EMPLOYMENT TRIBUNALS

Claimant:	**Mr S Mohammed**
Respondent:	**Chief Constable of Derbyshire Police**
Heard at:	**Nottingham Tribunal Hearing Centre**
On:	**8, 9, 10, 11, and 12 July 2024**
Before:	**Employment Judge S Shore**
Members:	**Ms H Andrews** **Mr K P Chester**

Representation

For the Claimant:	**Mrs J Callan (Counsel)**
For the Respondent:	**Mr R Stubbs (Counsel)**

RESERVED JUDGMENT AND REASONS

The unanimous judgment of the Employment Tribunal is that:-

1. The claimant's claims of direct discrimination because of the protected characteristic of race under section 13(1) of the Equality Act 2010 ("EqA 2010") are all dismissed.

2. The claimant's claims of direct discrimination because of the protected characteristic of religious belief under section 13(1) of the EqA 2010 are all dismissed.

3. The claimant's claims of harassment related to the protected characteristic of race under section 26(1) of the EqA 2010 are all dismissed.

4. The claimant's claims of harassment related to the protected characteristic of race under section 26(1) of the EqA 2010 are all dismissed.

5. As all the claimant's claims have been dismissed, there is no need for a remedy hearing.

REASONS

Background

1 The claimant was engaged as a Police Constable by the respondent on 1 November 2021. He underwent a period of training from 1 November 2021 to 20 March 2022 and joined the respondent's force as a Student Police Constable at its Pear Tree Station.

2 The claimant was required to complete a period of 10 weeks' probation. If he successfully completed the probation period, he would become a fully-fledged Police Officer. The claimant tendered his resignation on 6 September 2022. His notice expired on 18 October 2022.

3 The claimant started early conciliation with ACAS on 23 November 2022 and obtained an ACAS early conciliation certificate on 14 December 2022. He presented his ET1 and Grounds of Complaint [4-61] on 13 January 2023. In paragraph 6 of his Grounds of Complaint, the claimant self-identifies as Asian, of Pakistani origin and of the Muslim faith.

4 The claimant's claims all arise out of allegations that he was subjected to acts of direct discrimination because of race and/or (in the alternative) religious belief, and harassment related to race and/or (in the alternative) religious belief.

5 On 1 February 2023, the Tribunal sent the parties a Notice of Claim that set the final hearing for three days on 2, 3, and 4, September 2024 and made case management orders that required:

3.1. The respondent to submit a response by 1 March 2022;

3.2. The claimant to produce a Schedule of Loss by 15 March 2023;

3.3. The parties to exchange lists of documents by 31 May 2023;

3.4. The respondent to produce a file of documents by 12 July 2023; and

3.5. The parties to exchange witness statements by 20 September 2023.

4. The Tribunal also listed a preliminary hearing for 5 April 2023. The respondent applied for an extension of time to present its response, which was granted on 7 March 2023. The extension was to 29 March 2023.

5. The respondent presented its response by way of a Grounds of Resistance [66-78] on 31 March 2023. On the same date, it was rejected by the Tribunal as it had not been presented on the prescribed form [84-87]. On the same date, the respondent sought an extension of time to present its response [88-89].

6. The respondent sent in its response form (ET3) [90-97] and Grounds of Resistance [66-78] by email on 31 March 2023 [98]. The response was accepted by order of REJ Swann on 4 April 2023 [111].

7. In preparation for the preliminary hearing on 5 April 2023, the claimant's solicitors submitted a case management agenda [99-103] and draft List of Issues [104-108]. The preliminary hearing on 5 April was held before EJ Hutchinson, who made a case management order dated 13 April 2023 [113-116]. The final hearing was extended to five days and brought forward to the dates on which we heard the claim (albeit that the order contained a typo in respect of the final day that was resolved later in the process). The parties agreed to Judicial Mediation, so few other orders were made.

8. The claimant filed his Schedule of Loss on 19 April 2023 [117-119]. His claim is limited to an injury to feelings award. The respondent filed a Counter-Schedule of Loss on 3 May 2023 [120-121].

9. The respondent withdrew from the proposed Judicial Mediation, so another

preliminary hearing was listed for 27 July 2023 before EJ Ahmed, who produced a case management order [99-103]. He ordered that the List of Issues prepared for the previous preliminary hearing be used for the final hearing save for the removal of the paragraphs related to the respondent's response being out of time.

10. The claimant applied to adduce the evidence of Inspector Keith Chambers after the date that the parties had exchanged witness evidence. The respondent objected to the application. EJ Heap granted the claimant's application on 1 July 2024.

11. The parties produced an agreed bundle on 346 pages that was couriered to the Tribunal on 2 July 2024. They also produced a bundle of nine witness statements on the same date. The respondent produced two additional documents and five additional witness statements together with an amended index for the bundle and witness statement bundle on 5 July 2024.

12. If we refer to any documents in the bundle, we will usually give the relevant page numbers from the bundle in square brackets next to the reference. If we refer to a paragraph in any document, we will usually use the silcrow symbol (§) to indicate the paragraph number(s).

13. The respondent produced a Chronology and Cast List.

The law

14. The statutory law is contained within the EqA 2010. We reproduce below sections 13, 26, 123, and 136 of the EqA 2010.

> ***13. Direct discrimination***
>
> *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.*
>
> *If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.*

The relevant protected characteristics are—

(a) age;

(b) disability;

(c) gender reassignment;

(d) race;

(e) religion or belief;

(f) sex; and

(g) sexual orientation.

26. Prohibited conduct (Harassment)

A person (A) harasses another (B) if

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

In deciding whether conduct has the effect referred to, each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

123. Time limits

(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—

(a)the period of 3 months starting with the date of the act to which the complaint relates, or

(b)such other period as the employment tribunal thinks just and equitable.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a)the period of 6 months starting with the date of the act to which the proceedings relate, or

(b)such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a)conduct extending over a period is to be treated as done at the end of the period;

(b)failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a)when P does an act inconsistent with doing it, or

(b)if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

136. Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

(5) This section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to—

(a) *an employment tribunal…*

15. We were referred to precedent cases by Mrs Callan and Mr Stubbs in their joint bundle of authorities. We considered all the following case law that was presented before making our decision:

15.1. **Shamoon** [2003] ICR 337, HL pp2-50;

15.2. **Robertson v Bexley** [2003] IRLR 434, CA pp51-55;

15.3. **Rihal v LB of Ealing** [2004] IRLR 642, CA pp56-65;

15.4. **Madarassy** [2007] ICR 867, CA pp66-95;

15.5. **Land Registry v Grant** [2011] ICR 1390 CA pp96-111;

15.6. **Abertawe BM Uni Health Bd v Morgan** [2018] ICR 1194, CA pp112-124; and

15.7. **Leicester City Council v Parmar** [2024] EAT 85 pp124-161;

The issues

16. The issues in the claim were as set out in the case management order of 27 July 2023 [99-103] based on the draft List [104-106], but with the removal of the issues concerning the late submission of the respondent's response.

17. It was agreed that the issues in the case were:

Jurisdiction

1. *Any complaint which took place on or before 24 August 2022 bracket being three months before the date the claimant contacted ACAS for mandatory early conciliation bracket is primer first year out of time.*

2. *In respect of any complaints which are out of time, do they form part of a continuing act, taken together?*

3. *If the complaints were not submitted in time, would it be just and equitable to extend time?*

Harassment

4. *Did the respondent engage in the conduct as set out in paragraph 50 (a – l) the course of 15 have anything to fix registered a cheque claimant's Grounds of Complaint?*

5. *If so, was that unwanted conduct?*

6. *If so, did it relate to the protected characteristic of race and/or religious belief?*

7. *Did the conduct have this purpose or effect (taking into account the claimant's perception, the other circumstances of the case whether it is reasonable for the conduct to have that effect) of violating the claimant's dignity, creating an intimidating, hostile, degrading, humiliating or offensive environment for him?*

Direct Discrimination

8. *Did the respondent subject the claimant to the treatment set out in paragraph 52 (a – f) of his Grounds of Complaint?*

9. *If so, are the named comparators set out at paragraph 53 of the claimant's Grounds of Complaint suitable and appropriate?*

10. *If not, would it be appropriate to rely on a hypothetical comparator?*

11. *Was the claimant treated less favourably than a named comparator and/or hypothetical comparator was/were treated or would be treated?*

12. *If so, was the less favourable treatment because of the claimant's race and/or religion and belief?*

13. *What was the reason for the less favourable treatment?*

14. *Has the claimant met his burden of proof in establishing a prima facie case of discrimination?*

15. *Does the respondent discharge its burden of proof in establishing a non-discriminatory reason for the treatment or was it because of the claimant race and/or religion and belief?*

Remedy

16. *Has discrimination occurred and if so, should the Employment Tribunal make a declaration to that effect?*

17. *Should the Employment Tribunal make an award for injury to feelings?*

17.1. what band should any award fall into?

17.2. what award would be just and equitable in the circumstances?

18. Is the claimant entitled to any other compensation or relief?

19. Is the claimant entitled to interest?

20. Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

21. If not, what period of loss should claimant be compensated?

18. As we have dismissed all the claimant's claims, there is not requirement for us to list a remedy hearing.

The Hearing

19. The hearing started at 2:00pm on the first day. We had completed our reading on the first morning.

20. It was agreed that the two additional documents submitted to the Tribunal on 5 July 2024 should be added to the bundle. The first document, a Police Standards Department (PSD) Enquiry Log spanning the period 25 September 2022 to 12 January 2023 was given page numbers 347 to 379 in the bundle. It was agreed that the second document, a Record of Interview dated 8 December 2022, would be given page numbers 380 to 426.

21. It was also agreed the statement of Inspector Chambers and additional statements from DS Lynam, Sgt Palfreyman, PC Gleghorn, and PC Jago would be added to the witness evidence as the four statements from the respondent addressed the evidence raised in Inspector Chambers' witness statement.

22. We were concerned that we were listed for five days to deal with evidence from two witnesses from the claimant and eight witnesses for the respondent. Four of the respondent's witnesses had submitted supplementary statements. The parties had produced an agreed timetable that we were able to stick to. We heard evidence on

the first afternoon until the fourth afternoon. We heard closing submissions on the fifth morning and advised the parties that we would reserve our judgment on liability, but deal with any **Chagger** points that arose, and list a remedy hearing if one was required.

23. The claimant gave evidence from 2:16pm on the first day until we closed the hearing at 4:25pm. He gave evidence on affirmation and produced a witness statement dated 14 May 2024 that consisted of 28 pages and 164 paragraphs as his evidence in chief. We took breaks during the hearing approximately every hour.

24. In answer to supplementary questions from Mrs Callan, the claimant sought to amend a date in paragraph 66 of his witness statement from 23 May 2022 to 27 May 2022, and add a date to paragraph 67 of his witness statement for the matters alleged therein: 26 May 2022. At the start of every break and at the end of the first day, we gave the claimant the usual warning not to speak to anyone about the case.

25. We repeated the warning to all other witnesses during any break in their evidence.

26. The hearing started at 10:10am on the second day. The claimant was cross-examined until 12:50pm. The Tribunal asked the claimant some questions and he was re-examined by Mrs Callan. We broke for lunch at 1:17pm.

27. We resumed at 2:15pm when we heard the evidence of Inspector Keith Chambers, who gave evidence in support of the claimant's claim on oath and produced a witness statement dated 21 June 2024 that consisted of 28 paragraphs and 8 pages as his evidence in chief. Inspector Chambers deleted a sentence from his witness statement at paragraph 18. He gave evidence until 3:06pm and was asked some questions by the Tribunal. There was no re-examination. The witness was released with the consent of the respondent.

28. We then heard evidence from Sergeant Gary Palfreyman, who was the claimant's direct Line Manager in Group 2, and who gave evidence on oath, and produced two witness statements. The first was dated 7 May 2024 and consisted of 17 paragraphs over 5 pages. The second witness statement was dated 3 July 2024 and consisted of 10 paragraphs over 3 pages.

29. Sgt Palfreyman gave evidence until 4:25pm. He was asked some questions by the Tribunal. The witness was released with the consent of the claimant.

30. During the day, the Tribunal had received an email from the respondent's solicitors that Police Constable Maddison Gleghorn, who had produced two witness statements, was unable to attend the hearing because of medical matters that were addressed in a letter from her GP dated 9 July 2024. Her attendance was excused.

31. The third day of the hearing started at 10:05am with the evidence of Police Constable Marc Jago who gave evidence on oath and produced two witness statements. The first was dated 16 May 2024 and consisted of 17 paragraphs over 6 pages. The second witness statement was dated 30 June 2024 and consisted of 12 paragraphs over 4 pages. PC Jago gave evidence until 12:05pm. We took lunch at 12:05pm and the witness was released with the consent of the claimant.

32. On the resumption at 1:05pm, we heard the evidence of Detective Sergeant Abigail Lynam who gave evidence on oath and produced two witness statements. The first was dated 29 April 2024 and consisted of 25 paragraphs over 8 pages. The second statement was dated 3 July 2024 and consisted of 12 paragraphs over 4 pages.

33. During Mrs Callan's cross-examination of DC Lynam, she asked a question of the witness that asked her to agree that the community is shocked by the idea of anal sex. We took a short break to discuss the question and returned to advise Mrs Callan that we had agreed that she could not put the question she had asked to the witness, as it was based on a premise that we found not to be accurate. We asked Mrs Callen to rephrase the question, which she did.

34. Mrs Callan's cross-examination of the witness ended at 4;02pm. The Tribunal asked some questions and Mr Stubbs asked some re-examination questions before we closed for the day at 4:06pm. The witness was released with the consent of the claimant.

35. The fourth day began at 10:05am with the evidence of Police Constable Kate Northridge, who gave evidence on oath and produced a witness statement dated 15 May 2024 consisting of 15 paragraphs over 4 pages. She gave evidence until 11:03am. The Tribunal asked the witness sone questions and Mr Stubbs asked her

one re-examination question. The witness was released with the consent of the claimant.

36. We took a break and, on the resumption, heard the evidence of Police Constable Simon Hickson, who gave evidence on oath and produced a witness statement dated 30 April 2024 that consisted of 14 paragraphs over 4 pages. The witness was asked questions by the Tribunal but there were no re-examination questions. The witness ended his evidence at 11:36am and was released with the consent of the claimant.

37. The next witness for the respondent was Police Constable Lauren Clayton, who gave evidence on oath and produced a witness statement dated 28 April 2024 that consisted of 12 paragraphs over 3 pages. The witness was cross-examined by Mrs Callan and the Tribunal asked her some questions. There was no re-examination. The witness stopped giving evidence at 11:52am and was released with the consent of the claimant.

38. The respondent's final witness had not arrived by the time PC Clayton's evidence had ended, so we took an early lunch and reconvened at 1:00pm when Detective Constable Emma Pitfield gave evidence on affirmation. She produced a witness statement dated 13 May 2024 that consisted of 11 paragraphs over 4 pages. The witness was cross-examined by Mrs Callan and the Tribunal asked her some questions. The witness was asked some re-examination questions and was released with the consent of the claimant at 1:41pm.

39. Mr Stubbs formally submitted the two statements of Police Constable Gleghorn. We can give little weight to witness evidence of a witness who does not attend the Tribunal. Little weight does not mean no weight. That was the end of the hearing on the fourth day.

40. We discussed closing submissions with counsel, and it was agreed that they would submit closing submissions and exchange the same on the fifth morning. We advised the parties that we would reserve our decision. We received an agreed bundle of authorities and Mr Stubbs's submissions on the evening of the fourth day but did not look at them until the fifth morning.

41. We received Mrs Callan's submissions at 8:47am on the fifth morning of the hearing. We read the submissions.

42. We opened the hearing on the fifth day at 10:39am, after agreeing to delay the start at the request of Mrs Callan. We heard the closing submissions of Mr Stubbs and Mrs Callan and spent the rest of the day considering our decision.

43. We convened on 15 July to continue our deliberations by remote video link and finalised our decision as it appears in this Judgment and Reasons. Before our deliberations, we considered Chapter 8 of the Equal Treatment Bench Book, particularly pages 251 to 256 that relate to Islamophobia.

Note from EJ Shore

I offer my sincere apologies to the parties, their representatives, the witnesses and to my colleagues for the excessive delay in producing the Reserved Judgment and Reasons. The fault is entirely mine. At the time of the hearing and since, I have had several family matters to deal with that have limited the time I have had available to complete the Judgment. Those circumstances together with my ongoing workload have caused the delay.

Findings of Fact

Preliminary Comments

44. All findings of fact were made on the balance of probabilities. If a matter was in dispute, we will set out the reasons why we decided to prefer one party's evidence over the other. If there was no dispute over a matter, we will either record that with the finding or make no comment as to the reason that a particular finding was made. We have not dealt with every single matter that was raised in evidence or the documents. We have only dealt with matters that we found relevant to the issues we have had to determine.

45. No application was made by either side to adjourn this hearing to complete disclosure or obtain more documents or call additional evidence, so we have dealt with the case based on the documents produced to us, the witness evidence produced, and the claims as set out in the List of Issues [104-106].

46. We have dealt with the jurisdictional issues about time limits at the end of our deliberations. We have dealt with the findings of fact in respect of the factual allegations made by the claimant in his Grounds of Complaint [40-52] in the order that the claims appear in the List of Issues.

47. The claimant's claims are expressed as being in the alternative as claims of race and/or religious belief discrimination. The Equal Treatment Bench Book on Islamophobia notes that the All-Party Parliamentary Group (APPG) on British Muslims recommended adopting the following definition of Islamophobia:

> *"Islamophobia is rooted in racism and is a type of racism that targets expressions of Muslimness or perceived Muslimness."*

48. We have adopted that definition and have therefore dealt with the allegations of race and religious belief discrimination where we have found that the same facts could be interpreted as discrimination because of or related to either protected characteristic.

Preliminary Findings

49. We find that the claimant's written evidence had a tendency towards exaggeration. We also find that his evidence was quite vague in respect of many of his claims. We found that the claimant rowed back on several of the strong assertions that he made in his witness statement when under cross-examination.

50. We were mindful of the possibility that the respondent's witnesses could have been tempted to confer about their evidence in a misguided attempt to protect "the Job." However, we find that the written and oral evidence of the respondent's witnesses showed no signs of obvious collusion; there were discrepancies in some of the written and oral evidence.

51. We also note that Inspector Chambers was willing to give evidence on behalf of the claimant, which does not support a thesis that the respondent's employees closed ranks (no pun intended).

52. We have placed weight on the email that the claimant wrote to Inspector Chambers on 15 September 2022 [217-221], following a meeting that they had as being a more contemporaneous record of his experiences than his witness statement that was

dated 14 May 2024, nearly two years after he resigned. We note that there is no mention or criticism of the training or supervision that the claimant received from PC Jago and Sgt Palfreyman. Neither does the claimant allege that he has spoken to Sgt Palfreyman about the problems of discrimination he had experienced on Group 2.

53. We will deal with Inspector Chambers' witness evidence in the preliminary comments, as it seeks to show facts from which we are invited to draw an inference about some of the actors in this case.

54. The primary evidence that Inspector Chambers gave is about PC Jago and PC Lynam. His evidence suggests he was concerned when he heard that PC Jago would be the claimant's Tutor because of *"his conduct towards a Sergeant on the team, who was a Muslim female."* Inspector Chambers stated that it had come to his attention that PC Jago had been extremely rude and belligerent towards the Sergeant and had actively sought to countermand her orders to the team.

55. Inspector Chambers said he dressed down the whole team about their conduct towards the Sergeant and then spoke to PC Jago individually. He alleged that PC Jago apologised and said his conduct was unacceptable.

56. Inspector Chambers said that PC Jago had an issue with the Sergeant because of her race and/or her sex. He spoke to the Sergeant *after* the incident and "…she said she believed it was because of her race, which reflected my own view of the reason for PC Jago's conduct."

57. PC Jago's second statement addressed Inspector Chambers' statement and identified the Sergeant in question as Sgt Khokhar. PC Jago gave a much more detailed account of the incident. He accepted that the team were given a dressing down and that he was then invited into an officer with Inspector Chambers and Sgt Khokhar. He said he apologised to Sgt Khokhar if his actions came across as rude or undermining.

58. PC Jago stated that at no time did Inspector Chambers tell him that he thought PC Jago's behaviour was because of race or gender. He was not challenged on that evidence.

59. Our finding on Inspector Chamber's evidence is that it has a number of logical inconsistencies that he did not address:

    59.1. Why did his statement not set the context of the meeting he called with the team;

    59.2. It seems highly unlikely that Inspector Chambers would have conducted the meeting with the team and, especially, the individual meeting with PC Jago, without first asking Sgt Khokhar why she thought PC Jago had acted as he had;

    59.3. How had he come to the view that PC Jago had been motivated to act by racism *before* he had spoken to Sgt Khokhar about her thoughts on his motivation;

    59.4. Why did Inspector Chambers agree that PC Jago should be the claimant's Tutor if he believed he was a racist who would be Tutoring an Asian probationary officer who, according to Inspect Chambers himself, had struggled at College and was coming to a pressurised station;

    59.5. Why did Inspector Chambers not escalate the alleged racist misconduct;

    59.6. Why did Inspector Chambers not check on the claimant's wellbeing during his probation if he had the concerns alleged.

60. We find that PC Jago's explanation of the circumstances in which the dressing down from Inspector Jago arose was more credible and consistent than Inspector Chambers' account.

61. We take note of the facts that:

    61.1. Inspector Chambers said he did not see or hear any racism at Pear Tree Station;

    61.2. He received no complaints of racism from a member of the public; and

61.3. He encouraged PC Lynam for promotion, encouraged her to act up as a Sergeant, and selected her as Tutor of probationers, and

61.4. Did not want her to leave the team. We find these actions to be inconsistent with the criticism he makes of her in his witness statement.

62. We find that we can draw no inferences from the evidence of Inspector Chambers.

Findings

Harassment related to Race and/or religious belief.

Paragraphs 50 (a-l) Grounds of Complaint [50]

50(a)

60. This claim in the List of Issues is that, on 29 March 2022, the claimant was called a "Road Man" by PC Gleghorn. In his witness statement (§29) the claimant's evidence was:

> *"On one of my first days at Pear Tree, as soon as I entered the room, PC Maddy Gleghorn shouted, "You're not a Road Man now!" in front of everyone."*

61. The claimant's pleaded case (§11 Grounds of Complaint [42]) was that PC Gleghorn shouted the words quoted above in front of everyone in the briefing room.

> *"The claimant found the comment very degrading and offensive, understanding this being a common street term for drug dealer."*

62. Our first finding is that the witness statement does not specify a date, whereas the allegation in the Grounds of Complaint and List of Issues specifies 29 March 2022 as the date on which the incident occurred. The removal of a specific date between the agreed List of Issues and the witness statement weakens the credibility of the allegation because the claimant originally stated the date of the alleged incident and then resiled from that position.

63. We find that the claimant's witness evidence on the allegation lacks any sort of

context. The claimant's evidence in chief was that he had never spoken to PC Gleghorn before. The allegation is that "Road Man" is street slang for a drug dealer. The claimant's evidence in chief (§30) was that the words "*…implied that I resembled a drug dealer and I believed that this was based on my appearance or ethnicity, or because I am Asian I must be associated with criminal behaviour*." That was not his pleaded case.

64. PC Gleghorn's evidence in chief (§6) was that she wasn't working the same shift as the claimant on 29 March 2022 and that she would not use the phrase when speaking to anyone, whether or not she knew them.

65. We find that the claimant accepted under cross-examination that the term could be applied to people of all races and all religions.

66. We find that it is unlikely that PC Gleghorn would have used the alleged phrase by shouting it across a busy room to the claimant, who she had never previously met.

67. We find that the phrase is not related to the claimant's ethnicity or religious belief as the claimant has not shown facts from which we could conclude in the absence of explanation that it was either said to him or that, of it was said to him, it was related to his race or Muslim belief.

50(b)

68. This claim in the List of Issues is that, in April 2022, the claimant was told that there was a problem with the way he spoke. The claimant's evidence in chief about the allegation (§§44-48) named PC Lynam as the officer who made the statements to the claimant about the way he spoke.

69. We find that the claimant's evidence in chief did not specify what it was about the way that he spoke that PC Lynam was criticising other than to say that he needed to "*…sharpen up…*" his language and "*...do something about the way you speak*." If the words were said, we find that they could have been a referral to the claimant's accent or to the words he used.

70. PC Lynam's evidence in chief (§§7-8) was that she spoke to the claimant about his use of the word "ghetto" after going to an incident where victims were present. She

said she reminded the claimant to speak professionally with victims. PC Lynam denied making the second comment about sharpening up the claimant's language.

71. We prefer the evidence of PC Lynam to that of the claimant on this issue as we find it to be more likely to be accurate because her account was more consistent than the claimant's. We find it more likely that PC Lynam spoke to the claimant about the words he used when speaking to victims at a crime scene, which did not relate to his race or religious beliefs, than it was that she spoke to him about something in the way he spoke that related to his race or religious beliefs.

72. We find that at its highest, the claimant's evidence about the incident has shown facts from which we could conclude in the absence of an explanation that the comments could be related to his race but not his religious belief. The claimant fails to switch the burden of proof in relation to the religious belief allegation. We considered whether the conversation that PC Lynam had with the claimant was motivated by his race but found that PC Lynam's evidence shows that the respondent did not contravene section 26 of the EqA.

50(c)

73. This claim in the List of Issues is that, in April 2022, the claimant was humiliated for eating his home-made food. The pleaded claim was at §17 of the Grounds of Complaint:

> *"When warming up his meal, PC Lynam made a horrible scene and noises of "EUGGGH" with a reference to the claimant's meal."*

74. The claimant's evidence in chief (§§51-53) was that the meal he had brought from home was mac and cheese.

75. PC Lynam denied making the comment (§9 of her witness statement).

76. We find that there is no connection between the food and the claimant's religion or race; mac and cheese is not specifically or remotely an Asian or Muslim dish. The cross-examination of PC Lynam on the point asked her if the strong smell of cheese caused her to make the alleged comment.

77. It is possible that the comment, if made, was part of a pattern of harassment against the claimant related to race and/or religious belief, but we find that the pleaded case and evidence in chief do not show facts from which we could conclude that the claimant was harassed contrary to the Equality Act 2010.

78. Or finding on the evidence is that we prefer PC Lynam's evidence that the comment was not made, so if the burden of proof had switched to the respondent, our finding would have been that the respondent did not contravene section 26 of the EqA.

50(d)

79. This claim in the List of Issues is that in May 2022, PC Lynam said to the claimant "Shaf, you're shit." The pleaded claim (§§18-20) was that:

> *"Throughout the claimant's time working in Group 2 PC Lynam made repeated references to the claimant saying "Shaf, your* (sic) *shit". By way of example, in May 2022, the claimant was slightly late on duty…On attending the briefing room, in front of the whole team PC Lynam stated "Shaf, you're shit!"*

80. We find that the claim as set out in the List of Issues is inconsistent with the pleaded claim. The claimant's evidence in chief (§§60-62) reverted to the allegation that the phrase was used repeatedly by PC Lynam and that the claimant had challenged her about its use in "early May 2022".

81. We find that we prefer PC Lynam's evidence to that of the claimant. We make that finding because the claimant's evidence was inconsistent between the pleaded case, the List of Issues, his written evidence, and his oral evidence. The claimant's written evidence did not mention the alleged incident in the briefing room. We find that we were not shown facts from which we could conclude that the claimant was harassed contrary to the Equality Act 2010.

50(e)

82. This claim in the List of Issues is that on 23 May 2023, the claimant was subject to comment and questioning about anal sex.

83. The pleaded case (§§21-22 Grounds of Claim [43-44]) was that the claimant was working a Night Time Economy (NTE) shift on 23 May 2023. He was working in the office with PC Lauren Clayton, PC Lynam PC Kate Northridge when PCs Lynam and Northridge had a loud conversation about matters relating to the shift.

84. The claimant's witness statement (§§69-70) alleged that PC Lynam directed a question to him, *"Anal sex on a Thursday is that right Shaf?"* The claimant challenged the comment and PC Lynam responded *"Oh, right, anal sex is not allowed."* The claimant alleges that as he had recently observed Ramadan, PC Lynam was aware of his faith and made the comments to humiliate him because of his faith.

85. We find that PC Lynam made the comments as alleged. We find that the claimant heard the comments. We find that whether the comments were directed at the claimant is irrelevant: the words of section 26 refer to the unwanted conduct having the purpose or **effect** (our emphasis).

86. We make our finding above because we find that PCs Lynam and Northridge admitted using the phrase, *"No anal on Thursday"* as an in joke. PC Lynam's witness statement (§12) says as much. PC Longridge's statement (§5) says the same. We find the rebuttals of the claimant's allegations by PCs Lynam and Longridge to be somewhat mealy mouthed and weak.

87. We find that there was no dispute that anal sex is forbidden in the Muslim faith. We therefore find that conduct had the effect proscribed by section 26 when considering the perception of of the claimant, the other circumstances of the case and whether it was reasonable for the conduct to have that effect.

88. We find that there is no connection between the act complained of and the claimant's race.

89. We find that there are facts from which we could decide, in the absence of any other explanation, that the respondent contravened section 26 of the EqA. We find that the respondent has not shown that it did not contravene section 26.

50(f)

90. This claim in the List of Issues is that in May/June 2023, the claimant was asked by PC Northridge to look at photographs of "Black female suspects" and comment on whether he liked them.

91. The claim as pleaded (§26 [45]) was that:

    81.1. PC Northridge showed the claimant a number of suspects;

    81.2. They were all Black and female;

    81.3. PC Northridge asked the claimant if he liked any of them;

    81.4. The claimant asked what was wrong with them;

    81.5. PC Northridge then asked the claimant about one suspect, saying *"What do you like about her?"; and*

    81.6. The claimant was offended and embarrassed by the conversation and alleges the line of questioning was inappropriate and racially motivated.

92. The parties agreed that the factual context was that the incident concerned a game, the polite name of which is "snog, marry, avoid". It was also agreed that PC Northridge showed the claimant photographs of female sex workers who were of various ethnicities; Black, Asian, and White.

93. The claimant's evidence in chief (§§82-83) was that *"PC Northridge…showed me photos of several suspects, all of whom were black females. [She] then asked me if I liked any of them, which left me puzzled and prompted me to ask her what was wrong with the photos."*

94. The claimant alleged that PC Northridge asked questions about one specific photograph, asking him what he liked about her. The claimant alleged that PC Simon Hickman was present when the exchange took place and remained silent. PC Hickman did not make any comment on the incident in his witness statement. The incident was not directly addressed in cross-examination, but Mr Stibbs asked the witness if he had witnessed anything discriminatory. PC Hickman relied "No."

95. PC Northridge's statement (§6) was that *"Some officers, myself included, would jokingly play 'snog, marry, avoid' with the pictures."* She accepted that she would have asked the claimant *"…which one he would 'snog, marry or avoid."*

96. The single point of dispute on the facts, therefore, is whether PC Northridge pointed to a photograph of one Black sex worker and asked the claimant what he liked about her.

97. We make the following findings:

    87.1. The 'game' was crass and inappropriate. It casts no one who participated in it in a good light.

    87.2. It is possible that the conduct that is agreed could constitute harassment of a sexual nature under section 26(2) of the EqA 2010. No such claim was made by the claimant.

    87.3. The claimant's allegations were inconsistent between his Grounds of Complaint, the List of Issues, his witness statement, and his oral evidence. The inconsistency has an adverse effect on our assessment of his credibility.

    87.4. The claimant was directed to pictures of sex workers of mixed ethnicity and colour.

    87.5. We find that the claimant's inconsistency on the colour of the sex workers whose pictures he was shown, (he alleged they were all black, only to agree that they were of mixed race and colour), undermines his credibility on the point about being directed to a picture of a Black sex worker and asked a question about her. We find that that part of the claimant's allegation is not credible.

    87.6. We agree with the claimant that the questions were inappropriate.

    87.7. We find that the claimant's case at its highest does not show facts from which we could conclude in the absence of explanation that the respondent had contravened section 26.

87.8. We make the finding above claimant makes no allegation that the incident was an act of religious belief discrimination in his claim. His witness statement does not explain how the allegation was harassment related to race or religious belief.

87.9. We find that this claim fails.

50(g)

88. This claim in the List of Issues is that *"In May 2022 PC Jago's repetition of the words, 'he's a fucking black bastard!' in front of the claimant."*

89. The claim is set out in paragraph 27 of the Grounds of Complaint and explains that the claimant attended a domestic incident involving a Black male and a White female with PC Jago in or around May 2022. PC Jago recorded the attendance on a Body Worn Video (BWV). It was alleged that during the incident, the female called her partner a *"fucking black bastard."*

90. After the incident, it is alleged that PC Jago listened back to the recording and repeatedly repeated the words, "He's a fucking black bastard!"

91. The claimant's witness statement (85-85) was consistent with the Grounds of Complaint. PC Jago denied any recollection of the incident and denied that he would have done such a thing. He maintained his position under cross-examination.

92. We find the claimant's evidence to lack internal logic. The majority of the Tribunal find it unlikely that PC Jago would have acted in the way alleged by saying the words alleged in the manner and tone alleged. We find PC Jago's denial to be more credible than the events that the claimant outlines.

93. The lack of any details of the incident (date, location, time, outcome) in a witness statement that is 28 pages and 164 paragraphs long from the claimant undermines his factual credibility.

94. Ms Andrews was in the minority on the Tribunal by finding that PC Jago did say the words but did not find that they had been said in the manner and tone alleged. She did not find that the allegation was made out.

95. We find that the facts showed facts from which we could conclude that there had been a breach of section 26 but that the respondent had shown that it did not contravene the provision.

50(h)

96. This claim is about PC Lynam's alleged comments about two Custody Sergeants in May 2022.

97. The claim is set out in paragraph 28 and 29 of the Grounds of Complaint [45]:

> *"…in or around end of May/beginning of June 2022 PC Lynam was openly discussing Custody Sergeants at Pear Tree PS and stated, 'where is the equality there, they are all black and ethnics working on the custody team, the so called 'A-Team'. This was a reference to the two Custody Sergeants who are both of Pakistani heritage and Muslim."*

98. We find the claimant's evidence on this allegation to be inconsistent and not very credible at all. We find PC Lynam's evidence to be much more consistent and credible. Neither the List of Issues nor the Grounds of Complaint name the Custody Sergeants. Neither does the claimant's witness statement (87-88), which does add the comment that PC Lynam referred to the Custody Team as *"…the all-black and Asian show."*

99. PC Lynam's witness statement (15) rebutted the claimant's allegations on the following grounds:

    99.1. She had used the phrase "A-Team" in a sarcastic way about another Custody Team, who she believed were unreasonably slow at processing suspects through custody.

    99.2. The shift she was referring to as the "A-Team" were majority White.

    99.3. The respondent had approximately 12 Custody Sergeants at the time. PC Lynam believed that two were female, one was Black, and one was Asian Muslim. She did not say as much, but we assumed that she meant that the rest of the shift were White.

99.4. It therefore made no logical sense to make the comment attributed to her about this team, as all but two of them were of the same ethnicity as her.

100. Rather than dealing with the evidence in witness statements that related to the documents, the parties ended up trying to establish facts that contradicted one another by cross examination.

101. The claimant's position was that a document produced for a PSD investigation into PC Lynam that was referred to in a Report dated 25 September 2022 [347-426] identified 3 Custody Sergeants (described as BAME, which we appreciate is not a term that is universally accepted) between 29 March 2022 and 18 June 2022 [347]. These were Sgt Sophia Blake, Sgt Ali Mudasar, and Sgt Amreen Khokhar.

102. The report undertook an analysis of when the three Custody Sergeants had been working when the claimant and PC Lynam were on duty. It identified 8 dates between 11 May 2022 and 18 June 2022 when a combination of two or more of the 3 Sergeants were working on shifts that crossed with the claimant and PC Lynam.

103. The claimant was asked questions about the incident in cross examination:

Q. Are you aware of the ethnic makeup of Custody Sergeants?

A. No.

Q. There are 12 Custody Sergeants, 2 from ethnic minorities.

A. I wouldn't know.

Q. Wasn't the comment [by PC Lynam] of the "A-Team" because some of the Custody Sergeants were so slow at processing?

A. "Where is the equality here now" She referred to Sgt Ali and Sgt Kochhar. There may be another.

It is a fact. She said it to me.

"A-Team" I took to be derogatory.

I though A-Team" was "Asian Team".

104. This was the first time that the claimant had named the Sergeants that he said PC Lynam had made the comments about. It was also the first time that he had said that he thought "A-Team" meant "Asian Team".

105. Mr Stubbs put a supplementary question to PC Lynam about the claimant's assertion that Sergeants Ali and Kochhar worked together. Her response was that this was not possible as Sgt Ali worked in a different custody suite.

106. In answer to cross-examination questions, PC Lynam stated that the Custody Suite for Pear Tree was at St Mary's Wharf, not Pear Tree Station itself. She agreed that she had referred to the "A-Team" because they were awful because they were slow. She denied that there were two Asian Custody Sergeants at St Mary's Wharf; the only two non-white Custody Sergeants were Sgt Blake, who is Black, and Sgt Khokhar, who is Asian. Those two Sergeants always worked the same shifts.

107. I asked PC Lynam who the "A-Team" were. She identified two White British officers by name who predominantly worked at St Mary's Wharf. It is not necessary to name them in these Reasons. This was the first occasion that PC Lynam had named the "A-Team".

108. We found the claimant's claim and evidence in chief to be lacking in detail. We found PC Lynam's account of the matter to be entirely credible. We find that the reference to the documents contained in the DPS report can carry little weight as the documents were not produced and there was no methodology to what information had been requested and whether the shifts that had been identified were for officers working at St Mary's Wharf only, or St Mary's Wharf and the other Custody Suite at Ripley.

109. We find that there were facts from which we could conclude, without an explanation, that there had been a contravention of section 26 but that the respondent has shown that there was no contravention.

50(i)

110. This claim in the List of Issues is that on or about 14 June 2022, the claimant was

accused by PC Lynam of fabricating events recorded in a witness statement.

111. Paragraphs 31 to 35 of the Grounds of Complaint dealt with the facts of this and the next claim. The claimant had arrested a man who was suspected of criminal damage at a pub. The claimant prepared a witness statement that was checked by PC Richardson and Sgt Palfreyman. The claimant then asked PC Lynam to help him upload the statement. PC Lynam read the statement and started to reword it. She then *"…began speaking to the claimant in a loud voice, to ensure that others in the room could here* (sic)*. She accused the claimant of fabricating the events as he had included them in his statement."*

112. We find that this claim is simply misconceived. Factually, PC Lynam told the claimant he had included matters in his witness statement that he had not witnessed. It was agreed that the claimant had written the statement. It was agreed that PC Lynam had read it as she had been asked to upload it. We find that the criticisms of the claimant's draft of the statement were valid and necessary.

113. We prefer the evidence of PC Lynam, which we found to be internally consistent and consistent with the email that PC Lynam sent to Sgt Palfreyman on 17 June 2022 [153]. PC Lynam's account was corroborated by PC Northbridge's witness statement (§13). We find the claimant's account to be a retrospective review of the events of the day with a view to bolstering his claim.

114. The claimant did not dispute the words that PC Lynam noticed and changed. His allegation about the tone and volume of PC Lynam's comments were rebutted by her and PC Northbridge. Sgt Palfreyman gave evidence and commented that if PC Lynam had acted in the manner alleged by the claimant, he (Sgt Palfreyman) would have intervened.

115. We find that there were facts from which we could have concluded that the respondent breached section 26 but that the respondent has shown that it did not breach the provision.

50(j)

116. This claim arises from the same incident as the previous allegation. The claim in

the List of Issues is that on or about 14 June 2022, PC Lynam questioned the claimant about his familiarity with alcohol.

117. We find that, as with the previous allegation, the basic facts of the claim are true, but have been taken out of context by the claimant and given a retrospective gloss of alleged discrimination.

118. We repeat our findings of fact in respect of the previous allegation.

119. We find that one of the faults with the claimant's statement about the incident was that he included a phrase that the suspect smelled of alcohol. We repeat our finding above that the claimant admitted that he had used the phrase. We find that PC Lynam pointed out to the claimant that alcohol does not smell of anything, so the claimant would have left himself open to difficult questions in cross-examination if the case had gone to trial. She suggested that he change the phrase to say that the suspect smelt of intoxicating liquor. This was not disputed.

120. PC Lynam's undisputed evidence was that the claimant had described the suspect as 'drunk', which she said was not how officers were taught to document such matters. Her undisputed evidence was that officers were taught to give examples of behaviours that indicated that a person was under the influence of alcohol, such as slurred speech, glazed eyes or unsteady on their feet, rather than just describe them as 'drunk'.

121. PC Lynam denied making the references to the claimant's religion that he alleges she made. We find her account of the incident to be more likely than the claimant's. We find that it is more likely that PC Lynam asked the claimant about his familiarity with alcohol and its effects because that was a relevant point in the advice she was giving him about writing his statement than it was that she made the comments alleged by the claimant.

122. The other witnesses in the room did not corroborate the claimant's evidence.

123. We find that there were facts from which we could conclude in the absence if explanation that a breach of section 26 could have occurred but that the respondent showed that no contravention occurred.

50(k)

124. The allegation in the List of Issues is that on or about 15 June 2022, PC Lynam singled out the claimant is a briefing.

125. The allegation was set out in paragraph 36 of the Grounds of Complaint [47]:

> *"…PC Lynam was acting up as Sergeant. The claimant attending at the start of the shift in the briefing room. PC Lynam opened the briefing asking if anyone had anything to say, staring directly at the claimant…She then stated that they would 'play a little game' and that they would go round the table asking how many hours sleep they had. She then started with the claimant."*

126. We find this to be an example of the claimant exaggerating events to put a retrospective discriminatory spin on them. PC Lynam's unchallenged evidence was that she asked all officers the question about their sleep as it was a night shift and sleep is an issue.

127. We find that the tenor of all the respondent's witnesses was that PC Lynam could be abrupt with colleagues, irrespective of their colour, ethnicity, or other protected characteristics.

128. The claimant complained to Inspector Keith Chambers in an email dated 6 September 2022 [202-207] following his exit interview. At paragraph 14 of his email [205], the claimant set out details of the incident on 15 June 2022. He wrote that, **"***To me [PC Lynam] is demonstrating her authority and is a bullying approach to the other members of the team.* (sic)*"*

129. The claimant accepted in cross-examination that PC Lynam *"…was known to be abrupt, it was widely accepted, I could not accept that."*

130. We find that there are no facts from which we could conclude in the absence of explanation that the respondent had contravened section 26.

50(j)

131. This claim, that on 16 June 2022, PC Hickman told the claimant that he (the

claimant) could not sit in the office at the empty workstation, was withdrawn by the claimant and is dismissed.

Direct Discrimination Because of Race and/or religious belief.

Paragraphs 52 (a-f) Grounds of Complaint [51]

52(a)

132. This claim was that on 29 March 2022, the claimant was told he would not be added to the Group 2 WhatsApp Group. The claim was withdrawn by the claimant and is dismissed.

52(b)

133. This claim in the List of Issues was that the claimant had been given little or no guidance or assistance to allow him to learn necessary skills and tasks such as statement writing.

134. The factual allegation was set out in the Grounds of Complaint (§13 [42]) and only made specific reference to one incident in early April 2022, when the claimant had attended a road traffic collision and had used a template provided by PC Lynam to create his witness statement. He alleged that he then showed the witness stamen to his Tutor, PC Jago, who rewrote the statement without explaining any errors and without providing guidance or assistance to the claimant. He compares himself to PCs Hickman and Lauren Clayton, who he alleged were provided significant feedback and assistance by PC Lynam and PC Jago. The claimant alleged that this situation continued throughout his posting with Group 2.

135. We find that the factual context of this allegation is that the claimant clearly struggled whilst at Police College. Written evidence of this was an email to Sgt Palfreyman, copied to Inspector Chambers, from PC Jane Clemson-Blythe, dated 15 March 2022 [328-329] concerning the claimant. PC Clemson-Blythe was a Core Trainer at the Police College. She wrote to Sgt Palfreyman as she believed, correctly, that he would be the claimant's Sergeant. The email contained the following comments:

> *"PC Mohammed started out exceptionally well, with his tasks and communication skills during week 1. However, there was a decline in his performance and knowledge from week 2 which has been worrying throughout."*
>
> *"This has resulted in an action plan which has been supported by the federation – he has successfully completed the tasks of passing the exams, and his OST. However I feel I need to make you aware of my concerns."*
>
> *"Over the 20 weeks we have done 4 x exams:*
>
> *He passed only 1 the first time.*
>
> *All others he has had to resit due to lack of knowledge. Although he has passed, this has been marginal.*
>
> *The one he passed first time, he just scraped through and had a considerably lower score than the rest of his class."*

136. The action plan referred to in PC Clemson-Blythe's email [141-143].

137. We find that the evidence, when taken as a whole, also shows that the claimant struggled as a probationary police officer. An example of this is the incident when he wrote that a suspect smelled of alcohol in June 2022.

138. We found Sgt Palfreyman's evidence in his first witness statement about the concerns he had about the claimant's performance in post to be credible. We find that his evidence that the claimant did not raise allegations of discriminatory behaviour by PC Lynam at the 5-week review meeting to be credible. The Policing Education Qualifications Framework (PEQF) Assessment was completed at the 5-week review on 3 May 2022 [198-199].

139. The PEQF also noted:

> *However, as we are now halfway through the tutor period we are going to need to see improvements in a number of areas before any consideration can be given for independent status…There is still a long way to go before*

I feel you will be ready to be independent…"

140. The comment boxes were incomplete on the copy of the form produced, but a full transcript of the comments was in the bundle at page 337.

141. In respect of the road traffic collision incident, we find that the claimant accepted in cross-examination that PC Lynam and PC Jago offered him help in writing his statement. We find that the allegation in respect of that allegation is not made out on the facts.

142. We find that this allegation is one where the claimant has made a sweeping allegation ("people were not helping me") that were not backed up by any further information and which crumbled under the slightest analysis. We also find that the claimant demonstrated an inability to accept criticism of his performance as a police officer under cross-examination.

143. In cross-examination, the claimant confirmed that PC Jago gave him a statement template and interview pack, which he then discussed with him as well as explaining the practical matters and procedures involved in policing. The claimant agreed that PC Lynam helped him with his statements, and he went to her for help.

144. The claimant agreed that PCs Hickman and Clayton were helpful towards him. The claimant agreed that he asked various officers for help, and they helped when he asked. The claimant confirmed that he crewed with about six or seven members of the shift, and they all discussed aspects of his work with him; statement writing, how to do PPNs, how to deal with situations. All this information was tendered by the claimant in cross examination and was not set out in his witness statement.

145. We find that the claimant did not switch the burden of proof as his allegation did not stand up to any scrutiny. We find that there are no facts from which we could conclude in the absence of explanation that the respondent had contravened section 13.

146. Had the claimant switched the burden of proof to the respondent, we would have found that the respondent showed that no contravention occurred.

52(c)

147. This claim in the List of Issues is that, in May 2022, the claimant's Tutor (PC Jago) confirmed that the claimant's Tutor Pack had not been started.

148. The factual allegation was set out in paragraph 25 of the Grounds of Complaint [44] was that the claimant attended St Mary's Wharf Police Station with PC Jago in May 2022. During the visit, PC Jago informed the claimant that he (PC Jago) had not started any of the claimant's Tutor Pack. He explained to the claimant that he had not opened the pack yet. The Tutor Pack is a document of record kept by a Tutor on a probationer that is used to monitor the probationer's competencies. It was expected that a probationer would attain all the required competencies by the end of the 10-week tutorship period.

149. PC Jago gave unchallenged evidence (§15 of his witness statement) that the Tutor Pack detailed the main duties of a police officer, such as witness statements, searches, and handcuffing technique.

150. We find this allegation to be misconceived. PC Jago accepted that he had not started the claimant's Tutor Pack in May 2022. He stated that he would sign off an officer when they had attained a competency, but that the claimant did not reach the required competency in any of the categories. Accordingly, PC Jago's evidence was that he had not started the Pack because there was nothing to enter in it. PC Jago's evidence was credible.

151. It was not the claimant's case that he met any of the competencies. PC Jago's evidence that the Pack could be completed at any time was not disputed.

152. We find that PC Jago discussed the competencies with the claimant and that the claimant was well aware of PC Jago's assessment of his shortcomings, even if he did not accept them. We found PC Jago's rebuttal of the cross-examination questions put to him by Mrs Callan to be credible. The claimant's probationary period was extended on or about 1 June 2022 and the Pack did not need to be completed until 10 weeks after the extension.

153. We find that a hypothetical comparator's Pack would not have been started in the

circumstances outlined by PC Jago. We find that the claimant provided no evidence in respect of one of his named comparators, PC Lauren Clayton. The other named comparator, PC Hickman, was asked no questions about how he was treated during his probationary period.

154. We find that the claimant did not switch the burden of proof as his allegation did not stand up to any scrutiny. We find that there are no facts from which we could conclude in the absence of explanation that the respondent had contravened section 13.

155. Had the claimant switched the burden of proof to the respondent, we would have found that the respondent showed that no contravention occurred.

52(d)

156. The claim in the List of Issues is that June 2022, the claimant's induction/tutor period was extended without proper process or rationale.

157. The claim in the Grounds of Complaint (§30 [46]) was that the claimant was due to complete his 10-week induction on 1 June 2022. In a meeting with PC Jago and Sgt Palfreyman on or around 1 June 2022, he was informed that his induction period was to be extended for a further 10 weeks. The decision was never formalised, the claimant never received any documentation or record to understand the reason why the tutor period was extended.

158. The claimant's witness statement (§§92-93) did not expand on the factual allegation in the Grounds of Claim.

159. We make the following findings of fact:

    159.1. It was undisputed evidence that probationers had a 5-week review and a 10-week review.

    159.2. We repeat our findings under the claim of direct race discrimination in paragraph 52(b) of the Grounds of Complaint above in respect of about the claimant's struggles at Police College and the comments recorded about the level of the claimant's performance. We find that

the comments were made to the claimant in the meeting, even if he was not subsequently given a copy of the form [198-199].

159.3. We find that the claimant had to know that he was struggling because of the feedback given in the 5-week review.

159.4. PC Jago gave unchallenged evidence that other probationer officers at Pear Tree Station had their probation extended.

159.5. It was undisputed evidence that an alternative to extending probation would be a formal Regulation 13 performance process.

159.6. It was agreed that the purpose of the 10-week review was to assess the claimant's suitability to work independently as a police officer.

159.7. The details of the procedure were not clear to the Tribunal or, seemingly to some of the officers who were involved in the process. For example, we were not told what the standard was that the probationers were judged against. PC Jago said he was not given training as a Tutor. PC Lynam said she had received training as a Tutor.

159.8. The PEQF in respect of the 10-week review on 7 June 2022 [200] was not complete in that it did not contain all the comments made in the narrative boxes of the form. However, we accept that the content of the narrative boxes was set out in the bundle at page 337.

159.9. We find that Sgt Palfreyman read the comments to the claimant at the meeting as we find his evidence to be credible.

159.10. We record some surprise that a copy of the PEQF from the 5-week and 10-week reviews were not shared with the claimant but find that this process was applied to all officers. The procedure employed by the respondent to deal with 5-week and 10-week reviews was not good, but it was not applied to the claimant in a way that was less favourable to the claimant when compared to actual or hypothetical comparators.

159.11. We find that there were not facts from which we could conclude in the absence of an explanation that the respondent had breached section 13. We find that there was a rationale for the decision and a process under which the decision was arrived out, even though it was poorly understood. However, it applied to all probationers.

159.12. If we had found that the burden of proof had switched to the respondent, we would have found that the respondent had shown that it did not breach section 13.

50(e)

160. The allegation in the List of Issues is that from March 2022 to June 2022, the claimant was ostracised and excluded from team and social events (§§12, 37, and 40 of the Grounds of Complaint [42, 47-48]). Paragraph 12 of the Grounds of Complaint was the allegation that the claimant had been excluded from the Group 2 WhatsApp group, which he withdrew.

161. Paragraph 37 of the Grounds of Complaint was the harassment allegation that on 16 June 2022, PC Hickman had harassed the claimant at paragraph 50(j) of those claims, which was also withdrawn by the claimant.

162. The remaining factual allegations were:

162.1. The claimant was not included in a regular sandwich round. It was alleged that Group 2 would regularly order bacon sandwiches and, knowing that the claimant was of the Muslim faith, he was not included and never asked if he wanted an alternative. He alleged PC Lynam smirked at the claimant whilst the Group ate their bacon sandwiches to further exclude him.

162.2. The claimant was not invited to any out of work events or team meetings.

162.3. The claimant was made to feel he could not sit with the team in the briefing room. The allegation against PC Hickman (subsequently withdrawn) was repeated and it was alleged that PC Northridge also

prevented the claimant from sitting next to her.

162.4. PC Lynam avoided sitting near of next to the claimant, making her choice of a seat away from the claimant obvious.

163. We find that the credibility of the remaining allegations is weakened by the withdrawal of the allegations relating to the WhatsApp group and PC Hickman.

164. We find that the evidence demonstrated that sandwich runs were not frequent occurrences. The claimant accepted in cross-examination that he accompanied PC Lynam on a run to McDonalds for the team and attended a kebab shop with team. This is not indicative of his being excluded from sandwich runs.

165. The claimant's evidence in cross-examination referred only to one incident when members of the team had gone out and brought back bacon sandwiches. The claimant accepted that it was unpremeditated, which we took to mean that there was no announcement to the team that they were going. We take judicial notice that no shop sells only bacon sandwiches and that other alternatives that the claimant could eat would have been available. The claimant could have asked for a halal or vegetarian alternative.

166. We find there are facts from which we could conclude that the respondent contravened section 13 in respect of the bacon sandwich allegation, but not the generic allegation that he was not included in the sandwich round.

167. The allegation that PC Lynam *"…**would often*** [our emphasis] *glare at me and smirk while they ate their bacon sandwiches…"* was not put to PC Lynam. We find that PC Lynam vehemently denied the allegation in (§19) of her witness statement and find that the respondent has showed that no contravention occurred. The claimant's credibility was damaged by referring to something that allegedly happened often when his oral evidence made no such claims.

168. We find that the claimant's only evidence in chief about his exclusion from social events was at paragraph 116 of his witness statement, in which he stated:

> *"I was **constantly*** [our emphasis] *excluded from out-of-work events and team outings. One time, I was invited to a day out organised by one of the*

departing shift members, PC Corkhill (sic)*. However, I was unable to attend because it coincided with Ramadan, which I had already explained to the team. Despite offering to join future events, my exclusion persisted, highlighting a lack of effort to accommodate my religious practices and a lack of consideration for including me in team activities."*

169. We find the actual circumstances to be somewhat different from the claimant's witness statement. As with many of the claimant's allegations, there was an element of truth in the allegation that quickly evaporated under cross-examination and/or the more credible evidence of the respondent's witnesses.

170. We find that in the relevant period, there were only two team social events:

    170.1. The first was a retirement function for PC Cork. No date was given for the event. The claimant's evidence in chief acknowledges that it was a retirement function. By definition, the timing of the event would have been tied to a date around PC Cork's retirement.

    170.2. The claimant's evidence in chief was that he was unable to attend because of Ramadan. We take judicial notice that Ramadan lasts approximately 29 or 30 days, but the claimant gave no evidence of when in the period of Ramadan, the function took place, so we had no indication of when the date of the event might have been switched to.

    170.3. The second (which the claimant made no reference to in his evidence in chief) was a trip to Nottingham that the claimant accepted in cross-examination that he had been invited to but declined to attend. We find PC Northridge's evidence on this point (§9 witness statement) to be credible:

        "Though it did not happen often, the Shift did try and socialise outside of working hours. It was usually a meal or drinks. I recall a time when we were arranging drinks in Nottingham. Shaf was asked to come. He would always have been asked to come if we arranged anything. I remember this time

specifically because he first said he didn't want to come because we would be drinking alcohol. I said we could change this to a meal, and as he was from Nottingham, he could choose where to eat. However, he said he didn't want to come. I just wanted him to know that it wasn't just about drinking, but more about the team getting together."

170.4. In answer to cross-examination questions, PC Northridge said that there were two events during the claimant's time with Group 2. She said that the Nottingham event ended up being at Hooters Bar in Nottingham and that the claimant had been invited "multiple times".

170.5. PC Northridge agreed that the claimant did not want to go because of the venue but she had offered to change the venue because he knows Nottingham.

170.6. In cross-examination, he said he did not want to go to Hooters because the food was not halal. He accepted he was invited and but did not recall being asked to choose a different venue. We prefer the evidence of PC Northridge.

170.7. We find that the claimant's case as put to the respondent's witnesses made no allegation that the claimant was not invited to either of the two events. We find his assertion that his "…*exclusion persisted, highlighting a lack of effort to accommodate my religious practices and a lack of consideration for including me in team activities…"* had no basis in fact.

171. We find that there were not facts from which we could conclude that a contravention of section 13 had occurred.

172. The allegation that PC Northridge had prevented the claimant from sitting next to her in a briefing was dealt with in paragraph 117 of the claimant's witness statement, in which he stated:

"When I first arrived, I sat in PC Corkhill's chair, as he was away on training

at the time. PC Northridge remarked that I was "brave" to sit in that seat, which was next to hers."

173. PC Northridge's witness statement was silent on the allegation, but in cross-examination, she said she could not recall the incident but could accept that the scenario was possible. However, she said that she sat next to PC Lynam in briefings, not PC Cork.

174. We find that the words were said, as it seems bizarre to imagine that the claimant made them up. However, we do not find that there is evidence from which we could conclude that the comment was a breach of section 13. We find that it is more likely that the comment was related to who usually sat in the chair, rather than the ethnicity of the person who wanted to sit there. It is our experience that attendees at regular meetings tend to sit in the same place and can be proprietary about their preferred spots. We find that PC Northridge would have made the comment to any new appointee.

175. We find that, in respect of this part of the allegation, there are facts from which we could conclude in the absence of an explanation that the respondent contravened section 13. However, we find that the respondent has shown that it did not contravene the provision.

176. The final part of this single allegation is that PC Lynam avoided sitting near of next to the claimant, making her choice of a seat away from the claimant obvious. The claimant's witness statement (119) stated that *"…if there was an open spot near to me, she would give me a disdainful look, as though I was beneath her, and deliberately choose a different seat."*

177. We repeat our finding above that our experience is that people can be territorial about where they sit in meeting rooms.

178. PC Lynam's written evidence (§21 of her witness statement) was that the claimant's allegation was untrue. She said that if she was acting Sergeant, she would be sitting in a separate room and if her probationer, PC Clayton was in the office, they would sit next to each other and the claimant would sit next to his Tutor, PC Jago.

179. We find that the claimant's allegation may have been his perception but that his account is weakened by the fact that he did nothing about it by reporting the matter to PC Jago or Sergeant Palfreyman in the early weeks of his time with Group 2.

180. We find that this allegation is one in which it is legitimate to ignore the two-stage test and go straight to a conclusion, which is that the respondent did not discriminate against the claimant.

181. We therefore find that the respondent did not commit the discriminatory acts concerned in this claim.

52(f)

182. This is the allegation in the List of Issues that the claimant's complaints (the List of Issues did not say which complaints the claimant meant) about the treatment he was receiving (he did not specify who the complaints were about) were ignored and he was given no support from his Line Manager (Sgt Palfreyman).

183. The List of Issues suggests that the claims are in the grounds of Complaint (§§23, 24, and 40).

184. The relevant paragraphs in the Grounds of Complaint alleged:

    184.1. In or around the first week in May 2022, the claimant had a meeting with Sgt Palfreyman. [The meeting was the 5-week review meeting on 3 May 2022.] During the meeting, the claimant infirmed Sgt Palfreyman that he believed he was being subjected to discriminatory behaviour by PC Lynam. The claimant gave examples of treatment. Sgt Palfreyman responded by saying that PC Lynam was professional and just wanted the work done properly. (§23)

    184.2. The response of Sgt Palfreyman made the claimant feel unsupported and he was concerned that no one would challenge discriminatory behaviour. The claimant avers this response from a supervisor condoned the behaviour and allowed it to continue. (§24)

184.3. On 25 August 2022, the claimant attended a welfare visit with Sgt Palfreyman at Pear Tree Station. The claimant informed Sgt Palfreyman about the Treatment he had received, explaining that he believed he had been subjected to discriminatory treatment, because of his race and his religious belief. Sgt Palfreyman offered no support to the claimant. The claimant believes that Sgt Palfreyman did not act on or report his allegations of racism to anyone else within the [respondent]. (§40)

185. We have restricted our fact finding to the matters disclosed in paragraphs 23, 24, and 40 of the Grounds of Complaint.

186. We repeat our finding above that Sgt Palfreyman's evidence about the 5-week meeting was credible when he said that the claimant did not raise allegations of discrimination against PC Lynam. We find the following evidence to be corroborative of Sgt Palfreyman's account:

186.1. The notes of the PEQF [197-198 and 337], which are silent on the claimant's allegations;

186.2. The evidence of PC Jago, who attended the meeting;

186.3. The evidence of DC Pitfield in her investigation of the PSD complaint against PC Lynam;

186.4. The claimant's email to Inspector Chambers dated 6 September 2022 [208-211];

186.5. The claimant's witness statement made to DC Pitfield of PSD on 12 October 2022 in support of his complaint [249-256]. On the final page of the statement, the claimant said:

> *"During my time on shift, I have never raised any of my concerns with anyone. I didn't feel I could talk about the issues because of the way I had been treated by the shift. I was worried about Abi's [PC Lynam] reaction and how she would treat me for saying something."*

187. We find the statement to PSD condemns the claimant's case on this point before us. He had left respondent when he made the statement so could have no fear of reprisals from PC Lynam or anyone else. He clearly said that he had not told anyone at the respondent about the allegations of racism (or anything else) he now makes against PC Lynam and others.

188. We find that this claim is entirely misconceived. We find that the claimant has fabricated the claim to bolster his claim. We have not found facts from which we could conclude in the absence of explanation that the respondent contravened section 13.

Time Points

189. We found the only factual allegation that the claimant made a prima facia case form, which was not successfully rebutted by the respondent, was the allegation relating to anal sex. That incident occurred on 23 May 2022 or thereabouts.

190. Mr Stubbs' only legal submission on the time point was this:

> "18. Having referred to the wide discretion afforded to ETs in the just and equitable extension test, the Court of Appeal in **Robertson v Bexley Community Centre t/a Leisure Link** [2003] IRLR 434 stated (at para 25):
>
> *"It is also of importance to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule."*

191. Mrs Callan's submissions were these:

> "13. In respect of time under the EqA, s123(1)(b):
>
> a. Burden of proof is on the claimant (**Robertson v Bexley Community**

Centre [2003] IRLR 434, CA).

b. Although the factors set out in s33 Limitation Act 1980 may be useful, it should not be used as a check list: **Adedeji v University Hospitals Birmingham NHS Foundation Trust** [2021] EWCA Civ 27, [2021] 1 WLR 2061.

c. Conduct continuing over a period is treated as done at the end of the period. Where there are a number of incidents occurring over a period of time, they may in appropriate circumstances be considered as being part of a continuing state of affairs whereby discriminatory act occur from time to time (**Hendricks v Commissioner of Police of the Metropolis** [2003] ICR 530).

d. C relies upon a just and equitable extension of time regarding any time limit issues in his claim. The discretion afforded under the EqA is wide: "*such other period as the employment tribunal thinks just and equitable"*. **Abertawe Bro Morgannwg University Local Health Board v Morgan** [2018] IRLR 1050 states that the discretion is "clearly intended to be broad and unfettered" and *"there is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation of the delay from the claimant"* – see paragraphs 24-25."

192. The claimant was a member of the Police Federation and used its services during his time as a Police Officer. To be in time, the claimant would have had to have started early conciliation by 22 August 2022. He started early conciliation on 23 November 2022 and obtained an ACAS early conciliation certificate on 14 December 2022. He presented his ET1 and Grounds of Complaint [4-61] on 13 January 2023.

193. We find that the claimant offered no explanation as to why his claim was out of time in his witness statement.

194. We find that there was no unlawful discriminatory conduct continuing over a period

of time.

195. We have exercised our wide discretion in this matter against the claimant. We find that if he believed he was being discriminated against by the respondent he could have started early conciliation well before he did, and we do not find it just and equitable to extend time to allow the single factual allegation that we found in favour of the claimant upon.

Applying the Law and Issues to the Findings of Fact

196. We applied the statutes set out in the Law section above and the case law that was agreed between the parties as set out in the same section. We also considered the overriding objective, and we considered Chapter 8 of the Equal Treatment Bench Book, particularly pages 251 to 256 that relate to Islamophobia.

197. We considered all the written evidence and oral evidence contained in our notes of the hearing and the documents in the bundle that we were taken to by the witness statements, cross-examination questions and closing submissions.

198. We considered the List of Issues.

199. We considered our findings of fact above.

200. The burden of proof is on the claimant to show, with evidence, facts from which (absent a reasonable explanation) the Tribunal; could conclude that a provision of the Equality Act 2010 (namely sections 13 and 26 in this case). We feel we have been reasonably generous to the claimant in our findings but consider that there were several claims where the claimant did not meet the low bar of the burden of prima facia proof.

201. We were conscious of the fact that discrimination can be unconscious or not deliberate but found no evidence that would lead us to such a conclusion in this case.

202. After we considered the primary facts about each of the claims, we considered the totality of the facts, including the respondent's explanation, to determine whether the acts complained of were on racial grounds. Our analysis of the facts of each

claim led us to the conclusion that many of the claims were weak and not founded in fact. We considered that we had found that the allegation concerning PCs Lynam and Northridge for making comments and questioning the claimant about anal sex and discussed whether this finding informed our decision on the totality of the allegations. We considered the evidence that Inspector Chambers gave about the alleged discrimination that Sgt Khokhar was subjected to but found that the nature and quality of the evidence meant that w could not make an inference from the allegation.

203. Our decision was that we could not conclude that the acts complained of were on racial or religious belief grounds because of the single finding we made in the claimant's favour out of 18 allegations in the List of Issues. Where we have found that the claimant did not switch the burden of proof, we have found that he has not established the "something more" referred to in **Madarassy**.

204. We found most of the respondent's witness testimony to be credible in our findings above. For example, PV Lynam and PC Northridge did not dispute the gist of what the claimant alleged about the claim that we have found to be factually proven. We took into account our findings that:

    204.1. The claimant weakened his case by withdrawing allegations;

    204.2. Our findings that the claimant had retrospectively refitting facts to fit his claims of discrimination;

    204.3. The claimant had exaggerated of fabricated facts to bolster his claims; and

    204.4. That some of his claims were contradicted by his own contemporaneous statements.

205. We found that the claimant offered little by way of actual comparators other than his perception that the two named comparators were somehow treated better than he was. The claimant's witness statement (§§153-158) stated that PCs Hickman and Clayton were included in team activities and included in the WhatsApp group from the start. We refer to our previous findings that there was no harassment in the

attendance at social events and the claimant withdrew the WhatsApp allegation. The claimant was vague in describing how he was treated less favourably than PCs Hickman and Clayton who he said received support and mentorship from PCs Lynam and Northridge. Again, we have found above that both officers gave support and guidance to the claimant.

206. The claimant gave no specific evidence as to how PCs Hickman and Clayton were given the opportunity to work on a variety of cases without giving any specific details. He complained that their training packs were completed on schedule. WE refer back to our findings on that topic.

207. We find that on the harassment claims, all but the fifth claim falls at the first hurdle: the respondent did not engage in the conduct as set out in paragraphs 50(a-d) and (f-l) of the Grounds of Complaint. In respect of the claim at paragraph 50(e), we find that the claim was out of time and that it was not just and equitable to extend time.

208. We find that on all the direct discrimination claims, the respondent did not subject the claimant to the treatment set out at paragraph 52(a-f) of the Grounds of Complaint.

209. We dismiss all the claimants' claims against the respondent.

Approved by EJ Shore
Employment Judge S Shore
Date: 19 May 2025

RESERVED JUDGMENT & REASONS SENT
TO THE PARTIES ON
Date: 20 May 2025

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FOR THE TRIBUNAL OFFICE