EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs S Dye	**v**	The Chief Constable of the Norfolk Constabulary

Heard at: Norwich

Heard on: 10, 11, 12, 13, 14 February 2025
Discussion in Chambers: 25 April 2025

Before: Employment Judge Postle

Members: Mrs K Knapton and Mr M Kidd

Appearances
For the Claimant: Ms K Nowell, Counsel
For the Respondent: Mrs C Hampshire, Counsel

RESERVED JUDGMENT

1. The Claimant was not disabled within the meaning of s.6 of the Equality Act 2010.

2. Claims prior to 18 April 2023 are out of time, and nothing being advanced before the Tribunal that would persuade us to exercise our just and equitable discretion to extend time. The acts prior to that date did not constitute conduct extending over a period such as to be treated as done at the end of that period.

3. The Claimant's claims for direct discrimination on the grounds of sex fail.

4. The Claimant's claims for discrimination on the grounds of marriage and civil partnership fail.

5. The Claimant's claims of harassment relating to disability fail as the Claimant does not have a disability.

6. The Claimant's claims that she was subjected to sexual harassment fail.

REASONS

Background

1. The Claimant brings claims to the Tribunal that she had a disability, namely a number of symptoms arising from the Menopause. The Claimant's claims are summarised at pages 24 – 25 of her ET1 Claim Form, being the detailed body of her grounds of complaint. They were further confirmed at the Preliminary Hearing on 8 April 2024 (pages 79 – 81) . The Tribunal will therefore confine themselves to those issues.

2. For the avoidance of doubt the Claimant's claims include direct discrimination relating to marriage and civil partnership, direct discrimination on the grounds of sex and harassment relating to her disability and / or sex.

3. In this Tribunal we have heard evidence from the Claimant and her husband, Mr A Dye also a serving Police Constable, both giving their evidence through prepared Witness Statements.

4. For the Respondents we have heard evidence from:

    4.1. Ms C Swann, a Supervisor in the Respondent's Command and Control Room;

    4.2. Chief Inspector Z Hardman;

    4.3. Ms A Warren, HR Manager in the Joint HR Delivery Team for the Respondent and Suffolk Constabulary;

    4.4. Inspector J Burgess;

    4.5. Inspector D Jerman; and

    4.6. Inspector J McCormack.

    All giving their evidence through prepared Witness Statements.

5. The Tribunal had the benefit of a Bundle of documents which was added to during the course of this Hearing, amounting to 533 pages.

6. The Tribunal also had the benefit at the outset of the Hearing of written submissions by the Respondent on the substantive claims.

7. The Tribunal also had a chronology, a cast list, a glossary and not contained in the Bundle a Resolution Manager's Report by Chief Inspector Bank which appears to be relating to the Claimant's Appeal against the Grievance.

8. At the conclusion of the evidence, the Tribunal had the benefit of written submissions on behalf of the Claimant and further written submissions on behalf of the Respondent, which were most helpful on behalf of both parties.

The Law

Time Limits

9. Section 123 of the Equality Act 2010 provides,

> 123. Time Limits
>
> (1) A complaint within section 120 may 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) …
>
> (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.

10. As mentioned above, the Tribunal's calculation means that all of the Claimant's claims relating to events before 17 April 2023 are out of time unless they can be considered as part of a continuing act.

11. In relation to continuing acts, it was noted by the Tribunal that this has never been pleaded or expressly explained in evidence (written or oral), the Tribunal understands that the Claimant is saying the acts which she complains of do form continuing acts before 17 April 2023 are in time.

12. It is correct that the focus of the Tribunal should be on the substance of the complaint (Commissioner of Police of the Metropolis v Hendricks [2002] EWCA Civ.1686 203 ICR 530 CA 52.

13. The question is whether there is "an act extending over a period" as distinct from a succession of unconnected or isolated specific acts for which time would begin to run from the date when each specific act was committed.

14. It is further correct that the EHRC Employment Statutory Code of Practice clarifies, 208, 15.28 that,

> "A single unlawful act which has continuing consequences will not extend the time period".

15. It is further correct that the Claimant has asserted in the Tribunal's view incorrectly as she feels all the events are connected to her suffering symptoms of Menopause. The fact that the Claimant feels that events are connected does not make them so.

16. It has become clear to the Tribunal, when one looks at the facts and the acts relied upon that they do involve different types of prohibited conduct and decisions by different people, quite clearly.

17. For example, the claim of direct discrimination on the grounds of marital status, the 27 March 2023 events are both alleged to have happened in the same conversation, both being out of time, the Claimant's husband being asked to return to work to take calls on 19 April 2023 cannot be said to be part of a "series" with the alleged 27 March 2023 act, nor is it similar to the 27 March 2023 act which allegedly took place during induction which was allegedly directed at the Claimant and not at her husband.

18. The 27 March 2023 events are therefore not continuing acts with 19 April 2023 events.

19. In relation to the claim for direct discrimination on the grounds of sex, it is quite clear even on the Claimant's own case, none of these alleged acts can be said to form part of a series or to be similar.

20. "Having the ability to work from home" on 10 October 2022, 27 October 2022 and 22 November 2022, relates to the Claimant's move from homeworking at the close of the Op Solve office that she was currently in. However, being removed from call handling on 28 March 2023 after having difficulties hearing the calls, relate to the Claimant's difficulties in hearing calls is a totally different role by totally different decision makers. Furthermore, the 15 April 2023 conversation relates to annual leave. The late April allegation is that the Claimant was told to stop talking, again a totally different act to the others relied upon under this particular head.

21. The 10 October 2022, 27 October 2022, 27 November 2022 and 28 March 2023 claims are all out of time.

22. The harassment claims are pleaded in the alternative. It is true the Tribunal noted that although cross examination on behalf of the Claimant was conducted on the basis that the "harassment related to sex" and "harassment related to disability" both rest on the Claimant suffering menopausal symptoms. However, that cannot form a basis of all claims, otherwise the harassment relating to sex regards "being prevented from sitting with or speaking to" her husband during the shift on the CCCR, (which does rest on the same facts as the first two direct discrimination claims on the basis of marital status claim, i.e. the induction on 27 March 2023) could have been pleaded as harassment relating to disability too. It

is therefore unclear why the alleged 27 March 2023 events have not been brought as direct discrimination on the basis of sex claims.

23. Turning to the events of the alleged 12 September 2022 and 23 May 2023 which are acts said to have been done by Chief Inspector Hardman, they are clearly not a series and are not similar. In particular there is a large gap in time between these. The alleged comments made on each date were unrelated and had different subject matters. The first relates to comments said to have been personal, the latter alleged act relates to Chief Inspector Hardman's tone towards the Claimant. The fact they are both allegedly made in meetings with the Claimant cannot be sufficient, in the Tribunal's mind, to establish a continuing state of affairs.

24. Dealing with the remainder of the alleged harassment acts, they are clearly not part of a series and not similar. One relates to annual leave, another to the Claimant talking, another to the Claimant's husband's work, the seating arrangements, another to the Claimant's ability to drive and another to the Claimant's interactions with colleagues. They are clearly not a series of continuing acts and they are not similar.

25. The Tribunal therefore conclude that there was no clear continuous line through the alleged acts. None of the alleged acts relied upon by the Claimant come close to an example of a continuing act.

26. Therefore, all the acts before 17 / 18 April 2023 are out of time.

27. The Tribunal then considered whether it would be just and equitable to extend time. The Tribunal's discretion arises as a broad discretion and there are guidelines as to its exercise.

28. Firstly, there are the factors contained in s.33 of the Limitation Act 1980. In this respect the Tribunal should consider the length of and reasons for the delay and indeed any prejudices caused to the Respondent by the delay.

29. In respect of the reasons for the delay, neither in the Claimant's pleaded claim nor before this Tribunal has the Claimant provided a proper explanation as to the reason she delayed in bringing her claim. This is particularly relevant given the fact that throughout the period to which the Claimant has complained, she appears to have had the benefit of the Police Federation Representative throughout. It would therefore be inconceivable in this day and age that a Police Federation Representative would not be conversant with the requirement to bring claims within three months of the date of the alleged incident.

30. There are lengthy delays, particularly relating to the September 2022 and October 2022 claims.

31. It has to be said the Respondent has been caused prejudice by the Claimant's delay. Owing to the passage of time Witnesses are unable to remember important details. It was noticeable the Respondent's

Witnesses were candid when they were cross examined and conceded they could not remember certain events. Many of the Claimant's complaints and her background facts are about specific wording used on days in relation to matters arising over two years' ago. That delay and period of time is a clear prejudice to the Respondent who are being asked to comment on events as long ago as September 2022 and whose Witnesses are now unable to recall with complete accuracy what occurred on each and every day that the Claimant now complains about. We are talking about periods from 2022 to 2024.

32. Set the above against the fact that the Claimant does not appear to have been prejudiced by any degree, it is notable that the Claimant's husband does mention being unable to remember anything whereas the Claimant mentioned that the passage of time had caused her only to forget an HR Representative's name.

33. It is also worthy of note that the Claimant on the one hand, in relation to symptoms arising from her Menopause claims in her Impact Statement, that the symptoms arising from her Menopause the impact has been debilitating, she says,

> "…brain fog is a common symptom of menopause, but it is a terrible impairment. I find I can't remember things that I used to, I can't focus on anything so I am unable to read a book, I am unable to watch a tv show and I also find I cannot retain information and lose my train of thought and get confused. This makes having conversation with people difficult. I struggle to remember simple tasks, I risk assess my brain fog with the help of my husband regarding driving a car. We will always have a conversation about how I am feeling before we go out and whether or not I feel fit to drive."

34. It is therefore surprising that the Claimant has such a clear memory recall as she now advances. She puts this down to making notes on her telephone, although such notes were never made available for the Tribunal, or apparently to the Respondents.

35. It is a high hurdle to overcome and the Tribunal are simply not persuaded that it would be just and equitable in the circumstances to extend time.

Disability

36. Section 6 of the Equality Act 2010 provides,

> 6. Disability
>
> (1) A person (P) has a disability if-
>
> (a) P has a physical or mental impairment, and

> (b) the impairment has a substantial and long term adverse effect on P's ability to carry out normal day to day activities.

37. Therefore, the Equality Act 2010 requires a Tribunal to look at the evidence by reference to four different questions (or conditions as the EAT term them):

    37.1. Did the Claimant have a mental and / or physical impairment? (the impairment condition);

    37.2. Did the impairment affect the Claimant's ability to carry out normal day to day activities? (the adverse effect of the condition);

    37.3. Was the adverse condition substantial? (the substantial condition); and

    37.4. Was the adverse condition long term? (the long term condition).

38. These four questions should be posed sequentially and not together.

39. The Claimant relies on,

> "Physical and mental impairments of symptoms associated with Menopause being insomnia, fatigue, burning legs, back spasms at night, joint aches, brain fog, concentration issues, strong vaginal odour and headaches"

    as her alleged disabilities.

40. This is not accepted by the Respondents.

41. It is accepted by the Respondents that the symptoms the Claimant relies upon can, the Tribunal emphasises the word 'can', be symptoms of Menopause.

42. The Respondents assert that:

    42.1. there is insufficient evidence from which the Tribunal could properly conclude that many of the symptoms the Claimant relies upon were related to the Menopause absent medical evidence to the contrary;

    42.2. this is important both for determining the disability and insofar as the Claimant may seek to raise an argument that there was constructive knowledge of any disability and / or evidence of any disability, whereas the Claimant relies upon a number of entries from her GP Records, particularly pages 322, 327, 328, 332, 335, 337, 338, 342, 343 and 345. She further relies upon the Respondent's own Reports from Occupational Health and the Force Medical Advisor, in particular the Force Medical Advisor's Report dated 8 June in which it was stated,

> "Sarah's menopause symptoms that have not been fully managed by HRT are insomnia and brain fog, these make driving far more than a very short time to be difficult."

42.3. when advising on time scales he states that,

> "It is difficult to determine particularly as the menopause can last several years…"

42.4. the Claimant's Impact Statement and her Witness Statement set out various effects on her day to day activities caused by the symptoms.

43. The Tribunal reminds itself that although normal work related activities should be taken into account, the test for determining whether an individual has a disability relates to the person's ability to carry out normal day to day activities and not whether they can carry out specialist work.

44. Again, the Tribunal reminds itself that the impairment must have a substantial adverse effect on a person's ability to carry out normal day to day activities.

45. The Tribunal have had regard to the guidance on disability in respect of the Equality and Human Rights Commission and the Employment Code of Practice.

46. The focus should be on what a person cannot do and only do with difficulty the things that he or she can do.

47. The Claimant says she began to experience significant perimenopausal symptoms such as hot flushes, night sweats, headaches, aching legs and back. She was given HRT (Novofem). The Claimant says her symptoms did not settle and started to become acute and her general health began to deteriorate. She then says she was prescribed Sertraline. She commented she had been on this previously as she had suffered with some mental health issues a number of years ago.

48. She goes on to say that symptoms continued to cause her problems throughout 2021, particularly back spasms preventing her from moving. She had burning sensation in her lower legs at the end of 2021. She continued to experience night sweats, hot flushes and insomnia.

49. The Claimant says by January 2022 the symptoms were severe and she had not found Novofem helpful at the time and because she was being investigated for possible cancer the GP would not prescribe her with alternative medication. She felt at this stage incredibly stressed, anxious and emotional. She says she was clumsy. She had poor spatial awareness and was finding driving long distances difficult. Her mental health began to suffer. She follows on and says she experienced brain fog. She found it difficult to remember things, finding herself asking questions repeatedly about things that she knew the answer to. This

apparently impacted on her concentration. She was experiencing strong vaginal odour. She put on weight. At the time she had an injury following a work related matter to her shoulder. In her Impact Statement she lists a number of symptoms she experiences which she puts down to the Menopause.

50. She describes in relation to symptoms that impacted her ability to carry out normal day to day activities were issues with insomnia, joint aches, burning legs and back spasms. As she mentioned earlier she said,

> "I find I can't remember things like I used to. I can't focus on anything so I am unable to read a book, unable to watch a tv show, I find I cannot retain information and easily lose my train of thought and get confused. This makes conversations difficult. I struggle to remember simple tasks."

51. That has all to be put in context with the fact that during this period, apart from a period towards the end or middle of 2023 when the Claimant was absent from work due to work related stress, throughout the entire period the Claimant had no absences from work due to her symptoms arising from Menopause. Indeed, the job that the Claimant did at Op Solve would have required tremendous concentration. It involved taking statements from victims of alleged sexual assault which in itself would have been detailed and complicated and requiring a great deal of concentration. Throughout that period there is no suggestion that the Respondents had any issue with the Claimant's quantity or quality of her work. If the Claimant had been suffering as she now asserts, not remembering things, difficulty with conversations and difficulty concentrating, it seems inconceivable that the Claimant could have held down a job with Op Solve which the Tribunal repeats requires a great deal of concentration and clarity of thought.

52. The Tribunal also have read through the GP notes and it is notable there is a complete absence of medical evidence that the Claimant suffered debilitating menopausal symptoms. Indeed, the GP Records suggest that her difficulties with sleeping were due to a bereavement and do not suggest that Menopause was the cause of her difficulties sleeping. Indeed, the Claimant accepts in her own email in May 2022 (page 387) that her lack of sleep was due to bereavement. It is also the case that medical evidence (additional) provided during the course of this Hearing, the two letters from the Norfolk and Norwich Hospital, July 2022 and October 2022, did not say that the Claimant's burning leg symptoms related to Menopause. Furthermore, the GP Records suggest her joint pain related to arthritis and was not related to Menopause.

53. The Claimant's fatigue could well have been down to the lack of sleep which was due to the bereavement on the Claimant's own admission.

54. Furthermore, there was no medical evidence supporting that her frozen shoulder that appears to have come about from an injury at work, was in any way related to the Menopause.

55. It is notable as well, the Claimant herself accepts there were never any performance issues at work and yet the Claimant asserts that her brain fog was so bad that she could not remember things from one moment to the next and had difficulty with conversations. It just does not stand up.

56. The Claimant says in her Impact Statement that she could not drive because it was too painful to do up her seat belt due to her frozen shoulder which, in her words made her not want to drive. Set that against her pleaded grounds that she could drive short distances, which clearly would require a seat belt.

57. The Tribunal felt the Claimant suffered symptoms arising from the Menopause, but what the Tribunal could not accept on the Claimant's own evidence, is that those symptoms or impairments affected the Claimant's ability to carry out normal day to day activities to the extent that the Claimant now advances.

58. Furthermore, the adverse condition was not substantial as to meet the criteria to conclude that the Claimant suffered a disability within the meaning of s.6 of the Equality Act 2010.

Direct Discrimination (sex) (marital status)

59. Section 13 of the Equality Act 2010 provides,

> 13. Direct discrimination
>
> (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

60. The protected characteristic must be the effect or cause significant influence for the treatment. The crucial question will always be,

> "Why the complainant received less favourable treatment … was it on the ground of a protected characteristic?"

61. The EHRC Employment Statutory Code of Practice clarifies the meaning of "less favourable treatment" by,

> 3.4 To decide whether the employer has treated a worker less favourably, a comparison must be made with how they have treated other workers or would have treated them in similar circumstances. If the employer's treatment of the worker puts the worker at a clear disadvantage compared with others, then it is more likely that the treatment will be less favourable: for example, where a job applicant is refused a job. Less favourable treatment could also

> involve being deprived of a choice or excluded from an opportunity."

62. There must be a disadvantage. Difference by itself is not sufficient.

63. To be treated less favourably implies some element of comparisons. Accordingly, the Claimant must have been treated less favourably than the comparator or comparators, be they actual or hypothetical. It is necessary for the Claimant to compare, "like with like" and the relevant circumstances of an actual or hypothetical comparator must not be materially different from those of the Claimant, s.23 of the Equality Act 2010 and Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337.

Harassment relating to disability (relating to sex)

64. Section 26(1) of the Equality Act 2010 provides,

> 26. Harassment
>
> (1) 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.

Unwanted Conduct

65. The EHRC Employment Statutory Code of Practice clarifies the meaning of "unwanted conduct" as:

> 7.8 The word unwanted means essentially the same as unwelcome or uninvited. Unwanted does not mean that express objection must be made before the conduct is deemed to be unwanted.

66. If a Claimant generally does not object to the conduct, it is not unwanted conduct.

Relevant to a Relevant Characteristic

67. The relevant protected characteristic includes disability and sex, s.26(5) of the Equality Act 2010.

68. Carozzi University of Hertfordshire [2024] EAT 169, 15 – 16:

> "Although, "related to" is "designed to cover all forms of conduct that properly viewed had a relationship to the protected characteristic" and

> although "because of" is not the only way conduct can be "related to" a protected characteristic, that does not mean that "related to" has become a nebulous term robbed of specificality."

69. It is correct Tees Esk and Wear Valleys NHS Foundation Trust v Aslam [2020] EAT IRLR 495, paragraph 25, cited with approval in paragraph 15 at Carozzi,

> "Nevertheless, there must be still, in any given case at least 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. In every case where it finds that the 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 led to the conclusion that the conduct is related to the characteristic as alleged. Section 26 does not bite on conduct which though it might be unwanted and have the prescribed purpose or effect, is not properly found for some identifiable reason also have been related to the characteristic relied upon as alleged, no matter how offensive or otherwise inappropriate the Tribunal may consider it to be."

70. Whether or not the Claimant perceives alleged unwanted conduct to be related to a relevant protected characteristic is not sufficient to show that it is so related. The Tribunal must consider the reasonableness of the contention that the alleged unwanted conduct to be related to a relevant protected characteristic and must consider what evidence it has of the alleged relationship and must make for itself the decision as to whether it is so related. This much is clear from Tees Esk paragraphs 30 – 42, which found that a Claimant who complained of a comment made about ISIS in her Employment Tribunal had not been harassed, there being no evidence the individuals of South Asia origin were associated with ISIS.

Purpose or Effect

71. In considering the purpose the Tribunal must take into account the motivation of the alleged harasser, the "or" in purpose or effect is disjunctive so the Tribunal need only find one or other proved.

72. Section 26(4) of the Equality Act 2010 is clarified in Pemberton v Inwood [2008] ICR 1291 CA 75, 88, in deciding whether conduct has the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for B, the Tribunal must take into account B's perception (the subjective element), the other circumstances of the case (the context), and whether it is reasonable for the conduct to have that effect (the objective element).

73. The context includes the intention behind the alleged unwanted conduct and in considering this the Tribunal must consider what the Claimant

reasonably ought to have appreciated about the intent behind the alleged unwanted conduct, Ali v Heathrow Express [2022] EAT 54.

74. A demonstration of strength of feeling on the part of the Claimant is insufficient to demonstrate the effect.

Violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B

75. Per Langstaff P in Weeks v Newham College of Further Education [2012] EQLR 788, EAT, "an environment" for the purposes of s.26 is a state of affairs whilst an environment,

> "…may be created by an incident the effects are of longer duration".

76. Per Elias LG in Grant v HM Land Registry [2011] ICR 1390 CA, the words "violating dignity", "intimidating, hostile, degrading, humiliating or offensive" are significant.

> Paragraph 47,
>
> "In my view, there can be no detriment because, having made his sexual orientation generally public, any grievance claim has about the information being disseminated to others is unreasonable and unjustified. Furthermore, even if in fact the disclosure was unwanted and the Claimant was upset by it, the effect cannot amount to a violation of dignity, nor can it properly be described as creating an intimidating, hostile, degrading, humiliating or offensive environment. Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment. The Claimant was no doubt upset that he could not release the information in his own way, but that is far from attracting the epithets required to constitute harassment. In my view, to describe this incident as the Tribunal did as subjecting the Claimant to a "humiliating environment" when he heard of it some months later is a distortion of language which brings discrimination law into dispute."

The Burden of Proof

77. Section 136 of the Equality Act 2010 applies to any proceedings relating to a contravention of the Equality Act 2010. It sets out the shifting burden of proof in the Equality Act 2010 claims,

> 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) Bur 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) …

78. Guidance has been set out in Barton v Investec Limited [2003] ICR 1205 CA, at 25, the Court of Appeal handed down important guidance subsequently amended by Igen v Wong [2005] ICR 931 CA:

"1. It is for the applicant to prove on the balance of probabilities facts which the Tribunal could conclude in the absence of an adequate explanation that the Respondents have committed an act of discrimination which is unlawful as having been committed against the applicant. These are referred to below as such facts.

2. If the applicant does not prove such facts he or she will fail.

3. It is important to bear in mind in deciding whether the applicant proves such facts it is unusual to find direct evidence of race discrimination. Few employers would be prepared to admit such discrimination even to themselves. In some cases, discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".

4. In deciding whether the applicant can prove such facts it is important to remember that the outcome at this stage of the analysis by the Tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the Tribunal.

5. It is important to note the word is could. At this stage the Tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a Tribunal is looking at the primary facts proved by the applicant to see what inference of secondary fact could be drawn from it.

6. In considering what inferences or conclusions can be drawn from the primary fact, the Tribunal must assume there is no adequate explanation for those facts.

7. These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw from an evasive or an equivocal reply to a question.

8. Likewise, a Tribunal must decide whether any provision of any relevant code or practice is relevant and if so, take into account in determining such facts… this means that inferences may also be drawn from any failure to comply with a relevant code of practice.

9. Where the applicant has proved facts from which inferences could be drawn that the Respondents have treated the applicant less favourably on the grounds of (race) then the burden of proof moves to the Respondent.

10. It is then for the Respondent to prove that he did not commit or as the case may be, is not to be treated as having committed the act.

11. To discharge the burden it is necessary for the Respondent to prove on the balance of probabilities that the treatment was in no sense whatsoever on the grounds of (race) since no discrimination whatsoever is compatible with the burden of proof directly.

12. That requires a Tribunal to assess not merely what the Respondent has proved an explanation for facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that race was not in any part of the reasons for the treatment in question.

13. Since the facts necessary to prove an explanation would normally be in the possession of the Respondent, the Tribunal would normally expect cogent evidence to discharge the burden of proof. In particular the Tribunal will need to examine carefully explanations for failure to deal with questionnaire, procedure and / or code of practice.

It is only once a Tribunal has considered all the relevant evidence that a Tribunal can reach a conclusion as to the first part of the first test only when the Claimant discharges that burden of proof does the burden of proof move to the Respondent to prove that it did not so committed an act of unlawful discrimination if the Claimant does not discharge the claim will fail."

Main Facts

79. The Claimant was engaged by the Respondents as a Police Officer from 12 February 2018 and remains at the time of this Hearing a Police Officer with the Norfolk Constabulary.

80. The Claimant was moved from her front line duties following a shoulder injury at work around September 2020, where she was then posted on Op Solve (the Respondent's crime recording and investigating function which deals with low risk offences that do not require an Officer to physically attend in order to investigate). This was at Reepham Road, Norwich from January 2021.

81. The Claimant, it is accepted, experienced some perimenopausal symptoms throughout 2021. A Work Place Health Review of the Claimant took place in June 2022 confirming that the Claimant had reported menopausal symptoms, of insomnia and some brain fog which was not being fully managed by her HRT. The Respondent's Medical Advisor confirmed those symptoms make driving for more than a very short time difficult and recommended if possible the Claimant work within five miles of her home address, or from home, in order to reduce any risk from tiredness and brain fog. The Report also confirmed that the Claimant had reported experiencing body odour despite good personal hygiene.

82. Unfortunately, it was not possible for the Claimant to work within five miles of her home address in the Op Solve role because the only Police Station in this geographical area was now being used by Student Officers for training. The Respondents therefore needed to ascertain whether working from home was strictly necessary and appropriate given the Claimant's role. The Claimant was therefore asked to attend a meeting with her Second Line Manager Inspector Zoe Hardman on 18 July 2020. The Claimant attended the meeting via Teams, with her Police Federation Representative PC Locke and in attendance was an HR Manager.

83. At that meeting on 8 July 2020, the Claimant explains her need for home working giving details of her impairment. It was made clear to the Claimant that she was not required to give any details if she did not want to discuss a particular thing. Inspector Hardman, however, did ask questions in relation to the Claimant's symptoms to clarify the position and the need to work from home or within five miles. Clearly such discussions were necessary and appropriate in the context of the Claimant's role. There was a possibility as a result of recent tests of a change in medication with a view to eliminating her symptoms. In other words, her symptoms could improve to the extent of a return to working on site within a six month period.

84. It was agreed on 18 July 2022 that the Claimant would be permitted to work from home on a trial basis, initially for six months. This would be in accordance with the Respondent's Limited Duties Policy and subject to a regular review. This was in effect to consider whether any new medication which the Claimant had referred to would reduce the Claimant's menopausal symptoms enabling her to drive and work on site.

85. The Claimant did begin working from home around 8 August 2022. It is accepted that the Claimant's work presented no issues in relation to her performance.

86. There was then a review meeting with her Line Manager Sergeant Jason Smith on 12 September 2022, which was also attended by Inspector Hardman. The reason why Inspector Hardman attended was to support Sergeant Smith.

87. Also, around that time reports / information had come in that the Claimant's social activities outside work, on Facebook entries, were not

consistent with the need to work from home which clearly needed to be addressed.

88. It is accepted that Inspector Hardman, at that meeting, asked questions about the Claimant's vaginal odour. The reason for that was that the Claimant had given this as one of the main reasons for necessitating her need to work from home. However, the evidence that had been provided regarding the Facebook entries indicated that the Claimant's activities outside work simply did not suggest that the vaginal odour was to such an extent that the Claimant was making out. Inspector Hardman did raise the issue of colleagues' concern that the Claimant had posted photographs on her Facebook page clearly travelling distances and enjoying herself at social activities in restaurants and at zoos, etc. The Claimant's explanation that whilst she was restricted, her impairment did not prevent her from going out with her husband.

89. It is clear that the Claimant became upset about the question and Inspector Hardman did apologise at the time, but these issues clearly needed to be addressed.

90. There was then a further meeting on 10 October 2022, with Sergeant Jason Smith and Sergeant Jamie Burgess, together with the Claimant's Police Federation Representative PC Locke. The Claimant was not advised at that stage she was no longer permitted to work from home. It was discussed and documented that the issue of working from home was now at a stage where consideration would be given as to whether a return to the workplace would be beneficial. The Force Medical Advisor would be approached before a decision was made. The Claimant did confirm she was willing to attend the workplace in principle.

91. There was then a further meeting scheduled for 22 November 2022 and the Claimant was warned of the possibility she would be required to return to office working either at North Walsham or the Operations and Communications Centre at Wymondham. This was subject to any information which advised to the contrary before a final decision was made.

92. The Claimant is married to PC Andrew Dye who is also employed as a Police Officer by the Respondent. In February 2023, his then role of Scheduled Deployment Officer was being disbanded and he was to be deployed in the Control Room at OCC as a 999 Call Handler.

93. The Claimant proposed that she be deployed in the Control Room and that proposal was accepted by the Respondent. The Claimant raised no concerns about her odour symptoms in relation to working on site.

94. The Claimant was then posted to the Respondent's Control Room on 20 March 2023, previously attending Dereham Police Station where she completed a five day training course for the new role.

95. The Claimant attended her first shift on 27 March 2023. The Claimant attended with her husband, was greeted and taken into a room by Inspector McCormack. It might well have been suggested at that stage, given they were married and the nature of the Control Room Operation that it would be advisable not to sit together. What is clear, the Control Room Manager suggested that both the Claimant and PC Dye integrate with the other members of the Team. The reasoning for not sitting together was quite simply to get to know other members of the Team and concentrate on the job in hand without distraction. This clearly would be the position with any couple working in the Control Room, whether married or not.

96. Ultimately, the Claimant was removed from Call Handling on 28 March 2023 as her tutor raised concerns of the Claimant not being able to hear what a call maker had been saying on a 999 call. The Claimant informed the Control Room Manager she was deaf in one ear and that PC Dyer was deaf in the other. However, there had been no concerns raised about Mr Dyer at the time. The result of the Claimant's call handling and difficulty was that she was to be removed from taking any more calls until further guidance was taken. Basically, the Claimant had misheard important information from a caller on a 999 call.

97. An Occupational Health Referral was made, the Claimant attended an urgent Audio Hearing Test on 3 April 2023 which indicated poor hearing with severe deficiency in the right ear and significant deficiency in the left ear.

98. It submitted that her husband PC Dyer also attended an Audio Hearing Test on 3 April 2023, but whilst his result indicated poor hearing the practical impact was clearly not as severe as the Claimant's hearing deficiency.

99. The Force Medical Advisor on 6 April 2023 recommended the Claimant be removed from Call Handling and re-deployed, suggesting that she was re-posted back to Op Solve In the meantime the Claimant was assigned Digital Communications in the Control Room on a temporary basis whilst a decision was made about her posting. The temporary role required her to read and respond to emails and computer aided despatches. The Claimant sat with other members of the Team and therefore had support.

100. On 15 April 2023, in relation to previously authorised requests for annual leave by the Claimant, Inspector McCormack was informed by the Resource Management Unit that the Claimant had been granted leave in error during a period when there was an embargo on Force wide leave in place. Seemingly, Inspector McCormack questioned the Claimant about this, she understood the position that it was pre-authorised leave and notwithstanding the embargo, the Claimant's leave remained authorised.

101. Whether or not the Claimant was told to stop talking on 17 April 2023 by Inspector McCormack is not clear. What is clear is that if any member of the Team was talking, any other Communications Officers in the Control

Room would be spoken to, as the function of the Control Room was extremely important, the need to take 999 calls as quickly as possible.

102. On 19 April 2023, the Claimant received a telephone call relating to an investigation involving her own ex-husband. With permission from her then Supervisor, the Claimant stepped out of the Control Room office to take the call. For reasons best known to her husband, he followed her and stayed. Inspector McCormack came out and told her husband he was required to return to the Control Room to take calls, otherwise there would only be one or possibly two call takers which could affect the response and service to the public in relation to those 999 calls.

103. Whilst the Claimant took the call, Inspector McCormack remained nearby the Claimant maintaining a discreet distance, to ensure that the Claimant was okay. Indeed, when the call finished the Claimant would volunteer information about the call and clearly Inspector McCormack was a listening ear and a support. It then appears she returned to the Control Room for the remainder of her shift.

104. On 24 April 2023, Police Supervisor Swann and Inspector McCormack met the Claimant at which she was informed there was specialist equipment that could be used for taking calls in the Control Room which worked alongside the use of hearing aids. The Claimant was questioned as to whether she was willing to wear hearing aids to enable her to stay in the Control Room. If she was not then it was not feasible for the Claimant to remain in the Control Room and re-deployment to a more suitable role would have to be sought. During that meeting Inspector Mc Cormack did say something on the lines of,

> "yes we know about them having only one car."

105. That was in response to the Claimant stating that she needed to be on the same shift as her husband as they only had one car and shift alignment was required due to her driving conditions. Inspector Mc Cormack further stated that they could not guarantee anything going forward in relation to the Claimant and her husband's shift as he was needed in his current position to cover the night shifts. Inspector McCormack explained there was an option of her to make a Flexible Working application but the Claimant needed to discuss the options with her husband before confirming her decision.

106. The Claimant was then on annual leave between 29 April and 16 May 2023. On her return to duty the Claimant was informed by Inspector Jerman that the decision had been made to move the Claimant back to Op Solve and she could consider submitting a Flexible Working application in order to align her shift to her husband's.

107. The Claimant was due to attend a Police National Computer course on 18 May 2023, that would be in relation to her duties in the Control Room Call Centre. As it was unlikely the Claimant would continue with the call handling role, that course had been cancelled.

108. The Claimant remains an employee of the Respondent.

Conclusions

Discrimination on the grounds of sex, direct discrimination on the grounds of marriage and harassment relating to sex

109. The Tribunal reminds itself that many of the claims prior to 18 April 2023 are out of time and of course nothing has been advanced before the Tribunal that would persuade us to exercise just and equitable discretion to extend time. The Tribunal has nevertheless addressed those issues.

110. The Claimant relies on the following alleged acts for her claim of direct discrimination because of marital status:-

110.1. Inspector McCormack telling the Claimant that she could not sit next to her husband during her Induction in the Control Room on 27 March 2023;

110.2. Inspector McCormack telling the Claimant she could not speak to her husband during shifts and had to integrate with other Team members during her Induction in the Control Room on 27 March 2023; and

110.3. Inspector McCormack asking the Claimant's husband to return to work rather than stand with the Claimant as she took an "upsetting" telephone call on 19 April 2023 and Inspector McCormack standing next to the Claimant for the during of the call.

111. What is clear is that when the Claimant and her husband attended for duty in the Control Room on 27 March 2023, Inspector McCormack met with both of them and confirmed that Team 3, the Team they would be working in, was a good Team and recommended that they sit separately in order to get to know the Team. Inspector McCormack did not say that the Claimant could not sit with her husband or could not speak to her husband. Inspector McCormack properly recommended that they integrate within the Team.

112. The Respondents dispute the Claimant's description of the interaction between herself and Inspector McCormack on 19 April 2023. What happened was she received a telephone call during work about the investigation regarding her ex-husband and with permission she stepped outside the Control Room. For reasons best known to the Claimant's husband, he followed her (he did not have permission to leave the Control Room). The result would be there was not enough Call Handlers in the room to take extremely important 999 calls from the public and so Inspector McCormack asked the Claimant's husband to return to the Call Room. It was not an unreasonable request.

113. Thereafter Inspector McCormack stayed with the Claimant to provide support to ensure she was okay, keeping an appropriate distance between

herself and the Claimant. The Claimant voluntarily shared details of the conversation with Inspector McCormack and Inspector McCormack provided support to the Claimant, checking if the Claimant was ready to return to her shift.

114. Are the alleged acts because of marital status?

115. It is clear the Claimant has neither pleaded evidence nor proved any facts from which it could be inferred that the fact she was married was an effective cause or significant influence in Inspector McCormack's advice that they should sit with other Team members.

116. Yes, Inspector McCormack recommended the Claimant sit separately from her husband to get to know the Team and to concentrate on the job in hand without distraction.

117. The fact the Claimant was married was neither an effective cause nor a significant influence for Inspector McCormack giving the above advice. She certainly did not reference the Claimant's marriage during their induction. What is clear is Inspector McCormack would have given this advice to any couple joining the Team whether they were married or not, engaged, dating or otherwise.

118. As to the third allegation, again the Claimant has neither pleaded evidence nor proved any facts from which it could be inferred the Claimant's husband was asked to return to work because of their marital status. Quite simply the Claimant's husband was asked to return to the Control Room because there were insufficient Call Handlers to handle the volume of calls and ensure an appropriate service to the public in relation to important 999 calls.

119. The Claimant's husband attempted to give evidence that there was no shortage of Call Handlers on the day, which is inconsistent with the fact the Respondent struggled to fill 999 Call Handler positions and there was a critical need.

120. The fact that the Claimant was married was neither an effective cause nor a significant influence for Inspector McCormack asking the Claimant's husband to return to work. The reason for this was the shortage of Call Handlers. Furthermore, Inspector McCormack remained at an appropriate distance from the Claimant whilst she took the call, to remain with the Claimant because she was clearly upset over the content of the call regarding an investigation against her ex-husband. The fact the Claimant was married was clearly not an effective cause or significant influence, rather Inspector McCormack did so because the Claimant was upset.

121. Were those alleged acts less favourable treatment?

122. The Claimant's named comparators at the time of the Case Management Hearing were Dan Robertson and Elizabeth Parsons. Subsequently in correspondence through her Representative, the Claimant has tried to

name two further comparators Ben Mason and Ellie Bush. Whilst she has not sought permission to rely on those additional comparators or explained any reason why they are not included in her pleaded claim and the fact they were not introduced in the Case Management Hearing.

123. Furthermore, the Claimant has not referenced the above named comparators or indeed any comparators in her Witness Statement, nor has her husband.

124. In any event, the actual comparators the Claimant seeks to rely upon are not like for like. In particular: they are not couples who joined the Control Room at the same time in the same role. Apparently Dan Robertson and Elizabeth Parsons had different roles, were on different Teams and had different shift patterns. Likewise, Ben Mason and Ellie Bush had different roles in different Teams and did not sit together for work purposes.

125. Even if they were appropriate comparators, there is no evidence that Inspector McCormack would have refrained from asking Dan Robertson and Ben Mason to return to work if Elizabeth Parsons or Ellie Bush were taking upsetting calls. The request to return to the Control Room would have been made also with these individuals if there were insufficient Call Handlers in the Room.

126. Taking into account all the evidence, the Claimant has not:

126.1. Proved any facts;

126.2. Insofar as she has proved anything regarding the alleged acts at 110.1, 110.2 and 110.3 above, she has not proved any facts from which it could be inferred that the alleged acts were because of her marital status; and

126.3. Insofar as she has proved facts from which could be inferred the alleged acts were because of marital status, she has not proved any facts from which it could be inferred that the way she was treated was a disadvantage as compared to how other engaged, civil partners or dating colleagues would have been treated.

127. Those claims therefore fail, notwithstanding that some of them are out of time in any event.

Direct Discrimination – sex

128. The Claimant relies on the following alleged acts for her claim:-

128.1. Removing the Claimant's ability to home work by removing the Claimant's ability to work on 10 October 2022, advising the Claimant she was no longer permitted to work from home;

128.2. Arranging a meeting on 22 November 2022;

128.3. Emailing the Claimant on 27 October 2022 to tell the Claimant she would be required to return to the office at a location more than five miles from her home address;

128.4. Responding that it was unlikely that she would be able to work at a local Police Station and a further FMA review would be arranged;

128.5. Removing the Claimant from Call Handling on 28 March 2023 after taking just six calls over two shifts, the Claimant accepts that she had difficulty hearing but suggests she was not given any time to settle into the role and get used to the system, the headphones and tuning in to taking calls from members of the public;

128.6. Telling the Claimant to stop talking and get on with the work during a night shift on 17 April 2023;

128.7. Chastising the Claimant in relation to previously authorised requests for annual leave; and

128.8. Informing the Claimant on 18 May 2023 that a PNC course which she was due to attend had been cancelled.

129. It is accepted in July 2022 the Respondent agreed that the Claimant could trial working from home on a monthly basis for a maximum of six months.

130. On 10 October 2022, Sergeant Burgess attended a remote Teams meeting with the Claimant and her Federation Representative Sergeant Smith. It was discussed whether a return to office work in the future would be appropriate.

131. Sergeant Burgess confirmed that updated advice would be needed prior to such a decision being made and the Force Medical Advisor's guidance was to be sought around fatigue management, a balanced approach and how this would work in relation to travelling.

132. The Claimant explained that the circumstances were not much improved, she could still not drive but she would be happy to attend the work place in principle.

133. The conclusion of this meeting was that the reasonable adjustment was to remain as working from home on a temporary basis and that at the next meeting a phased and balanced plan would be discussed. Clearly the Respondent did not remove the Claimant's ability to work on 10 October 2022.

134. Following a further three months working from home, in a remote meeting to review home working on 27 October 2022, Sergeant Burgess emailed the Claimant informing her that there was a possibility that the Claimant would be asked to return to work at North Walsham or at the Command Centre. No decision had been made at that stage.

135. A further Review meeting was held on 22 November 2022. The Claimant was now stating she was willing to go back to work in a Police Station and happy to attend the work place. In the meantime, the Claimant remained working from home and in fact, this continued until she started in the Control Room on 27 March 2023. It would appear it was in February 2023 that the Claimant's husband proposed he and the Claimant be posted to the Control Room to work together. His proposal having been made in the context of his previous role being moved. The Claimant had confirmed that she was happy to take on the 999 Call Handling role.

136. The Claimant was therefore posted to the Control Room on 20 March 2023 and attended her first shift on 27 March 2023 having completed a five day training course.

137. In those circumstances, the Respondent never removed the Claimant's ability to work from home. It would appear that it was following her husband's request that she return to work in the Control Room approximately eight months after the six month working from home trial began.

138. It was the Claimant's own evidence she was having difficulty hearing callers. The Claimant clearly misheard a man during an important 999 call. The Respondents quite rightly took the Claimant off taking calls as an interim measure because of the risk of mis-hearing callers. On 29 March 2023 the Respondents had been in contact with Occupational Health to arrange an urgent hearing test for the Claimant and her husband. That hearing test was on 3 April 2023 and again, on the Claimant's own evidence, showed she had a severe hearing deficiency in the right ear and in the left. As a result, the Respondents, around 6 April 2023, made enquiries for a specialist head set for the Claimant. However, following the Force Medical Advisor's Review on 6 April 2023, he recommended that the Claimant be removed from the Call Handling role.

139. The Respondents therefore looked at other options which could be agreed, including a special headset and for the Claimant to start wearing hearing aids. Those options were discussed with the Claimant on 24 April 2023, at which the Claimant confirmed she did not have hearing aids and did not like wearing them and would confirm her decision on the options the following day.

140. On 25 April 2023, the Claimant clearly opted to be re-deployed rather than to wear hearing aids. That was a decision for herself. Therefore, the Respondents did not permanently remove the Claimant from the Control Room on 28 March 2023, she was removed as an interim measure due to safety and given alternative tasks. The Claimant in the end opted to leave the Control Room rather than wear hearing aids and the use of the special headset offered by the Respondent.

141. With the events of 17 April 2023, the Claimant was not told to stop talking.

142. Furthermore, the Claimant was not told off for having booked annual leave. There appeared to be an error at a time during a Force wide embargo on leave and the fact that the Claimant's leave had been approved, that would be honoured and that was really the end of it.

143. It is likely that the Claimant had originally been booked on a PNC course, but with the removal from the Control Room and the fact that she was not going to wear the specialist headset or hearing aids, not surprisingly given the course was relevant to that role, she was effectively removed from that course. Clearly there was no point in her attending the course if she was no longer Call Handling.

144. There is therefore no suggestion whatsoever that the events above were because of the Claimant's sex. It was nothing to do with her sex. There was perfectly adequate reason why those events occurred. The Claimant's sex was neither a significant nor effective cause for any of the actions taken by the Respondents.

145. As to whether the treatment was less favourable, again the Claimant relies on her husband as an actual comparator. The point to make there is that the husband was not on home working at the relevant time.

146. The fact that the Claimant's husband also received low hearing results, unlike the Claimant her husband experienced no difficulties hearing callers and had no issues in the Call Handling role.

147. The Tribunal reminds itself the Claimant has to prove on the balance of probabilities facts from which the Tribunal could conclude in the absence of an explanation, the Respondent has discriminated against her.

148. The Tribunal are entirely satisfied, taking into account all the relevant evidence that the Claimant has not proved any facts and insofar she has proved anything regarding the alleged acts, she has not proved that any facts from which it could be inferred that the alleged acts were because of her sex.

Harassment

149. In relation to the harassment claim, the Claimant relies on the following:-

149.1. Are any of the matters set out in paragraph 16 – 18 in her Particulars of Claim, at a meeting on 12 September 2022?

149.2. Was the Claimant chastised by Inspector McCormack in respect of annual leave?

149.3. Did Inspector McCormack tell the Claimant to stop talking?

149.4. Inspector McCormack preventing the Claimant from seeking consolation from her husband?

149.5. Are any of the matters set out in paragraph 38 of the Particulars of Claim at a meeting on 24 April 2023?

149.6. Did Inspector McCormack chastise the Claimant for talking to colleagues?

149.7. Are any of the matters set out in paragraph 46 of the Particulars of Claim on 23 May 2023? and

149.8. Prevent the Claimant from sitting next to or speaking with her husband in the Control Room?

150. The meeting of 12 September 2022 relates to Inspector Hardman and Sergeant Jason Smith. There is in reality when one looks at the discussion between the parties at that meeting that those questions were asked in a humiliating or offensive way. Indeed, the Claimant herself had previously raised the issue of vaginal odour as a reason she needed to work from home. Clearly that is why Inspector Hardman asked questions about this at that meeting. The Respondents only appeared to have asked two questions about the odour, clearly this was not inappropriate as that was one of the main justifications for the Claimant wishing to work from home as advanced by her.

151. The matter was further explored quite simply because other Police Officers were questioning the Claimant's outside of work activities which appeared to be inconsistent with the Claimant's inability to attend the work place and the need to work from home. This was in relation to the Claimant's Facebook page and how she was enjoying herself out and about at theatres, zoos and restaurants etc. It was not unreasonable to explore these Facebook postings with the Claimant. Furthermore, Inspector Hardman, at that meeting, was quite clearly at pains to help the Claimant understand the reason why she was asking the questions about the Claimant's Facebook posts. The Claimant seemed to understand that at the time. Clearly that was not unwanted conduct based on the Claimant's sex that had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading or offensive environment.

152. It seems far from being upset by Inspector Hardman, the Claimant was more upset about the Facebook posts which had been brought to her attention and potentially suggesting that the Claimant's issues were not quite prevalent or extreme as the Claimant would have the Respondents believe.

153. That claim therefore fails.

154. In relation to the allegation that Inspector McCormack chastised the Claimant in respect of annual leave, there was clearly a misunderstanding. The Claimant had booked leave and that had been granted in error at a time when there was a Force embargo on leave. When Inspector McCormack questioned the Claimant about the misunderstanding,

realising there had been a mistake the Claimant's leave was honoured and that was the end of the matter.

155. Clearly that was not unwanted conduct which had the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading or offensive environment. That claim fails.

156. The allegation that Inspector McCormack told the Claimant to stop talking in the Control Room, this has already been dealt with above.

157. In relation to the allegation preventing the Claimant from seeking consolation from her husband, this has already been dealt with above.

158. In relation to the matters set out at paragraph 38 of the Particulars of Claim at a meeting on 24 April 2023, the Claimant asserts Inspector McCormack was dismissive of the Claimant's issues and Inspector McCormack stating she knew about them having only one car. Together with the fact that Inspector McCormack could not guarantee the Claimant's and her husband's shifts being aligned if she was re-deployed.

159. It is correct that Inspector McCormack did say they could not guarantee the Claimant and her husband being placed on the same shifts and further that it was unlikely that the Claimant's husband be taken off night shifts in order to drive the Claimant to work. Further she did state that she knew the Claimant and her husband only had one car.

160. Again, this gets nowhere near to being unwanted conduct because of the Claimant's sex, having the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading or offensive environment. It was stating facts.

161. In relation to the allegation that Inspector McCormack chastised the Claimant for talking with her colleagues, it is accepted by the Tribunal that Inspector McCormack never told the Claimant she was not talking to other Team members enough. What Inspector McCormack did say was to encourage the Claimant to integrate with other members in the Team. Again, that is not unwanted conduct which had the purpose or effect of violating the Claimant's dignity and creating an intimidating, hostile, degrading or offensive environment.

162. In relation to the allegations and matters set out at paragraph 46 of the Particulars of Claim, on 23 May 2023, namely that Inspector Hardman having spoken to Inspector Jerman and Inspector McCormack indicating that the Claimant's request for an aligned shift was refused stating instead that she needed to submit a Flexible Working application or use public transport. What is clear is the Claimant wanted an aligned shift with her husband. In the Claimant's new role in Op Solve there was no shift pattern which aligned with her husband's shift pattern and Inspector Hardman explained that she could not authorise the Claimant's husband's shift to be matched to the Claimant's if she was to return to Op Solve.

Therefore, they would have to make a Flexible Working application, or consider public transport.

163. This is clearly not unwanted conduct which had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading or offensive environment. Again, this was stating what the position was.

164. In totality, therefore, the Claimant's claim fail.

Approved by:

Employment Judge Postle

Date:12/6/2025

Sent to the parties on: 16/06/2025

N Gotecha

For the Tribunal Office.

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