Case Number: 1804950/2023

1804951/2023

EMPLOYMENT TRIBUNALS

Claimants:	**Mr D A Driver**		
	Mr P J Brackpool		
Respondent 1:	**The Chief Constable of South Yorkshire Police**		
Respondent 2:	**Mrs L Lynskey**		
Heard at	**Sheffield**	**On:**	**17th, 18th, 19th, 20th, 24th, 25th and 26th June 2024** **28th, 29th, 30th and 31st October 2024** **4th, 5th, 6th and 8th November 2024.** **11th, 12th and 13th November 2024** **(in chambers)**

Before:	**Employment Judge Brain**
Members:	**Mr K Chester** **Mrs P Pepper**
Representation	
Claimants:	**Mr A Crammond, Counsel**
Respondents:	**Mr D Jones, Counsel**

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is that:

Mr D A Driver

1. The complaints of direct discrimination because of the protected characteristic of age brought pursuant to section 13 when read with section 39(2)(d) of the Equality Act 2010 fail and stand dismissed.
2. The complaint of less favourable treatment brought pursuant to Regulation 5(1)(b) of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 fail and stand dismissed.
3. By consent, at all material times Mr Driver was a disabled person within the definition in section 6 of the 2010 Act of which disability the respondents had knowledge.

4. Upon the complaints of unfavourable treatment for something arising in consequence of disability brought pursuant to section 15 when read with section 39(2)(d) of the 2010 Act:

   (1) The complaint about the respondents' decision to remove Mr Driver from his specialist role of operations manager of the mounted section to work on Operation Adonis succeeds.

   (2) The complaint about the respondents' decision to remove Mr Driver from his specialist role of operations manager of the mounted section to work as police officer support in the Force Crime Management Unit succeeds.

   (3) The remaining complaints of unfavourable treatment for something arising in consequence of disability fail and stand dismissed.

5. The complaints in paragraphs 4(1) and 4(2) were presented within the time limit in section 123 of the 2010 Act. Accordingly, the Tribunal has jurisdiction to consider them.

6. In the alternative, in relation to the complaint in paragraphs 4(1) it is just and equitable to extend time to vest to the Tribunal with jurisdiction to consider it.

Mr P J Brackpool

1. The complaints of direct discrimination because of the protected characteristic of age brought pursuant to section 13 when read with section 39(2)(d) of the 2010 Act fail and stand dismissed.

2. The complaints of less favourable treatment brought pursuant to the 2000 Regulations fail and stand dismissed.

3. By consent, at all material times Mr Brackpool was a disabled person within the definition in section 6 of the 2010 Act of which disability the respondents had knowledge.

4. The complaint of unfavourable treatment for something arising in consequence of disability brought pursuant to section 15 when read with section 39(2)(d) of the 2010 Act succeeds upon the complaint of his removal from his specialist role with the dog section to work as police officer support in the Force Crime Management Unit.

5. The remaining complaints of unfavourable treatment for something arising in consequence of disability brought pursuant to sections 15 and 39(2)(d) of the 2010 Act fail and stand dismissed.

6. The complaint in paragraph 4 was presented within the time limit in section 123 of the 2010 Act.

Respondents' liability

The respondents are jointly and severally liable for remedy upon the claimants' successful complaints.

REASONS

Introduction

1. The Tribunal received closing submissions in this case on 8 November 2024. Judgment was then reserved. The Tribunal deliberated over three days on 11, 12 and 13 November 2024. We now give the reasons for the judgment that we reached. Our judgment and the reasons for it are unanimous.

2. This case benefited from a case management hearing which came before Employment Judge Cox on 5 November 2023. She listed the case for a hearing over seven days between 17 June and 26 June 2024.

3. The Tribunal used 17 June 2024 (the first day of the hearing) as a reading day. The Tribunal was presented with a hearing bundle running to 583 pages together with witness statements from the claimants, the second respondent and the witnesses called on behalf of the first respondent.

4. The matter was adjourned on 26 June 2024. This followed late disclosure from the first respondent on the evening of 25 June 2024. Case management directions were given.

5. The Tribunal gave case management directions and adjourned the case to dates in October and November 2024. Further case management directions were given by the Tribunal pertaining to the late disclosed documents at a case management hearing before the Employment Judge held on 20 September 2024. A supplementary bundle and additional witness statements were produced by the first respondent. 28 October 2024 was used by the Tribunal as an additional reading day given the circumstances.

6. The first respondent is the Chief Constable of South Yorkshire Police. The second respondent was a serving police officer with South Yorkshire Police between 21 February 1994 and 20 February 2024. From November 2021 until her retirement, she held the post of superintendent in the Operational Support Unit ('OSU').

7. The claimants are retired police constables. Following their retirements, they returned to work for the first respondent under the South Yorkshire Police Returner Scheme. To be eligible to return to the employment of the first respondent under this scheme, officers had to have 30 or more years of pensionable service. Accordingly, the scheme was referred to within South Yorkshire Police as the *'30+ scheme.'* The Tribunal shall follow suit.

8. Arising out of their service as 30+ officers, the claimants have brought complaints of discrimination. We shall look at the issues and the applicable law in further detail in due course. Suffice it to say at this stage that the claimants' complaints are of:

    8.1. Direct age discrimination brought pursuant to the Equality Act 2010.

    8.2. Unfavourable treatment for something arising in consequence of disability brought pursuant to the 2010 Act.

    8.3. Part time worker discrimination brought pursuant to the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000. *(This*

complaint is brought against the first respondent only whereas those in paragraphs 8.1 and 8.2 are brought against both respondents).

9. The respondents do not dispute that each claimant was disabled within the meaning of section 6 of the 2010 Act at the relevant time with which this case is concerned. They also do not dispute that they knew of each claimants' disability at the material time.

10. The Tribunal heard evidence from the claimants. We also heard evidence from the following witnesses called on behalf of the respondents. (In these reasons, we shall usually refer to the claimants and the respondents' witnesses (and others in the force from whom evidence was not called) by their civilian names and not by their professional names and rank. No discourtesy is intended by doing so):

    10.1. Lee Carlson. He holds the rank of Chief Inspector. He has been a serving police officer for 27 years. From January 2022 to July 2023, he was the chief inspector for Roads Policing, heading up the Roads Policing Group ('RPG'). The Roads Policing Group is part of the OSU.

    10.2. Cherie Buttle. She is a Chief Superintendent with South Yorkshire Police and head of the force control room and the OSU. She commenced in that role in December 2022. (Miss Buttle's evidence in chief was in three witness statements. The second and third witness statements were given pursuant to the case management directions of 26 June 2024 and 20 September 2024).

    10.3. Helen Arden. She is an Inspector with South Yorkshire Police currently posted within the duties and contingency planning unit.

    10.4. Jason Booth. He is a retired police officer who served with South Yorkshire Police until 18 May 2022. At the time of his retirement, he held the post of Inspector in the Roads Policing Group but also managed the day to day running of the dog officers who worked alongside the RPG officers.

    10.5. Natalie Gilmore. She holds the post of Chief Inspector with South Yorkshire Police based in the Force Crime Management Unit ("FCMU"). Her role is to oversee the three departments within the FCMU. As she explains in paragraph 1 of her witness statement, these departments are the Force Crime Bureau (FCB'), Crime Support Hub ('CSH') and the Crime Data Accuracy Team ('CDA').

    10.6. Daniel Garside. He is an Inspector in the OSU. He is currently the Inspector for the Tactical Support Group and the South Yorkshire Police Dog Training School. Around October 2020 he became the Inspector for the South Yorkshire Police Mounted Section. He also held responsibility for the Police Dog Training School at Niagara in Sheffield.

    10.7. Daniel Lumley. He is the police dog training Sergeant with South Yorkshire Police based at the South Yorkshire Police Dog Training School at Niagara. He was posted into the role of dog handler Constable within the OSU in March 2018. In January 2023 he was promoted (temporarily) to the role of operational dog sergeant.

11. The second respondent also gave evidence. As we have said, she was promoted to the role of OSU Superintendent in November 2021. At that time she reported to Chief Superintendent Simon Wanless who was the head of the OSU. In

December 2022 Miss Buttle took over from Mr Wanless as head of the OSU. The second respondent reported directly to Miss Buttle.

12. In these reasons, we shall refer to the Chief Constable of South Yorkshire Police as the first respondent. We shall now refer to the second respondent as Mrs Lynskey. We shall refer to the claimants as Mr Driver and Mr Brackpool respectively.

13. There is much factually which is not in dispute and where the issue between the parties is whether the conduct in question was discriminatory. Where there is a need for the Tribunal to resolve conflicts of fact, the Tribunal shall indicate so.

Findings of fact

The parties in the case

14. For context, it is necessary to say something about the relevant parts of the first respondent's organisation. Mrs Lynskey introduces the OSU in paragraph 2 of her witness statement as, *"the collective term for a number of highly specialist and trained police officers and units, which provide support locally and nationally depending on their specialism. This includes the firearms unit, dog handling, public order offences and roads policing as well as many other functions."*

15. One of these functions was the co-ordination of a multi-agency *"live play"* exercise known as Operation Adonis. The objective of this exercise is described by Mrs Lynskey in paragraph 7 of her witness statement as, "*to test our chemical biological, radiological and nuclear (CBRN) response to a terrorist incident working alongside other Blue Light agencies and partners (please see pages 133 and 134 of the bundle)."*

16. Pages 133 and 134 is an executive summary about Operation Adonis from the respondents' senior command team. (Operation Adonis was also known as *'Adonis Oscar'*). In paragraph 8 of her witness statement Mrs Lynskey says*, "My department were the lead agency in planning the event. There was of national importance and necessity in the delivery as SYP [South Yorkshire Police] had been the Pilot force trialling the CBRN response to firearm incidents and this would be the first time the capability had been showcased."*

17. The RPG of which Mr Carlson was Chief Inspector forms part of the OSU. He described, in paragraph 2 of his witness statement, it being his responsibility "*to oversee the operational delivery of a number of policing areas including roads policing, serious collision investigation, accident records, abnormal loads management and rural and wildlife crime. In this role I had responsibility for the police dog section, within which PC Paul Brackpool was posted."*

18. Miss Buttle in paragraph 3 of her witness statement describes the OSU as consisting *"of a number of specialist units, including firearms, the tactical support group, roads policing, the dogs section, the planning, duties and events department, specialist training departments and the mounted section. PC David Driver and PC Paul Brackpool were both officers within OSU."*

19. Mrs Arden describes the duties and contingency planning unit (in paragraph 1 of her witness statement) as comprising *"a small team of contingency planning officers and the business continuity manager. The team's core role is to discharge the Force's statutory duties under the Civil Contingencies Act including managing the Force's emergency plans. This includes testing and exercising these plans in order to validate them, both internally and with multi-agency*

partners." She goes on in paragraph 2 to say that *"In 2022 my team were tasked with planning and running a live play exercise to test the response to a terrorist threat. Exercise Adonis Oscar was a multi-agency, live play exercise, designed and planned to test individual and collective responses to a major incident at large public venues. South Yorkshire Police and my team took the lead role throughout the planning and development of this exercise."* The contingency planning unit sits within the OSU.

20. Two other units or organisations within South Yorkshire Police are of relevance in this case. One of these is the Football Intelligence Unit (FIU). At the relevant time, the FIU supervisor was Detective Sergeant John Armitage. The FIU sits within the OSU - (see Mr Garside's witness statement in paragraph 6).

21. The other unit of significance in this case is the Force Crime Management Unit. We have already referred to the brief description of this in paragraph 1 of Mrs Gilmore's witness statement (in paragraph 10.5 above). The FCMU sits outside the OSU.

22. Mrs Gilmore goes into a little more detail about the FCMU in paragraphs 2 and 3 of her witness statement as follows:

"2. The three departments [FCB, CSH, and CDA] perform different functions for the force. FCB is the Force's central crime recording department, CSH conduct desktop investigations where they either resolve or allocate investigations for further action, and the CDA team ensure filed investigations comply with national standards.

3. As stated, FCB is the central crime recording department within SYP, which performs a number of functions. FCB record reports of crime and non-crime from a number of pathways, these being public calls, online reports and an incident active queue. FCB also quality assure ('QA') all crime and non-crimes recorded in SYP those having been recorded by FCB and those recorded by police officers and staff from across the force. Through a decision-making process, staff in FCB assess and rationalise whether each recorded crime and non-crime investigation requires allocation for further investigation or where there are no lines of enquiry to identify a suspect the crime is filed."

23. Mrs Gilmore says in paragraph 1 of her witness statement that, *"Part of my role is to ensure the departments achieve compliance with national standards, force policy, deliver an excellent service to the communities of South Yorkshire and continue to address areas for improvement (AFI) identified in our recent HMIC inspection. One of those AFIs being "The force should immediately ensure that all identified crimes are recorded without delay and in any case within 24 hours."*

24. She mentions in paragraph 4 of her witness statement that in October and November 2022 the demand within the FCB significantly exceeded the department's capacity. This led to "*a backlog and delay of around two and a half weeks* [being] *experienced"* in crime recording, in breach of AFI standards. This led to the senior command team taking action at around that time to address the issue. We shall look at this issue in further detail later in these reasons.

25. Having introduced the relevant parts of the first respondent's organisation and functions, we now introduce the claimants.

26. Mr Driver joined South Yorkshire Police on 28 April 1996 after service with British Coal and the Royal Air Force Police. At school, he said he wanted to be a police

officer or a fire officer. In paragraph 1 of his witness statement, he says that, *"It was the proudest moment of my career when I was accepted to the post of Police Constable. I had made the dream come true."*

27. In 2002, he applied for a post in the mounted section. He was successful. He was assigned to the mounted unit of South Yorkshire Police based at Ring Farm Stables. This is a small farm on the edge of Barnsley with approximately 11 acres of land and associated farm buildings. He was in charge of the police officers assigned to the mounted unit along with the civilian grooms. Together, the police officers and grooms were responsible for looking after the police horses. He took great pride in this role. As he said in paragraph 3 of his witness statement, passing out as a mounted officer was *"another proud and privileged moment, patrolling the streets of South Yorkshire on horseback."*

28. On 17 November 2015 Mr Driver sustained an injury while on duty. The injury was sustained in the course of apprehending an individual suspected of the theft of a bicycle. In his rush to alight from his horse to help with the arrest, he landed heavily on his right ankle resulting in a significant injury, tearing the tendons and ligaments. He underwent an operation to re-attach the tendons and ligaments in October 2016. This incident has, unfortunately, left him with a permanently weakened right ankle.

29. On 9 August 2018, Mr Driver suffered another injury, this time to his left ankle. This injury was sustained off duty. As with the right ankle, he underwent a Brostum repair operation in the left ankle on 5 March 2019. He returned to duty in the summer of 2019.

30. Upon his return to work, he was asked to take on the role of temporary Sergeant of the mounted section. He spent five months in the role. In October 2019, PS Clive Collings was appointed as the substantive Sergeant for the mounted section. He (PS Collings) achieved a promotion in early 2020. Mr Driver therefore stepped back into the role of temporary Sergeant. He held that role until the appointment of PS Collette Pitcher to the role of substantive sergeant for the mounted section in October 2020. Mr Driver in fact took part in the selection exercise in which Ms Pitcher was appointed.

31. The injuries which he had sustained to his ankles in 2015 and 2018 led Mr Driver to ask for an assessment for adjustments to be made to his duties. It was a matter of great regret to him that he would no longer be able to ride horses in the course of his duties. As he says in paragraph 12 of his witness statement, "*It took me a great deal of personal anguish to stop doing what I enjoyed the most about my job."*

32. On 2 January 2020, Mr Driver was granted 'adjusted duties officer' status. The adjusted duties agreement is at pages 107 to 109 of the bundle. Amongst other adjustments was the avoidance of any operational work with horses. The adjusted duties agreement provided that Mr Driver's *"posting may change as dictated by organisational need and operational resilience, and South Yorkshire Police will endeavour to post you into a role where you are deployed utilising your capabilities fully."*

33. Mr Brackpool joined Nottinghamshire Police in February 1998 after a career with the Royal Air Force. His aspiration for working with the police was "*to follow in my uncle's footsteps and become a police dog handler."* He transferred to South

Yorkshire Police in July 2002. He successfully applied to become a dog handler with South Yorkshire Police in 2004.

34. He says in paragraph 5 of his witness statement that, *"I started as all officers do as a general public dog handler (GPD) but eventually found myself applying for the role of passive drugs detection dog handler and dual handler."* When giving evidence in cross-examination, Mr Brackpool informed the Tribunal that a passive dog is one which searches people. They are to be distinguished from reactive dogs who search buildings.

35. Mr Brackpool spoke with pride in his evidence in chief about his experiences with his passive Police Dog ('PD') Duke. He says in paragraph 6 of his witness statement that, "*PD Duke, my passive detection dog had also started to make a name for himself, working operations both in South Yorkshire Police and surrounding Forces."* He goes on to say that he worked around the country and that he and PD Duke *"had become the country's leading passive detection team."* He spent many of his days off working away and giving talks to groups of young people about his work with PD Duke. He also says that he was the highest arresting dog handler. (None of this evidence was challenged and, by way of reminder of what we said in paragraph 13 above, much of the evidence in this case was not disputed or challenged and may be taken as factual save where there is a conflict of evidence to be resolved).

36. Mr Brackpool retired from South Yorkshire Police on 19 March 2019. He settled into retirement and his life away from the force. He took on a role as a swimming teacher and leisure supervisor with Barnsley Premier Leisure (at two sports centres in Barnsley). This role fitted in with his position as a sports adventure training and Duke of Edinburgh Awards officer which he leads and for which he is a qualified assessor.

The 30+ scheme and the claimants' return to work following retirement.

37. The first respondent decided to introduce the 30+ scheme. It was to run for one year between 1 November 2019 and 31 October 2020. There is a description of the 30+ scheme at pages 100 to 104. This says, in the introductory section, that the 30+ scheme *"allows a police officer to retire from SYP but to then return as an attested officer after a short break of service. Officers that retire will be given access to their commutation lump sum and will receive a partial pension abatement to ensure that their remuneration package is at the same level prior to their retirement."*

38. The scheme was open to constables, sergeants and inspectors where the officer was eligible for the immediate maximum police pension and where a justifiable business case can be made for their re-engagement on the 30+ scheme. It was open to officers of those ranks who had retired since November 2017. The scheme was designed to assist SYP in the return and retention of officers with valuable skills and experience who would otherwise retire.

39. The guide at pages 100 to 104 says that was the responsibility of district commanders and departmental heads to identify *"critical roles within their business areas that carry a substantial risk to the Force if they were unable to maintain officer numbers in those posts."* It was their responsibility to ascertain *"whether these officers in critical roles wish to be re-appointed under the principles of this policy."* There was then a requirement to submit a business case for re-appointment of officers in identified critical roles.

40. An internal job advertisement was placed alerting officers to the 30+ scheme: (page 106). This stipulated that returners must spend a minimum of one month and a maximum of two years in retirement. Those returning were to be posted to existing SYP vacancies *"in line with normal workforce deployment practices."*

41. The question of what is meant by *"normal workforce deployment practices"* was an issue in the case. There was no dispute that Mr Driver and Mr Brackpool both returned under the 30+ scheme because of their specialisms – in Mr Driver's case, his work with horses in the mounted section, and in Mr Brackpool's case his work with dogs in the dog section.

42. It was the respondents' case that the claimants were returning as warranted police officers first and foremost and were liable to be re-deployed. Mr Driver, in paragraph 40 of his witness statement, said *"I haven't heard of any other specialist officers being moved away from the roles they were brought back to do."* (This was plainly a reference to being brought back under the 30+ scheme). In evidence given under cross-examination, he said that as a specialist he was not liable to be moved. That said, he did say in his witness statement that, *"I'm a police officer and can be moved"* before going on to say that notice of a move had to be given. When he gave evidence in cross-examination, Mr Brackpool similarly maintained that he should not be liable to be moved given his specialist role.

43. Mrs Arden, Mr Booth and Mr Garside all agreed that to move a specialist officer is not unknown but is unusual. There was a large measure of agreement therefore that specialist officers could be moved if a need arose.

44. It was possible for a retired police officer to return under the 30+ scheme on a part time basis. This is clear from some further information about the 30+ scheme at pages 110 to 115 – (see the bottom of page 111 for a clear stipulation that a return to work on a part time basis under the 30+ scheme is possible).

45. A retired officer returning on the 30+ scheme was able to retain their pension lump sum and the annual pension annuity as well as receiving a salary under the 30+ scheme. Mr Jones put it to the claimants that the 30+ scheme was seen as a *"golden ticket."* The claimants' case was that there was resentment of 30+ officers accordingly.

46. There have been changes to the 30+ scheme from the form in which it was operating when the claimants applied to return under it. The 30+ scheme is now not as attractive as it once was. Mrs Lynskey and Mr Carlson both said that had they been in a position to do so, they would have applied to return under it as it stood at the time of the claimants' return under it. The scheme as it was then operating enabled a returning officer to work part time hours (of around half a working week) and effectively receive a full salary (that being the pension annuity together with the salary earned under the 30+ scheme).

47. However, there was also an advantage to the 30+ scheme from the perspective of the first respondent. As Miss Buttle explained, there was a political imperative behind the 30+ scheme. A returning retired police officer would count towards the pledge advanced by the previous government to recruit 20,000 new police officers. Even if the officer was returning on a part time basis under the 30+ scheme, the force would receive funding for one full time equivalent. As Miss Buttle put it, this meant that the recruitment of a returning part time 30+ officer was in fact profitable for the force as a consequence. This is because they only

had to fund a part time salary in circumstances where they received central government funding for a full-time officer.

48. On 22 April 2020, in anticipation of his forthcoming retirement, Mr Driver expressed an interest in returning to work within the mounted section on the 30+ scheme (page 116). He anticipated there to be a need for his knowledge and experience in the circumstances already described in paragraph 30 (where PS Collings had achieved a promotion which resulted in the return of Mr Driver to the temporary Sergeant's post). He said that in his email of 22 April 2020 that, *"there won't be time to recruit the new sergeant* [who it transpired was Collette Pitcher] *and any new riders and train them before 30 October 2020* [Mr Driver's retirement day]." He said that he *"would like the opportunity to pass on* [his] *knowledge and experience to help sustain the department over the next few years."*

49. Darren Starkey, Chief Inspector of the OSU, interviewed Mr Driver and prepared a brief business case (page 118). It was recommended that Mr Driver be permitted to return to the mounted section in order that the force may *"retain the benefit of his extensive knowledge and experience for the long-term benefit of the mounted section."*

50. A role was created for Mr Driver. The job title was mounted section operations manager. The description of the role, at page 118 (as part of the business case) was to take on responsibility for the day-to-day management of Ring Farm, provide specialist knowledge and support to the new mounted sergeant enabling that officer (PS Collette Pitcher) to undertake the 16 weeks mounted standard equitation certificate to enable her to develop and become proficient on horseback.

51. At page 119, one of the business benefits is described by CI Starkey in these terms - *"The mounted unit will lose over 73 years of experience in the next 18 months due to officer retirements and it is critical that the succession is managed as effectively as possible using the existing experience to best effect as part of the process."* He goes on to say that the new mounted sergeant would be coming into a highly specialised role which carries a risk of non-compliance with legislation and risk assessments until Collette Pitcher is fully competent within the mounted environment.

52. In paragraph 16 of his witness statement, Mr Driver gives a very detailed description of the tasks to be carried out at Ring Farm. We shall not recite this lengthy passage in full. Suffice it to say that management of the farm (which is an agricultural entity) called for detailed and expert knowledge to comply with environmental regulations and maintain the health and welfare of the horses.

53. Mr Driver retired on 30 October 2020. After spending the minimum of one month in retirement (in accordance with the terms contained in the job advertisement at page 106) he returned to work in his new bespoke role as mounted section operations manager on 2 December 2020. His offer letter is at pages 127 to 129.

54. There is no dispute that Mr Driver performed his new role well. He was supportive of Sergeant Pitcher both when she was present at Ring Farm and when she was away on the standard equitation course. Mr Driver was contracted to work 19.75 hours a week. However, he often worked more hours than those which he was contracted to provide. For instance, on 4 January 2022 Mr Garside emailed Mrs Lynskey to the effect that Collette Pitcher *"is now familiar with most of the operating at the farm, Dave is clearly instrumental in supporting this*." He added

that Mr Driver was always busy, and that Collette Pitcher had reported to him (Mr Garside) that Mr Driver often leaves work late and was happy to be contacted even when off duty. We refer to page 139 of the bundle.

55. In Mr Brackpool's case, he describes in paragraph 12 of his witness statement having been called *"out of the blue"* in mid-2020 by Superintendent Paul McCurry. Mr McCurry had been a Superintendent in the OSU until November 2021. Mr McCurry informed Mr Brackpool that he (Mr McCurry) was putting together a business plan for a specialist passive search dog handler and that Mr Brackpool was top of his list.

56. At the same time, Mr Brackpool had been shortlisted for the position of duty manager working on a full-time basis at one of the leisure centres in Barnsley where he had been working as a swimming teacher and leisure supervisor. (We should clarify that as a swimming teacher and leisure supervisor he was engaged on a casual basis).

57. In paragraph 15 of his witness statement, Mr Brackpool explains that returning to work as a passive dog handler was not a short-term commitment. Dogs can work for up to eight years. Having discussed the matter with his wife and his daughter, Mr Brackpool agreed to return to work on the 30+ scheme committing to a further six to eight years of working life with the force. He withdrew from the selection process for the full-time duty manager role at the leisure centre. He was continued working there (and at the other leisure centre) on a casual basis.

58. The business case for Mr Brackpool's return was made out and on 19 November 2020 he was offered the position of Police Constable under the 30+ scheme with effect from 1 December 2020. He was to be posted into the role of dog handler. The letter of offer is at pages 124 to 126. (We appear not to have Mr Brackpool's business case in the bundle).

59. The letter of 19 November 2020 says, at page 124, that Mr Brackpool's supervisor was to be PS Jonathan Hardwick. Mr Brackpool attended the dog training school at Niagara on his first day, on 1 December 2020. There, he met with PS Hardwick and Brian Grange, a police sergeant based at the dog training school.

60. Mr Grange and Mr Hardwick told the claimant that there was not, after all, going to be a passive detection dog. The justification given to Mr Brackpool was that there was no need for one and it was too expensive. The Tribunal did not have the benefit of hearing from either Mr Hardwick or Mr Grange about this change of plan.

61. However, in an email dated 15 December 2020 addressed to Mr Garside and Mr Booth at page 131, Mr Hardwick alludes to there having been an intention to train Mr Brackpool on a six-week course with his passive dog. Mr Hardwick then explains that, *"unfortunately, some internal disciplinary issues have meant that [the] manager and an instructor have been removed from post and the future of the course is in doubt."* (SYP had an agreement with Nottinghamshire Police to train PC Brackpool. It was Nottinghamshire's manager and instructor who, it seems, had disciplinary issues leading to the course being put in jeopardy).

62. In paragraph 19 of his witness statement, Mr Brackpool said, *"I feel the reason [for the cancellation] was that it was time consuming, none of them had the specific knowledge of passive work/detection and they just could not be bothered."* He went on to say in paragraph 20 that*, "There was a complete lack of enthusiasm within the dog section trainers. I even found a passive course at*

Nottinghamshire, who would be willing for me to attend. Also a retired qualified trainer to assist in house at Niagara. All to no avail, they were simply not interested."

63. The Tribunal has little doubt that the circumstances which were presented to Mr Brackpool on 1 December 2020 were hugely disappointing. He had given up the prospect of a career with Barnsley Premier Leisure to return to the force in a specialist role as a passive dog handler.

64. Matters were aggravated by Mr Brackpool not having been informed in advance of 1 December 2020 of the potential problems with the course. From the email of 15 December 2020 at page 131 there does appear to have been genuine reasons for difficulties in running the passive drugs course. The poor communication and disappointment led to Mr Brackpool (in our judgment) then having a jaundiced view of the force which tainted matters following his return on the 30+ scheme.

65. Returning to paragraph 20 of Mr Brackpool's witness statement, he says that he was offered *"a reactive drugs, cash, weapons (DCW) detection dog and they had a police dog, PD Milo who had previously failed an explosive detection course. It was 'take it or leave it'".* Mr Brackpool goes on to say*, "I tried to take it further to Inspector Dan Garside, unfortunately he had been bamboozled with corrupt facts about passive and he had been turned against the idea. In my opinion Inspector Dan Garside had little to no knowledge on the working dogs and would believe everything from the sergeants and trainers there at Niagara."*

66. Accordingly, Mr Brackpool underwent a shortened course of three weeks (instead of six) and became operational with PD Milo on 25 January 2021. In paragraph 22 of his witness statement, Mr Brackpool says that he "*took PD Milo home to meet the family. All police dogs live at home with the handlers. It creates a special bond between dog and handler and secondly the family.*"

67. Some further context is given about this in paragraph 46 of his witness statement. He says*, "I think it is important to understand the circumstances and impact for me of taking on a police dog. It is a huge commitment 24/7. Days out are virtually impossible due to the police dog's requirements. It becomes part of the family. This is especially so to my autistic daughter. Her acceptance of the dog is vital. She bonded with Milo and she relishes hiding items in my horse's paddock, and woods, to train Milo on days off. The police dog is not a resource that simply goes into the kennel until it is needed. It is a living breathing partner in every sense of the word. PD Milo was a huge part of the family. Every dog I have had has retired to me at my home to live out the rest of their days in mine and my family's care."* Mr Carlson accepted, when giving evidence under cross-examination, that he was aware that Mr Brackpool's daughter is autistic.

68. Like Mr Driver, Mr Brackpool had returned to work on the 30+ scheme on a part-time basis. He returned on a job share with another 30+ officer, Mark Adams. Mr Adams handled a victim detention dog. Mr Adams remains with the force. Mr Adams had charge of his own dog. As we have said, PD Milo (a male labrador who was born in May 2019) was teamed with Mr Brackpool.

69. We have given a description of the relevant parts of the first respondent's organisation and the 30+ scheme. We have described the circumstances in which the claimants returned, following their retirements, on that scheme. We have seen that Mr Driver volunteered to return after his mandatory minimum

month in retirement to provide his specialist knowledge in the mounted unit. We have seen that Mr Brackpool was solicited to return by Paul McCurry on account of his (Mr Brackpool's) specialist knowledge of and skills with handling passive police dogs. Having set the scene, we now turn to make factual findings pertaining to the issues in the case.

70. Mr Jones provided the Tribunal with a very helpful chronology of events dealing with the events affecting each claimant concurrently. Respectfully it is, we think preferable to separate out at this stage the issues affecting Mr Driver and Mr Brackpool respectively from the end of 2020 until around March and April 2023. Upon the latter dates, as we shall see, each were required to join the FCMU. At that point, it is convenient, we think, to consider both of their cases concurrently. We therefore start with a consideration of Mr Driver's case.

David Driver- Operation Adonis Oscar

71. We have seen already that the go-ahead for Operation Adonis Oscar was given by the Senior Command Team. The exercise was to be held in October 2022. This was resource and planning intensive. Helen Arden approached Lydia Lynskey about the need for additional resources over and above her (Helen Arden's) existing staff. As Mrs Arden put it in paragraph 3 of her witness statement, her staff "*also had a day job to maintain whilst planning such a significant exercise".*

72. It is not in dispute that Mrs Lynskey's preference was for *"Staff [to be] pulled from other areas of business who were unable to fulfil their normal role or who had capacity to support the planning team temporarily. Off-line firearms officers, training teams and staff from all areas were required to support the core team."* We refer to paragraph 12 of Mrs Lynskey's witness statement.

73. The expression *"off-line"* simply means that there is a restriction upon an officer's ability to carry out their substantive role in full. It was not disputed by the respondents that those on adjusted duties or on restricted duties would be those to whom the force would routinely turn where the need arose. (Mr Driver was an adjusted duties officer- see paragraph 32 above. As we shall see, Mr Brackpool was on restricted duties at material times). Mrs Lynskey said in paragraph 17 of her witness statement that she was *"acutely aware of how unpopular such moves, even if on a temporary basis, could be."* She said that in her career she had been moved many times (from roles which she had loved). However, she took the view that *"that is part and parcel of being a police officer."* Mrs Lynskey's view as to whom the Force should turn where additional resources were needed with any particular operation was dictated by operational need and what would be least impactful on frontline policing.

74. In paragraph 3 of her witness statement, Helen Arden says that Mrs Lynskey informed her that she (Mrs Lynskey) "*would prefer not to abstract staff who were fully operational, in order to minimise the impact on frontline policing response. She told me she would seek to identify someone not currently performing frontline duties instead."*

75. Mrs Lynskey suggested a number of officers to assist including Mr Driver- see paragraphs 14 and 15 of her witness statement. He was not required to move from his place of work but, if necessary, any commuting from Ring Farm to the Operations Complex would be undertaken in duty time. She considered that Mr Driver could be abstracted (that is to say, temporarily removed) from his role as

the mounted sections operations manager because others within the mounted department were also off-line and therefore able to cover his absence.

76. Mrs Lynskey says in paragraph 16 of her witness statement that, *"As is often the case my decisions were communicated by my managers, generally the Chief Inspectors or Inspectors. In this instance Inspector Garside was asked to inform PC Driver of the decision."*

77. Mr Garside, for his part, corroborates Mrs Lynskey's account. He says in paragraph 5 of his witness statement that, "*I spoke with both of my officers as to the requirement (please see pages 140 to 144 of the bundle)."* By "*both of the officers"* Mr Garside is referring to Mr Driver and one of his colleagues from the mounted department, Michelle Hudson. She was off-line at this time, having unfortunately suffered a broken wrist after falling from a horse.

78. Mr Garside says (also in paragraph 5 of his witness statement) that, *"I am not aware of any work that PC Driver performed in support of the operation, this is not to say he didn't, however I trusted that he would be tasked directly by the CPU [Contingency Planning Unit] PS at the time Sergeant Bruce Yacomeni so I simply had no need to know, I was happy with PC Driver being able to support as and when required and in line with his working hours."*

79. For his part, Mr Driver says that he was informed of his move to operations complex as part of Operation Adonis by PS Pitcher in April 2022. He says in paragraph 21 of his witness statement that that he spoke to Bruce Yacomeni at length about the move. Mr Driver says that Mr Yacomeni told him that there was no room for him to work from the Operations Complex and that he had no understanding of what Mr Driver would be able to provide to a firearms operation.

80. Mr Driver's evidence thus accords with that of Mrs Lynskey to the effect that he would stay at Ring Farm and be included in clerical and Teams meetings. There is no dispute that Mr Driver did take part in a couple of Teams meetings. He says in paragraph 22 of his witness statement that having no experience of firearms led him to, understandably, feeling foolish at those meetings as he had little if not nothing to offer.

81. There is a large measure of agreement between the parties as to what transpired in the lead up to Mr Driver joining Operation Adonis. We therefore accept as factual the evidence recited in paragraphs 71 to 80, save that we find that Mr Driver was informed of the move in January or early February 2022 and not April 2022 for the reasons that now follow.

82. It was put to Mr Garside by Mr Crammond that his reference in paragraph 5 of his witness statement to being informed of a requirement for support in staffing with Operation Adonis in April 2022 was in error and that the correct date was January 2022. The basis of this line of questioning was the email at page 139 from Mr Garside to Mr Lynskey dated 4 January 2022 and which fairly was complimentary of Mr Driver's work with the mounted unit following his return on the 30+ scheme. Mr Garside apprehended difficulties with the request to move Mr Driver to help with Operation Adonis. He said, *"For clarity, I did make it very clear that as far as I'm concerned (and I'm sure you would agree) we can't be held hostage to the possibility of our 30+ staff giving their notice if they are asked to perform a function that they do not want to perform BUT I think we need to recognise the real risk that comes with this, and recognise that what we could be losing should we switch an officer's role to service a temporary requirement. The*

majority of our 30+ staff have returned to the organisation, rightly or wrongly, to perform very specific roles, they have the luxury of being able to down tools with next to no notice should the rules of the game change and they not like what hand they are dealt – bit of a nightmare really!"

83. At pages 114 and 115 of the bundle is a *'frequently asked questions'* document. This says that a returning 30+ officer will still be a warranted officer. It also goes on to say that a returner would need to provide one month's notice to terminate his or her appointment on the 30+ returner scheme. The point being made here by Mr Garside is that although serving officers can resign on notice, the reality is that very few would do so before accruing 30 years of service to maximise their pension entitlement (save, plainly, in cases of injury or ill health). In his email of 4 January 2022 Mr Garside said that he had not yet spoken to Mr Driver about a temporary move to Operation Adonis.

84. At page 553 is an email from Mr Garside to Mr Driver dated 8 February 2022 (to which Collette Pitcher and Bruce Yacomeni were copied in). This thanked Mr Driver for his assistance with planning around Operation Adonis Oscar. The same day, Mr Yacomeni invited Mr Driver to telephone him or drop him a line about the move to Operation Adonis Oscar. The next day, Mr Driver said that he would give Mr Yacomeni a call so that he could *"fill me in on the delights of Op Adonis."*

85. It appears to the Tribunal that, accordingly, both Mr Driver's and the respondents' chronology of events may be inaccurate. On any view, it seems clear that Mr Driver was aware of Operation Adonis and the force's request for him to help with it by early February 2022 at the latest and not April 2022.

86. As we shall come to in due course, the claimants raised grievances about their treatment by the respondents. In Mr Driver's case this was dated 12 April 2023 (pages 248 to 252). The grievances were investigated by Claire Hayle, head of organisational development and learning. As part of her investigations, she interviewed Mrs Lynskey about the circumstances in which Mr Driver was re-deployed on a temporary basis to Operation Adonis.

87. The grievance outcome report in Mr Driver's case is at pages 478 to 491. The salient passage to which we now refer is at page 487. Mrs Lynskey informed Claire Hayle that Mr Driver was assigned to Operation Adonis to undertake administrative functions including "*booking rooms, ordering packed lunches etc"* and that was nothing to do with the exercise itself because he did not have firearms knowledge. Further, as Helen Arden said in evidence given under cross examination, Mr Driver was only able to work on the operation for 8 hours a week anyway, due to the lack of coincidence of his shifts with those of the operation. As he said in paragraph 23 of his witness statement, Mr Driver *"remained focussed on [his] tasks at Ring Farm"* for the rest of his time. We accept that he did so, this evidence being unchallenged. Indeed, Mrs Lynskey said in paragraph 17 of her witness statement that *"Everybody was …busy performing their core role …however I had to make unpopular decisions and move staff, balancing organisational demands and risks in each area…"* She did not suggest there to be spare capacity in the mounted unit at this point. There is a tension between Mrs Lynskey's evidence in paragraph 17 of her witness statement and that recited in paragraph 75 of these reasons. We find it to be the case that M Driver continued to attend to his work mounted sections operation manager during the time he was not taken off the role to do Adonis-related work. There was no

suggestion that he did not do so, and it would be out of character for Mr Driver to sit idly by *per* paragraph 54 above.

88. Ms Hayle had also determined in her grievance outcome (at page 487) that Mr Garside had informed Mr Driver that he could work upon Operation Adonis from Ring Farm, start his duties at Ring Farm and then as and when required commute in to the Operations Complex to work on Operation Adonis. She then says that *"Lydia [Lynskey] informed that the feedback from CI Emma Cheney was that David [Driver] did not do a great deal to contribute to the project so that when the administrative function was completed, he was moved back to Ring Farm."*

89. Mrs Lynskey gave a description in paragraph 11 of her witness statement of the kinds of tasks which it was anticipated Mr Driver would be asked to do. Those were the administrative tasks described by her when she met with Claire Hayle. That the claimant had little to offer Operation Adonis was borne out by experience. This unhappy situation was aggravated by the fact that Mr Driver's coincidence of shift patterns with those officers working on Operation Adonis meant that he was only able to work on the operation for about eight hours a week. Mr Garside commented upon this aspect of matters in his email of 26 May 2022 to Mrs Lynskey (pages 141 and 142).

90. On 24 May 2022 Mr Garside suggested to Mrs Lynskey an alternative of deploying Michelle Hudson (page 143). Mr Garside observed in a subsequent email of 26 May 2022 (page 142) that sadly "*Michelle is likely to be restricted till well after the summer, the break in her wrist was substantial and getting her back in the saddle is going to take time, as such I am happy that we can use her over the next two to three months to support Adonis Oscar and leave Dave to do his day job."* Mrs Lynskey agreed. Also, on 26 May 2022 (page 141) she said to Mr Garside, "*Let's use Michelle for Adonis and if the team need any extra support Dave can chip in also."* Mr Driver, when giving evidence under re-examination said that Ms Hudson is younger than him and at that time was working full-time hours.

91. It is apparent from the emails at pages 145 and 146 (dated 14 to 16 June 2022) that there were discussions with Michelle Hudson about working on Operation Adonis Oscar. As Mrs Arden says in paragraph 4 of her witness statement, "*When she [Michelle Hudson] did not wish to do this we identified some work she could do remotely during her shift pattern, but from memory we never used her as she returned to operational work more quickly than anticipated."* She went on to say in paragraph 5 that she was unable to find any emails to her about Mr Driver *"but it was a similar conversation when Bruce [Yacomeni] made enquiries about his working hours and location it became clear it would be difficult to bring him into the office."*

92. On Mr Driver's behalf, Mr Crammond put it that Michelle Hudson appeared to have received more consideration from the force than did Mr Driver in that she received what was tantamount to consultation about the move to Operation Adonis, whereas Mr Driver was simply told to move there. Mr Driver's account in paragraph 21 of his witness statement is that he was simply informed by Collette Pitcher of the move in April 2022. The Tribunal does not accept this to be the case. From the emails at pages 551 to 554 (touched upon in paragraph 84 above) we find that there were discussions between Mr Yacomeni and Mr Driver about his work on Operation Adonis and that consideration was given to him to

remain working at Ring Farm while helping with Operation Adonis and that the need for him to commute to Sheffield from Barnsley was limited.

93. Two off-line firearms duty officers were then drafted in to help with Operation Adonis. These were Vicky Allen and Amy Vickers. Mrs Arden describes the assistance which they gave in paragraph 6 of her witness statement. She says that they *"supported us in performing admin tasks and helping to develop the exercise scenario scripts. Those two officers were off-line as firearms officers so unable to perform their substantive role."*

94. Therefore, in or around May 2022, Mr Driver was taken off Operation Adonis and returned to work in the mounted unit at Ring Farm.

David Driver - Football Intelligence Unit

95. Around five months later, on 23 November 2022, Mr Driver took a telephone call from PS John Armitage. By way of reminder, he is the sergeant on the Football Intelligence Unit (FIU). Mr Driver's account, in paragraph 24 of his witness statement, is that he was told that he was required to start work in the FIU, based in Ecclesfield Police Station in Sheffield, filling a detective role. He says that he emailed Collette Pitcher straightaway expressing his concerns.

96. Mr Driver's account is corroborated by the contemporaneous evidence. We can see at pages 177 and 178 that he sent an email to Miss Pitcher protesting about this move on 23 November 2022. Mr Driver mentioned that he had been informed that he would be working with the FIU until March 2023.

97. Mr Driver said that in the email that he was not a good fit for the role. It entailed accessing *"Connect and Dems"* (upon which footage is captured) to help build a case ready for arrests. He said, *"I have no issue with being loaned out to assist other teams, however I am not experienced enough in the digital process, to be confident producing evidence, which will be used in court."* He went on to say that, "*The 19.75 hours I work at Ring Farm often involves short notice changes to shifts for stable cover and animal welfare and saves the department money. I am utilised to move our HGVs when required, so that this doesn't impact on deployment. I returned on the 30+ scheme to provide support [to] the specialism that I am experienced in."*

98. Collette Pitcher took up Mr Driver's case with Mr Garside. She emailed him on 23 November 2022 (pages 176 and 177). She said that "*Dave is also (and I'm sure he wouldn't mind me saying this) not very computer literate either, so I think he will really struggle with the file building, offender logs etc, basically anything to do with Connect."* She made a similar point about the Dems system.

99. Miss Pitcher was on restricted duties herself at this point. She had sustained an injury to one of her knees. She added, in her email to Mr Garside of 23 November 2022, that, *"Whilst we are awaiting the results of my knee, I would hope to be back well before March, in which case Dave would be needed back in the office as soon as I am off restricted."* She concluded, *"In short, whilst he is willing to help out where he can, I think due to the lack of training and his capability with computers, this task is slightly beyond his ability. If there is somewhere he can assist with viewing footage once he had a DEMS input, then can this be a consideration instead? It would allow him to remain at the farm and assist here where he is needed."*

100. Mrs Lynskey gives the background to the request made of Mr Driver by Mr Armitage in her witness statement as follows:

> *"20. In November 2022, following the removal of the Covid restrictions my department witnessed significant demand due to the resumption of football and other events.*
>
> *21. Nationally all forces saw a substantial increase in football related violence, South Yorkshire included, and in response we launched several large post-match investigations which were ongoing at the same time.*
>
> *22. Due to the significant increase force support was requested, swift prosecution and the imposition of banning orders reduced the likelihood of future violence.*
>
> *23. Despite multiple requests for additional staff from other areas of business, including a business paper being submitted to the Chief Constable, I was informed none was available.*
>
> *24. Funding was however approved for the use of external agency staff to support the team but the induction process would take several months and there was little interest in the short-term contracts when advertised.*
>
> *25. As a result staff from across my portfolio were once again selected to temporarily support the Football Intelligence Unit.*
>
> *26. There were several officers identified who were required to move from their existing function to assist by watching videos, taking statements and gathering evidence to assist in building a prosecution case against the offenders.*
>
> *27. Dependent on the officers working restrictions and skillset the role in the football unit would be tailored to their individual needs which was managed by the department supervisor.*
>
> *28. PC Driver was again identified to assist with the viewing of video footage to support the unit."*

101. The demand to assist the FIU in South Yorkshire stemmed largely if not wholly from serious outbreaks of disorder following a game between Sheffield United and Birmingham City. There were also football-related incidents in Sheffield city centre around other fixtures.

102. Mr Garside discussed the matter with Inspector Louise Lambert. They came up with a number of tasks which they considered to be within Mr Driver's capabilities. We refer to pages 180 and 181.

103. Miss Pitcher's representations on Mr Driver's behalf had been to no avail. She emailed Mr Garside on 25 November 2022 to say, *"I think a leavers form will be submitted on Tuesday morning giving notice, unfortunately."* Mr Garside replied, *"so be it".* We refer to pages 179 and 180.

104. The same day, Mr Garside emailed expressing a similar sentiment to that expressed around Operation Adonis mentioned in paragraph 82. He said (at page 183) that, *"I'm not going to be entering into any negotiation with PC Driver as to his decision and ultimately we should not be held ransom by officers threatening to leave should they be asked to perform duties outside their normal scope."* When asked about this in cross-examination, Mr Garside denied being

dismissive of Mr Driver. He said, *"Dave is a grown man, if that's his decision, I would not be threatened, the ask was not outside [police regulations]."*

105. Part of Mrs Lynskey's rationale for moving Mr Driver was that there was capacity within the mounted unit. This arose out of Collette Pitcher's injury. As she (Miss Pitcher) was restricted, she was therefore able to absorb many of the duties being undertaken by Mr Driver, particularly as she was gaining more experience working within the mounted unit. Mrs Lynskey said in an email sent to Mr Garside on 28 November 2022 (page 182) that she did not consider the request as inappropriate or unreasonable. She took responsibility for the decision, saying that ultimately this was one for her to make.

106. There is much, in our judgment, in Mr Jones' closing written submission (at paragraph 3) that it is important to have in the forefront of our minds that this is a police case which accordingly requires an understanding of the hierarchical nature of the police service and how decisions are made. He went on in paragraph 7 to refer to the scarcity of resources funded by the public purse and that force priorities, frontline operational policing and maintaining public confidence must come first as the police exist to serve and protect the public.

107. On the evidence, there clearly was a need for additional resources to be deployed to the FIU given the outbreaks of disorder in the city centre of one of the largest cities in England. The need for public protection is obvious. While in many employments, Mr Garside's sentiments (in the "so *be it"* email at page 179) and his standing by operational commands for Mr Driver to move to Operation Adonis and the FIU without negotiation may appear harsh and contrary to good industrial relations in many sectors, his position must be set in the context of this being police work. Upon this basis, we reject the suggestion made on behalf of Mr Driver that Mr Garside adopted a dismissive attitude towards him.

108. That being said, the nature of policing work and the hierarchical structure of the Force cannot excuse poor communication. Embarrassment was caused to Mr Driver when he arrived in uniform in Ecclesfield to find that others in the FIU were in civilian clothes. He therefore felt very much out of place. While rejecting Mr Driver's grievance, Claire Hayle did make recommendations that there be improvement in the communications around re-deployments (in particular as to the reason why particular officers are chosen), that consideration should be given to individual duty adjustments and skill sets, and that there should be clear confirmation as to whether the re-deployment is permanent and if not the timescales for temporary re-deployment. Had such been done, Mr Driver would have known not to turn up to Ecclesfield Police Station in uniform. It would have taken very little time and effort to inform him of this and would have saved him grave embarrassment and matters in the FIU getting off on the wrong foot.

109. Notwithstanding his reservations about working with computer systems and processing matters for court, Mr Driver in cross-examination fairly recognised that he had some relevant skills from his experience in the mounted section to bring to the FIU. In particular, he had developed a good understanding of crowd dynamics.

110. Mr Driver's deployment with the FIU ended on 16 February 2023. Inspector Louise Lambert spoke to Mr Driver that morning to say (as recorded in an email addressed to Collette Pitcher and Mr Garside of 16 February 2023 at page 229), *"that the element of work that he has so kindly been assisting with has now drawn to an end and I can release him back to yourselves. Therefore, I believe he*

intends to return next Tuesday. He's been a great help with viewing the CCTV and once he got into it, I believe has enjoyed doing something different." It is clear from the subsequent emails that morning (at pages 227 and 228) that Miss Pitcher was very pleased to be able welcome Mr Driver back to Ring Farm.

111. Mr Driver takes issue with Louise Lambert's view that he had enjoyed work in the FIU. At the risk of stating the obvious, Louise Lambert cannot get inside Mr Driver's head and know what he was thinking. We can accept that subjectively Mr Driver did not enjoy his work at FIU. Plainly, he would much prefer to have been continuing his work as the mounted sections operations manager. Indeed, he said in his witness statement (in paragraph 27) that he felt *"elated, relieved and excited at the prospect of returning to Ring Farm. I didn't think this was an option."*

112. That being said, it is very much to Mr Driver's credit that Louise Lambert formed the view that he had enjoyed his work in the FIU *"once he had got into it."* The Tribunal did not have the benefit of hearing from her, but on any view, Miss Lambert had, from her observations, formed the impression that Mr Driver was enjoying the work and had contributed to the FIU's tasks. After all, there was no need for her to have informed Collette Pitcher and Daniel Garside that Mr Driver had been a great help.

113. Mr Garside did not take issue with what Louise Lambert had said about Mr Driver's contribution to the FIU. That he gave no evidence contrary to that of Louise Lambert is corroborative of our finding that Mr Driver was an asset in the FIU, albeit perhaps a reluctant asset. This also demonstrates that Mr Driver was acting in good faith when he expressed the sentiment (before his move to the FIU) in the email of 23 November 2022 (mentioned in paragraph 97 above) that he has no issue with being loaned out to assist other teams. This was not simply lip service, but a genuine willingness to help where needed.

114. The Tribunal was not furnished with much detail of others who had been deployed to the FIU at around the same time as Mr Driver. However, one such officer was PC Lock who was at the time a restricted officer. PC Lock was not working under the 30+ scheme. Reference to PC Lock moving to the FIU may be found at page 175. Another was PC Greaves, a dog handler of around 40 years of age, whom Mr Driver mentioned as having been temporarily posted to the FIU pending a dog becoming available.

115. Doubtless relieved that his time at the FIU had come to an end, Mr Driver returned to his work at Ring Farm. Unbeknown to him, a third move (this time to the FCMU) was just around the corner. At this point, we now turn to our findings of fact about Mr Brackpool.

Paul Brackpool's interest in courses offered by the force

116. Email advertisements had been circulated throughout the force asking for expressions of interest to attend courses. Mr Brackpool says in paragraph 26 of his witness statement that, "*One of these was for HGV drivers to assist with traffic operations. As I was already both a HGV and a coach licence holder this would require me to complete a one day conversion, familiarisation course. I own a horse lorry which I drive several times a week and thought it would benefit both the force's resilience and finances, whilst also giving me more to do after being disappointed with having no passive detection work."*

117. Mr Brackpool goes on to say that in paragraph 27 of his witness statement that, *"I was called to the Traffic Inspector's office to be told by Inspector Jason Booth that my requests were refused. This was a face-to-face meeting. Also in attendance was Inspector Darren Johnson from traffic. Whilst there at the same time he told me to stop putting a request in to become a taser trained officer as being part time I was not going to get it. I was told that the courses are for full time officers as they give greater value for money. I remember very clearly that he told me that the Force would not spend money on training me because I was part time and "it wasn't worth it". I can remember walking out of the office feeling very upset. I could remember thinking why have I given up everything to come back, they just don't want me here. Up until 2019 I was a highly commended professional and respected dog handler; on my return it seemed I was hitting my head against a brick wall."*

118. For his part, Mr Booth says in paragraph 3 of his witness statement that, *"Given the time that has passed, I do not recall any specific conversation with PC Brackpool about training. However, the decision as to whether to offer training would have been based on operational need and not on whether an officer worked part time or full time. As for the HGV courses specifically, these were limited and expensive courses and were offered to members of the roads policing team whose role profile was primarily the enforcement of road traffic legislation foremost, I am unaware of any other dog handler being offered a course."*

119. He goes on to say in paragraph 4 that*, "Whilst I was the inspector within the department training requirements, some a necessity for the role profile far exceeded the courses available and I had a number of full time and part time staff waiting long periods for potential availability."* (Something has plainly gone wrong with the typing of this witness statement, but Mr Booth's sentiment is clear – that demand for some courses far exceeded availability and officers would wait a long time for potential availability).

120. When giving evidence under cross-examination, Mr Booth referred to Form TN1. This form is to be completed by those wishing to attend any courses. Mr Brackpool did not make any reference in his evidence to having completed a Form TN1. It is understandable however that he gave no disclosure of such a form having been completed as he would not have had access to the first respondent's systems to enable him to do so. The respondents gave no disclosure of any Forms TN1 about Mr Brackpool's expressions of interest to attend the HGV and taser courses. Such is of course consistent with their case that no such request was made.

121. In his grievance (raised on 18 May 2023 at pages 342 to 345) Mr Brackpool does not in fact mention the refusal of the HGV and taser courses. However, it is credible, in our judgment, that he would have made a request to attend these. Firstly, the HGV course is likely to have been of great interest to him given his experience of driving large vehicles in his own time. Secondly, he said in evidence under cross-examination that *"all dog handlers have tasers"* and so such is likely to be of interest to him.

122. Mr Booth's account was that Mr Brackpool cannot have asked him to attend the courses in the presence of Mr Johnson because the latter did not work in the Roads Policing Group at the same time as did Mr Booth. Whilst this may be thought a good point in and of itself, that must be set against Mr Booth's evidence

the general tenor of which is that he largely had no recollection one way or the other as to whether Mr Brackpool had asked for the training. It is understandable that Mr Booth would have difficulty in recalling such requests from Mr Brackpool. Mr Booth retired from the force around two and a half years ago. Further, Mr Brackpool's request would be, doubtless, one of many such which he received. The request is therefore likely to be much more memorable to Mr Brackpool than to Mr Booth. That factor, coupled with the fact that it is entirely credible that Mr Brackpool would be interested in HGV training and interested in achieving parity with his fellow dog handlers for taser deployment persuades us to find that he did ask go on the HGV and taser courses.

123. This being said, although unable to recall the specifics of Mr Brackpool's request, there is much force in Mr Booth's evidence that Mr Brackpool would not have been given a place on a HGV training course. Although we had no specifics about costs, it stands to reason that such courses are expensive and that priority would be given to members of the Roads Policing Group whose role profile was the enforcement of road traffic legislation. Mr Booth could think of no instances of dog handlers being granted access to such a course. Mr Brackpool gave no evidence of such an instance having occurred.

124. We find that Mr Brackpool was denied a place on a taser course for similar resourcing issues. Mr Brackpool did not identify a full-time comparator officer undertaking broadly similar work and engaged under the same type of contract as was he who was granted a place on a taser course or HGV course.

Paul Brackpool's move to the Wildlife and Rural Crime Team

125. In April 2022, Mr Brackpool had a period of absence following an arterial stent which had to be fitted due to a hereditary issue. He returned to work in May 2022.

126. On his return, he says, in paragraph 29 of his witness statement, that he was told by the Chief Inspector of Operations (whose name he could not recall) that he was being posted to Ring Farm to assist the Rural and Wildlife Crime team under Sergeant Mark Gregory with immediate effect. He says that he was told that he "*was to move to Ring Farm Mounted Department and set up an office there. I had never worked on rural and wildlife crime, which in itself is a vast specialism and niche area. However, this was just to assist and also I had PD Milo carrying out my dog handler search duties."* Accordingly, happily from Mr Brackpool's point of view, he was at least able to remain teamed with PD Milo.

127. PS Gregory had in fact himself returned to the force on the 30+ scheme. He resigned shortly after Mr Brackpool's deployment to Ring Farm in the rural and wildlife crime team to be replaced by Sergeant James Shirley. (We should add here that Mr Brackpool alleged that Mark Gregory had resigned because of how badly he had been treated following his return. This was a generalised allegation about which the Tribunal can make no findings, no details having been given).

128. Mr Carlson explains in paragraph 5 of his witness statement that, "*The intention was never that this was a permanent move but was done to try and support Paul [Brackpool] on his return to work as he was on recuperative duties and not operational in his post as a dog handler. This also assisted with the resourcing issue created by the resignation of the part time (30+ scheme) wildlife crime sergeant, Mark Gregory, which was submitted on 16 May 2022. I saw this as a collectively beneficial arrangement as it provided resources to wildlife crime that had a vacancy, and also for Paul personally as he could work from the police*

stables at Cudworth [near Barnsley, that being the location of Ring Farm] (approximately two miles from his home) and he could continue to keep PD Milo with him whilst at work. It was also agreed (at Paul's request) that whilst not fully operational, Paul and PD Milo (a drug detection dog) could assist with searching premises as part of the execution of drugs warrants. The rationale being that any location would have been secured by other officers and be a "safe" environment for Paul to work in without the potential for confrontation, however to the best of my knowledge this was never required. I personally discussed these arrangements with Paul who agreed with the plan."

129. In evidence given under cross-examination, Mr Brackpool displayed a somewhat stoic attitude about his move to rural and wildlife crime. As he put it, *"I returned to work with PD Milo in rural crime, put my kit on and returned to work."*

130. That is not to say, however, that Mr Brackpool readily agreed with the move to rural and wildlife crime as sought to be portrayed by Mr Carlson. Mr Brackpool said that the move was, as he understood it, permanent because no team was in place in rural and wildlife crime and there was a shortage of officers following Mr Gregory's resignation.

131. In evidence given under cross-examination, Mrs Lynskey said that the idea of moving Mr Brackpool to the rural and wildlife crime team was to provide them with additional support and that the idea had emanated from Mr Carlson. Mr Carlson made no reference to Mrs Lynskey being involved with the decision to move Mr Brackpool to rural and wildlife crime. Her endorsement of the move did not appear in her evidence in chief (in her printed witness statement). However, from Mrs Lynskey's evidence given in cross examination, we conclude that it was Mr Carlson's idea to move Mr Brackpool to rural and wildlife crime for the reasons given in paragraph 5 of Mr Carlson's witness statement and that the idea was supported by Mrs Lynskey.

132. The respondents pointed to no contemporaneous evidence making clear to Mr Brackpool whether the move was permanent or temporary. In her decision upon Mr Brackpool's grievance at pages 492 to 503, Claire Hayle made a similar recommendation to that made in Mr Driver's case (mentioned in paragraph 108 above) about the need in future for effective communication around re-deployments. *(We should clarify that Mr Brackpool's move to rural and wildlife crime formed no part of his grievance. This position may therefore be contrasted with Mr Driver who raised a grievance about all three of his moves including the one to FCMU. Mr Brackpool's grievance was only about the latter move).*

133. Although, in the event, the move to the rural and wildlife crime team was not permanent (Mr Brackpool moving out of it and being re-deployed to the dog section in July 2022) we accept his case that he was under the impression that it was a permanent move. This is corroborated by his expression of interest in attending courses to assist him with his duties in rural and wildlife crime.

134. There is no dispute that Mr Brackpool asked Mr Carlson if he was able to attend a quad all-terrain vehicle course. Mr Carlson explains in paragraph 8 of his witness statement that *"SYP has a quad vehicle as part of the vehicle available to our off-road bike team who also undertake wildlife crime operations (to combat overnight poaching and similar operations). Officers on the off-road bike team who are already trained in off road riding of motorcycles take an additional course which familiarises them with the quad vehicles to authorise them to ride it."*

135. Mr Carlson helpfully explains in paragraph 9 of his witness statement that legally a quad vehicle is classed as a car and so you do not need a motorcycle licence to ride it. Mr Brackpool does not have a motorcycle licence. However, this created a difficulty because the driver training department would have to develop a bespoke course for Mr Brackpool as the only training available was a conversion course from the off-road motorcycle course (and those attending the course by definition would hold a motorcycle licence). Mr Carlson goes on to say that, *"as Paul was only working with the rural and wildlife crime team temporarily there was no organisational benefit to the training."* He goes on to say, *"considering Paul was on recuperative duties at the time due to a heart condition, I would not have sent him on a strenuous off road vehicle course that is significantly physically demanding until he was medically fit anyway."*

136. Mr Carlson has no recollection of Mr Brackpool asking to attend a rural wildlife crime course. However, he concedes in paragraph 13 of his witness statement that *"it is quite possible he did make such a request, but for the avoidance of doubt I would have refused any such request."* The justification for this is given in paragraph 14. He says that, *"In his role as a dog handler, he would have no need or use of the training/qualification from attending such a course."* Mr Carlson says in paragraph 15 of his witness statement that places on such courses are oversubscribed, and priority had to be given to dedicated officers in the rural and wildlife crime team as opposed to officers in the position of Mr Brackpool who were on recuperative duties as a temporary measure. The force is only granted two places a year for the rural and wildlife crime course.

137. The Tribunal has little hesitation in finding that Mr Brackpool did ask to go on the rural and wildlife crime course and the quad bike course. We accept entirely his account that he was concerned that he felt out of his depth in rural and wildlife crime. There is much force in his position that this is a specialist area with niche laws. This was of concern to Mr Brackpool who feared jeopardising an operation by making a wrongful arrest or some other legal error which may cause a trial following an operation to collapse. As with Mr Driver, the Tribunal readily accepts that Mr Brackpool was a conscientious police officer determined to do his best. There was a lack of clarity, as found by Claire Hayle, as to whether the move was temporary or permanent. That Mr Brackpool anticipated the move to rural and wildlife crime being more than short-term would credibly lead to him exploring the availability of courses for his professional development.

138. Mr Brackpool contends, in paragraph 35 of his witness statement, that Mr Carlson was dismissive of him and that he (Mr Carlson) said that he was unwilling to spend the money on part time workers as it was "*just not worth it".* He accuses Mr Carlson of adopting a condescending and sneering attitude towards him.

139. Mr Carlson denied, in evidence given in cross-examination, adopting a condescending and/or sneering attitude towards Mr Brackpool. Mr Carlson accepted that Mr Brackpool had asked a couple of times about attending the courses, which corroborates our finding of fact in paragraph 137.

140. Mr Carlson was challenged as to the veracity of his evidence around the costs of the courses and the number of people waiting to go on them. He was unable to corroborate what he said in evidence by reference to any documentation. He said that he had obtained the information about the courses from Mr Shirley.

141. There was also an issue about the cost of personal protective equipment. Mr Brackpool's evidence was that some unused PPE was available for use to

ride the quad bike and that all that would have to be acquired was a new helmet for him. Mr Carlson said in paragraph 11 of his witness statement that PPE would cost in the region of £2,500 for each rider of the quad bike.

142. The Tribunal can accept that Mr Brackpool was disappointed with Mr Carlson's response to his request to go on the quad training and the rural and wildlife crime course. As we said earlier, following the events at Niagara Dog Training School on 1 December 2020, Mr Brackpool had formed a jaundiced view about the force from a very early stage of his return under the 30+ scheme. In this context, we accept that he had a perception of Mr Carlson adopting a condescending attitude towards him when Mr Carlson sought to explain the rationale for the refusals.

143. Objectively, however, the Tribunal accepts that Mr Carlson's refusal of the courses was soundly based. While perhaps the respondents would have been better served to call Mr Shirley to give corroborative evidence of that of Mr Carlson about the costs of the relevant courses, the latter's account about scarcity resources credible. It very much chimes with that given by Mr Booth about the HGV and taser courses in which Mr Brackpool expressed interest. Training courses are expensive to put on.

144. In straitened times, it is credible that the Senior Command Team would look to maximise those resources made available to them. It is logical and credible that priority to go on these courses would be given to those most in need of them. Mr Brackpool's disappointment was doubtless compounded by the fact that he was under the impression that the move to rural and wildlife crime was not s short-term move even if it was not a permanent move. The respondents did not help themselves by failing to make clear that the move was only temporary. Claire Hayle's criticism of the communication when she handled the claimants' grievances was valid and well founded.

145. Even if Mr Brackpool is correct about the spare PPE (and we see no reason to disbelieve him) this would be to no avail without being sent on the quad training course in any case. That the availability of the PPE did not persuade Mr Carlson to oblige by sending him on the course is unsurprising given the budgetary constraints placed upon the first respondent.

146. As Mr Driver had done when he was assigned to the FIU, Mr Brackpool did, we find, endeavour to provide as much assistance as possible in rural and wildlife crime. Indeed, a complimentary email about Mr Brackpool's assistance with an operation was sent to him by Mr Shirley to Mr Carlson on 8 July 2022 (page 574).

147. Mr Brackpool gave no evidence identifying a full-time officer employed under the same type of contract and engaged in broadly similar work to that carried out by him who was given a place on any courses such as those in question in this section of our reasons.

148. It will be recalled that when Mr Brackpool returned to work after his short period of absence following the fitting of the arterial stent, he moved to rural and wildlife and was able to keep PD Milo. In paragraph 31 of his witness statement, he recounts attending the Niagara Dog Training School with PD Milo following his return to work in rural and wildlife crime. He says that in paragraph 31 of his witness stamen that Mr Garside walked in *"and jovially I said, 'thanks for your text message and phone call whilst I was dying in hospital.' Garside replied 'you're not one of my officers now. You're wildlife and rural crime team. I've nothing to*

do with you' and he walked off. This was in the staff room and made me feel very small and completely alone."

149. When this issue was put to Mr Garside in cross-examination, he disagreed that such a conversation had taken place. When asked if Mr Brackpool had made it up, Mr Garside replied, *"Only he can say, I don't recall".*

150. The account given by Mr Brackpool was in fact not challenged by Mr Jones. It may be thought understandable that he did not do so as, regrettably, this exchange does Mr Brackpool little credit. It does corroborate Mr Brackpool's understanding that the move to rural and wildlife crime was permanent. However, the comment aimed at Mr Garside was plainly sarcastic and frankly deserved the response which it got. The reference in paragraph 31 to Mr Garside simply as *'Garside'* is illustrative of the disdain which Mr Brackpool had (and still has) towards the senior officers involved in his management. We shall see further examples of this in due course.

151. Mr Carlson's wish to give only light duties to Mr Brackpool was pursuant to occupational health recommendations. An occupational health report dated 24 May 2022 is in the bundle at pages 576 to 578. The occupational health advisor (Lesley Armiger) noted that the claimant's substantive role is considered to be "*safety critical".* It was therefore recommended that he undergo a medical assessment before attempting to resume substantive duties involving advanced driving. A medical assessment was to be conducted on 7 June 2022 to determine the claimant's fitness to drive *"under blue light."* Lesley Armiger recommended that the claimant gradually return to physically exerting tasks, that he was fit to attempt to return to work with temporary adjustments but should refrain from utilising blue light and advanced driver privileges pending an advanced driver medical review.

152. From this, we conclude that Mr Carlson was motivated to move Mr Brackpool to rural and wildlife crime for Mr Brackpool's recuperative benefits, to enable him to keep PD Milo, and to fill a resource issue which had arisen following the resignation of Mr Gregory. Further, Mr Brackpool was permitted to work from Ring Farm which is close to where he lives.

153. It was put to Mr Carlson by Mr Crammond that it would have been preferable simply to allow Mr Brackpool to return to work and carry on as a dog handler. Mr Carlson replied that the move was, *"within the parameters of the occupational health unit recommendations, as part of the operational uplift plans, there was a need to fill the organisational gap, and to improve policing until another solution could be found."*

154. There is, we think, much merit in Mr Crammond's point that this move was doomed to failure as a recuperative measure. As we have seen, Mr Brackpool did in fact join in operations with rural and wildlife crime. However, this was an unfamiliar area for Mr Brackpool which inevitably caused him stress (hence his wish to go on a rural and wildlife crime course).

155. There were flaws in Mr Carlson's approach in that there was no consultation with Mr Brackpool. Mr Carlson accepted that had Mr Brackpool objected to the move then he (Mr Carlson would have relented). Mr Carlson confessed that it was the first time that he had been involved in a move of somebody who had undergone heart surgery. He accepted to knowing nothing of Mr Brackpool's expertise in dog handling. All this being said, the Tribunal accepts that what was in Mr

Carlson's mind was the operational need in the rural and wildlife crime unit and for recuperation to enable a return to work for Mr Brackpool, cognisant of his wish to remain with PD Milo.

156. Also operating upon Mr Carlson's mind at around this point was his view (as explained in paragraph 20 of his witness statement) that, *"there was an oddity with the staffing numbers of dog officers. There were four teams and five officers per team totalling 20 officers evenly spread across the teams. However, there were also two 30+ posts for dog officers at that time."* (The Tribunal interposes here to say that these were the posts filled by Mr Brackpool and Mr Adams). Returning to paragraph 20 of his statement, Mr Carlson goes on to say, *"It was my view that only 20 posts were needed and that the additional posts could be re-deployed for other areas of policing which I had raised in management meetings with my line manager, Lydia Lynskey. I had engaged in discussion with Anne Harhoff (HR representative) to discuss in broad terms the movement of the 30+ posts and she had advised me that it was a force-wide issue with complexities linked to potential age discrimination if not dealt with correctly."*

Paul Brackpool's move back to the dogs section.

157. Mr Brackpool says that towards the end of July 2022 he was told that he was being taken off the rural and wildlife crime team and placed back on operations with PD Milo. This was with immediate effect. Mr Brackpool remained under the line management of Mr Shirley. Mr Brackpool says that he was also assigned to work alongside "*a newly promoted sergeant, PS Dan Lumley."*

158. There is a tension between the parties in the chronology as Mr Lumley says in his witness statement (at paragraph 9) that he was promoted temporarily as the operational dog sergeant only in January 2023. That said, Mr Lumley was posted into the role of dog handler constable within the operational support unit in March 2018 and we have no doubt would have worked alongside Mr Brackpool in that capacity. (Mr Brackpool and Mr Lumley have a healthy mutual respect).

159. Mr Lumley helpfully tells us in paragraph 5 of his witness statement that, *"The term police 'dog team' denotes a handler and his/her dog. Our operational dog teams are based at the Operations Complex in Sheffield where they provide 24-hour force cover, working on a 4 on 4 off shift. They are aligned to and work closely with a RPG [roads policing group] team."*

160. Further information is given in paragraph 6 where Mr Lumley says that the dog handlers are in the main *"general purpose dog (GPD) handlers. A GPD has a wide range of skills and examples of their use include tracking and apprehending suspects, or in protecting the handler and the public when faced with a threat. SYP use breeds including the Belgian Malinois and Dutch Herder."*

161. Mr Lumley then tells us in paragraph 7 about the specialist dogs which include those carrying out functions such as currency, drugs and firearms (such as PD Milo) and victim recovery (such as the dog being handled by Mr Adams). For these more specialist tasks, labradors (such as PD Milo), cocker spaniels and springer spaniels are used.

162. At around the time of Mr Brackpool's move back to the dog section, Mr Carlson had arranged for a dog cage to be placed in the back of one of the police vehicles used in rural and wildlife crime. There were some emails about this at pages 161

to 163. Upon this issue, we agree with Mr Jones that such was indicative of consideration being given by Mr Carlson towards the rural and wildlife crime team (including Mr Brackpool at that stage) concerning the welfare of the police dogs including PD Milo. The cage enabled the dogs to be moved around with their handlers but Mr Carlson advised that the cages were smaller than in dog cars and so the dogs should not be in the cages for long periods.

163. The issue of Mr Brackpool's deployment in the dogs team remained under consideration. As we said above (in paragraph 156) Mr Carlson was of the view that only 20 dog officer posts were needed across the Force. On 16 June 2022 Mr Grange emailed Mr Garside (pages 153 and 154). Consideration was being given as to how best to deploy Mr Brackpool. Mr Grange said, "*I haven't discussed with him and I do not know how attached he is to his dog [PD Milo]. However we could re-team his current dog on the C/D/F (cash, drugs, firearms) reactive course leaving a spare cocker and send him out of force on a passive course with a new dog as was originally planned when he came back."*

164. Mr Grange went on to say that Mr Brackpool's shifts would have to change if this option were to be pursued. He explained that Mr Brackpool, currently works Monday/Tuesday and Monday/Tuesday/Wednesday on alternating weeks. Passive work is *"evening, night-time economy mainly weekends and he would be deviated every week to meet that demand if not. As a 30+ officer he cannot work overtime and he would have too many training days per year if he had two dogs. This option would give you [Mr Garside] a part time resource to be going on with albeit with some issues."*

165. Speaking generally about the dogs section, Mr Grange proposed four options going forwards noting that the force had eight cash, drugs, and firearms dogs including PD Milo. Mr Grange proposed waiting until the summer of 2023 before progressing matters and selecting two from the general police dog handlers to become *"dual role or passive",* leaving the force with the 20 general dog handlers proposed by Mr Carlson. This option was the chosen way forward - (see page 150 being Mr Carlson's instruction to Mr Garside and Mr Grange to this effect).

166. Mr Carlson recognised Mr Brackpool's situation as problematic. In an email which he sent to Mrs Lynskey and Mr Wanless of 13 July 2022 (page 149) various options were proposed. One of these was simply to align him back with the dogs team *"which is what he was brought back on the 30+ to do."* Another option proposed was to *"put him up for re-deployment through the [Workforce Deployment Board] where he would be posted to district and likely to resign. This is problematic as it could easily be viewed as constructive dismissal. Ann [Harhoff, part of the first respondent's HR function] suggests that a full review of all the dog handlers/structures would be needed to show that a 30+ post was unnecessary and at that point it would be cut from the structure and a process done to identify who would leave reduc[ing] the number of posts."*

167. That shedding two of the 22 posts continued to be Mr Carlson's preferred option may be seen from the email exchange at page 165 dated 5 October 2022. He was informed by one of the force's accountants that 22 dog handler posts are in the budget. Four of these are vacant. One full time equivalent is filled by two part time individuals. As we know, those were Mr Brackpool and Mr Adams. Mr Carlson, in light of this, emailed Inspector Matthew Collings of the RPG and Lydia Lynskey on 11 October 2022 (also on page 165) to say, *"I don't necessarily see*

the need for two extra posts. Five handlers on each team (total 20) should be sufficient."

168. Mr Carlson had been advised by the accountant in the email at page 165 that one of the vacant posts was frozen. He confessed in that email that *"I don't know what the frozen post is being used for."* In paragraph 22 of his witness statement, Mr Carlson says that the "*frozen"* post was in fact being used to fund another post. The concept of a *"frozen post"* was not very well explained by the respondents. However, as the Tribunal understands matters, the idea is that the funding for a post deemed *"frozen"* is used to fund another post and therefore would not be filled. Therefore, with one post being frozen, the first respondent in reality needed to lose one full time equivalent dog handler post and not two to achieve Mr Carlson's aspirations of 20 dog handlers within the force.

169. In the event Mr Carlson says in paragraph 23 of his witness statement that, *"no action was taken with any of the dog handler posts as no force wide decision was made relating to 30+ posts and SYP engaged in a "priority based budget" review which started in the OSU department in April 2023. In anticipation of this project no changes were made to the structure of the department as there was to be a comprehensive review of the entire department."*

170. It was the late disclosure around the priority based budgeting programme ('*PBB'*) which led to the disclosure of documentation to the claimants' solicitors late on the evening of 25 June 2024 and which led to the adjournment of the case the following day. The Tribunal gave permission for supplementary witness evidence to be called on behalf of each party concerning the PBB disclosure. The claimants chose not to give additional evidence. The respondents served two additional witness statements from Miss Buttle. She referred (in her first supplementary witness statement) to the PBB programme having begun on 2 May 2023. We shall come to it in due course, but it is right to say that the claimants' posts were on the radar of the first respondent's senior management team when the PBB post got underway.

171. The review of the dog handler's structure recommended to Mr Carlson by Ann Harhoff (alluded to Mr Carlson's email of 13 July 2022 mentioned in paragraph 167) effectively was subsumed within the PBB review. This appears to have occurred more by accident than design. There was no suggestion that Mr Carlson, when he made his recommendation in July 2022 to defer matters for a year was aware of the advent of the PBB programme. Even if we are wrong on this, nothing turns upon his knowledge (or lack of it) of the forthcoming PBB programme. In the final analysis, the review of the dog handlers' roles was deferred for a year and a review of them took place (albeit in the context of a much wider force-wide review).

172. In November 2022, Mr Brackpool began to experience significant pain because of a trapped nerve in his neck. A note of Mr Brackpool's discussion about this with Mr Shirley of 8 November 2022 is in the *'supportive management action record'* at page 237. Mr Brackpool had in fact been put on a CPD course about rural and wildlife crime to take place on 15 November 2022. Mr Shirley's note dated 8 November 2022 says that Mr Brackpool was at work at this time and was managing with painkillers. It appears therefore that he was able to take his place on the course. By this stage of course he was back in dogs' section. The tribunal received no evidence about this course and whether it was of the same kind as that he was looking to go on when he worked in rural and wildlife crime.

173. Mr Brackpool's state of health (with his neck condition) regrettably got worse during November and December 2022. Mr Shirley made a note in the supportive management action record at page 237 that on 2 December 2022 Mr Brackpool declined to speak to the locum occupational health physician, preferring instead to speak with *"a SYP practitioner."* Just three days later, Mr Brackpool was reporting uncontrollable pain. An appointment date had been given to him for surgery. Unfortunately, this was cancelled at the last minute and rescheduled for 19 January 2023.

174. Mr Brackpool explains in paragraph 39 of his witness statement that the origins of the condition resulting in surgery in January 2023 arose from a collision which had taken place in January 2017 when a stolen car hit him head on. He was classed as 14% disabled. This did not stop him completing his role as a dog handler before his retirement.

175. Happily, the surgery which he underwent in January 2023 was a success. His consultant orthopaedic spinal surgeon, Mr Brewer, wrote a supportive report dated 15 March 2023 (page 570). This reads, *"Having spoken with Paul today he feels competent and confident to return to work on full active duties and certainly from my perspective there is no reason why he can't."* This email was sent to Mr Brackpool and to Mr Lumley.

176. During Mr Brackpool's absence from December 2022 with his neck and shoulder symptoms, PD Milo was placed with PC Jason Pitcher. Mr Brackpool was utterly dismayed by the placement of PD Milo with Mr Pitcher. It was well known to the first respondent that Mr Brackpool and Mr Pitcher were on bad terms and had clashed publicly several times.

177. Consideration was being given by the force to Mr Brackpool's return to work following surgery. Brian Grange was concerned (as he says in his email of 2 February 2023 sent to Mr Shirley, Mr Hardwick and Mr Garside (page 225)) that PD Milo "*is a big dog and will pull [Mr Brackpool] about a bit. I don't want that to happen and cause further injury especially if it is to his [cervical] spine. If the dog stays at Niagara until mid-March though, that means at least another six weeks from now in the pounds. Including 14 weeks due to Paul's heart op [in April 2022] Milo will have spent six months overall in a pound at Niagara over the last 12 months, which is not great for his well-being nor good value for SYP. Initially, I didn't think it worth the bother but for both Paul and the dog's welfare it may well be worth re-teaming the dog temporarily. Jason Pitcher is an experienced drugs dog handler and able to accommodate that for us if needs be and this would get the dog working again. We can then see how Paul goes in March and if fit we can put him and Milo back together again. If he is not fit then we will have something in place for the dog until he is. Worst case scenario is if Paul is not fit enough to come back as a handler. If that happens the dog can be re-teamed to someone else by the time Jason retires in December. We have a drugs refresher on next week and the manual does not give a minimum time to do a drugs re-team. So it can be done easily both ways as they are both experienced."*

178. Mr Shirley was supportive of Mr Grange's suggestion and invited Mr Carlson's views. Mr Carlson suggested (at page 224) that the three of them (Mr Shirley, Mr Grange and Mr Lumley) have a discussion before having "*an honest conversation with Paul."* However, Mr Grange's suggestions of Mr Brackpool not handling PD Milo in the interests of his own health and welfare on a temporary basis and of PD Milo being reteamed temporarily with Mr Pitcher met with Mr

Carlson's approval. Mr Carlson said, *"If Paul becomes fit in the future, we will know before Jason retires, and if he doesn't we have some breathing space to find a more personal solution. We do however need to engage with Paul to explain the rationale so he is part of the arrangements and doesn't feel unsupported."*

179. Mr Grange, on 3 February 2023, volunteered to go to see Mr Brackpool (page 223). Mr Grange said that if there were *"no objections I will crack on with it once I know Jason can accommodate the dog without dog fights etc."* Mr Carlson replied the same day, "*crack on".*

180. Mr Grange then reported back later the same day (pages 222 and 223). He said, *"I've been to see Paul and he is okay with things."* He said that it had been explained to Mr Brackpool that the re-team of PD Milo with Mr Pitcher was temporary until Mr Brackpool was signed off by his doctor and by the occupational health unit as fit to return to his work as a dog handler. Mr Grange reported that Mr Brackpool was in agreement that it was unfair to leave PD Milo in the kennels.

181. Mr Grange's suggestion that Mr Brackpool was *"okay with things"* was not the experience of Mr Shirley when the latter spoke with him (Mr Brackpool) in a weekly welfare check. On 7 February 2023 he emailed Mr Grange, Mr Carlson and Mr Lumley (pages 221 and 222). He said that Mr Brackpool was *"livid in simple terms."* Mr Shirley said that Mr Brackpool was *"wanting in writing that he will get Milo back upon his return. He has not slept for two nights as a result of the re-teaming, and feels betrayed and doesn't know who to trust. He is being 'stabbed in the back.'"* He went on to say, *"I believe he has taken it quite personally as due to the fact that [Mr Brackpool] has particular issues with Jason [Pitcher]. There is a bit of history between Jason and Paul where they do not like one another and have had several public spats. The re-teaming of Milo to Jason is quite bitter for him [Mr Brackpool]."*

182. Mr Lumley said in reply (page 221) that Mr Brackpool *"will have to put aside his personal issues, as the decision was made to safeguard the dog's physical and mental welfare."* He went on to say, *"I won't put anything in writing for him, and I won't be making promises I can't keep. Paul has had surgery for a back/neck injury and we will have to be guided by the [Force Medical's Officer's] report. Any future re-team will be based on the fit for role assessment."* Mr Lumley added, *"I understand that Paul will be stressing, and I will give him a shout later to touch base, as I know him well."*

183. Mr Carlson gives an overview of this correspondence around paragraphs 24 to 28 of his witness statement. The contemporaneous correspondence corroborates Mr Carlson's account of the decision being made to re-team PD Milo with Mr Pitcher in the interests of PD Milo's welfare. Mr Carlson said in paragraph 26 of his witness statement that the force *"has a duty to manage the welfare of animals under its ownership. In point of fact, we can commit an offence under section 4 of the Animal Welfare Act 2006 of causing unnecessary suffering."*

184. Mr Carlson's rationale for re-teaming PD Milo with Mr Pitcher was, on any view, rationally based. The Tribunal can understand that, subjectively, Mr Brackpool did not want PD Milo to be re-teamed with anybody, least of all Mr Pitcher. However, he fairly recognised in paragraph 44 of his witness statement that PD Milo belongs to the force. Mr Brackpool's affection for PD Milo is understandable, a feeling doubtless enhanced by the affection which his daughter had developed towards PD Milo. However, in the final analysis we

accept that Mr Carlson was motivated by well-founded animal welfare concerns and the understandable apprehension of severe reputational damage to the force were there to be a suggestion of the force breaking animal welfare law.

185. We also accept the first respondent's evidence on this issue that the intention was for PD Milo to be returned to Mr Brackpool once he (Mr Brackpool) was declared fit to return as a dog handler. Notwithstanding Mr Brackpool's dislike of Mr Pitcher, the force's choice of temporary dog handler for PD Milo corroborates the force's good faith towards Mr Brackpool upon this issue. Mr Brackpool may have entertained more serious concerns had PD Milo been assigned to someone with many years left to serve in the force. Mr Pitcher was due to retire from the force at the end of November 2023 necessitating a further re-teaming of PD Milo. It is clear in our judgment that the force had the re-teaming of PD Milo with Mr Brackpool firmly in mind.

186. That said, it is difficult to understand why Mr Lumley was reluctant to write to Mr Brackpool to confirm the first respondent's intentions. Such could have been couched in conditional terms. Mr Lumley appears to have apprehended that Mr Brackpool wanted some kind of unequivocal guarantee that PD Milo would be placed back with him. There was no reason why an assurance that the force intended to do so but conditional upon Mr Brackpool's fitness to return to work (after assessments by the occupational health unit) could not have been given. Once again, regrettably, poor communication appears to have increasingly soured the relationship between the parties.

187. On 1 February 2023, Mr Shirley informed Joanne Ridge (people advisor for the OSU) (page 218) that he had "*put in another OHU referral for Paul."* Mr Shirley went on to say, *"he refused the last one in November due to it being an out of force doctor that called him."* The Tribunal accepts that this was the case. It is corroborated by PC Shirley's supportive management action record at page 237 (in the entry dated 2 December 2022- see paragraph 173 above). Mr Shirley informed Joanne Ridge that Mr Brackpool was hopeful of returning to work on 17 March 2023 which is the date upon which his current fit note expired. In the supportive management action record of 1 February 2023 (at page 238) Mr Shirley noted Mr Brackpool as being "*high in spirits and appreciated the time I have given to him."*

188. In anticipation of Mr Brackpool's return to work, Mr Lumley had arranged for him to undergo officer safety training *('OST'*) and first aid training on 5 and 6 April 2023. Mr Brackpool was *"out of ticket"* for both of these essential requirements due to his absence from work. Mr Lumley told Mr Brackpool that the occupational health unit would not commit to supporting his attendance at those training events until he had had an appointment with the Force Medical Officer. This was arranged for 24 April 2023, hence the need to cancel the training on 5 and 6 April. Mr Lumley accepted that this resulted in the timescales being *"extended slightly."* The plan now was for Mr Brackpool to attend with the Force Medical Officer on 24 April 2023 for formal assessment and sign off as fit for work followed by attendance at the OST/first aid refreshers for which course dates were awaited. (This plan of action is recorded in Mr Lumley's email to Mr Brackpool of 23 March 2023 (page 240)).

189. Mr Brackpool complains (in paragraph 49 of his witness statement) of three cancellations of the OHU assessment. (We have found in paragraph 173 above that the first of these cancellations (in November 2022) was in fact at his behest

per the note of 2 December 2022 at page 237). He said in paragraph 49 that, *"I was told that I could not have PD Milo back until I was cleared by the FMO and OHU. I was told by PS Dan Lumley that this had come from the SCT [Senior Command Team]."* Mr Brackpool goes on to say in paragraph 50 of his witness statement that this *"demonstrates a clear intent by the SCT that I was never going to get my dog back and return to dog handler duties."*

190. At page 566 is a record of courses undertaken or to be undertaken by Mr Brackpool between 7 December 2020 and 6 September 2023. Some of these are marked as having been completed and others as having been cancelled. From this, we can see that the combined OST/first aid module was re-arranged from 5 and 6 April 2023 to 15 and 16 May 2023. This was then noted as having been cancelled. We shall see in due course that Mr Brackpool commenced a period of absence from work from 12 May 2023 due to ill health. This followed the respondents' decision to move him to the FCMU. He never returned to duty. It appears logical that it is for that reason that the course of 15 and 16 May 2023 was cancelled. Nonetheless, this does show that another course had been arranged for him following the cancellation of that on 5 and 6 April 2023. We therefore do not accept Mr Brackpool's case that it was the never respondents' intention to reteam him with PD Milo. The intention not to so only crystallised after the decision to move Mr Brackpool to the FCMU- see paragraphs 217 and 218 below.

191. Mr Brackpool attended an appointment at the Occupational Health Unit on 24 April 2023. An occupational health unit report was prepared by the Force Medical Officer (Dr Bollmann) on 25 April 2023 (at pages 568 and 569). Happily, she reported that Mr Brackpool was well and that the surgery and treatment had been a success. She said that Mr Brackpool, *"should be able to provide reliable and effective service in his contracted dog handler role for the foreseeable future."* She commented that Mr Brackpool's cardiovascular assessment was also acceptable. She recommended no adjustments need be made and that he had passed his advanced driver medical as well. She said that he would need to undergo an annual review of the advanced driver qualification. Mr Brackpool was certified as fit for work in his substantive role as a dog handler.

192. This concludes the findings of fact about Mr Brackpool. It is at this point of the story where we consider the claimants together. This is in connection with their move to the FCMU.

Mr Driver's and Mr Brackpool's move to the Force Crime Management Unit

193. We have mentioned already in paragraphs 23 and 24 above Natalie Gilmore's evidence about the significant backlog and delays being experienced within the FCMU (in particular the Force Crime Bureau) in recording crime. This was impacting the force's ability to investigate crime in a timely manner resulting in a potential loss of evidence and the standard of service being delivered to the communities served by the force. In evidence which she gave in answer to one of Mr Chester's questions, she commented that the delays were resulting in disengagement with the force by members of the public and key evidence (such as CCTV footage) being wiped.

194. Such was the backlog and demand that a decision was taken by the Senior Command Team at a meeting held on 30 November 2022 for 10 police constables from across the force to be loaned to the FCMU on a temporary basis

with a view to reducing the backlogs and improving the service offered to victims of crime.

195. Mrs Gilmore prepared a detailed discussion paper (at pages 184 to 195) for the Senior Command Team making out the business case for the temporary deployment of 10 police constables. The FCB was operating at around 70% staffing level. Although permission had been given to recruit, the benefit of this would not be seen until April 2023.

196. On 30 November 2022, Mrs Gilmore emailed Chief Superintendent Becs Horsfall, Head of Analytics, Crime Management and Digital Capabilities to the effect that a list of those to move was being compiled. She said that the list would highlight those who have recently completed overtime in quality assurance. She preferred to have such officers temporarily deployed as *"this will improve efficiency in reduced errors that will come to light and require rectifying in the future. Staff that have completed QA for some time may require some training/additional support"*- (page 198).

197. It was resolved that eight officers would be deployed from the Sheffield, Doncaster, Rotherham, and Barnsley Districts with a further two to be deployed to the FCMU from the OSU. We can see from page 202 (in an email from Natalie Gilmore) that PC Steve Hilditch and PC Dan Dalby were to be deployed to the FCMU from the OSU. PC Hilditch was from the Roads Policing Group and PC Dalby was from operations planning.

198. Within the bundle between pages 206 and 209 are emails between (amongst others) Mrs Gilmore and Mrs Arden. It is, perhaps, surprising that Mrs Arden makes no mention of these in her witness statement. However, Mrs Gilmore does so in paragraph 8 of her witness statement. She says that "*Around the end of December 2022 into January 2023 it was identified that PC Dalby was required back in OSU to perform his previous role due to his skillset along[side] the lack of resilience within that department (please see pages 207 to 211 of the bundle). It was also identified that PC Hilditch was required back in the Roads Policing Group as he was a fully operational officer who supported FCB for a temporary period because of his personal circumstances (please see pages 215 to 217 of the bundle). Once returned to OSU, the department began a process identifying replacements to support FCB."*

199. She goes on to say in paragraph 9 that "*Following a people board meeting on 23 March 2023, it was confirmed that the requirement for 10 loaned police constables to support FCB was to be maintained, which included the requirement for OSU to supply two officers (please see pages 241 and 242 of the bundle)."*

200. It can be seen from her email to Lydia Lynskey of 28 March 2023 that Mrs Gilmore's view was that *"the queues are not getting where they need to be, the requirement [for assistance] is still there."* She mentioned that the 10 loaned PCs were to be re-deployed for a period of 12 months. Mrs Lynskey replied on 4 April 2023 (also at page 264) that she was "*in the process of identifying two officers to come to you."* She went on to say that *"due to the nature of their existing roles they will need training on the systems."* She said that they had not yet been spoken to, hence her reluctance to name them.

201. On 4 April 2023, Mrs Gilmore acknowledged Mrs Lynskey's email and thanked her for the additional resource. She asked, *"Are they trained in the use of Connect?"* Mrs Lynskey replied the next day, 5 April 2023, to confirm that they

were not. Mrs Gilmore said that there was a Connect training course the following week. Mrs Lynskey said it was unlikely that arrangements could be made for them to attend on such short timescales - (we refer to page 261 to 264).

202. Mrs Gilmore continued to press Mrs Lynskey for the date when the OSU officers would arrive. We can see her doing so in an email of 17 April 2023 (page 260). Mrs Lynskey replied, *"I'm being grievanced by one of them Nat [Gilmour] and speaking to the other on Wednesday."*

203. The OSU officers being referred to in these exchanges were, of course, the claimants. Mrs Lynskey's reference to "*being grievanced"* was to the grievance raised by Mr Driver on 12 April 2023 at pages 248 to 252. Her reference to speaking to *"the other"* (Mr Brackpool) was to a meeting which had been arranged for her to see him on 19 April 2023. In the event, this meeting did not take place because Mrs Lynskey was called out to a firearms incident. Mr Brackpool met with Mr Carlson instead.

204. In her evidence (both in chief and in cross-examination) Mrs Lynskey acknowledged that a move to the SMU was unlikely to be popular with any individual. She said in paragraph 39, however, that the role in the FCMU *"would accommodate officers who required longer term reasonable adjustments due to health and well-being considerations."*

205. She identified Mr Brackpool as having capacity as he did not currently have a police dog. As it was put by Mr Jones, Mr Brackpool was *"a dog handler without a dog."* She anticipated or hoped that the deficiency in the claimants' skillset to provide effective service in the FCMU may be overcome with training.

206. For her part, Miss Buttle says, in paragraph 7 of her first witness statement, that Mrs Lynskey informed her that the claimants were "*the two most appropriate members of staff to undertake this work [in the FCMU]."* Miss Buttle said that, *"Based on the information I had at the time, I believed both could be fully abstracted [from the OSU] with no impact of service to the public or operational delivery."*

207. On 7 April 2023 Miss Buttle informed Mrs Lynskey that she was happy with her [Mrs Lynskey's] decision to send the claimants to the FCMU. We refer to page 243. It is clear from the emails to which we have referred at pages 260 to 264 that Mrs Gilmore was inevitably going to be disappointed with Mrs Lynskey's selection of the claimants because of their skillset (or lack of it) for work in the FCMU. (Mrs Gilmore did not know their identity at that point). Others within the force harboured concerns about the selection of the claimants. At page 257, we see an email from Sue Hare, Collisions Admin and Crash Database Manager copied into Mr Carlson in which she said, *"I'm unsure with regards to Paul [Brackpool], simply because I think the training would be longer than the job itself. Absolutely no disrespect to Paul but as previous history has shown, we need somebody to come in running."* Notwithstanding Sue Hare's misgivings, Mr Carlson endorsed the decision taken to move the claimants to the FCMU.

208. Miss Buttle, Mrs Lynskey, and Mr Carlson did not suggest that anybody else was being considered for the move other than the claimants. In her grievance outcome report of 12 December 2023 pertaining to Mr Brackpool (at page 500), Claire Hayle held that, *"The collective decision was to nominate Paul and another officer [Mr Driver] and that they would be the two officers from OSU even though they were both part time."* From this, we conclude that no one else other than

the claimants were in the frame. Mr Brackpool was a restricted duties officer at this time, as his return to full duties was pending the Force Medical Officer's assessment and his attendance on mandatory training. Mr Driver of course was an adjusted duties officer.

209. The justification given by the first respondents' witnesses and by Mrs Lynskey was that both Mr Driver and Mr Brackpool had capacity to work in the FCMU. As has been said, Mr Brackpool was (as far as the respondents were concerned) a dog handler without a dog. There was a perception that the need for Mr Driver to work in his substantive new role as mounted section operation manager afforded some capacity given that Collette Pitcher was gaining experience. Further, Mr Driver accepted (in paragraph 28 of his witness statement) that upon his return to Ring Farm on 16 February 2023 other officers were dealing with parts of the role which he had been doing. We therefore accept that, on the face of it, the claimants did have some spare capacity.

210. According to the grievance outcome report of 12 December 2023 (at page 495) Mr Brackpool returned to work on 20 March 2023. At that stage, of course, pending the FMO's report, he remained on restricted duties. Joanne Ridge provided Claire Hayle with details of welfare contacts which had been made with Mr Brackpool around his return to work. She emailed Claire Hayle with the relevant records on 16 November 2023 (pages 469 to 471). Mr Brackpool's duties on his return to work in March 2023 were restricted and, essentially, he was provided *"time and space to catch up on all e-learning and to allow for 'gym time' as part of his return, owing to limited admin/work available."*

211. We have seen that, behind the scenes and without the knowledge of the claimants, there had been a lot of back and forth within the Senior Command Team and others about moving the claimants to the FCMU. Mr Driver says in paragraph 29 of his witness statement that "*On 4 April 2023, out of nowhere I was told by PS Pitcher that Lydia Lynskey had been making enquiries about looking to move me again. My instant reaction was shock, disappointment and fear. I was devastated at being moved again, why me? Why does Superintendent Lynskey keep taking me away from the role I love and excel at, and the role I was appointed to. I was told by PS Pitcher that conversations had been going on for several weeks."* Mr Driver says that he was *"left to wait and see"* when the move would take place.

212. Mr Driver then says in paragraph 30 of his witness statement that Collette Pitcher confirmed the move on 11 April 2023. He emailed Lydia Lynskey the same day to express his disappointment (page 247). He gave a history of having been moved twice following his return to the Force on the 30+ scheme. He went on to say, *"Today I have been informed by PS Collette Pitcher that I am again being moved to another role. PS Pitcher is unsure of the exact nature of the job, location or duration of the re-deployment. Neither of the deployments have any bearing on my role or experience or have been taken into consideration. My treatment appears unfair to say the least."* In light of Mr Driver's reference in the email at page 247 to having been informed of the move that day, we find as a fact that Miss Pitcher did not tell him about it on 4 April 2023 as Mr Driver alleges.

213. On 12 April 2023, Mrs Lynskey emailed Mr Driver (page 246). She sought to assure him that the decision to move him to the FCMU was nothing to do with him being a part-time worker. She went on to say*, "In my role I had to make the difficult decision as to which two officers would be re-deployed. This was subject*

to a local OSU command team discussion and adjusted/restricted officers were the primary choice to allow the longevity to the posting within the FCMU whilst retaining operational resilience and deployability. As such as you are an adjusted officer you were selected. Your role as the operations manager, as important as it is, can be filled by the wider team at Ring Farm especially whilst Collette [Pitcher] is offline."

214. Mr Driver describes in his witness statement under the heading *'injury to feelings'* the impact of this decision upon him. The Tribunal shall say no more about this for now. The Tribunal gave a direction at the outset of the hearing that we would deal with merits only at this stage. Mr Jones therefore has had no opportunity to cross-examine either of the claimants upon the issue of the impact upon them of the several decisions made about them by the force.

215. The decision to move him to the FCMU led Mr Driver to raise his grievance on 12 April 2023. We refer to pages 248 to 252. Mr Driver named the person the subject of the grievance as Mrs Lynskey. Mr Driver then took sick leave with effect from 12 April 2023 (page 365). He did not return to work.

216. As we noted in paragraph 203, Mr Carlson stood in Mrs Lynskey's stead to inform Mr Brackpool of the decision to move him to the FCMU. This he did on 19 April 2023.

217. Mr Brackpool says that Mr Carlson told him that in addition, there was no prospect of him getting PD Milo back. PD Milo was to stay with Jason Pitcher until retirement after which PD Milo would be re-teamed with a full-time dog handler.

218. In evidence given under cross-examination, Mr Carlson accepted that Mr Brackpool had been given the impression that there was no prospect of PD Milo returning to him. When asked about what was said at the meeting of 19 April 2023, Mr Crammond suggested that this was the first time that there was mention of the possibility that Mr Brackpool would not be getting PD Milo back after all (notwithstanding what he had been told in February 2023). Mr Carlson replied, *"not permanently, but yes."* This was a somewhat unsatisfactory response from which the Tribunal concludes that in reality Mr Brackpool was told that PD Milo would not be returned to him.

219. In paragraph 55 of his witness statement, Mr Brackpool said that Mr Carlson's suggestion that the new role fitted with his restrictions *"is disingenuous and at that point there had been no recommendations, no suggestion of what I needed. My own doctor had said that I was fit to return to my role as a dog handler. It was the force that were insisting that I be assessed by the OHU and the FMO before they believed that I was fit to return."* As we know, the FMO gave Mr Brackpool a clean bill of health and certified him as fit for operational duties just six days later on 25 April 2023. The force acted reasonably in not simply accepting the views of Mr Brackpool's treating surgeon, as he would not know of the demands of the role or of the force's requirements.

220. Mr Carlson followed up the meeting of 19 April 2023 with an email to Mr Brackpool dated 20 April 2023 (pages 268 and 269). He sought to explain the rationale behind the decision to move him to the FCMU. He acknowledged Mr Brackpool's comment that he did not understand the computer processing that lay behind the FCMU's function and Mr Brackpool's comment that in the meeting Mr Carlson *"may as well be speaking a foreign language (or words to that effect) as you [Mr Brackpool] are not good with computers."* He recorded that Mr Brackpool

expressed the view that 30+ officers were unpopular and that he was being *"pushed out."* He recorded Mr Brackpool's upset around PD Milo generally and that he was of the view that PD Milo had been placed with Jason Pitcher to cause him personal hurt. Mr Carlson then said, *"You stated that you would be operational in a month after completing your OST so should not be considered for the secondment. I explained whilst you may pass the safety training and fitness test (I genuinely hope you do) this was not guaranteed. It is possible that any decision could be reviewed in the light of new information, but the decision was/is made on the basis of facts as they are now."* No such review in fact took place after 25 April 2023, which may be thought surprising. The Force Medical Officer's report came to hand less than a week after Mr Carlson's meeting with Mr Brackpool of 19 April 2023 and his follow up email of 20 April.

221. He went on to reassure Mr Brackpool that notwithstanding his limitations with computers, training was to be made available. He concluded, *"As expected you did not take this news well and became quite animated. For clarity I do not suggest that you were abusive or disrespectful, rather than it was somewhat difficult to hold a conversation with you as you [were] eager to express yourself. We agreed that a further meeting would be arranged to speak to Ma'am Lynskey next week and that you had an opportunity over the weekend to think about what you wanted and structure your thoughts for that meeting. I readily acknowledge that our discussion was your initial reaction to news you did not want to receive."*

222. In his witness statement in paragraph 32 Mr Carlson refers to Mr Brackpool's *"demeanour during the meeting [being] that of an angry man who was struggling to contain that anger which culminated in him slamming the door as he left."* The Tribunal has no note that Mr Jones suggested to Mr Brackpool that he had slammed the door on his way out. This is not mentioned in the contemporaneous email sent to Mr Brackpool by Mr Carlson at pages 268 and 269. There is reference to Mr Brackpool becoming animated but not to having stormed out, slamming a door on his way. Upon the basis that there is no contemporaneous mention of this, the Tribunal prefers the evidence of Mr Brackpool that he did not slam the door when leaving.

223. Mr Driver declined the opportunity to meet with Mrs Lynskey. He declined to meet with her as he was currently signed off work with stress and anxiety. We refer to page 293.

224. On 25 April 2023, Mr Brackpool emailed Mrs Lynskey to seek her rationale for the move (page 272). Her reply (page 271) was in not dissimilar terms to that which she had given to Mr Driver on 12 April 2023 (at page 246). She sought to reassure Mr Brackpool that he had not been chosen because he was a part-time worker. She said that she had made the difficult decision to deploy him and Mr Driver to the FCMU. Like Mr Carlson, she assured Mr Brackpool that he would be afforded the training to enable him to perform the role.

225. Mrs Lynskey then cited passages from internal guidance as to the operation of the 30+ scheme. This reads that, *"If a vacancy exists, you will be permitted to remain in your current role for a period of two years. Where no vacancy exists, you will be posted in accordance with normal workforce deployment practices. At the end of two years you will be asked to give three preferences for vacancies and will be posted with the normal workforce deployment practices applied."* By this stage, the claimants had been in their substantive posts for over two years. Mrs Lynskey accepted in her email that Mr Brackpool (like Mr Driver) had not

been asked to give three workforce preferences going forwards but rather, she said, they were *"being posted in line with normal workforce deployment practices in line with organisational needs on the decision and direction of [the Senior Command Team]."*

226. On 27 April 2023, Miss Buttle emailed Rebecca Salamut, workforce planning manager (page 274). She said, *"An action from Tuesday's SLM [senior leaders meeting] was for me to identify two posts which can be frozen and loaned to the Force Crime Management Unit. The posts I have decided to move across are:*

Dave Driver – mounted – 0.5 of a post, 30+ officer;

Paul Brackpool – dog handler – 0.5 of a post, 30+ officer;

COPAD [central operation planning and duty] – Angela Marasco's old post which is a constable post in the duties project team."

She went on to say that Ms Salamut should note that Mr Driver had been informed, had submitted a grievance and was now absent from work. She also said that Mr Brackpool had intimated an intention to submit a grievance after having been informed of the move. (Mr Brackpool in fact raised his grievance on 18 May 2023 – pages 342 to 345). The COPAD post was vacant and *"so it will be the post only transferring."*

227. On 28 April 2023, Miss Buttle again emailed Ms Salamut (page 276). This was in response to Miss Salamut's query (at page 277) that *"the instruction was for the people as well as the post."* Miss Buttle reply was that "*It has changed and at this time it is post solely. This has come from Dan Thorpe from the SLM on Tuesday. However as we had informed Dave and Paul they were being deployed I am not reversing this as this is a reasonable adjustment."* When asked why she took the view that the move to FCMU was a reasonable adjustment, Miss Buttle said (in evidence in cross-examination) that *"The claimants should be in a post suited to them."* She accepted that she had not sought occupational health advice as to the suitability of a move to FCMU nor had she seen Mr Driver's adjusted duties agreement at pages 107 to 109. No Equalities Impact Assessment for the moves was carried out.

228. On 26 April 2023, Miss Salamut had emailed Miss Buttle with a list of vacancies held by the force as of that date (page 275). Mrs Lynskey was asked by the Employment Judge how moving a vacant post (that being the COPAD post) would help Natalie Gilmore and the FCMU. The Tribunal was as perplexed as Miss Salamut appeared to be as to how it was of any help to move posts as opposed to people. Mrs Lynskey said that *"This was Cherie Buttle's decision to show that we'd transferred the staff."* Mr Crammond put it to Mr Carlson that by that logic one of the full time equivalent vacant posts available as of 26 April 2023 could have been transferred to the FCMU rather than the claimants. Mr Carlson said that "*Miss Buttle may have believed that there was a need for two full time equivalents, so when they [the claimants] came back the FCMU would then have two full time equivalents."*

229. When the point was put to Miss Buttle, she said that moving two vacant posts *"wouldn't serve the public. They [the claimants] weren't fulfilling their roles. They would be in a role to meet their adjustments, serving the public, and fulfilling work."* We presume that she meant to say that the claimants were not fulfilling

their substantive roles, which is a questionable proposition. There was no suggestion that Mr Driver was not doing so at Ring Farm- available capacity is a different issue. Mr Brackpool had, the day before, being certified as fit to work in his substantive role. There was no OHU advice that a move to FCMU was a reasonable adjustment. Moving the claimants to the FCMU while they were both on long term sickness absence was of no help Natalie Gilmour.

230. On 5 May 2023, Mrs Gilmore emailed a list of those police officers currently assisting the FCMU (pages 294 and 295). We can see that the two OSU deployments were left blank. At this stage, Mrs Gilmore still did not know the identity of the claimants. She pointed out that two of those listed were going on maternity leave later that month. Becs Horsfall requested (in an email of the same date) that Mrs Gilmore *"get this on the WDB [workforce deployment board] agenda via Barry Quirk."*

231. Mrs Gilmore was anxious to replace two officers from the Doncaster district assigned to the FCMU who were about to take maternity leave. She had said in an email dated 3 May 2023 (page 285) that *"we really do need the replacements without a gap please"* due to the "*queues in the FCB".* That day, she also raised a query of Becs Horsfall about the two officers from the OSU (page 283).

232. Mrs Gilmore was taken, in cross-examination, to the email of 28 April 2023 referred to in paragraph 227 above (that being the email from Miss Buttle to the effect that it would suffice to transfer posts to the FCMU). It was put to her by Mr Crammond that the claimants had not yet arrived. She said that at around the end of April 2023 she was "*chasing replacements but demand had reduced."* (We have just seen that in early May 2023 she was chasing the Doncaster district to replace the two pregnant employees and had raised a query as to the whereabouts of those to be deployed from the OSU).

233. It was suggested to Mr Crammond that Mrs Gilmore did not need the claimants and the vacant COPAD post. She replied, *"They [the senior leadership team] allocated the posts for me and I wanted them there."* The Employment Judge then asked her whether she could do without the claimants at this point. She replied, *"I could do with them, I was still asking. I could manage without them at that point, it had become manageable."* Mr Crammond then asked her, *"when did it become manageable?"* She replied, *"It had got to the stage that relinquishing one post became manageable. It had become too much hard work to get someone to fill it. I was told they weren't coming over. I was still chasing at that point."* Mr Chester then asked her whether the position was that she would have liked to have had them but could do without them. She replied "*Yes, I could make do with nine full timers as I had an overtime budget."* She said that by April 2023, *"The backlog had come down to a level where the risk was not zero but was less. Victims had not been engaging and CCTV was being wiped. Demand reduction and overtime meant I could do without the one FTE."* In re-examination, Mrs Gilmore said that towards the end of May 2023 she had informed Barry Quirk that she did not need the claimants.

234. We mentioned in paragraph 201 that Mrs Gilmore's clear preference had been for Connect trained officers to move to the FCMU (page 262). From page 266 (an email from Mrs Gilmore dated 27 March 2023) we see that for those not trained on Connect a nine-week training course was available. That was the duration of the course for full-time workers. When this issue was raised with her

by Mr Crammond, Mrs Gilmore said that in the claimants' case, rather than sending them on the training course she would have deployed the claimants to work on the Pronto system thus relieving others to then work on Connect. We conclude from this that the claimants were not ideal candidates for Mrs Gilmore but would have been capable of rendering some assistance in the FCMU.

235. Mrs Gilmore also acknowledged in the email of page 266 that it was open to districts and the OSU to rotate the 12-month deployment period. In other words, it was not necessary for the same individuals to work in FCMU for the entire 12-month loan period. The question of rotation does not appear to have been raised with the claimants by the respondents.

236. Although Mr Brackpool initially was receptive to the meeting with Mrs Lynskey suggested by Mr Carlson on 20 April 2023 (mentioned in paragraph 201 above) he changed his mind. He submitted a Leavers Form on 9 May 2023 (pages 297 and 298). This was sent to Mr Lumley. Mr Brackpool gave a leaving date of 6 June 2023. He commented in the form that *"I'm resigning due to being lied to by the SCT at Ops and complete lack of honesty and integrity within the SCT, and others. Welfare of staff has no meaning at all within SYP and is lip service only."*

237. Upon receipt of the form, Mr Lumley invited Mr Brackpool to discuss the matter with him. Mr Brackpool replied (at page 296 in an email dated 9 May 2023), *"You can call, but I want this form sending. There is nothing that can be said or done now to change my mind. I cannot work in a place with no honesty or integrity."*

238. Mr Lumley spoke to the Police Federation. He says in paragraph 23 of his witness statement that he feared that Mr Brackpool may have been acting on impulse and he had made an irrational decision. He was advised by the Police Federation to withdraw the papers to provide Mr Brackpool with a period for reflection. Mr Lumley says that Mr Brackpool thanked him for his intervention and accepted that he had acted irrationally.

239. The Tribunal accepts Mr Lumley's account. Mr Brackpool thanked him in his email of 10 May 2023 (at page 302). This was in reply to an email to him from Mr Lumley of the same date reiterating the offer to meet with Mr Carlson and Mrs Lynskey. Mr Brackpool replied, *"Thank you for your efforts and help, but NO, I do not think seeing either of them face to face will do any good and I would struggle to remain civil to either of them. Of course they will have crossed the Ts and dotted the Is. That's what politicians do when they screw people. When you say it is my decision to leave yes, it is but its based on their actions and bad man management. It really does amount to constructive dismissal and even a blind man can see that. These people are lower than a snake's belly and I have no trust or respect for them. There is nothing they can do or say that will make me change my mind, they have lost me! They have lost someone who has ethics and wants to work. They were fully aware I would resign having taken me off dogs, I can't make it any clearer than that. THEY KNEW!! and they didn't care. Yes they show all the lip service to say they are open to dialogue, but we all know it's a waste of time as they won't change their mind due to looking weak, and we can't have them looking weak can we, what sort of management would they be if they back down? She cancelled face to face three times, my welfare must mean so much to her (YEH RIGHT). They have forced me into this decision. It's their loss. They will now have to screw someone else. It will not be me, I have zero trust or respect for them, Zero!"*

240. On 11 May 2023, Mr Brackpool emailed the first respondent herself (pages 305 and 306). He set out a brief history of matters and his complaints and concerns as to how he had been treated. He said that his treatment by Mrs Lynskey and Mr Carlson had *"ripped my heart and soul out and destroyed my will to even come to work now. I got up the first morning, made my snap [lunch] and then just went to bed. I could not face work. And I certainly can't face going to work every day sat behind a computer dealing with crimes I've no idea about. I don't use a computer at home!! It's a complete waste of my precious time."* He mentioned having given his 28 days' notice (which as we have just seen was rescinded). He asked for her intervention *"as I feel strongly this is a case of constructive dismissal."* The first respondent asked Miss Buttle to look at the issues raised by Mr Brackpool and speak with him- see her email to this effect at page 305.

241. Mr Brackpool was absent from work by reason of sickness from 12 May 2023. He never returned to duty.

242. Following the first respondent's instructions, Miss Buttle made arrangements to meet with Mr Brackpool on 15 May 2023. Mr Brackpool declined her suggestion that Mrs Lynskey attend the meeting. He said in an email to her of 15 May 2023 (pages 322 and 323) that he would rather she not be present as his *"trust level is very low at the moment but Sgt Dan Lumley could be [there] as support if that would be possible."* Miss Buttle agreed to that request. It was also agreed that the meeting may be online as Mr Brackpool did not feel "*up to coming in at the moment."* We refer to page 324.

243. There are no notes of the meeting as such. However, Miss Buttle emailed Mr Brackpool and Mr Lumley with an email summary of it (pages 332 and 333). From this, we can see that Mr Brackpool was given the opportunity of going through the history of matters: that he had returned on the 30 + scheme to work as a dog handler, that he felt unsupported by having had requests to go on courses declined, that he felt misled about being reunited with PD Milo, that he was not a good fit for the FCMU, and that he felt that he was being pushed out of the force. She also noted that Mr Brackpool had returned to work on adjusted duties in March. Miss Buttle said that "*to be signed off for operational duties, the FMO from OHU would require to see you and sign you off. In addition you would need to undertake your PST/First Aid."* (Mr Brackpool had of course been signed off by the FMO at this point and the necessary training had been scheduled for 15 and 16 May 2023 but had been cancelled due to Mr Brackpool's absence from work).

244. Miss Buttle went on to record that she had said in the meeting that it was her decision as to where to move post and people to meet force needs. A difficult decision had been made and she had decided to choose him to go to the FCMU. The rationale given was that she could afford to run the dog unit with a 0.5 post loss considering threat, risk, and department resilience. Further, Mr Brackpool was, she said, on adjusted duties and the role met "*your adjustments".* She concluded by confirming that the role at FCMU would be based at Shepcote in Sheffield but with agile working. She said that if Mr Brackpool were required to work specific shifts, then *"of course 90 days' notice for a change in pattern would be given."*

245. There was no response from Mr Brackpool to Miss Buttle's email of 15 May 2023. In his witness statement (at paragraph 66) he takes issue with her assertion that she was able to run the dog unit with a 0.5 post loss. He refers to page 165

(being the email of 5 October 2022 showing there to be 22 dog handler posts of which four were vacant).

246. We have seen that Mr Carlson was of the view that 20 dog officers were required (and not 22). This was a conclusion which he had reached in July 2022 when the decision was taken to defer dealing with this issue until the following year by which point the priority based budgeting scheme was underway. There was no evidence led by the respondents as to whether the four positions in the dog section which were vacant in October 2022 had been filled by around May 2023.

247. The position was somewhat fluid. On 24 July 2023 there is an email from Mr Lumley to Joanne Ridge asking for *"some direction on the waiting list for future dog handlers"*- page 385*.* This is indicative of there being vacancies. This was confirmed by Mr Lumley in evidence in cross-examination. He said, "*Yes, we had vacancies for full time handlers additional to Mr Brackpool."* The available vacancies in July 2023 were filled, according to Mr Lumley, from a waiting list. However, Mr Lumley went on to say that it would not be open to a part-time officer to work with a general purpose dog. Those dogs have to be worked more than a cash, drugs and firearm dog such as PD Milo. Mr Lumley was not aware of any vacancies for roles such as those occupied by Mr Adams who, as we have seen, was handling a cocker spaniel victim recovery and forensic dog. He added that had PD Milo been re-teamed with Mr Brackpool, Mr Pitcher would still have work to do with his general purpose dog until his (Mr Pitcher's) retirement.

248. On 18 May 2023, those in the OSU command team were asked to send a list of all adjusted staff, what they are currently doing and how for long they have been adjusted. Mr Carlson, as requested, prepared a list of his adjusted officers at page 356. This was sent to Miss Buttle and Mrs Lynskey. Mr Crammond put to Mr Carlson that at least some on that list could have been nominated by him to move to the FCMU. (By this point, of course, both claimants were off duty on sick leave). The focus from this list in cross examination (which included Mr Brackpool) was on PC Rachael Atwell and PC Paul Jameson both of whom worked as dog legislation officers. Miss Buttle observed that they were both working in their full substantive roles and had no capacity in contrast, she said, to the claimants. Mr Carlson accepted that PC Vasilienko who was pregnant could have been assigned to do office work in the FCMU.

249. Upon being informed of Mr Driver's grievance, Miss Buttle made arrangements to meet with him, as she had done with Mr Brackpool. She met with Mr Driver on 7 June 2023. As with Mr Brackpool, the meeting was held online. Inspector David Baines, of the Police Federation, accompanied Mr Driver. Things got off to an unpromising start, according to Mr Driver in paragraph 45 of his witness statement, when Miss Buttle addressed him as '*Paul.'* He alleges that Miss Buttle showed him little respect and that he felt belittled by her. The Tribunal has not note of Mr Driver being challenged in cross examination about the use of the incorrect given name. Miss Buttle said that she had no recollection of using the wrong name. That Miss Buttle did not deny using an incorrect name with Mr Driver persuades us that this did occur.

250. Miss Buttle departed from the procedure which she had followed in Mr Brackpool's case. She did not send a confirmatory email to Mr Driver. Instead, she made notes in her daybook. These are at page 363. The notes record Mr Driver and Mr Baines giving the history of matters. This focused on the three moves which Mr Driver had been asked to make following his return on the 30+

scheme. There is a note to the effect that Mr Driver expressed concerns as to whether Ring Farm would be able to function without him. He acknowledged that Collette Pitcher was *"finding her feet."* He also said that he had no Connect or systems knowledge to bring to work in the FCMU. That she did not extend to him or his Police Federation representative the same courtesy was with Mr Brackpool of a confirmatory email and the use of the incorrect given name persuades us that Mr Driver had a reasonably held perception of the conduct of the meeting.

251. Mr Baines added that he considered there to be breaches of the Equality Act 2010 in the way in which Mr Driver had been treated. Miss Buttle says in paragraph 15 of her witness statement that she was shocked to hear that allegation. Miss Buttle went through the rationale for Mr Driver's move to the FCMU. She observed that this had been her decision. She said in an email to Joanne Ridge of 8 June 2023 that Mr Driver *"was aware it was my decision and not Lydia [Lynskey]'s so the grievance should be against me."*

252. On 13 June 2023, Lee Beck (Chief Inspector of the OSU) emailed Miss Buttle (pages 367 and 368). He said that the mounted section had lost several officers including Mr Driver who, it was noted, had been re-deployed. He said to her that she would *"see from the workforce plan below that we already have two true vacancies which amount to 1.5 FTEs. If you add in [two leavers] this will take us to three FTEs short (not including Dave Driver)."*

253. On 21 June 2023, Jayne Downing, occupational health advisor, prepared an occupational report for Mr Driver (pages 371 to 374). This was a telephone assessment. She opined that *"provided David is not subject to any untoward setbacks, his stressors are addressed including the resolution of the workplace issues, his future capability to provide regular and effective attendance at work in the long term is good. David may be vulnerable to further pressure in the short term."* She said that in her opinion Mr Driver's return to work *"is largely dependent upon the resolution of the workplace issues described in the management referral."* She suggested revisiting the question of adjustments once a return-to-work date was in mind.

254. On 29 June 2023, Ms Buttle prepared command team notes. This deals with a number of issues including the deployment of 30+ officers. These are listed in the document at pages 381 and 382. She made a note that Mr Brackpool's role was *"not needed."* She added a note by his name "*FCMU"*. She also observed that Mark Adams' post was also not needed. A note was made against Mr Driver's name that he was on sick and had raised a grievance.

255. A second occupational health report for Mr Driver was prepared on 9 August 2023 (pages 390 to 393). Again, the occupational health advisor concerned was Jayne Downing. The assessment was by telephone. The opinion was essentially the same as that in her earlier report.

256. We can see from page 394 (being an email exchange of 10 Augst 2023 between several individuals including Miss Buttle) that it remained the first respondent's intention to deploy the claimants in the FCMU. There appears to have been no consultation with Mrs Gilmore at this stage about the need for the claimants to be deployed there.

257. On 11 August 2023 an email was sent to Joanne Ridge by Jocelyn Franklin, people specialist, concerning progress with the claimants' grievances. This email is at page 396. The delay in progressing the claimants' grievances was

unexplained and was a matter acknowledged and criticised by Claire Hayle in her grievance outcome letters. She recommended more timely handling of grievances in future.

258. On 16 August 2023, the claimants were sent an email by Julia Baker, workforce planning assistant. They were told that their "*duty pattern needs updating on DDT [duty desktop team]"* – (page 401). Mr Lumley informed her of the position as it pertained to Mr Brackpool (page 405). The Tribunal is not clear whether anybody informed her of the position as it pertained to Mr Driver.

259. On 24 August 2023, Joanne Ridge informed Rebecca Salamut that in the circumstances until a decision had been reached in respect of their grievances, Mr Driver and Mr Brackpool were to be moved back into their OSU posts- (page 403). She added, *"This way their existing line managers can continue to carry out the welfare checks."*

260. In September 2023, a question was raised within the force about Mr Brackpool's employment with Barnsley Premier Leisure. It appears from Mr Lumley's emails at pages 412 and 413 (dated 14 and 19 September 2023) that Miss Buttle had asked about this issue. Mr Lumley confirmed that Mr Brackpool had what was described as *"a secondary employment arrangement"* with Barnsley Premier Leisure. He had no details about his contracted hours. He also mentioned Mr Brackpool's work with the Air Cadets. He said, *"This is a voluntary contract, and whilst he could claim for mileage, I understand that he foregoes this claim."* Mr Lumley continued to manage Mr Brackpool's sickness absence. He also mentioned in the email at page 412 Mr Brackpool having had contact with an occupational health advisor in September 2023.

261. On 27 September 2023 Joanne Ridge emailed Mr Driver (page 418). This followed a meeting held on 7 September 2023. She confirmed that the force was happy for him to return to work at Ring Farm on a phased return under his current line management. However, she added, *"The plan moving forward remains for you to move to the Force Crime Management Unit. However, this is something that can be discussed further once you are back in work and, as you say, is also subject to an ongoing grievance process."*

262. On 5 October 2023, Mr Brackpool received a letter suspending his *"business interest."* This had the effect of withdrawing the first respondent's consent to Mr Brackpool working for Barnsley Premier Leisure. That letter is at pages 423 and 424. Unsurprisingly, this came as further unwelcome news for Mr Brackpool. In an email to Joanne Ridge of 6 October 2023 (page 439), Jayne Wright, people assistant, said that Mr Brackpool was "*upset that the force has now stopped him from carrying out his business interest as it has taken away his only income."* In his witness statement in paragraph 78, Mr Brackpool says, *"My work at BPL was always approved by the force, from the time I came back after retirement. It was not hidden nor was it incompatible that I kept attending work, doing a totally different role with different people."* He described having felt devastated when the permission for him to work with BPL was withdrawn. He felt that the action in withdrawing permission for him to work with BPL was "*a totally unnecessary action."* In paragraph 80 of his witness statement he says, *"I can see that this was instigated by Cherie Buttle. Regardless of what the Force say officially to the Tribunal or in their emails to each other, this was tactical, it was intentional. I was a problem and they wanted me gone."* He went on to say in paragraph 81 of his witness statement that, *"I just could not take any more, they had ground*

me down to the point of complete mental exhaustion. I rang HR for leavers forms to be sent to me. I felt I had no choice but to resign." No evidence for justification of this decision was led by the respondents.

263. Mr Brackpool's leaver's form is at pages 442 to 444. It is dated 18 October 2023. His last day of service was 15 November 2023. Mr Brackpool tendered a sick note up until his leaving date (page 446). This was accompanied by his comment, *"I hope the SCT are happy with how they have treated me and that they sleep soundly at night!"*

264. On 30 October 2023, Mr Brackpool was informed that Miss Hayle would be allocated to deal with his grievance as resolution officer. Mr Brackpool replied on 1 November 2023 *"Really? Is this a bad joke? Just pathetic. You've only had since April!"* We refer to pages 466 and 467.

265. On 8 November 2023, Mr Brackpool emailed Rachael Greenfield, employment and advice partner (page 465). He informed her that he had spoken to Miss Hayle the previous week and that she had *"called me out of the blue six months too late!! The whole system is shocking and has reduced me to a wreck!!! Of course that is what is suspected SYP were trying to do and force me to quit! (which you have all succeeded in doing) between you all. Yes I do want the grievance to go ahead of course. However I stated I would like to consult with my solicitor first. Is that such a bad thing?? SYP is shocking in dealing with their staff. I can hope I can actually rebound from this whole sorry mess! If only you knew what this has done to me as a person. It's a disgrace! So YES, I do want it to continue!!"*

266. On 7 December 2023, Louise Lambert emailed Mr Driver (pages 473 and 474). She recorded that Miss Pitcher had been in regular contact with him during his period of sickness absence. She reiterated the offer of a return to Ring Farm with the aim of *"alleviating the stress and anxiety of returning to work."* She offered him a meeting at Ring Farm on 15 December 2023.

267. Mr Driver responded on 10 December 2023 (pages 472 and 473). He confirmed having been in regular contact with Collette Pitcher. He said that his "*treatment has had a detrimental effect on my mental health. The stress, anxiety and depression have had a dramatic effect on my health, as well as a financial effect, by being reduced to half pay. It is not my fault that the SYP grievance procedure is not fit for purpose. I have waited for the process to begin. The process has begun and I am waiting for this to conclude before I make any decisions about returning to work. I will not be attending the meeting that you have planned."* He concluded that he "*has no confidence in being left alone to carry out the work at Ring Farm that I returned to South Yorkshire Police on the 30+ leavers scheme to do."* This was a justified concern given Joanne Ridge's intimation in the email of 27 September 2023 (at page 418) mentioned in paragraph 261 that the plan was for him to return to the FCMU following a phased return to work at Ring Farm. The prospect of deployment to the FCMU had not been removed- see also paragraph 273 below.

268. As has been mentioned already, Claire Hayle investigated the claimants' grievances. Her grievance outcome reports are at pages 478 to 491 in Mr Driver's case and 494 to 503 in Mr Brackpool's case. In the course of her investigations, she met with Mr Driver on 8 November 2023. In connection with his grievance, she then met with Miss Buttle, Joanne Ridge, Miss Pitcher and Mrs Lynskey between 14 and 21 November 2023. Her grievance outcome was

sent to Mr Driver on 15 December 2023. In Mr Brackpool's case, she met with him on 23 November 2023 and with Miss Buttle, Miss Ridge and Mrs Lynskey between 14 and 21 November 2023.

269. The Tribunal is not of course bound by her conclusions which were not in any case directed at the discrimination claims brought by the claimants. Although the grievances were not upheld, she did make recommendations pertaining to the communication around re-deployments - providing confirmation as to whether re-deployment is permanent, timescales for re-deployment, and better handling of the grievance processes. The Tribunal was impressed with the thoroughness of Claire Hayle's investigations.

270. The Tribunal notes that Miss Buttle intimated to Miss Hayle a likelihood of the formal disestablishment of Mr Driver's post at Ring Farm (page 484). Miss Buttle also said that Mr Driver's grievance should be directed to her as she and not Mrs Lynskey was the decision maker. (She made a similar remark about the decision making to Claire Hayle in connection with Mr Brackpool's grievance (page 499)).

271. On 19 December 2023 Mr Brackpool acknowledged receipt of the grievance outcome. However, he decided not to appeal, taking the view that such would be *"a waste of time in engaging in a flawed process."* We refer to page 504. Mr Driver sent an email in very similar terms the same day (at pages 505 and 506).

272. On 21 December 2023 Miss Buttle confirmed the disestablishment of Mr Brackpool's post. She sought reassurance that there would be no or negligible impact on the frontline operational delivery of police dog handlers. This assurance was provided by Chief Inspector Spratt of the Roads Policing Group on 22 December 2023 (pages 507 and 508). Miss Buttle's decision to disestablish Mr Brackpool's post had been preceded by a '*priority based budgeting formal decision request'* on the proposed disestablishment of the role dated 25 October 2023 (pages 515 to 519).

273. On 4 January 2024, Laura Langley, people advisor, advised Miss Buttle as to the status of the claimants' grievances (page 532). Laura Langley said that because of the outcome, *"the move of David [Driver] to the alternative role will still stand, however, it is my understanding that as he is currently absent due to sickness, and due to the availability of the posting he was originally posted to, this will continue to be supported by Joanne Ridge at this time."*

274. In fact, a couple of weeks earlier, Miss Buttle had received confirmation that the two posts from OSU assigned to the FCMU may return to the OSU as they were no longer needed (see Natalie Gilmore's email of 20 December 2023 at pages 524 and 525). Laura Langley's email of 4 January 2024 confirms that Mr Driver's post had not been disestablished at that point.

275. On 9 January 2024 Mrs Gilmore confirmed to Miss Buttle that she no longer needed of the claimants (pages 534 and 535). On 8 January 2024 Miss Buttle had emailed Becs Horsfall to the effect that she was looking to disestablish all three of the posts earmarked for the FCMU (being the two held by the claimants together with the vacant COPAD post) through priority based budgeting (page 537). Miss Buttle was plainly intent on disestablishing Mr Driver's post. As Mrs Gilmour had said she no longer had need of the claimants she (Miss Buttle) emailed on 10 January 2024 to the effect that "*we need to remove this post"* and calling for support in so doing (page 539). Page 540 (an email from Miss Buttle

dated 10 January 2024) confirms her intention to disestablish the three posts sent to FCMU (including those held by the claimants).

276. On 22 February 2024 Mr Driver submitted his leavers form. This was acknowledged by the force on 27 February 2024. His last day of service was recorded as 4 April 2024. We refer to pages 543 to 545.

The disestablishment of the claimants' posts

277. Miss Buttle confirms in her first witness statement (at paragraph 20) that the posts held by Mr Brackpool and Mr Driver have been disestablished as part of the priority based budgeting programme.

278. In evidence given during cross-examination, Mr Carlson spoke about the priority based budgeting scheme. This was a force-wide review broadly aimed at getting best value for money. Mr Carlson accepted that one of the options in the PBB review was to save money by cutting the 30 + posts. This is borne out at page 65 of the supplementary bundle where we can see that the two dog handler posts (occupied by Mr Brackpool and Mr Adams) and the mounted manager post (occupied by Mr Driver) were identified as *"re-deployment opportunities."* Mr Carlson explained that PBB was not about targeting 30+ officers but rather aligning posts to meet demand.

279. For her part, Mrs Lynskey denied her decision making and input was influenced by the PBB programme. This was a separate piece of work to her decision as to who should be deployed to the FCMU.

280. Miss Buttle confirmed in evidence that the posts held by the claimants had been disestablished as part of the PBB project. She denied that the opportunity was taken to get the claimants *"out of her hair"* as it was put by Mr Crammond. Miss Buttle said in paragraph 12 of her first supplemental witness statement that, "*There were ten 30+ posts recommended for review. Some 30+ posts were not recommended for review (there are currently around 30 30+ officers in OSU). For example, there is a 0.5 30+ in the firearms support group. The post covers the same role as firearms officers but not on a part time basis. This is a key role and it would need filling should the officer leave or resign etc."* This evidence was unchallenged by Mr Crammond.

281. In the same witness statement Miss Buttle says in paragraph 16 that, *"In relation to the mounted operational manager post and the specialist dog handler post, these were two posts that were recommended for removal. Some of the rationale for this included that the removal would not impact on operational delivery. In addition, there were posts whereby they had not previously existed before 30+. There had been periods of time where the post has either not existed or not been fulfilled and it had not impacted on service delivery."* She went on to say in paragraph 17 that, *"The risk in disestablishing these posts was a low risk for the organisation, in that service to the public would not be impacted. If the posts were removed then the persons in those posts would be re-deployed either within or outside OSU, into specialist or non-specialist roles."*

282. The Tribunal accepts Miss Buttle's evidence and finds that the posts held by the claimants were disestablished as part of the priority based budgeting scheme. However, there were vacancies within the dog section as of July 2023 if not in October 2022 (paragraphs 246 and 247). Further, the force offered Mr Driver a return to his duties at Ring Farm in September 2023 (paragraph 261), a move

which was unlikely to have been offered were there no substantive duties for him to do.

The comparators

283. Paragraphs 96 to 98 of Mr Brackpool's witness statement concerns the issue of comparators. He says:

"96: PC Jason Pitcher – Pitcher was the full-time handler. He was actually due to retire at the end of 2023, so had less time to serve than I was planning to do when I was requesting courses. He was the same rank and role as me but the only difference was that I was only part time and he was full time. However he was permitted to attend all courses he requested. I know he was permitted on a TPac training course for example. [TPac stands for 'Tactical Pursuit and Containment' and is primarily for members of the Roads Policing Group].

97: PC Matt Aris was another full time dog handler. He was also the same rank and role as me. He was permitted on to a number of courses – including the TPac course.

98: They were not considered or selected to be moved when in reality either would be better suited to assist in R and W [Rural and Wildlife Crime], they would have been permitted to attend the course, as they were full-time officers."

284. Mr Carlson said in evidence under cross-examination that he did not think that Mr Pitcher had attended a TPac course. Mr Carlson said he would not have authorised this given that Mr Pitcher only had six months left to serve and a course lasts for eight weeks. Mr Carlson said that he had not seen Mr Aris' training record. The Tribunal would have expected the respondents to have produced Mr Pitcher's and Mr Aris's training records to deal with this issue.

285. When asked about paragraphs 96 and 98 of Mr Brackpool's witness statement, Mr Booth confirmed that Mr Pitcher and Mr Aris had been moved to the Road Traffic Policing Group. He was unable to refute what Mr Brackpool said by way of evidence about their placement on the TPac courses.

286. Mr Lumley said that Mr Pitcher was a response driver. He said the course *"did not materialise, we dropped off the course."* It is not clear whether he means that Mr Pitcher dropped off the course because he did not need to engage in tactical containment and pursuit driving or whether the course was simply dropped altogether for everyone. He said that Mr Aris would not be allowed to go on the TPac course as a general purpose dog handler. Priority for the TPac course would be given to members of the RPG.

287. Regrettably, the respondent's evidence again was unclear. Unsatisfactory as it is however, we do accept that Mr Pitcher was not permitted to attend the TPac course. As Mr Lumley says, there was no reason for him to attend the course given his duties and time left to serve. More tellingly, Mr Carlson's concerns about utilisation of resources is a position he consistently maintained throughout upon several issues which arose in this case. It is therefore consistent and logical that he would not have permitted Mr Pitcher to attend a TPac course so close to his retirement.

288. Although Mr Carlson's logic does not hold for Mr Aris, the Tribunal found Mr Lumley to be an impressive and straightforward witness. We find it entirely plausible that Mr Aris would not have been allowed to attend the TPac course as a general purpose dog handler.

The time issue.

289. Mr Driver was asked by Mr Jones about the timing of the presentation of his Employment Tribunal claim. Mr Driver commenced early conciliation on 27 July 2023. He presented the claim form on 16 August 2023. He confirmed in evidence under cross-examination that he had been in contact with the Police Federation at around the time of the presentation of the claim form and the commencement of the early conciliation process. He denied that the Police Federation had advised him about time limits. He had not done any research himself. As he put it, he progressed matters through ACAS. This was done upon the advice of the Police Federation.

290. It was drawn to his attention that the grievance form (at page 249) provides (in the *pro forma* box on the first page) that, *"There is a maximum time limit of three months between the act complained of and the submission to Employment Tribunal being accepted (though extensions may apply to facilitate use of grievance procedures)."* The form goes on to read, "*If in doubt contact your trade union, staff association or police federation at an early stage."* The same *pro forma* wording of course appears in Mr Brackpool's grievance form.

291. The grievance form cites the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004. This is now of course an out-of-date reference. Nevertheless, there is merit in Mr Jones' suggestion that there is sufficient within that standard wording to alert a potential claimant to the existence of time limits in Employment Tribunal cases.

292. A similar line of cross-examination was pursued by Mr Jones with Mr Brackpool. Mr Brackpool confirmed that he had been in touch with Mr Baines of the Police Federation. He was taken to the first page of his grievance (at page 342) and the standard wording therein. Mr Brackpool denied having been aware of the three-month time limit for the presentation of claims until he discussed matters with his solicitor.

293. This concludes our findings of fact.

The issues in the case

294. We now move on to the issues of the case. There is an agreed list of issues at pages 89 to 92. This reads as follows:

" INTRODUCTION

1. The Claimants are pursuing the following claims against the First and Second Respondents:

a. Direct age discrimination pursuant to section 13 Equality Act 2010;

b. Discrimination arising from a disability pursuant to section 15 Equality Act 2010; and

against the First Respondent only:

c. *Less favourable treatment on the basis of part-time status pursuant to the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000.*

2. *The Respondents resist all claims.*

JURISDICTION

3. *Taking into account the date the First Claimant's [Mr Driver's] claim form was presented and the dates of early conciliation, any complaint by the First Claimant about something that happened before 16 March 2023 may not have been brought in time.*

4. *Taking into consideration the date that the Second Claimant's [Mr Brackpool's] claim form was presented and the dates of early conciliation, any complaint by the Second Claimant about something that happened before 18 March 2020 may not have been brought in time.*

5. *Were the claims made to the Tribunal within three months (plus an extension for time spent during early conciliation) pursuant to section 123 Equality Act 2010?*

6. *If not, was there conduct extending over a period?*

7. *If so, were the claims made to the Tribunal within three months (plus an extension for time spent during early conciliation) of the end of that period?*

8. *If not, were the claims made within a further period that the Tribunal thinks is just and equitable?*

DISABILITY

9. *The First Claimant relies on physical injuries to his ankles for the purposes of disability discrimination.*

10. *The Second Claimant relies on a coronary heart disease and atherosclerosis for the purposes of disability discrimination.*

11. *The Respondents accept that the Claimants, at the material times, were disabled under section 6 of the Equality Act 2010.*

S.13 EQUALITY ACT 2010: DIRECT AGE DISCRIMINATION

12. *Did the Respondents subject the Claimants to the treatment set out at paragraph 84 (a to i) in the Claimants' Amended Grounds of Complaint? [These are set out in paragraph 296 below].*

13. *If so, were the Claimants treated less favourably than the hypothetical comparator was or would be treated?*

14. *If so, was the less favourable treatment because of or related to the Claimants' age?*

15. *If so, can the Respondents show that the treatment was a proportionate means of achieving a legitimate aim? The legitimate aims relied upon by the Respondent are: [those at 23 below].*

S.15 EQUALITY ACT 2010: DISCRIMINATION ARISING FROM A DISABILITY

16. *Did the Respondents treat the Claimants unfavourably as a consequence of something arising from their disability?*

17. *The "something" that the Claimants rely on is their status as an adjusted duties officer and/or a restricted officer.*

18. *Did the Respondents refuse and/or fail to return PD Milo to the Second Claimant, on 19 April 2023;*

19. *Did the Respondents, on or about 11 April 2023 select the Claimants to be posted to the FCMU in the role of Police Officer Support, the First Claimant being informed on 11 April 2023 and the Second Claimant being informed on 19 April 2023.*

20. *Did the Respondents remove the Claimants from specialist roles for which they were both individually selected, for the First Claimant in April 2022, [on] 28 November 2022 and [on] 11 April 2023, for the Second Claimant in May 2022 and on 19 April 2023.*

21. *Did any of the alleged treatment constitute unfavourable treatment of the Claimants because of something arising in consequence of their disabilities for the purposes of section 15(1)(a) Equality Act 2010?*

22. *If so, can the Respondents show that the treatment was a proportionate means of achieving a legitimate aim for the purposes of section 15(1)(b) Equality Act 2010?*

23. *The legitimate aims relied upon by the Respondents are: the requirement for the First Respondent to make appropriate use of its resources to ensure that it is able to effectively and efficiently perform its operational duties.*

LESS FAVOURABLE TREATMENT ON THE BASIS OF PART-TIME STATUS

24. *Did the First Respondent subject the Claimants to less favourable treatment on the grounds that the Claimants were part-time workers by:*

    a. *The refusal to allow the Second Claimant to attend any and all training courses he requested in February 2021, May 2022, [and] June 2022;*

    b. *Selecting the Claimants on multiple occasions to be removed from their specialist roles, to be redeployed, including the decision to send them to FCMU as Police Officer Support for the First Claimant in April 2022, [on] 28 November 2022 and 11 April 2023, and for the Second Claimant in May 2022 and on 19 April 2023;*

    c. *Removing the First Claimant's role entirely without warning or consultation on 7 June 2023;*

    d. *Failing to ensure the Claimants were provided with the requisite notice period for a change in duties, as required under the Police Regulations 2003 on 11 April and 19 April 2023.*

25. *Were the Claimants treated less favourably in comparison to the named comparators, PC Jason Pitcher and PC Matt Aris?*

26. Can the Respondents show the less favourable treatment to be a proportionate means of achieving a legitimate aim?

REMEDY: [This is not set out here as remedy shall be dealt with at a later remedy hearing]"

295. In paragraph 11 of his written submissions, Mr Jones set out a very helpful table summarising Mr Driver's and Mr Brackpool's complaints. It may be helpful to adapt that here:

296. **Mr Driver**

296.1. In April 2022, removing him from his specialist role as operations manager of the mounted section to work on Operation Adonis – age, disability, and part-time worker discrimination.

296.2. On 28 November 2022, removing Mr Driver from his specialist role of operation manager of mounted section to football intelligence – age, disability, and part-time worker discrimination.

296.3. On 4 April 2023, informing Mr Driver that the second respondent was seeking to remove him again – age, disability, and part-time worker discrimination.

296.4. On 11 April 2023, removing Mr Driver again from his specialist role of operations manager of the mounted section to work as police officer support in FCMU – age, disability, and part-time worker status discrimination.

296.5. Failure to provide the requisite notice period of a change in duties as required under the Police Regulations 2003 – age and part-time worker status discrimination.

296.6. Removing Mr Driver's role entirely without warning or consultation on 7 June 2023 – part-time worker status discrimination.

297. **Mr Brackpool**

297.1. In February 2021, refusing him to allow him to attend the taser course and HGV conversion course requested – age and part-time worker status discrimination.

297.2. In May 2022, refusing to allow Mr Brackpool to attend the rural and wildlife crime training course and the quad all-terrain vehicle course – age, disability, and part-time worker status discrimination.

297.3. In May 2022, removing Mr Brackpool from his specialist role – disability and part-time worker status discrimination.

297.4. Between March 2023 and 19 April 2023, refusing or failing to return PD Milo to Mr Brackpool – age, disability, and part-time worker status discrimination.

297.5. On 19 April 2023, removing Mr Brackpool from his specialist role within the dogs section to work as police officer support in FCMU – age, disability, and part-time worker status discrimination.

297.6. Failing to provide the requisite notice period of a change in duties as required under the Police Regulations 2003 – age and part-time worker status discrimination.

The relevant law

298. We now turn to a consideration of the relevant law. We shall start with the consideration of the issue of jurisdiction. If the Tribunal has no jurisdiction to consider these matters, then of course the enquiry ends there. It is therefore logical to start with the provisions to be found in the 2010 Act concerning time limits and jurisdiction.

299. By section 123 of the 2010 Act proceedings upon a complaint within section 120 (being complaints to an Employment Tribunal relating to a matter for which the Tribunal is afforded jurisdiction) may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates or such other period as the Employment Tribunal thinks just and equitable. By section 123(3), conduct extending over a period is to be treated as done at the end of the period. Failure to do something is to be treated as occurring when the person in question decided upon it. There are similar provisions about time limits in regulation 8(2) - (5) of the 2000 Regulations and to which like principles apply to those in the 2010 Act.

300. To determine whether a claim has been brought in time, the particular act complained of must be identified. For example, where the alleged discriminatory act is dismissal then the relevant date is when the notice expires.

301. In **Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686**, the Court of Appeal said that the test to determine a complaint was part of an act extending over a period was whether there was an ongoing situation or continuing state of affairs in which the claimant was treated less favourably. Tribunals need to look at the substance of the complaints in question – as opposed to the existence of a policy or regime – and determine whether they can be said to be part of one continuing act by the employer. The concept of a policy, rule or scheme are merely examples of when an act extends over a period and should not be treated as a complete and constricting statement of what is meant by an act extending over a period. The issue essentially was whether the Police Commissioner (in that case) was responsible for the ongoing situation or a continuing state of affairs in which female ethnic minority officers in the police force were treated less favourably.

302. If a complaint is out of time, then it is for the claimants to show that it is just and equitable to extend time. In **Roberts v Bexley Community Centre t/a Leisure Link [2003] IRLR 434, CA** it was held that there is no presumption that tribunals should extend time. The position is quite the reverse as a tribunal cannot hear a complaint unless the complainant convinces the tribunal that it is just and equitable to extend time, so the exercise of the discretion is the exception rather than the rule. This does not mean however that exceptional circumstances are required before the time limit can be extended on just and equitable grounds.

303. As the tribunal pointed out during submissions on 8 November 2024, **Bexley Community Centre** was looked at by HHJ Taylor in **Jones v Secretary of State for Health and Social Care [2024] EAT 2**. He observed that the *dicta* in **Bexley Community Centre** must be seen in the context of the rest of the judgment in that case which made it clear that tribunals have a wide ambit when deciding

whether to exercise their discretion in respect of time limits. HHJ Taylor opined that tribunals should focus less on **Bexley Community Centre** and more on Court of Appeal authorities such as **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640** in which it was pointed out that, on a proper construction of section 123 of the 2010 Act, *"Parliament has chosen to give the Employment Tribunal the widest possible discretion."*

304. In **Abertawe**, it was held by Leggart LJ at [19] that the factors which are almost always relevant to consider when exercising any discretion whether to extend time are firstly the length of and reasons for the delay and secondly whether the delay has prejudiced the respondent (for example by preventing or inhibiting them from investigating the claim while matters are fresh). The balance of prejudice places a burden on the claimants to show that their prejudice would outweigh that of the respondents.

305. **Abertawe** also held that 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 for the delay from the claimants. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard. However, there is no requirement for a tribunal to be satisfied that there was a good reason for the delay before it could conclude that it is just and equitable to extend time.

306. In **South Western Ambulance Service NHS Foundation Trust v King** [2020] IRLR 168, EAT it was observed that when a claimant wishes to show that there has been conduct extending over a period for the purposes of section 123(3) of the 2010 Act, they will usually allege a series of acts each of which is connected with the other, either because they are instances of the application of a discriminatory policy, rule or practice, or because they are evidence of a continuing discriminatory state of affairs. However, the EAT in that case held that if any of those acts are not established on the facts or are found not to be discriminatory, they cannot form part of the continuing act.

307. In **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23**, the Court of Appeal cautioned against tribunals relying on the check list of factors found in section 33 of the Limitation Act 1980. The best approach, said the Court of Appeal, was for a tribunal to consider the exercise of the discretion under section 23(1)(b) by considering those factors which it considered relevant as to whether it is just and equitable to extend time. Adaptation of the section 33 factors had become commonplace following **British Coal Corporation v Keeble and others [1997] ICR 336, EAT**. In **Adedeji** the Court of Appeal pointed out that the **Keeble** factors did no more than suggest that a comparison with section 33 of the Limitation Act 1980 might help to illuminate the task of the Tribunal by setting out a checklist of potentially relevant factors. However, that should not be used as a framework for any decision falling under the purview of section 123 of the 2010 Act. Adapting a checklist of factors may lead to a mechanistic approach to what is meant to be a very broad general discretion. The length of and the reasons for the delay and the balance of prejudice will always be factors to be considered in the exercise of discretion.

308. Turning now to the direct discrimination complaint, by section 13(1) of the 2010 Act 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. By section 13(2), where the protected characteristic is age (as is the case here) A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim. By section 5 of the 2010 Act, age can be a reference to a particular age or to a range of ages.

309. By section 23 of the 2010 Act, on a comparison of cases for the purposes of section 13 there must be no material difference between the circumstances relating to each case.

310. The prohibited conduct of direct discrimination is made unlawful in the workplace by the provisions to be found in Part 5 of the 2010 Act. By section 39(2) an employer (A) must not discriminate against an employee of A's (B) by (amongst other things) subjecting B to any detriment.

311. By section 42 of the 2010 Act, the office of constable is to be treated as employment by the chief officer of the force in question. No issue arises in this case about the claimants' standing to pursue their complaints of direct discrimination (and, for that matter, disability discrimination) pursuant to the 2010 Act.

312. There is no statutory definition of *'detriment'* within section 212 of the 2010 Act (the definitions section) or elsewhere within the legislation. The Equality and Human Rights Commission's *Employment Code of Practice* [2011] says (at paragraph 9.8) that a detriment can take many forms but generally is anything which the individual concerned might reasonably consider changes their position for the worse or put them at a disadvantage.

313. In this respect, the EHRC *Code* summarises the relevant caselaw upon this issue. In particular in **Shamoon v Chief Constable of the Royal Ulster Constabulary [200] ECR 337** Lord Hope approved of what was said by Brightman LJ in **Ministry of Defence v Jerimiah** [1980] ICR 13 that *"a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his detriment."*

314. As May LJ put it in **De Souza v Automobile Association** [1986] ICR 514 for the treatment to constitute a detriment the Court or Tribunal must find that a reasonable worker would or might take the view that they had been disadvantaged in the circumstances in which they had thereafter to work. An unjustified sense of grievance cannot amount to a detriment: **Barclays Bank Plc v Kapur (No 2) [1995] IRLR 87**.

315. The complaint brought by the claimants pursuant to section 13 imports a comparator exercise. No comparator is required where the treatment is inherently discriminatory (**Amnesty International v Ahmed [2009] ICR 1450)**. As it was put in that case by Underhill P (as he then was) there are cases where the treatment itself is inherently discriminatory, so that an examination of the alleged discriminator's reasoning becomes irrelevant, and a comparator may be dispensed with. Examples might include exclusion from a shop displaying a sign excluding a particular racial group, specifying different ages for women and men being allowed free admission to a swimming pool, or inherently discriminatory comments.

316. Where the treatment is not inherently discriminatory, the Tribunal must consider the reason why the claimants were treated in the way that they were. In most cases, this will call for a consideration of the mental processes, conscious or

subconscious, of the alleged discriminator. It is sufficient if the protected characteristic has a significant influence on the relevant decision making. Authority for these propositions may be found in **Nagarajan v London Regional Transport [199] IRLR 572**.

317. Although the concept of direct discrimination imports a comparator exercise, Lord Hope suggested in **Hewage v Grampian Health Board [2012] ICR 1054** that it is appropriate to go straight to the reason why unless there is room for doubt. Further, in **Shamoon**, Lord Nicholls said that, *"Especially where the identity of the relevant comparator is a matter of dispute this sequential analysis may give rise to needless problems. Sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason why issue. The two issues are intertwined. The most convenient and appropriate way to tackle the issues arising on any discrimination application must always depend upon the nature of the issues and all the circumstances of the case. There will be cases where it is convenient to decide the less favourable treatment issue first. But … when formulating their decisions employment tribunals might find it helpful to consider whether they should postpone determining the less favourable treatment issue until after they have decided why the treatment was afforded to the claimant."*

318. Assuming that the "*reason why"* cannot be clearly determined on the evidence, the initial burden is on the claimants to prove on a balance of probabilities a *prima facie* case of discrimination.

319. The burden of proof provisions are in section 136 of the 2010 Act. This provides that if there are facts from which the court or tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court or tribunal must hold that that the contravention occurred. However, that does not apply if A shows that A did not contravene the provision.

320. Accordingly, the burden of proof does not move to the employer to explain the reasons for the treatment unless the claimant is able to prove on the balance of probabilities, those matters which they wish the Tribunal to find as facts from which an unlawful act of discrimination can be inferred. In **Madarassy v Nomura International Plc [2007] EWCA, Civ 33** Mummery LJ said at [56] that, *"The bare facts of a difference in status and a difference in treatment only indicates a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities the respondent has committed an unlawful act of discrimination."* The *'something more'* than a difference in status and a difference in treatment may be found from indirect evidence and inference. This can include matters such as a lack of transparency, inconsistent explanations, and unreasonable behaviour.

321. Section 136 of the 2010 Act is reflective of the caselaw prior to it coming into force. In **Igen Limited v Wong and others [2005] ICR 931** the Court of Appeal held that the tribunal was required to go through a two-stage process. The first stage requires the complainant to prove the facts from which the tribunal could, apart from the section, conclude in the absence of an adequate explanation that the respondent has discriminated against the claimant. The second stage only comes into effect if the complainant has proved those facts and requires the respondent to prove that they did not commit or are not to be treated as having committed the unlawful act if the complaint is not to be upheld. If the second stage is reached and the respondent's explanation is inadequate it is not merely

legitimate but it is necessary for the tribunal to conclude that the complaint should be upheld.

322. As was said by HHJ Tucker in **Edwards v Unite the Union** [2024] EAT 151 at [48]: *"Therefore, whilst requiring a degree of intellectual rigour, possibly gymnastics even, the Tribunal, when considering its factual conclusions at this point (the first stage), must assiduously leave out of its analysis any evidence regarding a proffered adequate explanation. To do otherwise, and to include the explanation at this stage runs the risk of inadvertently and, wrongly, requiring the claimant to disprove the validity of that explanation."*

323. Where the tribunal is unable to move straight to the reason why and needs to engage comparators then the issue arises as to who is an appropriate comparator. Comparators can take two forms. The first is an actual, real-life comparator and the other is a hypothetical comparator. If there is no actual comparator the tribunal must assess the complainant's treatment against that which would have been afforded to a hypothetical comparator. Upon the latter, the tribunal may derive assistance from what is known as *'the evidential comparator.'* Considering the treatment of an evidential comparator (who may not qualify as a statutory comparator because of a material difference with the complainant's circumstances) is a permissible means of constructing the hypothesis as to how a statutory comparator would have been treated.

324. In **Shamoon** at [11], Lord Nicholls said about comparators that tribunals may be able to avoid disputes over the identity of such by instead concentrating primarily on why the complainant was treated as they had been. Was it on the proscribed ground? Or was it for some other reason? If the latter, the application fails. If the former there will usually be no difficulty in deciding whether the treatment was on the proscribed grounds and was less favourable than was or would have been afforded to others.

325. Underhill P (as he then was) cautioned against the construction of an unnecessary hypothetical comparator where the reason for the treatment clearly included or excluded any link with discrimination. He observed that, *"It might reasonably have been hoped that the Frankensteinian figure of the badly constructed hypothetical comparator would have been clumping his way rather less often into discrimination appeals since the observations of Lord Nicholls in **Shamoon** ...[cited in paragraph 324 above]…"* (see his comments at [30] of **D'Silva v NATFHE [2008] IRLR 412**).

326. In **Stockton on Tees Borough Council v Aylott [2010] ICR 1278** Mummery LJ said at [45] that a cross check as to the reason why a complainant was treated as they were by use of an actual or hypothetical comparator may still be of value. Accordingly, even where the reason why is clear, the tribunal is not precluded from (and indeed is encouraged to adopt) the comparator exercise as a cross check upon their findings.

327. It is rare to find evidence direct evidence of discrimination. As we have said, something more than a difference in protected characteristic and difference in treatment needs to be shown. The something more from which an inference may be drawn can arise from lack of transparency, inconsistency of explanations and unreasonable behaviour. The latter must be treated with some caution as unreasonable behaviour is not necessarily discriminatory behaviour: **Law Society v Bahl [2003] IRL 640.** As Mr Jones pithily put it in paragraph 174 of his written submissions, a respondent might escape a finding of discrimination by

arguing *"I'm a bastard to everyone"*: **Anya v University of Oxford [2001] IRLR 377, CA**. Mr Jones was right to counsel caution in a tribunal leaping from a finding of unfair or unreasonable conduct to one of direct discrimination. There must still be some evidential basis for drawing a conclusion or adverse inference of discrimination. He drew us to the comments of Underhill J (as he then was) in **Commissioner of Police for the Metropolis v Virdi [UK EAT 0598/07**] that, *"Inferences are not drawn as a sanction for bad behaviour."*

328. Mr Jones also drew our attention to the comments of HHJ Shanks in **Talbot v Costain Oil Gas and Process Limited and others [2017] ICR D11, EAT**. HHJ Shanks commented that:

(1) It is very unusual to find direct evidence of discrimination;

(2) Normally a Tribunal's decision will depend on what inference it is proper to draw from all the relevant surrounding circumstances, which will often include conduct by the alleged discriminator before and after the unfavourable treatment in question;

(3) It is essential that the Tribunal makes findings about any 'primary facts' which are in issue so that it can take them into account as part of the relevant circumstances;

(4) The Tribunal's assessment of the parties and their witnesses when they give evidence forms an important part of the process of inference;

(5) Assessing the evidence of the alleged discriminator when giving an explanation for any treatment involves an assessment not only of credibility but also reliability, and involves testing the evidence by reference to objective facts and documents, possible motives and overall probabilities;

(6) Where there are a number of allegations of discrimination involving one person, conclusions about that person are obviously going to be relevant in relation to all the allegations;

(7) The Tribunal must have regard to the totality of the relevant circumstances and give proper consideration to factors that point towards discrimination in deciding what inference to draw in relation to any particular unfavourable treatment; and

(8) If it is necessary to resort to the burden of proof in this context, section 136 of the 2010 Act provides in effect that where it would be proper to draw an inference of discrimination in the absence of "any other explanation", the burden lies on the alleged discriminator to prove there was no discrimination.

329. Although a person's possible motives may be weighed in the balance, discriminatory conduct is not excused because the discriminator acted with a benign motive. Authority for this proposition may be found in **Amnesty International v Ahmed [2009] ICR, 1450, EAT**. In that case, Amnesty International acted with the benign motive out of concerns for the claimant's health and safety but nonetheless was held to have treated her less favourably on the grounds of her race.

330. The burden of proof provisions also apply to the claimants' claims brought under section 15 of the 2010 Act. By section 15, a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability, and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. The employer may also have a defence of lack of knowledge of the claimant's disability. The knowledge defence does not arise in this case. Again, discrimination by way of unfavourable treatment for something arising in consequence of disability is made unlawful in the workplace by the provisions in Part 5 to which we have referred earlier.

331. In paragraph 101 of his written submissions, Mr Crammond neatly encapsulates the issues which arise upon a section 15 claim. The provision requires the following components to be shown:

331.1. Unfavourable treatment;

331.2. Because of something;

331.3. The something to have arisen in consequence of the claimant's disability.

331.4. The respondents to have knowledge of the disability (which is not in dispute) and;

331.5. The treatment is such that the respondents cannot show it to be a proportionate means of achieving a legitimate aim.

332. Unlike with the direct age discrimination complaint, no comparator issue arises on a section 15 claim. The question is whether the treatment of the complainant is such that it amounts to unfavourable treatment. Paragraph 5.7 of the EHRC *Code* says that *"This means that [the complainant] must have been put at a disadvantage. Often, the disadvantage will be obvious and it will be clear that the treatment has been unfavourable; for example, a person may have been refused a job, denied a work opportunity or dismissed from their employment. But sometimes unfavourable treatment may be less obvious. Even if an employer thinks that they are acting in the best interest of a disabled person, they may still treat that person unfavourably."*

333. In paragraph 4.9 of the EHRC *Code* (in the context of complaints of disadvantage by way of indirect discrimination) it is said that "*The courts have found that 'detriment' a similar concept [to disadvantage], is something that a reasonable person would complain about – so an unjustified sense of grievance would not qualify. A disadvantage does not have to be quantifiable, and the worker does not have to experience actual loss (economic or otherwise). It is enough that the worker can reasonably say that they would have preferred to be treated differently*."

334. Parliament has of course chosen to use the words *"treats unfavourably"* in section 15 rather than the words *"disadvantaged"* or "*detriment".* In **Williams v Trustees of Swansea University Pension and Assurance Scheme and another [2019] ICR 230, SC** Lord Carnworth held that little is to be gained by seeking to draw narrow distinctions between the words *"unfavourable treatment"* and analogous concepts of *"disadvantage"* or "*detriment"* found in other provisions of the 2010 Act. That said, the claim in that case failed as there was nothing intrinsically unfavourable to the claimant about the award to him of a pension based not on his full-time salary but rather on his part time salary before he took ill health retirement.

335. As Mr Jones says, when it comes to justification, *"The role of the Employment Tribunal is to reach its own judgment based on a critical evaluation, balancing the discriminatory effect of the act with the organisational needs of the respondents."* We refer to paragraph 183 of his submissions.

336. Mr Crammond took us to **MacCulloch v ICI [2008] IRLR 486** which sets out four legal principles regarding justification (which has since been approved by the Court of Appeal in **Lockwood v DWP| [2013] IRLR 941)**. These are that:

336.1. The burden is on the respondents to prove justification.

336.2. The classic test is set out in **Bilka-Kaufhaus GmbH v Weber Von Hartz (case number 170/84 [1984] IRLR 317**. The court or tribunal must be satisfied that the measures must *"correspond to a real need … are appropriate with a view to achieving the objective pursued and are necessary to that end* (paragraph 36). This involves the application of the proportionality principle. The reference to *"necessary"* means *"reasonably necessary"*: **Rainey v Greater Glasgow Health Board** (HL) [1987] IRLR 26;

336.3. The principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it: **Hardy & Hansons Plc v Lax [2005] IRLR 726**.

336.4. It is for the tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own assessment of whether the former outweighs the latter. There is no *"range of reasonable responses"* test in this context: **Hardy and Hansons Plc**.

337. Mr Jones referred us to the non-employment case of **Akerman-Livingstone v Aster Communities Limited [20015] UK SC**. The four-step approach to proportionality in that case very much follows the format in **MacCulloch**. It is for the tribunal to assess whether the objective that the employer was trying to implement was a *"sufficiently important"* one to justify limiting an employee's rights, to consider whether the objective in question was rationally connected to the treatment, that it was no more than necessary to accomplish the objective, and whether the objective was necessary and could not be achieved by alternative means was it nevertheless proportionate.

338. In **Akerman-Livingstone**, reference was made to another non-employment case of relevance on the question of proportionality. This is **Bank Mellat v HM Treasury (No 2) [2013] UK SC 39**. This is authority for the proposition that the tribunal must consider the overall balance between the ends being pursued and the means to achieve them. The disadvantages caused must not be disproportionate to the aims being pursued. The question is whether the infringement of the rights in question is disproportionate to the likely benefit of the measure in question.

339. To justify direct age discrimination, in **Seldon v Clarkson Wright and Jakes and Secretary of State for Business Innovation and Skills and Age UK – Interveners [2012] IRLR 590**, it was held by the Supreme Court that the concept of justification of direct age discrimination is conceptually significantly different to that of justification in the context of indirect discrimination (and that of

unfavourable treatment for something arising in consequence of disability). Direct discrimination on the grounds of age – such as mandatory retirement – may only be justified if the relevant treatment or provisions seeks to achieve a legitimate aim of a public policy interest nature. Lady Hale in **Seldon** gave two examples of a legitimate aim of a public interest nature. The first of these is inter-generational fairness. The second is of dignity in employment.

340. We now turn to a consideration of part time worker discrimination. By Regulation 2 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, a worker is a full-time worker where they are paid wholly or in part by reference to the time which they work and having regard to the custom and practice of the employer in relation to workers employed by the worker's employer under the same type of contract, is identifiable as a full time worker. A part-time worker is one who is paid wholly or in part by reference to the time which they work and having regard to the custom and practice of the employer is not identifiable as a full-time worker.

341. A full-time worker is a comparable full-time worker in relation to a part-time worker if at the time when the treatment alleged to be less favourable takes place, both workers are employed by the same employer under the same type of contract and engaged in the same or broadly similar work. Further, the full-time worker must work or be based at the same establishment as the part time worker or if not then they must be based at different establishments satisfying these requirements.

342. By Regulation 5(1) a part-time worker has the right to not to be treated by their employer less favourably than the employer treats a comparable full-time worker as regards to terms of their contract or by being subjected to any other detriment by any act, or deliberate failure to act, of the employer. That right is conferred by Regulation 5(2)(a) where the treatment is on the ground that the worker is a part-time worker and by Regulation 5(2)(b) that the treatment is not justified on objective grounds.

343. By Regulation 16, the holding otherwise than under a contract of employment of the office of constable shall be treated as employment. Again, therefore, there is no dispute that the claimants have standing to pursue complaints under the 2000 Regulations.

344. The justification considerations in a complaint under the 2000 Regulations gives rise to similar issues as to those which arise upon the claimants' complaints under section 15 of the 2010 Act. It was not suggested on behalf of the respondents that the higher justification test of social policy aims per **Seldon** is applicable to complaints brought under the 2000 Regulations.

345. Subject to the *pro rata* principle, the mischief against which the 2000 Regulations is aimed is to avoid less favourable treatment of part-time workers. They should therefore be given the same opportunity in respect of matters such as pay rates, holidays, and training and career development.

346. The *pro rata* principle is in Regulation 5(3) and provides that where a comparable full-time worker receives a particular level of pay or benefit, a part-time worker is entitled to receive no less than the proportion of that pay reflective of the number of hours worked.

347. There has been considerable disagreement in the jurisprudence on the question of whether Regulation 5(2)(a) requires a part-time worker to show that their part-

time status was the sole reason for the treatment complained of or whether it is sufficient for it to be simply one of the reasons for that treatment.

348. This issue arose very recently before the Employment Appeal Tribunal in **Augustine v Data Cars Ltd [2024] EAT 117**. The Employment Appeal Tribunal (EAT) reluctantly followed the judgment of the Court of Session of the Inner House in Scotland in **McMenemy v Capita Business Services Ltd [2007] IRLR 400** where it was held that part-time status must be the sole reason for the less favourable treatment. The EAT in **Augustine** was plainly reluctant to follow **McMenemy** and disagreed with the *"sole reason"* test, preferring a construction which considered the *"effective and predominant cause"* of the less favourable treatment (as in **Carl v University of Sheffield [2009] ICR 1286, EAT**.

349. Mr Crammond (in paragraph 38 of his written submissions) urged the Tribunal to adopt the approach in **Carl**. This was largely upon the basis that in **McMenemy** it had been agreed between the parties that the 2000 Regulations should be interpreted consistently with Council Directive 97/81/EC which implements the Framework Agreement on part-time work. Clause 4 of the Framework Agreement provides that in respect of employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part-time unless different treatment is justified on objective grounds.

350. Mr Crammond submitted that post-Brexit, there is no longer any need to interpret the 2000 Regulations in line with Directive 97/81/EC. Accordingly, there is good reason to depart from **McMenemy.**

351. It may be objected, of course, that there was nothing to prevent a departure from the wording of the Directive 97/81/EC prior to 30 December 2020 (which was 'implementation date' marking the departure of the UK from the European Union). Indeed, that this is the case was shown by cases such as **Carl** (decided pre-Brexit) where only an effective and predominant cause for the less favourable treatment needed to be shown as opposed to the less favourable treatment being caused solely by part-time worker status. The Employment Judge observed during submissions on 8 November 2024 that EU Directives are (or were, in the case of the UK) 'floors' (setting minimum standards and protections) and not 'ceilings' beyond which protections may not extend.

352. Mr Crammond makes a powerful point that the consequence of this jurisprudence requiring part-time worker status to be the sole cause of the discrimination is that discrimination by reason of part-time worker status is more difficult to establish than is discrimination upon the grounds to be found in the 2010 Act. Certainly, there is much merit in this observation. However, in paragraph 48 of **Augustine**, Eady P sitting in the EAT noted the agreement between the parties in **McMenemy** as to how to approach the causation question in part-time worker discrimination cases. In those circumstances, it would have been open to her to adopt the approach to **McMenemy** which Mr Crammond now urges upon this Tribunal. She did not do so. She maintained that in the interest of consistency within Great Britain **McMenemy** ought to be followed. That the President of the Employment Appeal Tribunal declined to distinguish **McMenemy** and depart from it binds this tribunal. For what it is worth, we agree with Mr Crammond that this puts part-time worker discrimination out of step with other protections. However, we are bound by the doctrine of precedent to follow the decision of Eady P in **Augustine**.

353. Another important aspect of **Carl v University of Sheffield** is that it ruled out the possibility of a hypothetical comparator being utilised in part-time worker discrimination claims brought under the 2000 Regulations. Unlike discrimination claims under the 2010 Act, there is no provision for a comparison to be made with a hypothetical comparator. We may contrast Regulation 5(1) of the 2000 Regulations with section 13 of the 2010 Act. The key words *"or would treat others"* present in section 13 of the 2010 Act are omitted from Regulation 5(1) of the 2000 Regulations. Jurisprudence of the European Court of Justice rejected a part-time worker's claim for want of an appropriate full-time comparator in **Wippel v Peek and Clappenburg GmbH & Co [2005] ICR 1604 ECJ**.

354. The approach to justification being broader than that of social policy aims was the view of the Supreme Case in **Ministry of Justice (formerly Department for Constitutional Affairs) v O'Brien [2013] ICR 499, SC**. Following a referral to the European Court of Justice, the Supreme Court observed that the ECJ had taken the view upon justification of part-time worker discrimination that of applicability are the *"familiar general principles applicable to objective justification: the difference in treatment must pursue a legitimate aim, must be suitable for achieving that objective, and must be reasonably necessary to do so*. There was no reference to a narrower formulation as adopted in **Seldon** that justification must be by reference to social policy aims.

Conclusions

355. We shall set out our conclusions upon the issues in the order in which they appear in paragraph 296. Accordingly, the first issue that we should look at is the removal of Mr Driver from his specialist role to work on Operation Adonis.

356. This issue is pursued as a complaint of age, disability, and part-time worker discrimination. We start our analysis with disability discrimination.

357. Before looking at the particular allegation, we note as a general point that Mr Jones accepted that requesting the claimants to move from their specialist roles was unfavourable treatment. This was a concession which was properly made. On any view, being moved from the specialist roles to which the claimants had returned under the 30+ scheme was unfavourable treatment amounting to detrimental or disadvantageous treatment. The claimants plainly were entitled reasonably to consider these moves to be changes for the worse and which put them at a disadvantage. We refer to the relevant principles in paragraphs 312-341 and 334.

358. Again, as a general proposition, Mr Jones conceded on the respondents' behalf that the unfavourable treatment of moving the claimants was for something arising in consequence of the claimants' disabilities. There is no dispute that the claimants are disabled within the meaning of Section 6 of the 2010 Act. In Mr Driver's case, he was granted adjusted duty officer status on 2 January 2020 (paragraph 32). This was because of the physical injuries sustained to his ankles. In Mr Brackpool's case, he was on restricted duties because of the coronary heart disease and atherosclerosis. The respondents do not dispute that at all material times they had knowledge of the claimants' disabilities.

359. There was also no dispute that those on adjusted duties or on restricted duties would be those to whom the force would routinely turn where the need arose. We refer to paragraph 73.

360. It follows therefore that the respondents' concession that the unfavourable treatment was because of something arising in consequence of disability is one properly made. The disabilities led to the claimants being in the pool of adjusted or restricted officers. It was from that pool that the respondents would first have recourse where a need arose to deploy officers because of operational demands. It was therefore rightly accepted by the respondents that the issues which arise upon the disability discrimination claims pursued in this matter is one of justification.

361. To repeat what was said in paragraphs 335- 338, our role is to reach our own judgment based on a critical evaluation, balancing the discriminatory effect of the acts in question with the organisational needs of the respondents. The burden of proof to show justification rests with the respondents. An objective balance must be struck between the discriminatory effect of the measure upon the claimants and the needs of the undertaking.

362. Mr Driver was heavily invested in his role of being a police officer (paragraph 26). He took great pride in his role in the mounted section (paragraph 27). He expressed an interest in being retained on the 30+ Scheme (paragraph 48), recognising that his extensive knowledge and experience would be of benefit to the force. Plainly, he was committed to the job and pre-retirement was not simply seeing out his days but was giving active thought to the future of the mounted section. The role of mounted section operation manager was created for him. He went above and beyond in the performance of his role for the benefit of the force (paragraph 54).

363. It is plain from his grievance of 12 April 2023 that the moves away from his specialist role were a cause of great upset and regret for Mr Driver (paragraph 86). On any view, therefore, the moves of Mr Driver away from the role of mounted section operations manager had a serious adverse impact upon him. That being the case, cogent justification needs to be shown by the respondents.

364. It is for the Tribunal to weigh the reasonable needs of the force against the discriminatory effect of the measures which they took and for the Tribunal to make our own assessment of whether the reasonable needs of the force outweighed the disparate adverse impact upon Mr Driver (and, when we get to his case, Mr Brackpool). This is not a "*range of reasonable responses"* test but one upon which for the Tribunal to reach its own objective judgment upon an evaluation of the findings of fact which we have reached.

365. In paragraph 108, we referred to Claire Hayle's' findings upon Mr Driver's grievance. Amongst other things, she recommended that consideration should be given to individual duty adjustments and skill sets. In our judgment, this is significant when we came to look at Operation Adonis Oscar, to which we now turn.

366. The findings of fact upon Mr Driver's assignment Operation Adonis Oscar are in paragraphs 71 to 94. By way of reminder, Mrs Lynskey extracted adjusted or restricted duties officers to assist with Operation Adonis. Mr Driver felt that he had little to offer to Operation Adonis as he had no experience of firearms. For their part, the respondents took the view that regrettably Mr Driver had little to offer. Firstly, there was a difficulty because of the lack of coincidence of his working hours with those working upon Operation Adonis. This meant that he was only able to work on Operation Adonis for about eight hours a week

(paragraph 89). The rest of his time was taken up with his work in the mounted unit anyway. There remained an operational need for his work at Ring Farm. Secondly, because of his lack of firearms skills and experience, Mr Driver was assigned administrative functions such as booking rooms and ordering packed lunches (paragraphs 87 and 89).

367. The Tribunal accepts, of course, the importance of Operation Adonis Oscar and that it was resource intensive. However, objectively, the move of Mr Driver to work on Operation Adonis did not correspond to the respondents' real need which was to deploy those with the requisite skills to assist and support the operation. On any view, moving a specialist officer such as Mr Driver from his area of specialism (wholly unrelated to the skills needed for Operation Adonis) to work upon an operation where he could offer only limited assistance (both skills and timewise) was not an objectively reasonable measure.

368. The need for Mr Driver to work upon Operation Adonis Oscar was not sufficiently important to justify limiting his rights not to be unfavourably treated for something arising in consequence of his disability. The disadvantages caused to Mr Driver of being moved from the specialist role which he had volunteered to undertake at the end of his 30 years of service was disproportionate when weighed against the very limited benefit to the respondents of Mr Driver's deployment in pursuit of the aim of successfully running Operation Adonis Oscar.

369. Mr Driver was only in reality able to work for eight hours a week upon Operation Adonis Oscar and that limited time was taken up with administrative tasks. In an organisation the size of the force, it is difficult to conceive that there would be no one else (whether a police officer or a civilian officer) who could have undertaken the booking of rooms and the ordering of lunches rather than taking Mr Driver from his specialist role at Ring Farm. The personal humiliation and embarrassment caused to Mr Driver, the diminution of the congeniality of the employment he enjoyed at Ring Farm and the denuding of Ring Farm of his expertise far outweighs, in our judgment, the (at best) marginal gain to the force in pursuit of the aim of successfully bringing home Operation Adonis Oscar.

370. We now turn to look at the issue of Mr Driver's move to Operation Adonis by reference to the age discrimination claim. It is for Mr Driver to show that he was less favourably treated because of age by the respondents than they treat or would treat others of a different age.

371. Moving Mr Driver to Operation Adonis Oscar was not an inherently discriminatory act. That being the case, the Tribunal must consider the reason why Mr Driver was treated as he was. This will call for a consideration of the mental processes, conscious or sub-conscious, of the alleged discriminators- see paragraphs 315-317.

372. It is permissible in a direct discrimination case to go straight to the reason why the complainant was treated as they were. On our findings of fact, one of the reasons why Mr Driver was moved to Operation Adonis Oscar was operational need. A further reason why he was chosen to be moved is because he was an adjusted duties officer. That factor is, of course, nothing to do with his age but rather is to do with his disability.

373. We mentioned in paragraph 326 that **in Stockton on Tees Borough Council v Aylott** [2010] ICR 1278, Mummery LJ said (at [45]) that a cross check as to the

reason why a complainant was treated as they were using an actual or a hypothetical comparator may still be of value.

374. Younger officers on adjusted or restricted duties were also moved to Operation Adonis Oscar. We refer to paragraphs 90 and 93. There, we found that three actual comparators all of whom were younger than Mr Driver were moved to Operation Adonis Oscar in circumstances where they were on restricted duties. Even if Michelle Hudson, Vicky Allen and Amy Vickers are not statutory comparators for section 23 of the 2010 Act (as they were not adjusted duties officers) then they will stand as evidential comparators to aid a construction of how a hypothetical comparator in Mr Driver's situation would have been treated (as we described in paragraph 323). In this case, the hypothetical comparator will be someone of a different age to Mr Driver who is an officer of adjusted duty status. We have little doubt that such an officer would also have been called upon by the respondents to move to Operation Adonis.

375. As a further point, Mr Garside made clear his view that 30+ officers should not be treated more favourably than others not serving under the 30+scheme. We refer to paragraph 82. From this, therefore, we conclude that adjusted and/or restricted officers of any age were treated the same. In our judgment, had 30+ officers been more favourably treated (as apprehended by Mr Garside in paragraph 82) such may have led to a complaint of age discrimination from younger officers who were moved to an unpopular posting against their will. Being a 30+ officer is a proxy for someone aged 48 and over. A younger officer who has not clocked up 30 years of service (and who could not have done so if aged under 48) would then be less favourably treated if special treatment were to be afforded to those on the 30+ scheme.

376. It follows in our judgment that Mr Driver has not discharged the burden of proof upon him (*per* the principles in paragraphs 317 to 322) to prove facts from which we could conclude in the absence of an adequate explanation that the respondents have discriminated against him upon the grounds of age.

377. We now turn to the third limb of Mr Driver's Operation Adonis complaint. This is that he was less favourably treated by the first respondent than was a comparable full-time worker because of his part-time worker status.

378. As we said in paragraph 353, there is no scope to succeed upon a part-time worker discrimination complaint by reference to a hypothetical comparator. Mr Driver must show less favourable treatment by reference an actual comparator engaged in full-time work. No actual comparator was advanced, and on that basis, the part-time worker discrimination complaint must fail. On the contrary, Michelle Hudson is a full-time officer, and she too was required to move to help with Operation Adonis.

379. So far as the complaint of part-time worker discrimination is brought upon the basis that Michelle Hudson received more favourable treatment around consultation, such also fails on the facts for the reasons given in paragraph 92.

380. We now turn to Mr Driver's second allegation which concerns his move from the mounted section to the Football Intelligence Unit. Again, this is brought as allegations of age, disability, and part time worker discrimination.

381. The findings of fact about Mr Driver's move to the Football Intelligence Unit are at paragraphs 95 to 115. As with the Operation Adonis complaint, we shall start our analysis by looking at Mr Driver's age discrimination complaint.

382. We need not repeat what we said in paragraphs 357 to 364 that the move to the FIU was unfavourable treatment for something arising in consequence of disability. We also need not repeat what we said in these paragraphs about the significant impact upon Mr Driver of his moves from the mounted section.

383. On this issue, considering matters objectively, the Tribunal prefers the respondents' case. There was a real need for resources to be deployed to the FIU in response to the substantial increase in football related violence. The need was acute within the force because of serious outbreaks of disorder in and around Sheffield city centre and the paramount consideration of public order and safety.

384. At this time, Collette Pitcher was on restricted duties. She was therefore able to pick up much of Mr Driver's role while he was re-deployed to the FIU. Accordingly, there was capacity. This may be contrasted with the position at the time of the deployment of Mr Driver to Operation Adonis (see paragraph 87).

385. In addition, unlike with Operation Adonis, Mr Driver was able to bring to the FIU some important skills, knowledge, and experience, particularly around his understanding of crowd dynamics (paragraph 109).

386. That Mr Driver was usefully and helpfully deployed is evident from the complimentary remarks made about him by Inspector Louise Lambert (paragraph 110). The Tribunal contrasts her feedback about Mr Driver's time in the FIU with that of CI Emma Cheney about his time in Operation Adonis (paragraph 88). (Indeed, Emma Cheney's comments reinforce our findings on the proportionality of moving Mr Driver away from the mounted unit to assist with Operation Adonis).

387. We therefore conclude that, objectively, Mr Driver's move to the FIU corresponded to a real need on the part of the respondents. The real need arose from the requirement to deal with serious public order issues in Sheffield city centre. The force was appreciative of Mr Driver's efforts which went towards achieving the achievement of the aim or objective in question of quelling public disorder. Mr Driver's move to the FIU did not leave the mounted unit short-handed because of Collette Pitcher's restrictions. Indeed, as we saw in paragraphs 105 and 109, the mounted section had managed to disperse many of Mr Driver's duties amongst themselves for the smooth running of that unit while he was working for within the FIU.

388. The Tribunal has little doubt that subjectively the move to the Football Intelligence Unit was unwelcome for Mr Driver. However, we must apply an objective test. Whereas with Operation Adonis he found himself undertaking what may reasonably be viewed as menial tasks, he brought real value to the FIU at a time when the respondents needed additional resources. In our judgment therefore objectively the reasonable needs of the respondents outweighed the discriminatory effect upon Mr Driver of the unfavourable treatment of him by moving him to the FIU for something arising in consequence of his disability. This complaint therefore fails.

389. We now analyse the complaint about the move to the FIU by reference to age discrimination.

390. The reason why Mr Driver was moved was because of operational need. That is plainly what was in the minds of the respondents when moving him to the FIU. Again, using comparators as a cross-check, the Tribunal found (in paragraph 114) that younger officers (PC Lock and PC Greaves) were also moved to the

FIU. PC Lock was at the time a restricted officer and therefore in comparable circumstances to Mr Driver. PC Garside had spare capacity pending a dog becoming available for him to handle. Mr Garside, like Mr Driver, therefore had capacity and was a restricted officer. They were treated the same by the respondents by being required to join the FIU effort. As with Operation Adonis (paragraphs 374 and 375) if PC Lock and PC Greaves are not statutory comparators as they were not of adjusted duty officer status, they will serve as evidential comparators aiding a construction of a hypothesis as to how a younger adjusted duties officer would have been treated. Again, we have little doubt that such an officer would have been asked to move.

391. Mr Garside made the same point about the FIU as he had around Operation Adonis when notified of Mr Driver's objection to the move to the FIU. We refer to paragraph 104. Mr Garside was therefore plainly intent upon treating officers of any age the same if on adjusted or restricted duties and able to help in the FIU.

392. We now turn to the FIU complaint through the prism of part-time worker discrimination. This can be quickly dealt with. No full-time comparator was identified by Mr Driver. The absence of a full-time comparator is fatal to the complaint which therefore must fail.

393. Mr Driver's third complaint is that Mrs Lynskey informed him that he was to be moved for a third time to the FCMU on 4 April 2023. This is brought as a complaint of age, disability, and part-time worker discrimination.

394. This complaint can be quickly dealt with. It is for Mr Driver to prove facts from which the Tribunal could, apart from the section, conclude in the absence of an adequate explanation that the respondents have discriminated against him. The second stage calling upon the respondents to explain the treatment only arises if the complainant has proved those facts- see paragraph 322.

395. Upon this complaint, we have found as a fact that Mr Driver was not notified by Miss Pitcher that Mrs Lynskey was looking to remove him from the mounted section for a third time on 4 April 2023. We refer to paragraphs 211 and 212. This complaint therefore fails.

396. We now turn to the fourth allegation which is that on 11 April 2023, Mr Driver was again moved from his specialist role of operations manager of the mounted section to work as police officer support in FCMU. This is brought as complaints of age, disability, and part-time worker status discrimination.

397. We shall first consider this allegation through the prism of age discrimination. Again, no issue arises that Mr Driver was unfavourably treated for something arising in consequence of disability by being compelled to move to the FCMU. We need not, we trust, repeat what we said in paragraphs 357 to 364 about the impact upon Mr Driver of the move away from the mounted section.

398. The findings of facts about Mr Driver and Mr Brackpool's move to the FCMU are at paragraphs 193 to 276. From these findings, we conclude that there was a real need for operational support for the FCMU. As we said in paragraph 193, members of the public were becoming disengaged due to the impaired ability of the force to investigate crime in a timely manner. Public confidence was being lost. Evidence was being lost. The force is there of course to protect the public. The risk of public disengagement to that aim is only too apparent.

399. All departments across the force (including the OSU) were required to contribute resources to the FCMU. The claimants were identified once PC Hilditch and PC Dalby were redeployed out of the FCMU back to the OSU (paragraphs 197 and 198). No one other than the claimants were in the frame to be moved from the OSU (paragraph 208). The claimants did have capacity. We have already observed that the mounted unit was able to manage while Mr Driver was working in the FIU (see paragraphs 384 and 387). (Mr Brackpool likewise also had capacity as had returned to the dog section but was without a dog following his return after the shoulder surgery undertaken in January 2023 - see paragraphs 157 to192).

400. When undertaking our objective analysis, these are certainly factors in the respondents' favour around Mr Driver's move to the FCMU, not least the need to restore public confidence in the force. Against that, however, must be borne in mind the serious disparate adverse impact upon Mr Driver of the move to FCMU.

401. As touched upon by Claire Hayle when making recommendations following Mr Driver's grievances (see paragraph 108) the question of skill set arises. Natalie Gilmore's understandable preference was plainly for those trained in the use of Connect. Mr Driver was not so trained. We refer to paragraphs 201 and 250. Mr Driver protested his move to Mrs Lynskey on 11 April 2023 (paragraph 212). He made this very point about the deployment having little bearing on his role or experience and what he was brought back into the force to do. He made similar points in his grievance of 12 April 2023 (paragraph 215).

402. Mr Driver was notified of the move to the FCMU on 11 April 2023 (paragraph 212). As we say, he protested the deployment that very day.

403. Towards the end of that month, Natalie Gilmore had come to the view that the position had become manageable (page 233). She said that she could manage and was able to relinquish one post (which was, effectively, the two claimants).

404. We agree with Mr Crammond when he said (in paragraph 136 (a) of his written submission) that Natalie Gilmour's evidence is fatal to the respondents' case on justification. This was reinforced when Mrs Gilmore said that she could make do with nine full-timers (as opposed to 10) because she had an overtime budget. We refer again to paragraph 233.

405. It follows therefore that very shortly after 11 April 2023 (when Mr Driver was informed of the move by Collette Pitcher) the view was taken by Natalie Gilmore that there was no imperative for the claimants to move to the FCMU. While it may be overstating matters to say that the need had passed, she had plainly taken the view that she could do without them.

406. Such was the impact upon Mr Driver that he took sick leave with effect from 12 April 2023 (paragraph 215). Joanne Ridge's notification of 27 September 2023 (some months after the need for the move had significantly diminished if not passed) that Mr Driver may return to Ring Farm on a phased return was to no avail. This was because Mr Driver was informed that the plan nonetheless remained for him to move to the FCMU (paragraph 261). The move to FCMU remained the force's objective into 2024 (paragraph 273) even though by then the need has passed (paragraphs 274 and 275).

407. On 10 December 2023 Mr Driver had responded to Louise Lambert's email of 7 December 2023. She reiterated the offer of a return to Ring Farm to alleviate the stress and anxiety of returning to work. Mr Driver said by way of response

that he had effectively lost confidence in the respondent. The overtures about returning to Ring Farm were to no avail absent the respondent lifting the prospect of Mr Driver returning to work and then being moved to the FCMU (paragraphs 266 and 267).

408. On 20 December 2023 Natalie Gilmore informed Miss Buttle that the two posts from OSU were no longer needed (paragraph 274). Mr Driver's post in the mounted section had not been disestablished at that point. Mr Driver was not offered a return to work in his substantive role within the mounted section.

409. These facts give of only one conclusion. When weighing the reasonable needs of the force against the discriminatory impact upon Mr Driver, the latter plainly outweighs the former. There was a real need for the respondent to increase resource in the FCMU. Mr Driver was chosen because he was in the restricted pool from which the force would routinely select those to move to aid operational need as and where required.

410. However, Mr Driver was not a good fit for the role. He was not equipped with the skills required by Natalie Gilmore. The need had reduced if not passed by the end of April 2023 and as time went on Natalie Gilmore was able to cope without the two assignments from the OSU. This culminated in her saying to Miss Buttle that the two OSU officers were no longer needed. Mr Driver was not informed that he was no longer required to work for the OSU. On the contrary, even as late as September 2023, he was offered the recuperative benefit of a return to Ring Farm but with the prospect of the FCMU looming over him. There was no suggestion made by the respondents of a move shorter than 12 months, rotation being an option (paragraph 235). Mr Driver was never disabused of the notion that he was to move to the FCMU for a period of less than 12 months.

411. On any view, the marginal benefit in April 2023 to having Mr Driver move to the FCMU was outweighed by the significant impact upon him of the move away from the specialist role that he had been recruited to undertake under the 30+ Scheme. That marginal benefit to the force would inevitably reduce as 2023 progressed. The need to move him to the FCMU corresponded less and less to a real need yet continued to have a significant adverse impact upon him. That posts as opposed to people were moved to the FCMU points to there being no real need by the end of April 2023 - paragraphs 227-229. There was at least one other who cold have gone to the FCMU rather than the claimants (paragraph 248). The disadvantages to Mr Driver were disproportionate to the aims being pursued by the respondents.

412. Mr Driver commented that he had felt elated, relieved, and excited at the prospect of returning to Ring Farm from the FIU (paragraph 111). One may have expected similar emotions (if not heightened emotions) at being relieved of the prospect of going to work in the FCMU. It is difficult to understand why the respondents gave no thought to relieving Mr Driver of this prospect where the diminishing need for OSU resource was such that only negligible benefit would be gained by the force by continuing with the plan to move him. He remained an employee (for the purposes of the 2010 Act) of the first respondent until 4 April 2024 yet no one within the force appears to have thought of allowing him to return to Ring Farm unconditionally. There was no evidence that there was no work for Mr Driver to do at Ring Farm. That there was some spare capacity given Miss Pitcher's development in her role is not the same as there being nothing for Mr Driver to

do. On the contrary, Lee Beck was concerned at the denuded resources in the mounted unit within which there were vacancies (paragraph 252).

413. We now turn to look at the move to the FCMU through the prism of age discrimination. Again, we focus on the reason why Mr Driver was required to move. We accept Mrs Gilmore's evidence that there was a compelling need for additional resource in the FCMU as summarised in paragraph 193. That Mr Driver was selected was due to him being an adjusted duties officer which is something arising in consequence of disability and not in consequence of age.

414. As a useful cross-check, we refer again to the move of two OSU officers to the FCMU. PC Steve Hilditch and PC Dan Dalby were full time and younger than Mr Driver. Officers of all ages can be full-time and part-time and officers of all ages and status were called upon to move to the FCMU from the force's districts. The common denominator amongst them was being on restricted or adjusted duties which gives rise to the disability discrimination claim but cannot properly found an age or part-time worker discrimination claim.

415. Mr Driver did not cite an actual full-time comparator upon which to base his part-time worker discrimination claim. There were two full-time comparators (PC Hilditch and PC Dan Dalby) in any event who were treated the same as Mr Driver in that they were required to move across to the FCMU.

416. In so far as a move to the FCMU complaint is concerned, the disability discrimination complaint succeeds but the age and part-time worker status complaints stand dismissed.

417. The next allegation is one of age and part-time worker status discrimination. This centres upon an alleged failure by the first respondent to provide the requisite notice period to Mr Driver of a change in duties as required under the Police Regulations 2003.

418. Somewhat unhelpfully, the Police Regulations 2003 were not produced by the parties for the benefit of the tribunal. Nonetheless, the tribunal has considered the 2003 Regulations.

419. The issue revolves around Annex E to them which is to be read in conjunction with regulation 22. This regulation makes provision for the Secretary of State to determine the normal periods of duty of a member of a police force, the periods allowed for refreshment, variable shift arrangements which may be brought into operation by a chief officer, the manner and timing of the publication of duty rosters, and the circumstances in which travelling time may be treated as duty. Annexe E is concerned with these matters referring, as it does, to hours of duty, variable shift arrangements, duty rosters, public holidays, rest days and monthly leave days, travelling time, and provisions for part-time members of the force.

420. Upon this basis, the Tribunal considers that the first respondent is correct to submit that these provisions are concerned not with changes of duty but rather with changes of periods of duty and shift arrangements. Upon this basis, Mr Driver has not shown facts from which an inference of discrimination may be drawn absent an explanation from the first respondent. There was no obligation to serve him with a Police Regulations notice of changes of duty.

421. The position is that the first respondent is correct that notice was not required to be given under the Police Regulations 2003 of a change in duty. Only if the shift patterns were to change was requisite notice to be given. Indeed, this is one of

the problems which beset Mr Driver's time in Operation Adonis – that his shift patterns were not compatible by and large with those of other officers working upon that project. The first respondent did not try to make Mr Driver's duties compatible by serving notice as required under the Police Regulations 2003 for him to change his shift patterns. Mrs Lynskey did not serve any such notice. On our findings, neither she nor the first respondent were required to do so.

422. The final allegation raised by Mr Driver was the removal of his role without warning or consultation on 7 June 2023. This is raised as an allegation of part-time worker status discrimination against the first respondent only.

423. This allegation fails on the facts. On 7 June 2023 Mr Driver met with Miss Buttle to discuss the move to FCMU. The disestablishment of Mr Driver's post was not confirmed by her until 10 January 2024 (paragraph 275). In any case, Mr Driver has not identified a full-time comparator. Such a comparator is, as we said in paragraph 341, one who is engaged in the same or broadly similar work as the part-time worker complainant or engaged under the same type of contract. It is unsurprising that no full-time comparator was identified by Mr Driver given that his role as mounted sections operations manager was created for him. There will be no one else undertaking the same or broadly similar work. At any rate, there was no evidence of such a comparator.

424. We now turn to Mr Brackpool's complaints. We start by making similar observations as upon Mr Driver's complaints about Mr Brackpool's investment in his role. He held an ambition which was fulfilled to follow in his uncle's footsteps and become a police dog handler (paragraph 33). He achieved great success in his role (paragraph 35).

425. Unlike Mr Driver, Mr Brackpool was approached to return to the Force. He was approached *"out of the blue"* about 18 months or so into his retirement (paragraph 55). In the meantime, he had forged a career away from the force (paragraph 36). He effectively gave up progression in that career to return to the force under the 30+ Scheme following discussions with his family (paragraph 57). Mr Driver knew from his previous experience of working with police dogs that the return would not be a short-term commitment. He therefore turned his back on his fledgling career in the leisure industry to dedicate six to eight years of further work with the Force (paragraph 57).

426. The first allegation raised by Mr Brackpool concerns the refusal to allow him to attend a taser course and the HGV conversion course. These are brought as complaints of age and part-time worker status discrimination.

427. The findings of fact upon this issue are in paragraphs 116 to 124. We shall start our analysis of this allegation by reference to age discrimination. The reason operating upon Mr Booth's mind when taking decisions about course allocation was plainly operational need and scarcity of resource. On any view, the decision to allocate those scarce resources to members of the Roads Policing Group was the reason why Mr Booth declined Mr Brackpool's interest in the HGV course. As a cross-check by the use of a comparator exercise *per* **Aylott** (paragraph 326) we note Mr Booth's unchallenged evidence that he was unaware of any other dog handler being offered a place on an HGV course.

428. Mr Brackpool did not lead evidence of the circumstances of any actual comparator (or of an evidential comparator from which to draw a hypothesis) that an officer in the same or similar circumstances to him (being a dog handler) but

who is younger was or would be given an opportunity to participate in such a course. On this basis, we conclude that Mr Brackpool has not discharged the burden of proof upon him to show facts from which (absent an explanation) a finding of age discrimination must be made.

429. For similar reasons, we find that the reason why he was refused a place on a taser course was for resourcing issues. Again, he did not identify (save in very general terms) other dog handlers who had been on taser courses. That said, Mr Booth did accept that dog handlers had gone on taser training courses, and that Mr Brackpool was correct to say that some dog handlers had been taser trained.

430. Although the Tribunal was presented with no direct comparator evidence, we did hear sufficient evidence to make findings of fact about how evidential comparators were treated such as to draw a hypothesis as to how a younger dog handler in Mr Brackpool's position shortly after his return under the 30+ Scheme would have been treated. We refer to the conclusion summarised in paragraph 287 about Mr Carlson's concern around utilisation of resources. No evidence was led by Mr Brackpool to the effect that there was a real need for dog handlers to be taser trained at the relevant time. The resources available to the first respondent would, we find, be better deployed elsewhere as was the case with the dog handler Mr Pitcher's unfilled wish to attend the TPac course. This was the reason why Mr Brackpool was declined taser training.

431. Best utilisation of resources was the reason why Mr Brackpool was refused attendance upon the HGV and taser courses. Mr Brackpool accepts that Mr Pitcher was a full-time handler. He was refused attendance upon the TPac course. In paragraph 288 we accepted Mr Lumley's evidence that Mr Aris would not have been allowed to go on the TPac course as a general purpose dog handler. From all of this, utilising what comparator evidence was made available to the Tribunal, our judgment is that this cross-check only serves to validate the reason why Mr Brackpool was refused attendance upon the courses – for best deployment of the first respondent's resource. This complaint therefore stands dismissed.

432. These full-time workers were treated the same as Mr Brackpool. Hence, his part-time worker discrimination claim fails.

433. Mr Brackpool's second complaint is that in May 2022, he was refused permission to attend the rural and wildlife crime training course and the quad all-terrain vehicle course. This is raised as complaints of age, disability, and part-time worker status discrimination.

434. The findings of fact upon this issue and in paragraphs 133 to 137.

435. The disability discrimination aspect of this matter can be quickly dealt with. Even on Mr Brackpool's case, Mr Carlson's refusal to allow him to attend on these courses was nothing to do with disability. As we say in paragraph 138 of our factual findings, Mr Brackpool alleged that Mr Carlson was dismissive of his wish to attend these courses because of his part-time worker status. It is difficult to see any link between Mr Brackpool's disability on the one hand and Mr Carlson's refusal to allow him to attend these courses to assist with his duties in rural and wildlife crime on the other. True it is that but for Mr Brackpool's disability he would not have ended up working in rural and wildlife crime. It was because of his disability that he was in the pool of those restricted duties officers liable to be

called upon as and when the need arose and for what Mr Carlson perceived to be the recuperative benefits of Mr Brackpool's deployment to the rural and wildlife crime team. We refer to paragraph 128.

436. However, a '*but for'* analysis is not apposite. The essential question is the reason why the putative discriminator acted as they did towards the complainant.

437. As is the case with the taser and HGV courses, we find that Mr Carlson declined Mr Brackpool's wish to attend the rural and wildlife crime training course and the quad all-terrain vehicle course because of resourcing issues, that Mr Brackpool had no need of the training in his substantive role, and because of Mr Carlson's wish to afford Mr Brackpool a period of time to recuperate following his operation. We refer to paragraphs 135 and 136.

438. Therefore, while we accept that from Mr Brackpool's perspective he was unfavourably treated in being refused the training, we find that this had nothing to do with his disability. We also find that Mr Carlson's processing and decision making, conscious or subconscious, was unconnected with Mr Brackpool's age or his part-time worker status.

439. On the latter, Mr Brackpool failed to identify a full- time comparator employed under the same type of contract and engaged in the same or broadly similar work to him (that is, as a dog handler) who was afforded access to these courses. Upon that basis, the part-time worker discrimination claim must fail.

440. The only actual comparators positively advanced by Mr Brackpool were Mr Pitcher and Mr Aris. We have already mentioned in this discussion and conclusions section the findings of fact which we made about them and Mr Carlson's wish for best utilisation of resource. Although, it seems to us, the reason why Mr Brackpool was refused permission to attend the courses is clear (resource issues and recuperative benefits) the cross-check as commended to tribunals by Mummery LJ in **Aylott** brings us to the same answer. There is simply no evidence advanced by Mr Brackpool upon which basis the Tribunal could find that a dog handler of a different age but in similar circumstances to him would have been allowed to attend expensive courses after a period of ill health. In any case, he was put onto a rural and wildlife crime CPD course in November 2022 (paragraph 172) which tells against him being less favourably treated than were others in this respect, at least.

441. We now turn to the third allegation raised by Mr Brackpool which is that in May 2022 he was removed from his specialist role. This is a complaint of disability and part-time worker status discrimination.

442. We shall dispose of the latter complaint first. The comparators advanced were Mr Pitcher and Mr Aris neither of whom were removed from their specialist roles. They both were dog handlers and so engaged in broadly similar work to Mr Brackpool. They are valid comparators for the part-time worker discrimination claim. However, Mr Brackpool was not moved from his substantive role because he was engaged to work part-time. There were other reasons at play as described in paragraph 437 (and in paragraph 444 below). Accordingly, per **Augustine** (paragraphs 348 to 352) the claim must fail as part-time worker status was not the sole reason why Mr Brackpool was moved to rural and wildlife crime. If we are wrong not to have departed from **Augustine**, then we find that part-time worker status was not even a material reason for the move. While this was suggested to Mr Carlson in cross examination, we accept Mr Carlson's account

that lack of career benefit for Mr Brackpool, resourcing issues, and recuperative benefit was the reason why Mr Brackpool was moved to rural and wildlife crime. It is no coincidence of timing that the move followed the arterial stent surgery in April 2022, and that Mr Carlson had not proposed a move for Mr Brackpool before then. The part-time worker discrimination claim therefore fails.

443. We find that Mr Brackpool was removed to the rural and wildlife crime team for something arising in consequence of disability. In paragraph 128, we have found that Mr Carlson was motivated to assign Mr Brackpool to that team, at least in part, because of his (Mr Carlson's) perception that this would be recuperative for Mr Brackpool. He (Mr Brackpool) of course disagreed with this assessment. However, the fitting of the arterial stent was plainly something which arose in consequence of Mr Brackpool's disability. The first respondent's management of his return to work in May 2022 therefore was plainly something arising in consequence of Mr Brackpool's coronary heart disease and arterial sclerosis.

444. Aside from welfare concerns and the need of the rural and wildlife crime team following Mr Gregory's departure (paragraphs 128 and 156), we find that Mr Carlson was motivated in part by concerns which he held that the force had too many dog handlers. We refer to paragraphs 165 to 168 of our factual findings. In the event, as we said, the decision making as to whether there were excess numbers in the dog team was put off from July 2022 into the following year and then was overtaken by events with the advent of the priority based budget review. This, coupled with under-resourcing in rural and wildlife crime following Mr Gregory's resignation, created a need in that department which could be met by Mr Brackpool's redeployment which Mr Carlson in any case saw as a recuperative measure. The 'something' arising from disability (the need to recuperate from the arterial operation) was plainly a material reason for the move and hence for the unfavourable treatment.

445. We therefore find that Mr Carlson, whose decision it was to move Mr Brackpool to the rural and wildlife crime team (albeit one endorsed by Mrs Lynskey – paragraph 131) was made with mixed motives. Budgetary and resource considerations were certainly present as were the perceived recuperative benefits to Mr Brackpool of a move to that team following his return to work after a period of absence arising from the admitted disability. That is sufficient to establish on the facts that Mr Brackpool was unfavourably treated for something arising in consequence of disability by being moved to the wildlife and rural crime team. Recuperative benefits were a material consideration.

446. Therefore, as with Mr Driver's moves to Operation Adonis, the Football Intelligence Unit and the FCMU, the issue on Mr Brackpool's disability discrimination claim around the move to rural and wildlife crime is one of justification.

447. We accept there to have been a real need for additional resource in the rural and wildlife crime team following the resignation of Mark Gregory. This also had the benefit of enabling the re-teaming of Mr Brackpool with PD Milo. Further, Mr Carlson was of the view that there was excess capacity in the dogs section.

448. On any view, objectively assessed, these were valid considerations. There was a real need for the respondents to maximise their resources (those being Mr Brackpool and PD Milo) at which the measure of moving Mr Brackpool (and PD Milo with him) to the rural and wildlife crime team was aimed to address.

449. The move to the rural and wildlife crime team was unfavourable treatment of Mr Brackpool. Indeed, the respondents concede as much. Against that, however, Mr Carlson considered that this would be beneficial to Mr Brackpool as he was able to work from Ring Farm which was very close to where he lives and was able to re-team with PD Milo. These measures, in our judgment, went some way to mitigating the disparate adverse impact upon Mr Brackpool.

450. We can accept that from Mr Brackpool's perspective the recuperative benefits perceived by Mr Carlson were offset by the pressure which he (Mr Brackpool) felt in the role. He was right to be apprehensive about his lack of familiarity with some of the niche aspects of the law around rural and wildlife crime. No compelling evidence was led by the respondents that work in rural and wildlife crime was any less onerous than was working the dogs section, particularly for an individual such as Mr Brackpool who specialised in dog handling.

451. Objectively, however, the Tribunal considers that the move of Mr Brackpool to the rural and wildlife crime team was proportionate and objectively struck the balance between the discriminatory effect of the measure upon Mr Brackpool and the respondents' real needs. The significant mitigation of a short commute to work and, in particular, the re-teaming of Mr Brackpool with PD Milo persuades us that the respondents have discharged the burden upon them to objectively justify the move. Therefore, this complaint fails.

452. The next allegation raised by Mr Brackpool is that between March 2023 and 19 April 2023, the respondents refused or failed to return PD Milo to Mr Brackpool. This is advanced as complaints of age, disability, and part-time worker status discrimination.

453. The factual findings upon this issue are at paragraphs 176 to 191 and then paragraphs 217 and 218.

454. The Tribunal accepts that from Mr Brackpool's perspective, the placing of PD Milo with PC Jason Pitcher was most unwelcome. The respondents were aware of the poor relationship between the two men - paragraph 181. The respondents knew or at least ought to have known of the close bond which develops between a police dog handler and their dog- see Mr Brackpool's unchallenged evidence on this issue in paragraph 67.

455. In those circumstances, we consider that the placement of PD Milo with PC Pitcher was something which a reasonable person in Mr Brackpool's position would complain about. It was not an unjustified sense of grievance.

456. It plainly lay within the respondents' gift to place PD Milo with a different dog handler. He was after all the first respondent's resource. Although there were several steps in the chain, we accept that the unfavourable treatment by the placement of PD Milo with Jason Pitcher was for something arising in consequence of Mr Brackpool's disability. The immediate cause of his absence leading to PD Milo's placement with Jason Pitcher was because of the shoulder surgery. However, an assessment of Mr Brackpool's fitness to return to work included a need for a cardiovascular assessment given his medical history. This was assessed as acceptable by Dr Bollman on 25 April 2023 (paragraph 191). Accordingly, a material reason for the unfavourable treatment of the placement of PD Milo with Jason Pitcher in February 2023 was Mr Brackpool's disability by reason of his cardiac condition, leading to his (Mr Brackpool's) need for a clear medical assessment before he could be re-teamed with PD Milo.

457. Again, therefore, the issue is one of justification. Upon this issue, we have little hesitation in preferring the respondents' case. It was plainly unacceptable to leave PD Milo in the kennels. As Mr Carlson said (in paragraph 183 above) to leave him there would leave the force open to an allegation of causing unnecessary animal suffering contrary to the Animal Welfare Act 2006. It is only too obvious why such would be an important consideration in deciding what to do with PD Milo during Mr Brackpool's recuperation from the shoulder surgery.

458. While there was mutual dislike between Mr Pitcher and Mr Brackpool, the decision to team PD Milo with Jason Pitcher was rationally based. It was, in fact well thought through given Jason Pitcher's imminent retirement. We refer to paragraphs 177 and 178.

459. The force's needs were to maximise their resources. Those resources include the team of police dogs. As importantly if not more importantly the force recognised the animal welfare concerns arising from PD Milo remaining in the kennels pending Mr Brackpool's recovery. PD Milo's deployment and re-teaming with Mr Pitcher corresponded to a real need which was in our judgment reasonably appropriate to achieve the objective of avoiding unnecessary animal suffering and best use of resources.

460. We can accept that subjectively Mr Brackpool found this a bitter pill to swallow. He did however fairly recognise in the hearing that PD Milo was a force resource. Also, the first respondent made efforts to reassure Mr Brackpool that the long-term objective was for him to be re-teamed with PD Milo.

461. Mr Brackpool had no need of PD Milo while he was out of work recuperating from the shoulder surgery. PD Milo is a force resource. The force had need of him. Mr Pitcher had capacity to team with PD Milo. The force could not leave PD Milo wallowing in the kennels. Such would be to cause unnecessary animal suffering which would be hugely damaging to the force's reputation if permitted to occur.

462. The respondents' objectives of best deployment of resource and the avoidance of unnecessary animal suffering were sufficiently important to justify limiting Mr Brackpool's right not to be unfavourably treated for something arising in consequence of disability. The placement of PD Milo with Jason Pitcher was not permanent given Mr Pitcher's retirement in November 2023. The respondents' objective was to re-team PD Milo with Mr Brackpool in the fullness of time once Mr Brackpool was signed off as fit to return to work. Objectively, balancing the needs of the parties, the respondents' actions upon this issue were proportionate and therefore justified. Accordingly, the age discrimination claim fails.

463. Mr Brackpool did not advance an actual comparator engaged under the same contract and undertaking the same or broadly similar work who was treated more favourably than he was. There was simply no evidence that a full-time comparator dog handler had been allowed to retain their dog when recuperating from a period of ill health and not engaged in dog handling.

464. Upon the issue of age discrimination, the reason why Mr Brackpool was treated as he was on this aspect of matters has already been made clear as articulated in our analysis of the disability discrimination claim. On any view, this was nothing to do with Mr Brackpool's age and everything to do with the best use of the force's resources and, at least as significantly, animal welfare concerns. There was no evidence from Mr Brackpool of a comparator younger officer in the same or similar circumstances to him who was more favourably treated in being allowed

to retain their dog during a period of ill health when they were not engaged in dog handling.

465. It follows therefore that all three aspects of Mr Brackpool's fourth complaint concerning the refusal or failure to return PD Milo to him fail and stand dismissed. We now turn to Mr Brackpool's fifth allegation.

466. This is that on 19 April 2023 he was removed from his specialist role within the dog section to work as police officer support in FCMU. This is advanced as a complaint of age, disability, and part time worker status discrimination.

467. On any view, this plainly was unfavourable treatment for something arising in consequence of disability. As with Mr Driver, Mr Brackpool was chosen to move to the FCMU by the respondents because he was on restricted duties. As with Mr Driver, this left him vulnerable to be selected when there was a need to move resources to assist areas of the force where additional resource deployment was required.

468. As with Mr Driver, Mr Brackpool reasonably perceived the move to the FCMU to be one to his disadvantage. This was to move him away from the specialist role to which he had been enticed to return by way of an unsolicited approach from the force. It was a move to a role for which Mr Brackpool was manifestly unsuited. To be moved from a specialist dog handler role in which Mr Brackpool had excelled and had expertise to a desk-based computer role in which he had none cannot reasonably be viewed as anything other than to Mr Brackpool's disadvantage. The move was because of something arising in consequence of disability because of his restricted duty status arising from the admitted disability.

469. The issue therefore becomes one of justification. We shall not repeat here in detail our conclusions about Mr Driver's case in paragraphs 403 to 411. However, the same factors apply with Mr Brackpool. By the end of April 2023, the acute need to have two officers deployed to the FCMU from the OSU had diminished if not ceased altogether. The need continued to diminish to the point where Mrs Gilmore candidly said that she had no need of the two deployments from the OSU. There was at least one other who could have gone across to the FCMU instead of the claimants.

470. Mr Driver was informed by Mr Carlson (on Mrs Lynskey's behalf) of the decision to move him to the FCMU on 19 April 2023 (paragraph 216). Just six days later, Dr Bollman certified Mr Brackpool as fit to return to his work as a dog handler (paragraph 191).

471. Although Mr Carlson remained of the view that only 20 dog officers were required and not 22, there were nonetheless vacancies for dog handlers (paragraphs 245 to 247). It is the case, of course, that it would not have been open to a part-time officer to work with a general purpose dog (see paragraph 247). Nonetheless, as we observed in that paragraph the position was fluid. There was no reason, it seems to us, that the claimant could not have been re-teamed with PD Milo once he received the necessary sign off from the Force Medical Officer and pick up the duties that he had prior to April 2022. This after all had been the intention when placing PD Milo with Jason Pitcher, who would then still have been usefully deployed with his own general purpose dog until his retirement in November 2023.

472. No evidence was led by the respondents that any consideration was given to a review of the decision to move Mr Brackpool to the FCMU in the light of the Force Medical Officer's opinion that Mr Brackpool was fit with effect from 25 April 2023. Notwithstanding the diminishing need for the deployments from the OSU within the FCMU, the position was not addressed or revisited by the respondents. The stress caused to Mr Brackpool of the prospect of a move to the FCMU led to him going off duty by reason of sickness absence with effect from 12 May 2023. He never returned to duty.

473. Despite the lack of need to deploy Mr Brackpool to the FCMU, at no stage did the respondents meet with him to explain this change of circumstance around the diminished need for work in the FCMU and to address the question of whether he could return to the force to fulfil the role which he had been enticed back to undertake. Mr Brackpool then submitted his leaver's form on 18 October 2023. Shortly before that, he had received the letter suspending his business interest working for Barnsley Premier Leisure (paragraph 262).

474. It is difficult to understand why the first respondent took the step of suspending Mr Brackpool's interest with Barnsley Premier Leisure. Mr Brackpool gave unchallenged evidence that there was no conflict of interest between his work for Barnsley Premier Leisure and his work for the force and that the force had known of his work for BPL for some time. The tribunal can see no conflict between work in a leisure centre teaching swimming on the one hand and work in the force as a dog handler on the other. This decision is even more perplexing given the evident need for dog handlers at that time when set against the fact that Natalie Gilmore had effectively moved on and no longer needed the deployment of the claimants from the OSU. We have little doubt that Natalie Gilmore's somewhat lukewarm attitude towards the claimants was because they were not Connect trained.

475. We accept that in April 2023 the force did have a need to deploy additional resource into the FCMU for the reasons given by Natalie Gilmore. That need had diminished as soon as late April 2023 and into May of that year. As we have observed, the need to all intents and purposes diminished altogether towards the end of 2023, and certainly by the time that Mr Brackpool resigned.

476. At best, the force was going to get marginable benefit from the deployment of Mr Brackpool into the FCMU. He had limited computer skills. He was not trained in Connect. That somewhat limited or marginal benefit must then be weighed against the disparate adverse impact upon Mr Brackpool.

477. The impact upon Mr Brackpool and the restriction of his right not to be unfavourably treated for something arising in consequence of disability outweighs by a large measure the needs of the force's undertaking. We say this for a number of reasons. Mr Brackpool had given up a career with Barnsley Premier Leisure to return to work for the force. He had no need to do this. He volunteered to give up that career for the benefit of the force, altering his position in the process. He recognised that as a dog handler this would represent a six to eight years' commitment. Secondly, the bond between dog handler and dog is strong. This is not something which should lightly be dismissed. Having had assurances in the early spring of 2023 that the idea was to re-team PD Milo with him once he (Mr Brackpool) was fit to return to work it must have come as a grievous disappointment to be told by Mr Carlson that he would not now be re-teamed with PD Milo at all (paragraphs 217 and 218). There is an aggravating feature of

Mr Brackpool's daughter's affection for PD Milo. Mr Carlson acknowledged that he knew that Mr Brackpool's daughter has autism (paragraph 67).

478. Mr Brackpool had changed his career path to benefit the force. The objection to Mr Brackpool's continued involvement with Barnsley Premier Leisure (which in no way conflicts with the force's operation) was irrational. The force led no evidence as to where the conflict of interests lay.

479. The move of Mr Brackpool to the FCMU remained the objective of the force up to the point of Mr Brackpool's resignation. That did not correspond to a real need on the force's part given the significant diminishing requirement from the end of April 2023 as described by Natalie Gilmore. The, at best, marginal resource gain to the FCMU by Mr Brackpool's deployment there must be weighed against the very serious disparate impact upon him of being effectively removed from his specialist role which he had been persuaded out of retirement to undertake at the cost of a fledgling and promising career with Barnsley Premier Leisure. As we say, this is aggravated by the reneging of assurances given to Mr Brackpool that he would be re-teamed with PD Milo at some point once certified as fit to serve in the force and which medical clearance he had received from the Force medical Officer as early as 25 April 2023 and the failure by the respondents to review the position. Mr Brackpool's feelings of disappointment can only have been exacerbated by his knowledge that his daughter would be deeply disappointed and upset not to get PD Milo back with the family. This complaint therefore succeeds.

480. As with Mr Driver, we find that Mr Brackpool's move to the FCMU was nothing to do with his age. The reason why Mr Brackpool was moved there was because he fell within the pool of adjusted or restricted duties officers. This is nothing to do with age and everything to do with disability. As a cross-check of the reason why he was moved by reference to comparators the Tribunal again highlights the cases of PC Hilditch and PC Dalby (see paragraphs 399 and 414 above).

481. The part-time worker discrimination fails for want of an actual full-time comparator employed by the force under the same type of contract and engaged in the same or broadly similar work as Mr Brackpool. There is no scope for the construction of how hypothetical full-time comparator would have been treated. Indeed, PC Hilditch and PV Dalby were full-time and were deployed to the FCMU.

482. Therefore, upon Mr Brackpool's fifth complaint, the disability discrimination claim succeeds but the age and part time worker status claims fail.

483. We now turn to Mr Brackpool's sixth claim which is one of age and part-time worker status discrimination. This concerns an alleged failure by the first respondents to provide the requisite notice period of a change in duties as required under the Police Regulations 2003. This fails for the same reasons as in Mr Driver's case (see paragraphs 417 to 421 above).

484. The claimants' successful discrimination complaints upon the move to the FCMU were plainly brought within the time limit in Section 123 of the 2010 Act. The respondent was (*per* **Hendricks** in paragraph 301) responsible for the ongoing situation of requiring the claimants to move to the FCMU until they resigned their positions. The claimants' claim forms were presented on 23 August 2023 after a period spent in early conciliation between 15 June and 27 July 2023. The presentation by the claimants of their ET1 in fact pre-dated the dates upon which they left the force as the state of affairs continued, the Damocles sword of a move

to the FCMU never being removed. In Mr Driver's case he left the force on 4 April 2024 and in Mr Brackpool's case he left on 15 November 2023.

485. The respondents' application to Mr Driver of the requirement for him to participate in Operation Adonis Oscar ended in May 2022 (paragraph 94). Mr Driver did not commence early conciliation until well after three months from May 2022. On the face of it, therefore, his successful complaint of unfavourable treatment brought pursuant to Section 15 of the 2010 Act is out of time if a need to work in Operation Adonis is taken in isolation.

486. The complaint is in time if the situation or continuing state of affairs *per* **Hendricks** is construed more widely as the ability of the force to move officers according to force demand.

487. Mrs Lynskey was responsible for the decision to deploy Mr Driver to Operation Adonis Oscar (paragraphs 76 and 77). It was also her decision to deploy Mr Driver to the Football Intelligence Unit (paragraphs 100 and 105). She was also responsible for nominating the claimants to move to the FCMU (paragraph 200).

488. Upon this basis, we accept Mr Driver's case that the force and Mrs Lynskey were responsible for the ongoing situation in which specialist officers were liable to be deployed to other areas if the need arose. It was common ground that specialist officers would seldom be moved (paragraphs 42 and 43) it is the case that as warranted officers all may be moved where a need arises. That state of affairs continued by dint of the moves to which he was subjected, and impacted on him until Mr Drivers' resignation from the force. Accordingly, his successful complaint of unfavourable treatment for something arising in consequence of disability upon the Operation Adonis move was brought in time.

489. If we are wrong on that and that the operation of the relevant policy around Operation Adonis ceased to apply to him in May 2022 and is rightly to be considered as a stand-alone state of affairs which ended then, it follows that the complaint is out of time. The Tribunal then has a wide discretion to extend the time limit.

490. We agree with Mr Jones that there was no satisfactory explanation forthcoming from Mr Driver as to why no action was taken upon the Operation Adonis move within three months of May 2022. That lack of explanation is one factor to be considered per **Abertawe** – see paragraph 305. The other significant factor is whether the delay has prejudiced the respondents in determining where the balance of prejudice lays.

491. There was no suggestion from the respondents that their ability to defend Mr Driver's complaint about the Operation Adonis move was prejudiced by the delay after May 2022. Such is unsurprising. As may be expected, much of the interaction between the parties was documented. None of the key witnesses involved were unable to attend to give evidence. There was therefore no forensic prejudice suffered by the respondents. The prejudice to Mr Driver of refusing to extend time to permit the Adonis Oscar complaint to be heard considerably outweighs that to the respondents of extending the time within which to hear it. We agree with Mr Crammond that it would not be just and equitable to deny a remedy to Mr Driver in these circumstances.

492. However, as we say, the conclusions in paragraphs 489- 491 are in the alternative to the Tribunal's determination that the Adonis Oscar complaint was

brought in time as part of a continuing state of affairs in the deployment policy reliant on restricted duties and adjusted duties officers in any case.

493. We now turn to the final remaining issue which is that of Mrs Lynskey's liability for the successful complaints brought by the claimants. We have just observed that Mrs Lynskey decided to move Mr Driver to Operation Adonis Oscar. She also decided to move the claimants to the FCMU. Miss Buttle sought to distance Mrs Lynskey by claiming that these were her (Miss Buttle's) decisions. However, that Mrs Lynskey decided upon the move of Mr Driver to Operation Adonis Oscar is plain from her (Mrs Lynskey's) own evidence in paragraph 16 of her witness statement (paragraph 76 of these reasons).

494. Upon the issue of the move of the claimants to the FCMU we refer to our factual findings in paragraph 207. There, Miss Buttle informed Mrs Lynskey that she was happy with her (Mrs Lynskey's) decision to send the claimants to the FCMU. She (Mrs Lynskey) explained to Mr Driver on 12 April 2023 that she had had a difficult decision to make (paragraph 213). Mr Carlson effectively stood in Mrs Lynskey's stead to convey her decision to him on 20 April 2023 (paragraphs 216- 220). Had Mrs Lynskey not had to attend a firearms incident then she would have done this herself. She did not shy away from the fact that it had been her decision when she emailed Mr Brackpool on 25 April 2023 (paragraph 224).

495. We accept that Miss Buttle endorsed Mrs Lynskey's decision. She did of course claim later that it had in fact been her decision and not that of Mrs Lynskey (paragraphs 251 and 270). We agree with Mr Crammond's submission upon this question that, as he put it, *"Lydia Lynskey's hands were all over the decisions".* (By *"decisions"* we here mean to refer to the decisions upon which the claimants have succeeded, being the move of Mr Driver to Operation Adonis and the move to the FCMU). The force is of course a hierarchical organisation. Mr Crammond must be right that it cannot be the most senior person within the organisation who makes all of the decisions. By that logic, responsibility for all the decisions taken by anyone within the force will rest with the first respondent.

496. It was within Mrs Lynskey's authority to require the claimants to move. Her authority was never questioned by Helen Arden (for Operation Adonis) or Natalie Gilmore (for the move to the FCMU). Mrs Lynskey was the operational decision maker. The later endorsement of those decisions by Cherie Buttle cannot alter that fact.

497. It follows therefore that Mrs Lynskey is jointly and severally liable with the first respondent for the acts upon which the claimants have succeeded.

498. The matter will now be listed for a remedy hearing. The parties shall, within 28 days of the below date, write to the Tribunal:

    498.1. To indicate whether they consider that a case management hearing before the Employment Judge would be of benefit.

    498.2. If so, with dates to avoid facilitating the listing of a case management hearing.

    498.3. If not, then dates to avoid for the listing of a remedy hearing together with a time estimate.

    498.4. Either way, with dates over the ensuing three months.

Employment Judge Brain

Date: 3/1/2025

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