020 shows that he read it that way too and was offended by it. This was before he reinterpreted events. It also accords with an objective interpretation of events.

64. As an aside, we recognise the similarity of what is in the notes to what Mr Hooper avers Insp Gould said in the meeting. However, we know Insp Gould added comments to her notes that were not parts of the discussion there.

We also note his email of 28 July 2020 makes no mention of that comment being made in the meeting, which we are satisfied he would have raised if it had been said. We see no incompatibility therefore between a finding that Insp Gould did not question his ability to work and regular overtime if he had to care for his wife and daughter in the meeting, but finding she made the written comments above. We are not persuaded that the latter on balance proves that the former occurred.

65. Mr Hooper said that he could not foresee any solutions to his current situation. Insp Gould wrote:

"…but he is adamant that he feels he cannot see an end to his stress."

The protected act of 28 July 2020

66. Insp Gould sent her notes on 22 July 2020. Mr Hooper replied on 28 July 2020 that he was not happy with some of the contents of the note of the discussion. He wrote his reply on one sitting, while things were fresh in his mind. He did not follow it up with further comments. We find as a fact that what he wrote were the only concerns he had after reading Insp Gould's statement. His complaints were:

66.1. the suggestion the role may not be suitable it seemed odd that this role is now unsuitable when in his previous role under Insp Wilson he was able to work at capacity; and

66.2. Insp Gould's suggestion that Mr Hooper was adamant that he would not return to work, suggesting it showed a lack of empathy and understanding. We note that is not what Insp Gould actually wrote in her notes.

He added that he had:

"… spent the last 15 years trying to balance my work with my caring responsibilities and even with the introduction of the Equality Act I find that I am still having the same struggles and same lack of empathy [from the Police] who… is required to champion such legislation."

It is agreed this was factually a protected act within the meaning of the **Equality Act 2010 section 27**.

67. We accept Mr Hooper was clearly upset by the notes. The fact he sent the email shows this to be true. We accept that he focused on what were the main points for him at this time. We do not accept it follows that only those comments concerned him. Mr Hooper focused on what he felt mattered. It is not inconsistent that he let other matters slip that he did not find them to be upsetting or offensive. Therefore, when he complains before us about the comments referring to "this situation", working in another department and calling into question discharge of his duties with concurrent caring responsibilities, we find as a fact that it affected him adversely and were unwanted. It tallies with documentary evidence he was upset by the notes, it is credible he would find such observations unwelcome, and we note this is all before he changed his mind and revised his views. These are comparatively minor matters and it is therefore understandable he did not raise them.

68. That said, this is not open-ended. We note that that Mr Hooper did not raise any other complaints in the email or after sending it. Taking into account his revision of events in his mind, we conclude that whatever other complaints he makes of Insp Gould's note or conduct in that meeting are later inventions arising from revision of events. This is particularly if he found the meeting to be unfair or intimidating. This is a significant thing we consider he would have raised if he felt it at the time to be true. Therefore, when he told us this was an intimidating meeting, we reject that characterisation and find as a fact it was not. In fact, it was a supportive meeting in which Insp Gould was doing her best to help Mr Hooper so far as was compatible with the limits to her authority and the need to manage the PSD. This conclusion is additionally supported by the notes themselves and what he told us he felt at the time.

Enquiry about the typical day

69. Insp Gould asked Mr Hooper to write out what a typical normal day would look like. It is not clear when. He replied by email on 29 July 2020, supplemented with comments on 5 August 2020. He raised no objection Insp Gould asking him to set out these details. In his email on 29 July he wrote as follows:

"Any hours that I cannot complete throughout the remainder of that day can either be taken as TOIL [time off in lieu] or made up at another time. On the days when my wife attends work then I could work from home whilst she

recovers and then after normal morning routine make my way to work, again any loss of hours could be taken as TOIL or annual leave or made up on another day."

Second flexible working application

70. On 21 August 2020 Mr Hooper submitted another flexible working application. He sought to adjust his hours slightly so that he would leave work an hour early and then complete the last hour at home.

Insp Gould raises concerns with DCI Sanders

71. At some point around this time (though it is not known when) Insp Gould liaised with DCI Sanders. She raised with him that she had concerns about Mr Hooper and his working arrangements, and that she was unsure how to proceed. Neither recalls when and how she liaised him and there are not notes or emails, but both accept it happened. DCI Sanders asked Insp Gould to leave matters for him to consider.

DCI Sanders concerned about overtime

72. DCI Sanders became concerned about whether Mr Hooper's claims for overtime when he worked in CLT were legitimate. He therefore commenced a process under the conduct regulations.

Scoping and access to emails

73. The Counter-Corruption Team scoped the case. They can access police systems and particularly emails of Police Officers without those officers knowing. Of course, an officer can also forward an email to them. DCI Sanders did not know if they accessed anyone emails in this case. However, the documents show that they somehow became aware of Mr Hooper's email of 29 July 2020 and that he had explained that he could use TOIL or annual leave to make up various shortfalls arising from his caring responsibilities. They also had access to the overtime records from his work at CLT.

Whether DCI Sanders was aware of the email of 28 July 2020, which referred to the Equality Act 2010.

74. The evidence shows that it is possible that the Counter-Corruption Team could have seen that email, but there is no evidence that they did – yet alone that they told anyone else about it. If they are investigating possible issues with overtime, then the email is irrelevant. However, DCI Sanders was unable to tell us if they did see because he would not have known what they saw. DCI Sanders had no recollection that he had seen it. Insp Gould had no recollection she either showed it to him or told him about it. It is not obvious to us what sensible reason there could be for Insp Gould either to have shown him the email or told him about it, yet alone that it referred to the Equality Act 2010. It is not relevant to her concern.

75. We conclude that DCI Sander was not aware of the email or of Mr Hooper's reference to the Equality Act 2010. At its highest the case is that it is technically possible that it could have come to DCI Sander's attention by a few routes. There is no evidence it did, however. To find that we could properly conclude it did would require us to draw an unsupported inference

that it did, speculate about how and why it would have done when it is not relevant to the investigation, and disregard the evidence of 2 credible witnesses - DCI Sanders and Insp Gould – that they have no recollection of it being passed to DCI Sanders and that he has no recollection of seeing it. We consider this is not tenable and requires improper levels of speculation. In the absence of any evidence, we find as a fact DCI Sanders was not aware of the email or that Mr Hooper has referred to the Equality Act 2010.

Formal investigation and the Regulation 17 Notice

76. The scoping exercise resulted in a conclusion that it required a formal investigation. The Police served a Regulation 17 Notice on Mr Hooper accordingly. It said:

"Allegation 1

"During a recent reorganisation of the working arrangements within PSD and a change in your line management, you have raised an issued with regard to your inability to comply with the requirement to attend [headquarters] and be present during 8am to 4pm each weekday.

"This has resulted in a review of your DMS [diary management system] bookings, because PSD were unaware of a 'local agreement' in place around flexible working, allowing you to undertake caring duties for your wife and daughter.

"This review revealed that between 01/08/2019 and 19/04/2020 you claimed overtime on 125 occasions. Of these, 61 dates were rest days less than 15 days' notice, generating an enhanced overtime payment.

"The written representations you made to your line manager on 29/07/2020, around your caring responsibilities, do not correlate with the fact that you have worked so much overtime. The long hours you have worked previously is not commensurate with the difficulties and demands that you portray as being evident in your home environment, particularly when you cite that you could use TOIL/AL to make up the deficit in hours, when in fact you have been working a significant amount of overtime rather than having to use 'time off' to ensure your caring obligations are met.

"[This allegation relates to] Honesty & Integrity".

The Regulation 17 Notice classified this as potential misconduct. It warned him it may require him to attend a misconduct meeting.

We are satisfied the Police served the notice because they genuinely believed that the circumstances warranted a formal investigation. There is no evidence that in our view even begins to suggest the protected act played a part in the decision to begin a formal investigation. We find as fact therefore it did not.

77. The Police assigned DC Gooch to direct and carry out the PSD investigation. She sent to Mr Hooper through his Police Federation Representative (as the parties agree is the usual way of conducing these matters) a disclosure pack, details of the allegation, some background information about the overtime claimed and purported to ask 12 questions

for Mr Hooper to answer. In fact, one was a statement and one was incomplete and so unanswerable. The Claimant provided his answers to these questions promptly through the Federation.

78. On 19 November 2020 an investigator on behalf of DC Gooch interviewed Mr Hooper under "civil caution" (i.e. without the qualification to the right to silence). A Police Federation representative accompanied Mr Hooper. There is only a summary before us, but there is no suggestion it omits anything of relevance. Mr Hooper found the experience to be unpleasant and intimidating. We remark that is not surprising. In the interview, Mr Hooper explained that he did not update his notes to log of what he was doing on a daily basis. He reported that he was never told to update the notes of cases and he was not very good with computers in any case. He told the interviewer that he was so busy he would not have had time to keep a record of his work anyway. He admitted he had not kept full records, and he accepted in the interview in hindsight he should have kept better records.

79. He also explained that although he did not keep a diary of his working hours, he wrote some dates in the back of one of his notebooks as to what he worked.

80. Further investigation revealed that Insp Wilson had approved all overtime claims that required her approval, and all others had been properly self-certified.

81. During the course of the investigation, the investigators interrogated the Police's computer management system to see whether the times he logged in and out tallied with the claims for overtime. At first it appeared there was a mismatch that suggested he was not working. The investigators asked him to explain discrepancies on certain dates. He satisfied them he was working on those dates. The investigators then asked him about a second set of dates. The Police Federation object to this on Mr Hooper's behalf. It appears the Police accepted that repeated questioning was in appropriate and that the computer records were not reliable for this purpose. He found the repeated questioning unpleasant and akin to the Police hounding him and found it hostile and intimidating. We accept this is how he felt and can understand why.

82. However overall, even Mr Hooper concedes that DC Gooch conducted a fair investigation. Therefore, while there may have been unpleasant moments, as noted above, even on Mr Hooper's own case, they must be consistent with and part of a fair investigation. If they are part of a fair investigation then we infer and find as a fact that Mr Hooper cannot reasonably object to them.

Outcome of the formal investigation

83. DC Gooch concluded that there was no case for Mr Hooper to answer. She recommended that he should be referred for a Reflective Practice Meeting (RPM) because the investigation had shown that Mr Hooper agreed that had not kept full records like he should have. As we noted, Mr Hooper has accepted this was a fair outcome.

84. DC Gooch's recommendation was given to DCI Sanders. He also accepted it, and he arranged for an RPM to take place.

85. We find there is no evidence that shows that either DC Gooch's conclusions (which Mr Hooper accepted was a fair outcome) or DCI Sander's acceptance and administration of the PRI advice at the RPM are connected in any way to the protected act.

86. The RPM took place on 25 January 2021. DCI Sanders conducted the meeting. He did so because he was familiar with the matter and it would be quicker for him to do it than to brief another officer superior to Mr Hooper who had not been involved and was unfamiliar with the case to do it. The parties agree that the effect of the conduct regulations was that DCI Sanders was an officer authorised to conduct the RPM and give the PRI advice.

87. The Claimant described it as a sanction. We find it was unwanted. It is quite usual for a person not to want to be told they have room for improvement. However well intentions or justified, it is understandable that it may not be welcome. However, we find as a fact it was not for reasons we gave earlier when we reviewed the regulations, above. That fact it may or may not be on the Human Resources is neither here nor there because the regulations are clear about the limit to which one may rely on the fact the Police gave PRI advice to an officer.

88. There is no evidence that DCI Sanders gave the PRI advice to Mr Hooper because of the protected act. Indeed, the fact it was the recommended outcome from DC Gooch and Mr Hooper agrees that is a fair outcome rather undermines the argument there is any link, factually. We therefore find as a fact there is no link between the protected act and the outcome.

Sargent ST

89. The Police also gave PRI advice to a Sgt ST. This was after a complaint about how she had spoken to a member of the public. However, unlike Mr Hooper, Sgt ST worked in a public facing role. In addition, unlike Mr Hooper, Sgt ST was the subject of misconduct proceedings because the investigation into her conduct found there was a case to answer. The outcome of Sgt ST's misconduct process was that there was no case to answer, but the panel felt she would benefit from an RPM with PRI advice. The outcome may have been the same for both her and Mr Hooper. However, the route that her case went through was very different. However, none of that detracts from the fact that PRI advice is not a sanction.

Law

Disability

90. The **Equality Act 2010 section 6(3)(a)** provides that, in relation to disability, a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability. In other words, the focus must be on the particular disability in question, not disability as a general concept.

Harassment

91. The **Equality Act 2010 section 26** (in relation to disability) provides a person (A) subject another (B) to harassment if they subject B to unwanted conducted related to disability that has the purpose or effect violating B's

dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. If the focus is on effect, then the Tribunal must take into account B's perception, the other circumstances and whether that effect is reasonable. Context is important in deciding whether the effect is reasonable.

92. While the parties have referred us to various cases, the **Employment Statutory Code of Practice** (published by the **Equality and Human Rights Commission**) (the Code) summarises accurately much of the position found in the cases – at least so far as relevant for present purposes. For example, **paragraph 7.8** of the Code "unwanted" means essentially the same as "unwelcome" or "uninvited".

93. The main question is what is meant by "related to". It is agreed that the disability need not be the claimant's disability. But there was a dispute about what is sufficient to show conduct is truly "related to" disability.

94. The claimant's case appeared to be that as long as disability is somewhere connected to the unwanted conduct, it is sufficient. The code at **paragraph 7.9** onwards appears to support this loose connection:

"7.9 Unwanted conduct 'related to' a protected characteristic has a broad meaning in that the conduct does not have to be because of the protected characteristic. …

"7.10 … b) Where there is any connection with a protected characteristic.

"Protection is provided because the conduct is dictated by a relevant protected characteristic, whether or not the worker has that characteristic themselves. This means that protection against unwanted conduct is provided where the worker does not have the relevant protected characteristic, including where the employer knows that the worker does not have the relevant characteristic. Connection with a protected characteristic may arise in several situations:

"• The worker may be associated with someone who has a protected characteristic. Example:

"A worker has a son with a severe disfigurement. His work colleagues make offensive remarks to him about his son's disability. The worker could have a claim for harassment related to disability.

"…

"The unwanted conduct is related to the protected characteristic but does not take place because of the protected characteristic.

"Example:

"A female worker has a relationship with her male manager. On seeing her with another male colleague, the manager suspects she is having an affair. As a result, the manager makes her working life difficult by continually criticising her work in an offensive manner. The behaviour is not because of the sex of the female worker, but because of the suspected affair which is related to her sex. This could amount to harassment related to sex.

"7.11 In all of the circumstances listed above, there is a connection with the protected characteristic and so the worker could bring a claim of harassment where the unwanted conduct creates for them any of the circumstances defined in paragraph 7.6."

95. We consider that the code however has potential to mislead because it does not appear to explain the need to show a **proper** relationship based on the circumstances. This need can be found expounded in **Unite the Union v Nailard [2017] ICR 121 EAT** at **[100]-[104]** (not departed from on appeal **[2019] ICR 28 CA**) The **EAT** said:

"In our judgment **section 26** requires the employment tribunal to focus upon the conduct of the individual or individuals concerned and ask whether their conduct is associated with the protected characteristic—for example, sex as in this case."

96. In **Tees Esk & Wear Valleys NHS Foundation Trust v Aslam and others [2020] IRLR 495 EAT**, the EAT recently considered the Court of Appeal decision in **Nailard** and said:

"24. … the broad nature of the "related to" concept means that a finding about what is called the motivation of the individual concerned is not the necessary or only possible route to the conclusion that an individual's conduct was related to the characteristic in question. [The appellant's Counsel] confirmed in the course of oral argument that that proposition of law was not in dispute.

"25. Nevertheless, **there must be still, in any given case, be some feature or features of the factual matrix identified by the Tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim** [Our Emphasis]. In every case where it finds that this component of the definition is satisfied, the Tribunal therefore needs to articulate, distinctly and with sufficient clarity, what feature or features of the evidence or facts found, have led it to the conclusion that the conduct is related to the characteristic, as alleged. **Section 26** does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the Tribunal may consider it to be."

Victimisation

97. The **Equality Act 2010** provides that if a person A subjects another B to a detriment because B did a protected act, then A has victimised B. There was no dispute Mr Hooper had done a protected act. The code **paragraph 9.8** defines a detriment as

"Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage." This tallies with the explanation provided in cases such as **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 UKHL**.

98. "Because of" requires that the protected act has a significant influence on the detriment caused to B but need not be the sole or principal reason: e.g. **Chief Constable of Greater Manchester Police v Bailey [2017] EWCA Civ 425**; likewise, The Code at **paragraph 9.11**.

Direct discrimination

99. The **Equality Act 2010 section 13** provides a person A directly discriminates against a person B if A treats B less favourably than they treat or would treat another, and the reason for that is disability. That other may be a real or hypothetical person, but their circumstances must not materially differ from B's. Even if the claimant relies on real people who are not true comparators, they may still be of some evidential value. The disability can be that of B or, as here, a person associated with B. Whether treatment is less favourable is to be assessed objectively: **Burrett v West Birmingham Health Authority [1994] IRLR 7 EAT**. The protected characteristic need not be only reason provided it has a significant influence: **Nagarajan v London Regional Transport [1999] ICR 877 UKHL** and the Code **paragraph 3.11**. Except in rare circumstances that do not apply here, acts of harassment cannot also be acts of direct discrimination: **Equality Act 2010 section 213**.

Burden of Proof

100. The **Equality Act 2010 section 136** provides for the burden of proof in claims under the **Equality Act**. A number of cases since have explained it; notably **Efobi v Royal Mail Group [2021] IRLR 811 UKSC** (which reviewed and approved a significant number of previous cases). In summary we understand it as follows:

100.1. The claimant must prove facts on the balance of probabilities from which the Tribunal could properly conclude that the respondent has committed an unlawful act under the **Equality Act 2010**. The Tribunal ignores any potential explanation but takes into account the evidence adduced by both sides.

100.2. If the claimant succeeds, the respondent must then on balance of probabilities prove that discrimination, harassment etc. were not the reason for the treatment;

100.3. A difference in status and in treatment is not enough alone to shift the burden of proof to the respondent; and

100.4. If the Tribunal can make positive findings one way or the other, it should do. The burden of proof in such cases is likely to have little to offer.

Jurisdiction

101. The **Equality Act 2010** requires any claim to be presented within 3 months of the act complained of or within such other time as is just and equitable. It is for the claimant to persuade the Tribunal to extend time.

102. Ultimately the Tribunal has a broad discretion when weighing up all the circumstances, but length of delay and reasons for it are always relevant,

as is the prejudice to the respondent if a claim that is out of time is allowed to proceed: **Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194, CA**.

103. Where there are a series of act that can be linked into a continuing act, the 3 months does not start until the last of those acts. An overarching sense of a discriminatory affairs is not enough: **South Western Ambulance Service NHS Trust v King [2020] IRLR 168 EAT**.

Conclusions

Harassment

104. We deal first with the issue of harassment. For simplicity we will deal with each of the following questions under each alleged act of harassment.

104.1. Did the Respondent engage in the conduct set out below?

104.2. If so, was that conduct unwanted?

104.3. If so, was that conduct related to disability?

104.4. If so, did that conduct have the purpose or effect of

104.4.1. Violating the Claimant's dignity?

104.4.2. Create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

104.4.3. If effect, was it reasonable in each in those circumstances for the conduct to have that effect?

Comments made by Insp Gould on 23 April 2020, informing the Claimant that he would be under more scrutiny;

105. We found as a fact this did not happen. Therefore, this allegation is dismissed.

Comments made by Insp Gould on 17 July 2020 during a telephone call, questioning the Claimant's ability to work regular overtime if he had to care for his wife and daughter.

106. We found as a fact this did not happen. Therefore, this allegation is dismissed.

Comments made by Insp Gould included in the Attendance Support Meeting (ASM) notes and sent to the Claimant on 22 July 2020:

a. *"Dave has been asked to reflect on how he can alter this situation and to consider if there are any roles that he feels able to complete around this caring angle. It is not considered that he can discharge his duties adequately with the distraction of caring." The Claimant believes the reference to 'this situation' is his need to care for his wife and daughter.*

b. *"I have also asked him to consider adjustment to his working day (part time) and also if another department/role would be more suited to his home situation".*

Having his ability to discharge his duties adequately being called into question;

107. These arise from the notes of the ASM meeting and so we deal with them together.

108. Insp Gould wrote the alleged comments. However, context is important. Mr Hooper did not hold the belief at the time – it is a more recent reinterpretation. We also find as a fact that "the situation" is not the need to care for his wife and daughter but to the intersection of the need to care for his family and its impact on him with the requirements of his new role in the PSD to work from the office.

109. Whatever her intention, the effect of her words was that it called into question his ability to discharge his duties. We note however that Mr Hooper has deliberately as part of his case not included the other part of the phrase which this complaint is based on, i.e. Insp Gould's words "with distractions with caring." He made no application to add those words and has been represented throughout. We assume it is a conscious choice to put his case that it is the calling into question that matters and not that it is "with distractions with caring."

110. On balance we conclude that these comments were unwanted as we explained above. They may not have been in the notes. However, it is credible they were unwanted and it accords with a part of his evidence we can accept.

111. We have seen no evidence to show Insp Gould made them for the proscribed purpose. We conclude she did not make these comments for the prescribed purpose.

112. We are satisfied that he found the words "Dave has been asked to reflect on how he can alter this situation and to consider if there are any roles that he feels able to complete around this caring angle. It is not considered that he can discharge his duties adequately with the distraction of caring" offensive or degrading. However, we do not consider that this reaction is reasonable. Read in context it was not about the need to care for his wife and daughter but the intersection of that need with his role. His reading is not reasons.

113. We are satisfied he found the words "I have also asked him to consider adjustment to his working day (part time) and also if another department/role would be more suited to his home situation" offensive or degrading. We do not consider that the reaction was reasonable, however. We cannot see how it is reasonable to suggest ways that he can balance the demands on him in his professional or personal life, and the reasonable way they that Insp Gould phrased it, can reasonably be said to have the proscribed effect.

114. We accept that having his ability to discharge his duties adequately being called into question had the effect of being offensive or degrading. As well as according with his evidence it is inherently plausible it would have this effect.

115. We do not accept that any of the above allegations were related to his wife's disability.

    115.1. We deal firstly with asking him to on how he can alter this situation and to consider if there are any roles that he feels able to complete around this caring angle, and the comment that Insp Gould asked him to consider adjustment to his working day (part

time) and also if another department/role would be more suited to his home situation".

115.1.1. The comments are entirely obvious and ordinary observations that it was reasonable to make about Mr Hooper's particular case. As the non-legal members observed, the process was more-or-less "textbook".

115.1.2. If Mr Hooper's situation in his personal life – whatever they may be or the cause – meant he had or appeared to have difficulties discharging his professional duties, then it is entirely proper and rational for Insp Gould to make those comments that he consider adjustments to his working day or consider another role or post around caring. The fact that the issue here is care-related, or that his wife is disabled, is merely coincidence in our view. The non-legal members particular said in their experience it is appropriate for an employer (which for present purposes we can consider The Police to be) to make observations and suggestions alike those which Insp Gould made.

115.1.3. As an analogy, we consider Insp Gould's approach would have been the same whether it were a caring or other issue, and whether it were caring for his daughter alone (who is not disabled) if Mr Hooper were experience the same challenges aligning his work demands with the other, external commands. We are no seeking to assess by using a comparison, but seeking to demonstrate why we consider the fact it was care for his disabled wife is no more than a coincidence or incidental fact to Insp Gould's acts. In summary we cannot properly say her acts were properly related to disability.

115.2. We now consider the comment that Insp Gould called into question his ability to discharge his duties.

115.2.1. We note that Mr Hooper his is allegation specifically does not complain about the words ""with distractions with caring." These are the words however that, at best, relate the unwanted conduct to disability. That he has not relied on them undermines in our view that the conduct alleged is properly describable as related to disability and undermines his claim.

115.2.2. However, in any case we consider the same reasoning as before applies here. We consider that even if it were something other than caring that appeared to be troubling Mr Hooper and having the same effect, she would have done the same. It shows the fact his wife is disabled is merely coincidental or tangential to what happened. We do not consider one

can say the conduct is properly related to disability, therefore.

116. Both allegations are dismissed.

Being asked to set out a 'typical day' by Insp Gould in July 2020;

117. This event happened.

118. We do not accept it was unwanted conduct. Mr Hooper raised no objection at the time. It was in the context of following the ASM meeting that he believed supportive. It is only recently he has decided it was unwanted because he has revised his memory of matters. Therefore, the claim fails at this stage.

119. In any case we do not consider there is any evidence to show that Insp Gould asked with the purpose of harassing Mr Hooper. We do not consider it had that effect either. He responded without objection, and only later decided it was objectionable after he revisited matters and revised his opinions in September 2020. In any case it is reasonable to ask about his day as part of understanding how me might return to work. She asked him an open, non-judgmental question. It was also as part of process connected with the ASM meeting he found at the time to be supportive. Therefore, even if it had the proscribed effect, in the circumstances and given what it asked, it was not reasonable.

120. Finally, we cannot see how it is properly related to disability. The fact he spent some time caring for a disabled person is merely incidental. The driver was the absence from work and his welfare.

121. This allegation is dismissed.

The narrative set out in the Regulation 17 Notice

Having his honesty and integrity called into question

122. These arise from the same event and the same document. We consider them together. The parties did not suggest that they could sensibly be divided.

123. Clearly these events happened. While he has not specified what he found objectionable about the narrative, we are satisfied having considered it as a whole that Mr Hooper found it to be unwanted conduct. We readily conclude that he found having his honesty and integrity called into question because it is inherently plausible.

124. There is no evidence that the Police issued this notice for the prescribed purpose.

125. We conclude it had the proscribed effect, however. The circumstances are important to our explanation. He had been working from home for a long time, albeit on informal arrangements. He had been claiming overtime which was approved in line with the Police's policies. He had made no secret of his situation or claims. From his point of view there was no explanation why it is suddenly an issue. There was no forewarning. In those circumstances it is entirely reasonable that he found it offensive, humiliating or intimidating.

126. However, we conclude that it was not related to disability. The whole focus of these allegations is that the Police had a concern that Mr Hooper had been wrongly (possibly fraudulently) claiming overtime when he should not have been. We accept that the notice referred to claims around caring responsibilities. One must focus on the concern or allegation: it was that there was a prima facie mismatch between his explanation about caring responsibilities and his claims for overtime. A concern that someone's explanation about caring responsibilities does not match with claims for overtime. In our view it is at best tangential that the caring responsibilities involved in part caring for a disabled person. We are quite satisfied from the evidence that if the caring responsibilities were for non-disabled person or persons only (e.g. for his daughter only), then the concerns of the Police would be the same, the evidence of the mismatch between his reported caring responsibilities and his overtime claims would be the same and so the reaction would be the same. Like with the other allegations there is nothing to show that his wife's disability plays any part in this other than being in the background. The sole factor was he appeared to claim overtime when his own explanation of his caring responsibilities suggested those claims were illegitimate or dishonest.

127. These claims fail.

Being subject to an investigation by Professional Standards Department (PSD)

Being subject to the recorded interview on 19 November 2020

128. We have considered these separately but they are part of the same process and we feel we can take them together for brevity.

129. We conclude that they were not done for the proscribed purpose because there is no evidence to support that.

130. We repeat our findings of fact about how he found the process. We note that it is quite reasonable for a police officer not to welcome an investigation into their conduct or being interviewed. However, in this case we find that the effect was not reasonable. The reason is that Mr Hooper accepted that the investigation was a fair one. This is part of that investigation. We consider that this is inconsistent with the suggestion that it was reasonable for him to find these had the proscribed effect.

131. In any case, we do not accept it related to disability. This was a part of the investigation that was justified by the apparent prima facie discrepancy between the claims for overtime and for caring. It is merely part of the background that his wife was disabled and he cared for her. There is no proper relationship between the two.

132. These claims fail.

Being given PRI advice by a Chief Inspector of PSD.

133. Having heard evidence and received the submissions, we still struggle to understand the issue that this allegation is aimed at.

133.1. The outcome was fair, as Mr Hooper agreed. Being given PRI advice was the recommended outcome. We also repeat the purpose and effect (or lack of effect) of PRI advice, noting it is

not a sanction. We cannot accept that is unwanted conduct, even if Mr Hooper has now decided it was.

133.2. If the focus is that DCI Sanders administered the advice, we also conclude that is not unwanted conduct. The regulations clearly empower DCI Sanders to give the PRI advice. It is true that others could have done it. However, the regulations do not set out a hierarchy of who should be chosen first to give PRI advice. We cannot see any issue with DCI Sanders giving the PRI advice. He had the right to do it, and the investigation that gave rise to it was from the department he was in charge of. We still do not understand what Mr Hooper's objection is. It has the air of trying to find something to complain of.

134. It is notable that at the time neither he, nor a Federation representative acting for him, raised any objection. This further supports our view that this was not unwanted conduct – it is only later he has come to see it this way.

135. In any event:

135.1. None of these actions were done for the proscribed purpose;

135.2. None of these actions had the proscribed effect. It is a non-sanction which was the fair outcome of a fair process administered by an officer authorised to do so. Even if had had the proscribed effect. In the circumstances, that effect was not reasonable; and

135.3. Finally, we cannot see how these acts can properly be said to be related to his wife's disability. That is but a piece of background information. This occurred because and only because of the fair outcome from the fair investigation and DCI following the regulations to administer the PRI Advice.

Victimisation

136. Because there is no dispute that the claimant's email to Insp Gould on 28 July 2020 was a protected act within the meaning of **section 27 Equality Act 2010**, we move to the next questions?

Was the Claimant subject to detrimental treatment as a result, namely:

…being served with the Regulation 17 Notice on 2 September 2020 and subject to misconduct allegations and investigation by PSD;

137. Being served with a Regulation 17 notice is a detriment because it is quite reasonable to consider it puts one in a worse position. However as noted we found as a fact this was not connected to the protected act. This claim fails.

Being sanctioned and provided with PRI on 25 January 2021.

138. For reasons set out above, we found there was no sanction. It is clear he was given PRI advice. We do not accept it is a detriment because, as explained above, it has no impact on his ability to seek promotion, does not accept future disciplinary processes and is advice to improve the discharge of his duties. That cannot be reasonably seen as a detriment.

If so, in each case did the Respondent subject the Claimant to the treatment because of the protected act or because he believed that he had or?

139. Whether they were detriments or not, we found as a fact (as set out above) there is no link between the protected act an (alleged) detriments.

140. Both these claims are dismissed.

Direct Discrimination

141. For each allegation we answer the following questions:

141.1. Was the Claimant subjected to the treatment?

141.2. If so, was the Claimant treated less favourably than DS PQ, Sgt ST, or a hypothetical comparator was treated or would be treated?

141.3. If so, was the less favourable treatment because of the Claimant's association with a disabled person?

Having his ability to carry out and discharge his full-time duties called into question by Insp Gould in the ASM notes provided on 21 July 2020;

142. It is clear the Police subjected him to the treatments.

143. The correct comparator is someone who had the same caring responsibilities and the same overtime history as Mr Hooper, but who was not associated with a disabled person.

144. DS PQ is not in that situation. He had no caring responsibilities. His overtime history under Insp Wilson is not known. His overtime on transfer to PSD was authorised in advance and in any case Mr Hooper deliberately chose not to work overtime after transferring to PSD. We do not consider DS PQ is a proper comparator and do not consider his circumstances are such to provide any evidential assistance.

145. In our view, the facts show Insp Gould would have done the same thing to a hypothetical comparator because the facts would have been the same – i.e. there appeared to be a conflict between the caring obligations and the ability to do the job. That is quite apparent the focus was on his ability to do the role to which he was assigned and whatever the cause of that impact was irrelevant. It just happened to be a caring responsibility. Put another way, the reason for the treatment was because of the apparent difficulty meeting the duties of his role, not the association with a disabled person. The presence of in Mr Hooper's situation of a disabled person with whom Mr Hooper was associated would be of no relevance and would play no part. Insp Gould would have said the same thing and the outcome would be the same. Disability played no part in what happened.

146. This claim fails.

*Being subject to Misconduct Proceedings under the **Police (Conduct) Regulations 2020** (the Conduct regulations) on 2 September 2020;*

147. He was clearly subjected to these proceedings.

148. DS PQ sheds no light on this scenario for reasons given earlier. The hypothetical comparator is the same as above.

149. The fact is that the scoping exercise suggested a mismatch between his assertions about the demands that his caring responsibilities placed on him and his claims for overtime. The proceedings began because of that mismatch, not disability. It has nothing to do with his association with a disabled person – that was just incidental to the fact that it appeared that his assertions that the demands of caring appeared at odds with an ability to do regular overtime. If a hypothetical comparator had the same apparent demands on their time and same apparent need for regular overtime, but was not associated with a disabled person, they too would have been the subject of the same misconduct proceedings. The disability played no part in what happened.

150. This claim fails.

Being sanctioned and provided with PRI on 25 January 2021;

151. Like with this allegation under harassment, it is difficult to know what the issue is. Firstly, he was not sanctioned. Secondly the PRI was on his own case a fair outcome. Thirdly for similar reasons, DS PQ sheds no light on this. Nor does Sgt ST because her situation is nothing like that of Mr Hooper's.

152. Given this PRI advice was a fair outcome it is difficult to see how it could ever be less favourable treatment. He did not, understandably, suggest there should have been an unfair outcome. He did not, rightly, argue that it was discriminatory because there could have been a better outcome.

153. In any case, if this were a fair outcome, anyone else in Mr Hooper's situation but who was not associated with a disabled person (i.e. the same earlier comparator) would have had the same, fair, outcome too. Put another way, his wife's disability played no part in this this.

154. This claim fails.

Having the sanction meted out by PSD on 6 December 2020.

155. He was not sanctioned. This claim must fail, therefore.

Jurisdiction

156. We deal with this point briefly because every claim has failed on its merits.

157. It is apparent that because there are no unlawful acts under the **Equality Act 2010** there is no continuous act. Therefore, a number of claims are out of time.

158. The claimant advances no good reason for the delay. Indeed, it seems there is a bad reason: In September 2020 he changed his mind and decided to view things differently.

159. There is no significant delay in our view. Based on the information before us, we also consider that it could not have been said before the hearing that the claims had no reasonable prospect of success.

160. However, the most significant factor for us is that at no time has there been any evidence or suggestion that the Police have been prejudiced in having to respond to the allegations – whether out of time or not. Indeed, it seems

they have been able to meet the allegations unhampered by the fact the claim in relation to that allegation might technically be out of time.

161. Overall, for those reasons we consider it just and equitable to extend time so that the claims are all deemed presented in time, albeit they fail on their merits.

Employment Judge Adkinson

Date: 9 December 2024

JUDGMENT SENT TO THE PARTIES ON

.....09 December 2024.....

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FOR THE TRIBUNAL OFFICE

Notes

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