



EMPLOYMENT TRIBUNALS

Claimant: Mr S Bailey

Respondent: Avon Fire & Rescue Service

Heard at: in person from the Bristol Employment Tribunal (sitting in the Bristol Magistrates' Court)

On: 21, 22 and 23 July 2025

Before: Employment Judge Woodhead (sitting alone)

Appearances

For the Claimant: Mr A Griffiths (Counsel)

For the Respondent: Ms E Sole (Counsel)

RESERVED JUDGMENT WITH REASONS

1. The complaint of constructive unfair dismissal is not well-founded and is dismissed. The Claimant was not unfairly dismissed.

REASONS

2. Although I warned the parties that I would not have the opportunity to turn my attention to this claim until September 2025, I nonetheless apologise to the parties for the delay in issuing this reserved judgment and written reasons.

THE ISSUES

3. The Claimant was employed by the Respondent from 14 October 1996 until his resignation with immediate effect on 9 September 2023. ACAS Early Conciliation took place between 30 November 2023 and 11 January 2024. On 2 February 2024 the Claimant issued this claim with complaints of disability discrimination and constructive unfair dismissal.
4. There was a case management preliminary hearing on 4 September 2024 at which the Claimant was represented by counsel (not Mr Griffiths) and the Respondent by a solicitor, this final hearing was listed and at which the issues

were agreed (and which, in so far as relevant, are set out in the Appendix to this judgment).

5. Prior to this final hearing the complaints of disability discrimination were dismissed on withdrawal and this final hearing was reduced from four to three days. The list of issues did not set out the questions that would need to be answered in respect of remedy.

THE HEARING

6. At the final hearing I was provided with:

- 6.1 A Witness statement bundle (WSB[]) containing witness statements as follows:

- 6.1.1 **Claimant** - 12 pages (CWS[])

- 6.1.2 **Mrs Sarah Martin** – Investigator (HR Consultant and Director of Narrow Quay HR) – 6 pages (SMWS[])

- 6.1.3 **Mr Luke Gazzard** – Hearing Officer – Assistant Chief Fire Officer for Service delivery -5 pages – (LGWS[])

- 6.1.4 **Ms Sarah Collins** – HR Business Partner - speaking to Ms A Feeney's involvement in the claim as Senior Point of Contact (SPOC) – 9 Pages (SCWS[])

- 6.2 A bundle of 582 pages (HB[]).

7. On 21 July 2025, after I had concluded my reading, at just after 11am, we started to hear the Claimant's evidence. The Claimant's evidence concluded after lunch and we then heard the evidence of Mrs Martin.

8. On 22 July 2025 we heard the evidence of Mr Gazzard. During his evidence reference was made to an audio recording of the hearing he conducted with the Claimant on 6 June 2023. There was no transcript of that recording and it appeared that neither a transcript nor the recording had been disclosed to the Claimant. Counsel for the Respondent needed to speak to Mr Gazzard and her instructing solicitors. The Claimant's position was that there was an ongoing duty of disclosure and that the only application that would need to be made would be as to whether the recording or a transcript should be admitted in evidence. Counsel for the Respondent thought that there had been some discussion between the parties as to the recording but she needed to check. The parties asked for a break to discuss this matter and the time needed for that ended up spilling into the period when we would have broken for lunch. Counsel returned at 13:45 to make a joint application for the hearing to be adjourned until the morning of 23 July 2025 explaining that:

- 8.1 The recording had been disclosed;

- 8.2 It was 1 hr 35 minutes long;
 - 8.3 Both parties were listening to it;
 - 8.4 Counsel would then need to take instructions;
 - 8.5 The recording may need to be transcribed in part;
 - 8.6 There may then be applications by the parties but that was as yet unknown.
 - 8.7 Counsel for the Respondent was going to take instructions on why the recording had not been sent to the Claimant as part of disclosure before today.
9. On 23 July 2025 it at first appeared that the Respondent would make an application to rely on the recording of the 6 June 2023 hearing but when hearing reconvened the Respondent said that in fact, having discussed it with Counsel for the Claimant, they had decided that they would not make such an application. We were therefore able to move straight to hearing the evidence of Ms Collins.
10. Owing to the fact that Counsel had been focusing on the question of the recording over night and because of the delay in the progress of the hearing, I indicated that it was unlikely that I would have time to hear submissions and also reach a decision that I could properly explain to the parties before the end of the day. Owing to the fact that there may then be some delay in my ability to produce a reserved judgment, I made clear that good quality submissions would be of particular benefit. Counsel discussed this and asked if they could have an extended lunch break to refine their submissions, returning at 13:30 to give them orally. I was prepared to agree that in the circumstances.
11. A member of the press asked to inspect core documents to ensure that she had recorded details correctly and the parties agreed to liaise with her on that to ensure that she only looked at documents that had been referred to in the proceedings.
12. The parties returned at 13:30 and gave oral submissions which concluded just before 16:00.

FINDINGS OF FACT

13. Having considered all the evidence, I find the following facts on a balance of probabilities.
14. The parties will note that not all the matters that they told me about are recorded in my findings of fact. That is because I have limited them to points that are relevant to the legal issues.

Background

15. The Claimant's service with the Respondent started on 14 October 1996. He was promoted from firefighter to Crew Manager in 2007. He was promoted again to Watch Manager A in August 2012 [HB89] and then further promoted to Watch Manager B in 2013. In a fire station the station manager holds the most senior role but Watch Manager B is the most senior role reporting to the station manager. As Watch Manager B the Claimant had line management responsibility for his watch and Crew Managers and firefighters on his watch reported to him. The Claimant's line manager, the station manager at the material time, was Mr L Rogers.

Contract

16. The Claimant's contract of employment provided [HB84-85]:

Your place of work will be determined after your successful completion of the Basic Recruit Firefighters Course but you are employed in the service of the Avon Fire Brigade and you are liable to be required to work at any of the Brigade's establishments.

[...]

Additional Particulars

Your terms and conditions of employment (including certain provisions relating to your working conditions) are covered by existing collective agreements negotiated and agreed with specified trade unions (see paragraph 11) recognised by this Brigade for collective bargaining purposes. These agreements are embodied in the National Joint Council for Local Authorities' Fire Brigade's Scheme of Conditions of Service (The Grey Book) as well as in other documents available to you at your place of work, or in the Personnel Section. Variations in your terms and conditions of employment may from time to time result from negotiations agreed with unions and any such changes will be separately notified to you, or otherwise incorporated in the documents to which you have reference. The Avon Fire Brigade undertakes to ensure that any future changes in these terms and conditions will be recorded for you to refer to within a period of not more than one month of that change. The principal conditions at the time of issue of this statement are set out in this document and for any subsequent amendments, please refer to the agreements mentioned above.

[...]

12 Grievance Procedure

If you have a grievance relating to your employment you should refer to the procedure outlined in the Scheme of Conditions of Service.

13 Disciplinary Rules

The disciplinary rules applicable to you are contained in the Fire Service (Discipline) Regulations currently in force. Any breach of disciplinary rules will render you liable to disciplinary action.

[...]

16 Equal Opportunities

You should have received a copy of the Brigade's Equal Opportunities Policy Statement to employees. If you have not, please contact the Personnel Section and a copy will be sent to you. It is essential that you read this document carefully as you will be required, as a Brigade employee, to carry out your duties under the terms set out in the policy statement at all times.

Policies

17. The Respondent's service values labelled "*Values, Ethics and Behaviour Framework*" were at HB572.
18. The Respondent has a Grievance Resolution Procedure which provides (amongst other things) [HB445]:

[...]

Employee should raise grievance with their line manager, unless the grievance is with the line manager. In this case that person's line manager or another person of similar status should be approached.

2.4 The South West Region Fire and Rescue Authorities (SWFRA) are committed to fair working practices. They are determined to ensure that no employee receives less favourable treatment through this policy on the grounds of sex, gender re- assignment, age, marital status, colour, race, culture, nationality or other ethnic or national origin, disability, sexual orientation, political or religious belief. SWFRA Race Equality Scheme will assess the impact on the outcomes of the grievance process for employees across all racial groups.

2.5 SWFRA are extremely positive about disabilities. Should the employee or their representative have a disability that requires assistance in any way, they are requested to inform the Authority in advance of any meetings, interviews or hearings in order that whatever reasonable adjustments are required or requested can be made.

19. The Respondent, at the relevant time, managed both conduct and performance problems under its Discipline Policy [HB503].
20. The policy included a flow chart which had as the top steps: 1. "*Alleged*

Misconduct. Poor Performance or Attendance issue reported/ occurs” and flowed into a subsequent box labelled “Line Manager to determine if issue is a serious or minor”. For the purposes of this judgment it is only then important to note that if the issue was categorised as serious then the chart split into a flow under a box labelled “SPOC or other to consider any further appropriate action which may include suspension”, then to “SPOC to nominate Line Manager or other manager to conduct investigation into discipline issue”. The policy also provided, amongst other things:

2.1 This Policy applies to all Grey & Green Book staff. It has been agreed with the Representative Bodies and complies with ACAS guidance.

2.2 The aim is to achieve improvement and address concerns informally. Formal action will only be taken if informal action has not resolved the problem or if the issue is sufficiently serious to warrant immediate escalation. A Senior Point of Contact (SPOC) is involved throughout the formal stages and will make decisions and advise on procedural matters

2.3 Except in cases of Gross Misconduct employees will not be dismissed for a first offence. Disciplinary action will not be taken until a reasonable and proportionate investigation has been conducted.

2.4 The line manager (informal stage) or Investigating Officer (formal stage) will establish facts and gather evidence relating to an alleged issue promptly. Employees will be made aware of any allegations against them as soon as is practicably possible, ensuring relevant evidence is secured first and not compromised.

2.5 Concerns regarding work performance or behaviour will be dealt with promptly by the line manager. Informal discussions will be held to set appropriate targets, standards and timescales for improvement. Where appropriate this can be documented in a performance improvement plan (PIP) or note for case. A copy should be e-mailed to the employee so they have a record of the discussion and actions required.

[...]

2.7 Bullying & harassment will be addressed as a potential disciplinary matter. Further details are contained in the Bullying & Harassment Policy.

[...]

2.9 The overriding principles are;

The employee will receive written communications at each stage of the process to confirm the issues and action to be taken. This will be by e-mail during the informal process and by letter for all formal stages (sent

to both the work e-mail and home address).

☐ *Formal investigations will have a terms of reference (agreed by the SPOC) detailing the facts (potential allegations) to be established. This will be provided to those interviewed as part of the investigation process.*

☐ *The individual will be advised of the detailed specific evidence and allegations against them once the investigation has concluded and before any disciplinary hearing.*

☐ *The individual will be provided with documentary evidence, including an investigation report, explanatory letter and any associated evidence when invited to a formal disciplinary hearing.*

☐ *The individual will have the right to state their case within the discipline hearing, prior to a decision being reached, and may provide evidence, mitigation and/or witnesses to support their case.*

☐ *All formal stages of the process will be conducted by managers trained in the role of SPOC, Investigating Officer or Presiding/Appeal Officer. Guidance and training is provided to these Managers to ensure consistency.*

[...]

3 Summary of process

3.1 Line managers are responsible for setting standards and addressing inappropriate behaviour or poor performance. It may be difficult for the manager to assess if an issue can be addressed informally. Therefore, when appropriate, the line manager will commence an informal investigation and gather information to help make an informed judgement on the severity. If it is deemed necessary to record a note for case they should advise their own line manager so they are aware of the issue and actions taken and can provide advice if required.

If evidence gathered indicates the matter may be more serious or if there is any doubt about whether formal investigation might be more appropriate then immediate advice must be sought from a Senior Point of Contact (normally the Group Manager or Department Head). The SPOC will decide whether informal action should continue or if a formal investigation should be instigated. This will ensure managers receive appropriate support and advice and will help ensure consistency of application across the Service. The line manager should be kept informed.

[...]

Third Formal Stage

3.13 Where an employee continually fails to improve or maintain the expected standards, or if a matter is potentially gross misconduct the third stage will be instigated. This decision rests with the SPOC and a further investigation may be required to gather additional evidence prior to a disciplinary hearing. The employee will receive a copy of the investigation report and supporting evidence prior to a discipline hearing (see timescales in appendix 2). The sanctions available include dismissal.

[...]

5. Standards of Conduct

5.1 Examples of issues which may give rise to formal disciplinary action are listed in appendix 4. This list is designed to help staff and managers understand what types of issues could lead to formal disciplinary action. It is not intended to be a complete list. It is important to note that activities outside of work may be included if they have the potential to be linked to your employment and/or adversely impact the name and reputation of AF&RS.

5.2 Gross misconduct is regarded as misconduct which fundamentally breaches the contractual relationship between the employee and the employer. In cases involving the Police the SPOC will decide whether the investigation and any other internal action should be delayed pending the Police investigation or if it should continue conjunction with the Police enquiries. Any decision taken will be kept under regular review. A number of misconduct offences may collectively be deemed gross misconduct. Examples of gross misconduct are included in Appendix 4.

10 Sanctions

10.1 There are a range of disciplinary sanctions available to the Presiding Officer. They may award a sanction and also take appropriate managerial action, depending upon the circumstances of the case. The options available are;

- ☐ *A formal written warning of between 6-12 months duration.*
- ☐ *Demotion.*
- ☐ *Dismissal either with or (in cases of gross misconduct) without notice*

☐ *Loss of allowances or pay of up to a maximum of 13 days (this would only be applied in cases where financial loss to the Service and gain for the employee has been proven).*

Managerial actions may include;

☐ *A transfer to an alternative workplace/watch*

☐ *Removing eligibility to apply for an ADC or promotion for period of sanction*

☐ *A Performance Improvement Plan (PIP)*

☐ *Training, coaching or support*

☐ *Mediation*

12 Appeals

12.7 The outcome of the appeal will be either:

The case against the employee is upheld (in whole or part); the sanction awarded will be reviewed and may stay the same, increase or reduce.

☐ *The case against the employee is not upheld, in which case the disciplinary sanction will be removed.*

[...]

[HB523] Appendix 4 [...]

Potential gross misconduct issues

☐ *Being charged and/or convicted of a criminal offence outside of work, which is liable to adversely affect the contract of employment.*

☐ *Theft, misappropriation of, failure to account for or falsely claiming entitlement to payment, hours or benefits for personal gain.*

☐ *Corrupt, improper practice and offences of dishonesty, including provision of false information within employment.*

☐ *Gross or repeated insubordination.*

☐ *Fighting or physical assault.*

☐ *Bullying, harassment, victimisation or discrimination (for FBU members an “All Equal, All Different” investigation may also be conducted to assess whether FBU will provide representation. The*

AF&RS investigation may be suspended for up to 14 days to enable FBU to conduct their process).

- ☐ *Serious loss, damage to, or misuse of the Fire Authority's property, assets, documents or funds through wilful negligence or carelessness.*
- ☐ *Displaying or accessing pornography or any other offensive or obscene material in the workplace or using workplace equipment.*
- ☐ *Incapability at work through use of alcohol or drugs.*
- ☐ *Misuse of AF&RS ID cards, image or name and/or bringing the Service into serious disrepute.*
- ☐ *Serious breach of Health and Safety legislation, policy or rules.*

CPD terms

21. The terms governing CPD payments made to the Claimant (which it was said in evidence amounted to £100 per month) were as follows [HB88]:

I understand that receipt of the CPD payment is dependent upon maintaining my competence and adhering to service values. I am aware that this payment is not an automatic entitlement and that it can be withdrawn. I have read and understood the CPD guidance provided on the Intranet and am aware of the criteria used to assess eligibility for CPD. I understand that this statement must be signed in order to be eligible to receive the CPD payment and that this will be placed upon my file as a record. I accept that by accepting my CPD payment I must take personal responsibility for:

1) Maintaining and developing my professional competence through day to day experience within the role or attendance at appropriate training courses and events.

2) Operating in a way that is consistent with service values, particularly in regard to relationships with colleagues and communication with the public.

3) Committing to achieving a high level of attendance at work.

4) Committing to achieving my personal and station/departmental objectives.

5) Championing change and managing the performance of individuals and teams as required (Crew Managers and above only).

2014 grievance

22. In 2014 the Claimant was involved in a grievance investigation [HB91]. The Claimant accepted in evidence that as part of that grievance investigation a

question had arisen as to whether a disciplinary should be started in respect of the Claimant [HB97]. He accepted that from that experience he was aware that disciplinary allegations could flow to a person being interviewed in respect of a colleague's grievance.

17 July 2021 - Incident between SA and DD

23. On 17 July 2021 there was an incident between a female firefighter (SA) and a male Crew Manager (DD). There had been problems in the working relationship between SA and DD. SA had approached the Claimant to complain about DD's behaviour towards her. The Claimant in turn spoke to DD about SA's complaints and described DD as appearing 'shell shocked'. The Claimant arranged an informal 'mediation' meeting between DD and SA. The Claimant described DD as 'mildly aggressive' in his tone towards SA.

29 November 2021 complaints

24. On 29 November 2021 SA spoke to the Claimant about further concerns she had in respect of her working relationship with DD. The Claimant did not consider SA's verbal complaints to be a formal grievance. On 13 December 2021, having not heard anything further from the Claimant, SA submitted a formal and extensive grievance. SA commenced sick leave from around that time until her employment ended in May 2022. She submitted an employment tribunal claim alleging discrimination and harassment against the Respondent and DD as a named individual.

January 2022 - informal grievance interview by Mr Rogers

25. A Mr L Rogers conducted an informal interview with the Claimant in respect of SA's grievance on 25 January 2022 and sent the Claimant his notes of what the Claimant had told him in an email [HB102-104]. The Claimant did not subsequently complain about this interview. The email records (amongst other things):

Simon recalls a conversation with [SA] when she asked to speak to him on 17th July 2021. This conversation was about [DD] how she had felt he 'treated her like the probie, not respected her, belittled her and put her down'

It was Simons understanding this was not an informal grievance submission but a conversation about [DD]'s behaviour. Simon stated he spoke to [DD] who was 'shell shocked and thought this was out the blue'.

Simon stated that he asked for a written submission from [SA] and that [SA] had stated 'no as she did not want to this to go any further'

Simon arranged a quick mediation meeting as he was going DD, this was conducted in the yard as there was no privacy on station due the building works.

During this meeting he described [DD] as being mildly aggressive in his

tone.

However both [SA] and [DD] had both put their points across.

Simons feelings after this meeting were that he felt that things had moved forward and did not schedule a review meeting at that time

As far as Simon can recall this meeting was not witnessed.

Simon stated due absence and annual he and [SA] had worked very little together since joining the watch.

Simon feels in hindsight he should have insisted on a written submission.

26. I accept Mrs Martin's evidence [SMWS8-11] that at this meeting Mr Roger's read out SA's grievance to the Claimant so that he knew the allegations it contained.

2022 – independent grievance investigation commences

27. Ms A Feeney was SPOC (Senior Point of Contact) in respect of SA's grievance. She is no longer employed by the Respondent and did not give evidence at this final hearing. I accept Ms Collins' evidence [SCWS5-6] that the SPOC is involved throughout the formal stages of a discipline process and will make decisions and advise on procedural matters. The SPOC is not responsible for undertaking the investigation or making the decision regarding awarded sanction.
28. Mrs Martin is an HR Consultant and Director of Narrow Quay HR. Narrow Quay was instructed by Ms Feeney to investigate SA's grievance. Mrs Martin said Narrow Quay was instructed on 5 May 2022 but it must have been before that date because she interviewed the Claimant on 22 April 2022 [SDWS2, HB134]. I accept Mrs Martin's evidence [SMWS5] that it was a complex investigation requiring her to consider 23 separate incidents. The terms of reference for her investigation were [HB216]:

3.3.1 If there is evidence that SA has been bullied, harassed and/or treated inappropriately by any members of her Watch due to her gender or any other factor.

3.3.2 If the Watch and Crew Manager have carried out their line management duties correctly and appropriately and addressed any concerns SA raised in accordance with the relevant processes.

3.3.3 If the Watch and Crew Managers have taken the appropriate actions to ensure the culture at Avonmouth Green Watch is inclusive and welcoming towards SA and other employees.

3.3.4 During your investigation interviews you should ask witnesses about the systemic issues raised by SA to enable the Service to consider whether it is appropriate to widen the scope of this investigation to

consider these matters or consider whether it would be appropriate to commence a separate investigation.

22 April 2022 - Mrs Martin interview of the Claimant

29. I accept Mrs Martin's evidence that she conducted her first interview with the Claimant on 22 April 2022 and that references to it taking place on 29 April 2022 are not accurate. Notes of the interview were taken by a Ms Noto [HB116-130].
30. The Claimant was invited to this meeting by email of 14 April 2022 [HB107-109] which included the following:

I am contacting you on behalf of Angela Feeney to inform you that we have commenced a formal workplace investigation into allegations made by Firefighter [SA]. A formal grievance about the culture and alleged inappropriate discriminatory behaviours within Avonmouth Green Watch, and more widely, have been raised and you have been identified as someone who may be able to assist with the enquiries.

[...]

I am aware you may want Steve McGreavy (FBU) to accompany you and you will therefore need to check his availability.

This is currently an investigation under the grievance (not discipline policy). Due to the confidential nature and the fact that a number of individuals are named in the grievance we are not able to provide you with a copy in advance of your interview. Sarah will talk you through the areas of the allegation where we think you may be able to assist. Sarah can also answer any specific questions you have at that time.

Firefighter [SA] has also submitted a legal Employment Tribunal Claim which contains similar allegations. Narrow Quay HR are not dealing with the Tribunal and are only investigating the grievance. However, the interview notes produced as part of this investigation process may also be used by the Service for the legal process, but this does not mean you will need to attend a Tribunal. As legal witness statements can require an oath, it is particularly crucial to ensure that the evidence and information you provide during the grievance process is full, honest, factual and can be relied upon within any subsequent proceedings.

31. I accept that this interview was more relaxed than a subsequent interview undertaken by Ms Martin on 23 August 2022 and which focused on more specific topics.
32. I accept that it is probable that Mrs Martin did explain the preliminary matters set out at the start of the record of the meeting (on which the Claimant was given the opportunity to comment). The notes record the following, amongst other things, being explained at the outset of the meetings [HB116] and the Claimant

accepted in evidence that the first paragraph was said at the meeting:

Following this investigation, depending on what happens and without pre-judging any outcome, it is possible that these notes could be used as part of another formal process e.g. the organisation's disciplinary / grievance process or an external legal process. There may therefore be circumstances where others may see your notes if this is necessary in connection with a further process.

I may also need to refer to comments made by you in this interview in conversation with others as part of the investigation for the purposes of ascertaining further information and / or determining factual accuracies.

The interview will conclude with an opportunity for you to clarify, emphasise or add to any matters that have been discussed or that you want to discuss.

You should draw to my attention to information that you believe to be relevant.

You should be honest and truthful in your responses.

33. Although the script does not precisely state that the Claimant himself might be subject to a disciplinary process based on the notes of the meeting I conclude that the Claimant did know, before the interview, that the matters that were the subject of the interview might lead to a disciplinary process of which he might be the subject. I reach that conclusion based on what was said at the start of the meeting, the Claimant's earlier experience in 2014 and the fact that, before the interview, on 20 April 2022, he had sent the following email [HB106]:

I am still waiting to have confirmation that an FBU rep will be able to attend the meeting. I am reluctant to have the meeting without my FBU rep present, due to the fact my statement will likely be used in a discipline case and an employment tribunal.

I will keep you informed when I know more.

34. I consider that the Claimant's keenness to have an FBU representative with him suggests that he knew that there could be personal repercussions from the interview. I do not accept that was solely because of SA having brought an employment tribunal claim.
35. In cross examination the Claimant was asked whether, if the words 'against you' had been added after the words 'further process' at the end of the first paragraph of the investigation introductory script quoted above, would that have led the Claimant not to be open and honest. The Claimant replied that he would have had more consultation with his FBU representative.

Culture in the Claimant's watch

36. As regards the culture in the Claimant's watch, the notes from the interview of the Claimant on 22 April 2025 record [HB118 onwards]:

11 Is the term 'Fireman' used frequently by the Watch at Avonmouth?

It would be used and I think it is used quite commonly, rightly or wrongly. I remember not long ago speaking to one of the HR staff who was female and they used the term 'Fireman' - I remember saying 'you can't call me that'.

I wouldn't say our Watch use it more than any other Watch would .

12 If yes, do you think this is the correct terminology to use?

I'm old fashioned. I don't use it, but I don't see a problem. I think some people say 'female firefighter' but you don't say 'male firefighter'. A firefighter is just a firefighter.

It's pretty obvious to me that that term should not be used anymore.

13 If you agree the correct term is 'Firefighter' have you ever challenged the use of the term 'Fireman' when you have heard it?

I don't think that I have challenged it. Because it is commonly used. I might joke 'you can't say that'.

14 As watch manager do you think it is part of your managerial role to challenge it?

Yes.

15 Going forward if you heard that terminology, would you challenge it?

I think I would now. As I think it is now more clear that people are upset by it. I haven't seen it causing offence, but I think maybe it has.

16 Do you think if someone expressed to you that they found it offensive that you would have taken a different view?

Definitely.

17 [SA] states that in late May, early June 2021, Green Watch, Avonmouth, were outside doing a drill using the wrecker. She said 'FF [TF] was on the controls of the Hi-Ab, and my crew manager, [DD], was standing next to me. Tom was in his fire kit, and I complimented him in a fun way about his impressive moustache.'

Do you remember this occasion at all?

No. I don't think I was there.

[...]

19 Do you recall a conversation around the mess table about the highest ranking females where WM [DC] was named, as was another WM in Weston-Super Mare, and a crew manager, who was described as "A Stick with Tits, who only got the job because she is female"

No. I don't recall that.

20 Did you hear about it afterwards?

No.

21 How do you feel hearing that sort of sentence - would you think it is appropriate?

Totally not.

22 Would you consider it as sexist?

Yes.

23 What would you do if you heard that?

I would challenge it at the time, with more emphasis if a female were present.

24 Do you think you have heard a firefighter use demeaning language towards a female?

No.

25 You don't hear sexist language?

There could be jokey. It is not squeaky clean all the time, but I think it is respectful.

26 [SA] refers to a conversation that took place on 16th July 2021. She says, 'A few members of our watch were outside whilst [THE CLAIMANT] was discussing a fellow manager at Clevedon, having come off of a job with Clevedon. was talking about the Clevedon WM and was saying that his daughter had got into this brigade, and CM [DD] immediate replied with a smirk, kicking the floor with a cigarette in his mouth and said "is she fit". Do you recall with conversation?

Not really. I can see someone saying it. It could have been said, but it is not appropriate.

SB additional comment added by email following interview: For 10 months I carried out a secondary contract at as WM at Clevedon. Part of my role was to interview possible recruits.

I interviewed my CM's daughter, and she was successful, on merit, having fulfilled the criteria. She is now a serving FF. I strongly oppose any suggestion that she got the job through being female or 'fit'.

27 Have you heard CM [DD] make other comments about female firefighters being sexually attractive? If so, please can you provide more details?

No.

Events on 17 (recorded as 16) July 2021

37. As regards events on 17 July 2021 the note from the hearing on 22 April 2022 record [HB120]:

29 [SA] states that following the comment made by CM [DD] she was then I then was sent detached to a different station. She says that as she was being sent out she said to you, 'I had had enough of this and told him what had happened, and how CM [DD] was belittling and sexist.' She says she called over FF [W] 'who backed up what I had said about CM [DD] belittling and not respecting me.' Please can you tell me your recollection of this conversation in terms of what [SA] said to you and what FF Wilton said to you?'

I can recall it, but not in great detail. I thought that happened on the 17th July because that was when I had a conversation with [SA] to say [DD] was belittling her and treating like a probationer?

30 Tell me to the best of your recollection what you remember?

We were on the nightshift. It was my last nightshift in the watch before I had a month off on leave. I was detached out and was being sent to Temple. I was waiting to go and [SA] came to me stating that she had issues with [DD] - no respect, belittling her, putting her down, and made reference to promotion. I think there was an incident where they were doing some training and [DD] made a point of saying to Tom and [SA] 'you better listen to this, you might learn something'.

[SA] and I had a discussion about it. It was not easy in that station, we were in the middle of a refurbishment, there was no office, so we were in the yard and she told me everything.

I asked if she wanted to put it in writing and go formal. She said that she

did not want to put it in writing. I then went to [DD] to ask his side as I couldn't ignore the concerns brought to me.

31 Do you remember her calling over FF [W]?

No, but I think there was some conversation between them. He mentioned to me that she was not happy. I've known him for over 20 years and he is very level headed. I trust his judgment.

She did not want to take it any further, but wanted it dealt with. I spoke to [DD] and hit him with the facts, and he was really shocked. He was quite agitated by the conversation, and you could hear the shock in his voice and he went pale. I was explaining that I would like to get them together so they can talk about how they are feeling. I think that [SA] then came out of the back. [DD] said we could do it now and called her over, so the three of us met and I attempted to mediate their discussions. I let them speak, and tried to direct it in a way. They were talking and [DD] got mildly aggressive as she got defensive. He said she was lazy and not competent. I said this wasn't going well, to try and calm it down. They both said their piece. I thought they were getting somewhere. The heated part did not last long, but there was no way that I could go on detached and leave this situation on the watch. I actually phoned up the main control and said they would have to wait for me, as I'm not going yet and leaving the situation here. I think I made that call before I spoke with [DD].

32 Did you hear the entirety of the conversation between [DD] and [SA]?

I'd say yes.

33 How long did you say it lasted?

10-15 minutes.

34 How did it end?

I felt that it ended okay. It was along the lines of [DD] saying '[SA] we'll get through this' and there may have been some gesture, like a fist pump or something. I felt that it was okay. I asked if they were okay and felt happy to leave them.

[DD] text me later on in the day at 22.24 so say that they had another chat, it all went well and it seemed okay. [SB sent text message to SM].

I returned from my month off and didn't think of it again.

SB additional comment added by email following interview in respect of paras 29-34: *I would like to add that, with what information I*

had at the time, my actions were appropriate. SA did not want anything recorded or to go formal, so it was addressed at the time and I was led to believe by both parties that it had been somewhat resolved.

35 Have you dealt with grievances in your role? If so, how often roughly and in what capacity? Being the initial person receiving grievances from those you manage?

Investigating them? Making decisions about whether they should be upheld or not?

Yes I have been involved in some. It doesn't happen very often. Maybe every few years.

The first one I was involved in was as a witness which was a big case and I have issues with the way that I was treated in that process. I was in a team of 4 females and one other male loosely associated in the team. There was an allegation of bullying and I didn't see it.

SB additional comment added by email following interview: *I don't agree with the phrase 'I didn't see it'. I feel there is a suggestion that there was bullying, and I didn't challenge it, this wasn't the case. [Simon - in respect of this comment, it might be better to amend the original paragraph if you think it was recorded incorrectly and that isn't what you said? Can you recall what you would have meant in respect of the allegation?]*

38. On 6 May 2022, Mrs Martin sent a copy of the draft interview notes to the Claimant. I accept that Ms Noto would have tidied the note up from the notes she typed at the interview, and she then would have emailed them to Mrs Martin to check before they went to the Claimant [SMWS33].

39. The Claimant replied on 31 May 2022 [HB110-112] saying:

"My delay has not been an intentional as at times I have felt somewhat overwhelmed with the situation. I feel that my integrity and character have been brought into question and doubt cast on my ability to manage a watch effectively. I have, and will, continue to be open and honest in my statements. I notice that some of the interview has not been included in the notes, I suspect due to irrelevancy."

40. Having offered to ask the Respondent to contact the Claimant about support that might be offered to him (which the Claimant did not take up), on 1 July 2022 Mrs Martin asked the Claimant some additional questions to which the Claimant replied on 4 July 2022 [HB 578-579].

23 August 2022 – Mrs Martin's second interview of the Claimant

41. Mrs Martin met with the Claimant for a second time on 23 August 2022 to ask some more focused questions on the events of 17 July 2021.

42. Notes were prepared of that meeting which, insofar as relevant record [HB573-577]:

1. I would like to ask you a few more questions about the incident that took place between DD and SA in the yard. I'm keen to build up a clearer picture.

2. When we spoke last you said, 'They were talking and [DD] got mildly aggressive as she got defensive' This mirrored wording you used in the initial interview with Lee Rogers and I asked you what you meant and you said 'the body language, puffing his chest out, tensed up. He was saying things that she did not agree with.'

3. I'd like to unpick that a little bit more if that's okay, possibly by reference to a drawing or you demonstrating it for me. What do you mean by tensed up?

He really just looked tense. He looked alert, his eyes were wide. He was quite surprised by allegations. He was defensive, in an alert kind of way.

4. Were his limbs tight?

Yes.

5. Were his arms raised or by his side?

I can't remember. They were just normal body movements really. I can't really remember though.

6. Was he gesticulating?

[SB demonstrating gesticulating, arms not up in the air over his head, but also not down by his side].

7. Was he pointing?

No.

8. What was his expression?

Surprised. He was a bit pale in a way.

9. Did he change during the conversation?

Not really. There was some element of confusion, he was surprised that he was being challenged. It was mild aggression in a defensive way.

10. What's mildly aggressive to you might be different to me, so I am just trying to understand what that term means to you.

There was never any threat of contact. I never thought they were going to have a fight or anything. There were not that close to each other or anything.

[SB and SM acting out in the room how close SB thought they were stood together - they were standing apart half a meter.]

He was moving around. Saying 'what are you talking about?' and things like that.

[SB sketching the location for SM and indicating where they each were.]

I think he was over on the wall by the steps, but that's all gone now. I reckon I was further back than half a meter. I am sure she was hanging around a bit near the engine house beforehand. I had already spoken with [SA], then I spoke with DD and said we need to sort this out and talk about how people are feeling.

11. Do you think she was hanging around there because she knew what was happening?

Yes, I had asked her if it was ok to talk to DD. It could have been due to the start of shift that she was there, but I think it was because she knew what was happening. He saw her there and called her over. That part was a bit uncomfortable, it was not how I planned it and DD sort of took over. He called her over and said 'ok, come over lets sort this out now'.

12. How was his tone?

Quite normal, I can't remember it being aggressive. Then she came over and it moved across a bit, I think I remember him sitting on the wall for a bit. I let our Control know that I wasn't leaving yet.

13. I wanted to know at what point you made that call?

I'm positive it was in between, it was after I had spoken to [SA], I phoned up Control, then I spoke to DD, then we spoke all 3 of us.

14. Did DD speak with a normal tone of voice?

Yes, but still agitated. It was normal for the time, there was a bit of urgency in his tone. He was under pressure, there were serious allegations against him.

15. Let's talk more about the term 'mildly aggressive'. So he was tense?

Yes.

16. He was moving his arms around?

Yes.

17. There was never any physical contact?

No.

18. DD never got right up in her face?

No. It never got that far, I would have stopped it if it had got to that. It was in each other's personal space, but not close. His voice was quite raised, but not shouting.

19. Can you give any more colour to description of how he was presenting?

He was straight to her, had a confrontational type of stance. He was just stood there, a bit tense moving his arms around and saying what they spoke about.

20. Had you ever seen DD like this before? If so, when?

No. It was different how he normally spoke to people, things were said he didn't agree with.

21. Did [SA] give the impression to you of being scared?

No.

22. Did she back away?

I don't think so, not that I recall.

23. Did her voice give away any signs she was worried or uncomfortable?

No.

24. Did what she was saying give any signs she was worried or uncomfortable?

Not really, no.

25. How was she presenting?

She was giving it back a bit as well as far as I remember. They were equally fighting their own corner. I don't remember her side what she said so much. I think DD was doing more of the talking to start with.

26. Nothing in the way it unfolded that made you think that you needed to step in and stop it?

No.

27. What would have made you think that?

It would have had to progress much more than what it was. If someone was moving up close and the other person was backing away, or the use of aggressive language and voices really raised. I didn't think it was going that well, but I didn't expect it to, to be fair. I did say that comment in a bit of a sarcastic way at the time.

28. If you had looked at a distance would you have thought they were having an argument?

Not really no, more of an intense chat than argument. Or thinking 'what have they done wrong?' as they were in the yard with me.

29. You said earlier that he was still but you also said he was moving around?

[Simon acting out how DD was in the room and showing movement from side to side].

30. Did he have clenched fists?

I can't remember seeing that. That would have been a bit of a red flag.

31. You said he was puffed out?

Well he is quite a slight bloke isn't he. [Simon acting out how DD was - pushing his chest out].

32. So he was trying to make himself look bigger?

Yes, I would say so.

33. But not like he was going to punch her?

No, nowhere near that.

34. Did you speak to [SA] or DD first after this?

I can't remember. I did write some bits down, [SB checking his notes.] I don't think I spoke to each on their own, I spoke to them both and said 'are we getting somewhere now?' Then I left.

Then DD text me later on. You've got that text. I thought we had got somewhere.

35. Did you then go on leave?

Yes, I then had 28 days off. That's why I needed to get something sorted out.

When I saw how they reacted to me and how Watch was working when I got back, there wasn't something obviously wrong still. Then we didn't actually work together that much, we were together very, very few.

36. Do you have anything to add?

Nothing on that particular incident to add. But last year's objectives were now irrelevant, promotion to crew manager still of interest. Put her forward for SWAH instructor and trauma instructor.

[...]

43. Mrs Martin sent the Claimant the notes of this interview 12 September 2022 but did not get a reply [SMWS37, HB578].

3 May 2023 – Mrs Martin finalises her report

44. Nearly 8 months then passed but by 3 May 2023 Mrs Martin had finished her investigation report and she sent it to Ms Feeney. It was a long report [HB131-213] and I was referred to key passages in the report. Sometimes the passages I was referred to were repetitive of other passages in the report (the same content appeared in more than one part of the report). I record the passages that I was referred to and which I have taken into account but have not quoted all of those passages:

[HB123-124]

[...]

[HB136-137]

2.33 Area of complaint 5: Poor examples set by managers and sexist comments

2.34 SA alleges that sexist comments are made by the Watch. She refers to one example of a female Firefighter being called 'a stick with tits'. She alleges that SB and DD do not challenge this behaviour and DD actively joins in.

2.35 I asked each member of the Watch if they had:

2.35.1 ever overheard Avonmouth Green Watch make any demeaning comments about women?

2.35.2 ever overheard Avonmouth Green Watch making

comments or jokes that relate to old fashioned stereotypes about women?

2.35,3 ever heard the terminology 'snake with tits' or 'stick with tits'?

2.36 The evidence I have gathered corroborates SA's allegations about demeaning or offensive comments being made about women. The evidence suggest that this mainly takes the form of jokes based on stereotypes of women which are intended to be in a light hearted or jokey way, commonly termed 'banter'.

2.37 The evidence from two witnesses (namely DD and DE) also suggests the existence of demeaning and offensive comments being made in the context of Watch members 'venting' about wives and girlfriends, but this did not appear to be a commonly held view amongst the Watch as a whole.

2.38 Banter' in the workplace is very common. However, as the Service will no doubt be aware, what one person finds to be light hearted and humorous banter could to another person be discriminatory or offensive. It is very much a matter of that individual's perspective.

2.39 The evidence does not corroborate the use of the term 'stick with tits'. Whilst SA could not identify the individual who said it, I interviewed all members of the Watch and no-one admitted to having used the term or having witnessed another Watch member used the term.

2.40 There is therefore a conflict of evidence here. I found SA to be a credible witness. Equally, my feeling when I interviewed the witnesses was that they were genuinely surprised to hear that terminology. Overall, therefore on the balance of probabilities, taking into account the consistency of evidence from all other members of the Watch, I find that the evidence does not support that the term was used.

2.41 In terms of the conduct of DD and SB in setting a poor example, DD's evidence does suggest that if anyone did make a nasty comment about someone in their personal life that he may not challenge that comment unless someone spoke up and said they were offended, in which case he would. The Service may wish to consider whether this is an appropriate distinction for a Crew Manager to make.

2.42 In respect of comments intended to be light hearted and jokey, the evidence does support that this happens and it does not appear from the evidence that SB or DD have challenged this type of behaviour when they have witnessed it.

[HB139-140] (the incident in the yard):

2.63 Areas of complaint 9 and 11: DD ignoring SA and the subsequent conversation between SA and DD in the yard.

[...]

2.65 The second part of the complaint related to DD's conduct towards SA in the yard. In my view, this is one of the primary areas of complaint. There is a conversation between DD and SA in the yard in which the concerns SA has raised with SB are discussed.

2.66 There is conflicting evidence between SA and DD in respect of this incident both in terms of some of the language used and the way in which DD was behaving towards SA. SA's description of DD's behaviour is more serious and aggressive than DD has admitted to and notably includes feeling physically threatened.

2.67 The incident was witnessed by SB. I felt that SB was trying to portray the incident as not being that serious, an 'intense conversation' however I consider this is at odds with the description of DD that he then gives. SB describes him as being mildly aggressive, being tense, puffing himself up, gesticulating his arms and being stood straight on to SA about half a metre from her. I have stood half a metre from someone to see how close this feels and it does feel quite close. If that person was also doing the things DD was doing, I consider this would feel intimidating.

2.68 I consider on balance that DD was probably behaving in the way SB has described, but that SB has sought to downplay it because it has the potential to reflect badly on him as Watch Manager.

2.69 Based upon my review of the evidence, I certainly consider it possible that SA may have felt physically threatened by DD.

2.70 Whilst I appreciate that DD may have felt wrongly accused, and that this may have made him feel upset, he is a Crew Manager and SA's line manager and this is not an appropriate way to behave in my view.

2.71. In section 5 I have outlined potential examples of misconduct and gross misconduct. Whilst these are non-exhaustive, I consider the ones that potential apply in this scenario are:

2.71.1 Inappropriate conduct/behaviour which contravenes our Service Values (namely respect, role modelling the best standards of behaviour); and

2.71.2 Fighting or physical assault.

2.72 Whilst I did not consider there was a physical assault, I considered it was possible that SA felt there was the threat of it.

2.73 *From a managerial perspective, whilst I can understand that SB saw some value in allowing the two to clear the air and communicate their differences, based upon the evidence I have reviewed I consider SB misjudged the situation and having seen that DD was visibly upset should have taken steps to stop DD from speaking to SA until he had calmed down.*

[HB147]:

2.176 PART 2: *If the Watch and Crew Manager have carried out their line management duties correctly and appropriately and addressed any concerns SA raised in accordance with the relevant processes.*

2.177

[...]

2.182 *I consider that in circumstances where there had been this sort of exchange between a Crew Manager and more Junior Colleague, it would have been appropriate for SB to follow up in terms of escalating the issue to the SPOC or seeking the involvement of HR, particularly as he was then absent for 1 month so that it could have been considered and monitored as needed.*

2.183 *There is a question around whether SB admitted in interview with LR on 11 February 2021 that there was something not right about the way DD treated SA. Having reviewed the evidence, it appeared to me that there was a misunderstanding on LR's part. SB did not say this but was discussing a comment NW allegedly made to SB about the way DD treated her.*

[...]

[HB149-150]:

2.207 *Recommendations*

2.208 *I recommend the following:*

[...]

2.208.2 *The AFRS considers pursuing disciplinary action in respect of redacted text as a consequence of his conduct towards SA during the incident in the yard on 17th July 2021 and the comments made to SA in relation to TF and whether 'he did it for her sexually' and the 'is she fit' comment.*

[...]

2.208.4 That AFRS takes steps to address the performance issues that I have identified in respect of redacted text and SB.

2.208.5 That AFRS reviews its programme of training in respect of Diversity, Equity and Inclusion in order to it is delivering a full and effective programme in this regard.

2.208.6 That AFRS consider the wider cultural points that flow from this report and determine whether any further action is necessary.

[HB163-164]:

6.93 Area of complaint 2: Use of the term 'Firemen'

6.94 SA's grievance states as follows:

6.95 The term "Fireman" is used frequently and often on this watch, and although i know this is terminology that should be outdated, it is an ongoing example of sexism in this brigade. I have challenged the term Fireman, with a smile and a groan, every time it is spoken, however, on one occasion, a firefighter on my watch replied with "I will stop saying Fireman when they stop specifically recruiting only firewomen". That response shocked me hugely as the term "Fireman" was removed from political correctness in the 1980s -in this brigade this terminology is the norm,

6.96 SA described this as 'Sexism Shocked'.

6.97 In my interview questions to SA, I asked her which firefighter had replied "I will stop saying Fireman when they stop specifically recruiting any firewomen".'

6.98 She told me it was PW.

6.99 I interviewed every member of the Watch and asked then the question, 'Is the term 'Fireman' used frequently by the Watch at Avonmouth?' I also asked RR. Responses were as follows:

6.100 'I wouldn't say in my Watch it is particularly used, but it does get used in the service. I think sometimes years ago it was a title in people's payslips, so it was on their job role. I wouldn't say it was frequently used. But have I heard it said? Yes.' [DD]

6.101 'it would be used and I think it is used quite commonly, rightly or wrongly, i remember not long ago speaking to one of the HR staff who was female and they used the term 'Fireman' – I remember saying 'you can't call me that'. / wouldn't say our Watch use it more than any other Watch would.' [SB]

6.102 Yes. / think a lot of people in the job have been here for a long time and the term fireman is still used. And 'Fireman Sam' is still 'Fireman Sam', I don't think there is any malice in it,' [TW]

6.103 'No, I think most people call them Firefighters now. ' [DE]

6.104 Yes. When I talk to kids I would describe myself as I am a Fireman', but we are all Firefighters. My dad was a Firefighter as well so I've grown up using that term also. If you are a man and a fireman you are fireman. ' [TF]

6.105 'No. I think I sometimes slip up and say Fireman but then I've been in the service for 18 years, but that soon got stamped out. I wouldn't say it is said in a horrible way. I think we all try and use the correct terminology,' [HC]

6.106 'Not just Avonmouth. I have said it before. I hear it throughout the brigade. It is one of those words which is hard to get out of your brain really. I wouldn't say I heard it any more than what I would hear outside. I have definitely said it a few times and corrected myself. ' [RR]

6.107 Yes. It's not something that happens on a daily basis. It would be minimal but again someone would say 'you can't say that anymore'. But again it would not have been said in a serious way to affect the way that people were thinking, it would have been in terms of that is what we used to be called and one of the guys would have said it without thinking as that is what they would have said for however long. [DB]

5.108 'I use 'Fireman' a lot and there is a reason. I was having a conversation with someone and intentionally using the word 'Fireman'. At the end of the conversation I was asked why I used that and I explained that that would be the term that I use until they call us all firefighters. As they use the term 'Female Firefighters' and genderise it.... i was o 'Fireman' when I joined the service. On the TV they still call the cartoon Fireman Sam. When someone refers to an old-school Fireman, that would be the term they would use. [PW]

6.109 I use it..... it's not deliberate. When I joined I was a fireman. It doesn't mean anything. It's just what you use. They use the term female firefighters. ' [NW]

6.110 'We are still in a transitional period. I am conscious of it, but it would not be to offend. It's difficult as I've been taught to open doors for ladies and that is not meant to offend someone. When we do school visits they ask how many firemen are there, and I have to say no we are firefighters now. Probably, it is used because if we are not consciously thinking of it, it can slip out. There are so many terms within the service that just don't marry up, which is why i said it was transition. For example

there is something called a 'practical firemanship'. It's not been changed to a 'practical firefightership'. There are lots of terms that haven't been dealt with, i struggle with it personally, I would say that the term applies to guys and girls, and that it's use would not be to offend anyone. I am conscious of it and everyone is equal in my eyes [SR].

6.111 I also asked each person if they recalled SA reacting to the use of this terminology. The responses were:

[...]

6.121 in terms of manager response to the use of this terms (which is also relevant to allegation 2) SB stated I'm old fashioned. I don't use it, but I don't see a problem. I think some people say 'female firefighter but you don't say male firefighter'. A firefighter is just a firefighter. It's pretty obvious to me that that term should not be used anymore. '

6.122 I asked if SB had challenged the use of the terms. He said, I don't think that I have challenged it, Because it is commonly used, I might joke 'you can't say that'.

6.123 I asked, 'As watch manager do you think it is part of your managerial role to challenge it?'

6.124 SB confirmed that it was.

6.125 I asked 'Going forward if you heard that terminology, would you challenge it?'

6.126 He replied, I think I would now. As I think it is now more clear that people are upset by it. I haven't seen it causing offence, but I think maybe it has. '

6.127 I asked, 'Do you think if someone expressed to you that they found it offensive that you would have taken a different view?'

6.128 SB replied, 'Definitely.'

[...]

6.131 Findings and conclusions

6.132 The evidence is not entirely consistent across the board but the weight of evidence points more in favour of the terms 'Fireman' being used at Avonmouth Green Watch as well as across the Service. For some, it appears it is used accidentally as it was a term they would have used in the past and for others it appears that there is a feeling that they should still be able to use this term.

[...]

6.134 *The evidence also suggests that neither DD or SB have challenged the use of this term when they have heard it.*

[HB170]:

6.188 *[demeaning comments] 'When they come and vent about their wives and girlfriends...there might be the odd joke towards [...], '[...]go and do the dishes.'* [DD]

6.189 *[demeaning comments] 'Not demeaning. There could be jokey. It is not squeaky clean all the time, but I think it is respectful.* [SB]

6.190 *[demeaning comments] 'Constantly about their wives, but not with any venom, it's banter. General chitchat. I may say something about my husband, it's the way it is. fold fashioned stereotypes] I would imagine that they would. But everything is a big joke They would make jokes like 'you need smaller shoes so you can get closer to the sink', but it is all in jest. '* (DE]

6.191 *[demeaning comments], 'Not malicious. There is banter with everyone. When there are girls there - someone might make a joke, who is doing the dishes. It wasn't taken in a bad way and if it was, then it would be stopped straight away, [old fashioned stereotypes]. Those comments would have been made, but not with malicious intent. We do that with the cook, but we would not do it if it upset her. In the post if someone has said I've gone too far, I'm like 'okay''* [PW]

6.192 *[Demeaning comments] No. [Old fashioned stereotypes] No.* [NW]

6.193 *[Demeaning comments] 'Nothing that I can remember.' [Old fashioned stereotypes] 'No. But I've heard comments relating to unpleasant terms used for people with additional needs. I've challenged that and asked if they understood what the term they were using actually means and explained why it is inappropriate language. I think I'm good at saying when something crosses the lines. In fact, I think we are all quite good with that really.'* [TF]

6.194 *[Demeaning comments] No.'* [Old fashioned stereotypes] No.'[HC]

6.195 *[Demeaning comments] 'Nothing springs to mind. There is old joke here and there about women but I don't think of it as being demeaning. Can you give me any examples as nothing sticks in my mind. Someone used a derogatory terms of someone with additional needs and it was challenged by someone else in the Watch then and there. [Old fashioned stereotypes] There are jokes about women, but similar to other Watches. I don't think this Watch is a bad Watch. I wouldn't single anyone out within the Watch.* [TW]

6.196 [Demeaning comments] No, nothing at all. Nope.' [Old fashioned stereotypes]' / don't think so. No. ' [RR]

6.197 [Demeaning comments] No, We have got a watch where if that were to happen someone would say 'you can't say that'. I'd say that of Avonmouth Green Watch or around the service in general. [Old fashioned stereotypes] 'So nothing really springs to mind. I'm not going to say it hasn't happened, but it's not something that happens regularly or is said in a serious manner as if it was, it would be called out. Again, no particular incident that springs to mind. If it did, it would be quashed quite quickly. 1 [DB]

6.198 [demeaning comments] No. I've worked with quite a lot of women in the brigade and have mentored two, so I would challenge that.' [Old fashioned stereotypes] 'I wouldn't have said so. I wouldn't think they would exist. ' [SR]

[HB172]:

6.220 Findings and conclusions

6.221 The evidence I have gathered corroborate SA's allegations about demeaning or offensive comments being made about women. The evidence suggest that this mainly takes the form of jokes based on stereotypes of women which are intended to be in a light hearted or jokey way, commonly termed 'banter'.

6.222 The evidence from two witnesses (namely DD and DE) also suggests the existence of demeaning and offensive comments, including the term 'snakes with tits' being made in the context of Watch members 'venting' about wives and girlfriends, but this did not appear to be a commonly held view amongst the Watch as a whole.

6.223 'Banter' in the workplace is very common. However, as the Service will no doubt be aware, what one person finds to be light hearted and humorous banter could to another person be discriminatory or offensive. It is very much a matter of that individual's perspective.

6.224 The evidence does not corroborate that the use of the term 'stick with tits'. Whilst SA could not identify the individual who said it, I interviewed all members of the Watch and no-one admitted to having used the term or having witnessed another Watch member used the term.

6.225 There is therefore a conflict of evidence here. I found SA to be a credible witness. Equally, my feeling when I interviewed the witnesses was that they were genuinely surprised to hear that terminology. Overall therefore on the balance of probabilities, taking into account the consistency of evidence from all other members of the Watch, I find that

the evidence does not support that the term was used.

6.226 In terms of the conduct of DD and SB in setting a poor example, CD's evidence does suggest that if anyone did make a nasty comment about someone in their personal life that he may not challenge that comment unless someone spoke up and said they were offended, in which case he would. The Service may wish to consider whether this is an appropriate distinction for a Crew Manager to make.

6.227 In respect of comments intended to be light hearted and jokey comments, the evidence does support that this happens and it does not appear from the evidence that SB or DD have challenged this type of behaviour when they have witnessed it.

[HB177-181]

6.267

[...]

6.276

[...]

6.277 Allegation 11

6.278 SA's grievance states as follows in respect of area of complaint 11:

[...]

6.310 [THE CLAIMANT] witnessed some, if not all of the conversation, when he initially spoke to LR on 31 January 2021, he described DD 'mildly aggressive'.

6.311 He said, '[DD] was mildly aggressive in a defensive way, he was shocked by the allegations

6.312 He further said to LR that he did not witness any squaring up or physical threat and can't remember it getting that aggressive.

6.313 I asked him to expand on that when I first interviewed him and I interviewed again about it in August 2021. The comments below are from that interview.

6.314 He said, 'He really just looked tense. He looked alert, his eyes were wide. He was quite surprised by allegations. He was defensive, in an alert kind of way.... There was never any threat of contact. I never thought they were going to have a fight or anything. There were not that

close to each other or anything [SB demonstrated that they were about half a metre apart],... No. it never got that far, I would have stopped it if it had got to that, it was in each other's personal space, but not close. His voice was quite raised, but not shouting.... He was straight to her, had a confrontational type of stance. He was just stood there, a bit tense moving his arms around and saying what they spoke about. '

6.315 SB said DD was gesticulating with his arms.

6.316 I asked him what someone would have thought it was an argument if they had been stood some distance away and he said he would have regarded it as more of an intense conversation.

6.317 I asked SB what would have had to have happened for him to step in. 'He said, It would have had to progress much more than what it was. If someone was moving up close and the other person was backing away, or the use of aggressive language and voices really raised. I didn't think it was going that well, but I didn't expect it to, to be fair. I did say that comment in a bit of a sarcastic way at the time.'

6.318 He referred to the fact that DD is quite a slight person.

6.319 In respect of SA, he said he did not think she looked scared. He said her voice didn't give away any signs that she was uncomfortable and she was not backing away or showing other signs that she felt uncomfortable. He said, 'She was giving it back a bit as well as far as I remember. They were equally fighting their own corner. I don't remember her side what she said so much. I think DD was doing more of the talking to start with.'

6.320 I asked SB about the comments SA alleges DD made to her. SB recalled some of those comments, but overall recalled hearing fewer of the comments that DD was alleged to have made than DD admitted to saying. Of note is that SB did recall DD using the word 'liar', which DD denies, as he thought this may have been what prompted him to intervene and make the comment about the conversation not going well.

6.321 SB did not recall SA telling him that she thought DD was sexist or treating her differently because she was a woman. SB also did not recall SA making any comments along these lines during the incident with DD. As noted above, DD does refer to this in his evidence.

6.322 [...]

6.323 Findings and conclusions

6.324 [...].

6.325 The incident was witnessed by SB. I felt that SB was trying to

portray the incident as not being that serious, an 'intense conversation' however I consider this is at odds with the description of DD that he then gives. SB describes him as being mildly aggressive, being tense, puffing himself up, gesticulating his arms and being stood straight on to SA about half a metre from her. I have stood half a metre from someone to see how close this feels and it does feel quite close. If that person was also doing the things DD was doing, I consider this would feel intimidating.

6.326 I consider on balance that DD was probably behaving in the way SB has described, but that SB has sought to downplay it because it has the potential to reflect badly on him as Watch Manager.

6.327 Based upon my review of the evidence, I certainly consider it possible that SA may have felt physically threatened by DD.

5.328 [...]

6.329 [...]

6.330 Whilst I did not consider there was a physical assault, I considered it was possible that SA felt there was the threat of it.

6.331 From a managerial perspective, whilst I can understand that SB saw some value in allowing the two to clear the air and communicate their differences, based upon the evidence I have reviewed I consider SB misjudged the situation and having seen that DD was visibly upset should have taken steps to stop DD from speaking to SA until he had calmed down.

6.332 In terms of whether there was a discriminatory element to what SA was alleging and whether she communicated that to SB beforehand or DD during, I consider it more likely than not that she did. As mentioned earlier in this report, I consider that during the incident involving the lift rescue, which occurred shortly before this, SA told tf that she thought DD was treating her differently as a result of her gender. It therefore seems more likely than not that she would have mentioned it to SB and DD.

6.333 [...]

45. The report included the following recommendations [HB213]:

7 Recommendations

7.1 I recommend the following:

[...]

7.5 That AFRS takes steps to address the performance issues that I

have identified in respect of redacted text and SB.

7.6 That AFRS reviews its programme of training in respect of Diversity, Equity and Inclusion in order to it is delivering a full and effective programme in this regard.

7.7 That AFRS consider the wider cultural points that flow from this report and determine whether any further action is necessary.

6 May 2023 invitation to a disciplinary hearing

46. Ms Feeney then, based on Mrs Martin's conclusions, decided that certain allegations should be put to the Claimant at the most serious level of the Disciplinary policy (level 3) reserved for situations where [HB510] *"an employee continually fails to improve or maintain the expected standards, or if a matter is potentially gross misconduct"*. As Counsel for the Claimant said, the Respondent decided on this course of action only three days after the final lengthy report was produced and after a long period of investigation.
47. There was no further investigation but Ms Feeney asked Mr Gazzard to conduct the disciplinary hearing. Ms Feeney sent the Claimant a letter on 6 May 2023 as follows [HB254-257] arranging a disciplinary hearing for a month later on 6 June 2023:

Disciplinary action

[...]

I recognise that it has been some time since the matters under investigation, and since you were interviewed by Sarah, but due to the large number of allegations in [SA]'s complaint it has taken time to investigate these fully and, due to the interlinkages, it has not been possible to conclude some matters before the completion of the whole report.

The report findings show that a number of complaints about you have not been upheld by the evidence and there are also findings in respect to concerns about [SA's] performance and potential behaviours.

However, the findings do point to some of the complaints being upheld. Therefore, I am writing to advise you that, based upon the information, evidence and recommendations contained in the investigation report (copy enclosed), I have determined that you will be required to attend a Level 3 formal disciplinary meeting to consider potential performance and conduct issues which can be considered 'gross' under the Service's Discipline Policy (copy enclosed). As set out in the policy the outcome of a Level 3 meeting can range from no further action to up to, and including, dismissal.

[...]

I have appointed AM Luke Gazzard as the Presiding Officer and Alison Short, as the representative from HR. Sarah Martin will present her investigation findings during the meeting. The meeting will be recorded electronically and upon request you can be provided with a copy of the recording.

The allegations which will be discussed with you at the disciplinary meeting are based upon the information and evidence contained in the investigation report which will be sent to you shortly and within the timeframes set out in the Discipline Policy. The full investigation report is 84 pages long (significantly longer with witness statements) and includes personal information, allegations, and findings, on several other staff members. Therefore, your copy of the report has been redacted where appropriate but of course contains the evidence, findings and recommendations pertaining to you. If you require a further copy of your interview statement/s please let me know and I will arrange for this to be sent to you also.

The purpose of the meeting is to review the investigation findings in respect of your conduct and performance (both of which are dealt with under the Discipline Policy) and determine whether a formal sanction is appropriate in respect of the following allegations:

- You failed to effectively perform your duties as a Watch Manager by not challenging inappropriate, stereotypical, demeaning and/or offensive comments which were contrary to the Service's position on harassment and inclusivity, in particular repeated use of the term 'Fireman' and comments about women that could be deemed sexist.*
- You failed to effectively perform your duties as a Watch Manager by misjudging and mishandling the situation between [DD] and [SA] on 17 July 2021 which had the impact of a member of your staff ([SA]) feeling that there was a threat of physical assault from your Crew Manager.*
- You failed to demonstrate proper practice and honesty by seeking to downplay the incident above to the investigating officer because it had the potential to reflect badly on you as a Watch Manager.*
- Whether, on their own or in combination, your actions constitute a breach of the Bullying and Harassment Policy as it existed at the time (now replaced by the Dignity and Respect Policy).*
- Whether any, or all, of the above:*
 - o Demonstrates conduct which contravenes our Service*

Values and Behaviour Framework.

o Is behaviour that could bring AF&RS into disrepute.

o Have damaged our trust and confidence in the employment relationship.

If you require a copy of the Crew Manager role map and generic job description (which the Presiding Officer will have to inform their considerations) please let Alison Short know. The other policies and frameworks referred to above are available to you on the Intranet but please contact Alison if you have any difficulties locating them.

At the discipline meeting you are entitled to be represented by a fellow employee or Trade Union Official who is not involved in the grievance. [...]

Should you choose to call any witnesses to support your case, you should inform AM Gazzard not less than five working days prior to the Disciplinary Meeting date.

[...]

48. Shortly after receiving this letter the Claimant started sick leave from which he did not return.

22 May 2023 – Claimant's written reply to the invitation to a disciplinary hearing

49. On 22 May 2023 the Claimant sent a letter by email as follows to Mr Gazzard and Ms A Short [HB270-274]:

I am writing in response to my invitation to a disciplinary meeting, which is set to be held at 1pm on 6 June 2023 and the report prepared by Sarah Martin of Narrow Quay HR ("The Report") following the investigation, commissioned by Avon Fire & Rescue Service on 5 May 2022 and which I received on 15 May 2023 concerning the allegations made by former Firefighter [SA] ("FFSA").

Having now read the report and its conclusions in full, I consider it appropriate to make you aware of the concerns I have, relating to its findings and the decision by AF&RS to institute level 3 disciplinary proceedings against me. I have been advised that if this matter proceeds to an Employment Tribunal (which it inevitably will if I am dismissed following this meeting) then the Tribunal will find the below points relevant in reaching its decision.

- According to The Report (although I understand that further allegations were made in FFSA'S grievance/Particulars of Claim), FFSA made a total of 23 allegations, of which only three were found to have any evidential basis in The Report.

- Five allegations have been made against me directly (including false allegations that were later demonstrated to be untrue) but the advice that I have received is that the findings in respect of these allegations are based on questionable evidence and, in most cases, do not apply the full and correct tests in law.

- The advice I have received is that an Employment Tribunal will be bound to consider whether the offence taken by FFSA was objectively reasonable in the circumstances (which was not considered in The Report), which instead relies solely on a narrow consideration of whether, subjectively, she had been offended as she claimed, and this being largely based on the opinion of the author and not any substantive evidence. My view and the advice I have received in respect of this matter is that the offence claimed by FFSA was not at all objectively reasonable in respect of the matters set out in your letter dated 6 May 2023 and that the decision to institute level 3 disciplinary proceedings against me for the charges set out in your letter dated 6 May 2023 are both disproportionate and unfair, for the reasons I have set out below:

Use of the Term Fireman

a) In respect of the term "Fireman", no-one on green watch Avonmouth has ever heard (nor was it recorded in The Report as being so) FFSA ever say that she was offended by the use of the term "fireman".

i) I accept that, in hindsight, allowing the continued use of the term on watch has the potential to cause offence. However, as I set out in my response to the question posed in the investigation meeting held on 29 April 2022, I have spent 25 years in AF&RS, and I joined just after the transition from fireman to firefighter had taken place. Yet, since joining, the term "fireman" has been endemic. In my time in AF&RS, I have grown up with the term. It is embedded, not only in the fire service, but in society generally. It is a term that has been used interchangeably with "firefighter" as applying to both sexes by members of the public, staff within AF&RS' HR department, and firefighters (whether male or female). It has never been used with the expectation that it would ever offend anyone working within AF&RS. Indeed, I have not been offended by its use when members of the public, including mothers and children at community events, call me or any of my crew (female and male crew members) "firemen" or "fireman". Neither has anyone else complained.

ii) I should note that I have never heard it being used by AF&RS watch personnel to describe female crew members. It has been used in relation to firefighters who are male, not female. In my view, it is used in a similar way to describe "the postman". Factually accurate if the postman is in fact male, but also an embedded force of habit. I agree that, in line with service policy I should be, as a manager, seeking to pick up on its use if I hear it being said but if no-one complains to me about its use, it is easy

to overlook such a term when it is embedded and used in society in all walks of life. Indeed, there are many public service organisations that continue to use terms that have male descriptors, such as the BBC (see attached copy of identification card with role “cameraman” together with an attached copy of an AF&RS self-created document referring to a recruit as having held a role of “postman” before joining the service) and “Fireman Sam” is still broadcast in its original format.

iii) Although The Report concludes that this is an offensive term that I should not have allowed to be used, I do not accept (and neither does The Report find at paragraph 2.20) that FFSA was offended, where it concludes “The evidence does not support that [FFSA] reacted to the use of this term in the way that she has suggested in her grievance in terms of demonstrating shock or reacting to the term”. This is so particularly given that she regularly used language which I would consider to be far more offensive to others. Neither do I accept that it in the circumstances this justifies disciplinary action at level three in the AF&RS Disciplinary Policy.

iv) If there is found to be no subjective offence taken to the use of the term by the Report (as was the case) or it is otherwise found not to have been objectively reasonable for her to have taken offence, then no breach of the AF&RS Bullying and Harassment Policy has taken place.

Failing to Challenge Inappropriate Comments

b) I am being criticised for failing to challenge “light-hearted and jokey comments” (para 2.42) which were found to have been made by both FFSA and other watch members and were not found to have been intended to offend anyone and, (as per para 2.20 above) at no point did FFSA react or complain that she was offended by it. Jokey and light-hearted comments are a crucial part of maintaining morale in the watch environment (which I believe the author of the report to have a limited understanding of). It is an environment which is totally distinct from many other working environments. Without the maintenance of morale in such an environment, where watch members are routinely exposed to some horrific events and experiences, the health and wellbeing of the watch members, if stifled in this way, would rapidly deteriorate and sickness absence and long-term mental health issues would increase. A balance must be struck and, in my view, if someone complains, it stops. However, it is a difficult task to attempt to stop the accidental use of the term even though I now recognise the importance of making every effort to reduce such use.

c) The Report wrongly applies the examples set out in AF&RS’ disciplinary policy as matters of gross misconduct, insofar as they relate to the facts in this case [“fighting” and “threats of violence”] and without appearing to have considered the possibility of AF&RS looking to

consider any of my actions as merely misconduct (see my comment below).

There were no findings of “threats of violence”, or “fighting” having occurred in The Report. Rather, there was a finding based on FFSA’s complaint and the author of The Report’s own opinion (which was itself based solely on my description of the event) that author of The Report would have felt threatened and, by implication, considered “it possible that FFSA may have felt physically threatened by CMDD” (paragraph 2.69).

d) This conclusion completely fails to take account of the facts that:

i) Crew Manager [DD] (“CMDD”) is extremely slight in stature compared to FFSA and would have posed no physical threat to FFSA.

ii) There was no evidence provided by FFSA or any of the witnesses to this event that FFSA’s actions suggested that she felt threatened in anyway. FFSA remained in the personal space of CMDD throughout the discussion and was not seen to physically back away from him at any stage. In fact, she gave as good as she got.

iii) Had the discussion escalated to anywhere near being a “threat of violence”, there would have been an immediate intervention by me. Threats of violence are never considered as acceptable by any member of staff within AF&RS and simply would not have been happened as alleged.

iv) I have not at any stage sought to play down this event and any finding that I did, based on the honest and open evidence I gave, is perverse. The conclusions in The Report were based on my description of how CMDD was gesticulating when he was raising his voice. FFSA did not say that she felt threatened to me at the time or any time. I stated this in my investigation response and yet, The Report goes on to conclude, with no other facts or corroborating witness testimony, that FFSA may have felt threatened and that I had attempted to play this down. If The Report relies on my evidence to support the finding that FFSA “may” have felt threatened, then I fail to see how I had tried to play it down. I did nothing more than correctly describe the interaction between FFSA and CMDD to what it was: namely a heated discussion between two firefighters who each had their own issues and who had been given the freedom to express their views on this. If FFSA had felt physically threatened, then she hid it well from everyone. I am unable to see, based on this poorly supported conclusion, how or why I am facing a stage 3 formal

disciplinary for failing to effectively perform my duties as a watch manager and/or failing to demonstrate proper practice and honesty. I have been open and honest with all my responses during the investigation.

In summary, I make the following points, which should now be considered by the panel ahead of the disciplinary meeting to be held on 6th June 2023:

- There is no evidence that I breached the Bullying and Harassment Policy (now replaced by the Dignity and Respect Policy). Indeed, there is no allegation at all that I bullied or harassed FFSA either in The Report or in your letter to me dated 6 May 2023.

- At paragraph 5.4, the author of The Report refers to the AF&RS Discipline Policy (Appendix 6, p.243) and examples of conduct that may be actioned under the policy under the heading "Misconduct". These include "inappropriate conduct/behaviour which contravenes our service values". It should be clear from The Report that none of the findings against me fall within the heading of "Gross Misconduct", but should AF&RS persist with the allegation that my conduct at any stage contravened the service values then I will argue that in doing so, AF&RS's actions in pursuing a gross misconduct charge itself constitutes a breach of the service values and is both disproportionate and unfair.

It is also critical that the disciplinary panel familiarise themselves with the summary conclusions in Part 5 of The Report (page 20, paragraph 2.208.4) which set out the recommendations to AF&RS only that AF&RS "takes steps to address the performance issues that I have identified in respect of [redacted] and SB". There is no recommendation whatsoever that I be subject to disciplinary proceedings, unlike the recommendations immediately above in respect of CMDD. This suggests that a performance improvement plan or retraining might be an appropriate course of action. There is no basis for AF&RS to institute disciplinary proceedings against me, let alone level three disciplinary proceedings for "gross misconduct" for which I could be dismissed. Given these recommendations I would submit that taking disciplinary action against me in the circumstances constitutes a potential breach of the implied term of trust and confidence and the service values. I am currently taking advice on whether this amounts to a repudiatory breach of contract and grounds to resign and claim constructive dismissal.

I respectfully request that the stage 3 formal disciplinary hearing be relisted as a stage 2 disciplinary hearing or, more appropriately, a stage 1 performance meeting.

[...]

50. Ms Feeney replied as follows by email on 31 May 2023 [HB278-279]:

[...] I will respond to your concerns in a different order than they were presented in your letter, but I will point to the relevant page to assist you.

Page 4.

I considered the recommendations in the investigation report when I, as SPOC, determined the level of the disciplinary meeting. It is important to note that they are recommendations only. The following may help understand my level 3 decision:

- I recognise that those advising you may be more familiar with organisations having a capability policy (which deals with performance and attendance concerns) and a separate discipline policy (which deals with conduct concerns). However, the discipline policy agreed with the representative body (in part due to their concerns about a capability policy) covers both performance and conduct concerns. You'll therefore see in the policy that the flowchart on page 3 starts with an alleged misconduct or performance issue being reported, and the content of the policy then continues to refer to its application to performance issues (for example para 2.5, 3.1, 3.5), as well as conduct. The Service is revising the discipline policy and drafting a capability policy which we hope will now be agreed, but the negotiated discipline policy remains current. Therefore, you will see that the allegations in your discipline invite letter consist of performance and conduct concerns.*

- As per paragraph 5 of the discipline policy, appendix four gives examples of the issues which may give rise to formal action under the discipline policy and is not intended to be a complete list. In my consideration as SPOC, I concluded that the findings of the investigation, taken in combination, are potentially gross misconduct issues because they are fundamental to our expectation of managers (in terms of addressing unacceptable behaviours and building an improved culture) and there is a concern about honesty (which is referred to in the potential gross misconduct issue list). Managers have a responsibility to ensure the behaviours of their teams/watches (and the managers underneath them) are appropriate, that they apply the core values and contribute to the Service's significant emphasis and drive towards culture change which you will be aware of.*

I have reviewed the level 3 decision on receipt of your letter and consider this level to be a reasonable response informed by the above. However, the Presiding Officer has the option to apply any, or none, of the sanctions set out in section 10 of the discipline policy having heard and considered your challenges about the investigation, representations, and

mitigations at the meeting.

I can also confirm that the Presiding Officer and HR representative have received a copy of the report (which includes the recommendations), and this will be part of the considerations on the appropriate sanction, should one be applied.

Pages 1-3.

The remainder of your concerns are for you to present at the hearing where you will have an opportunity to investigating officer on these points.

I hope the explanations in this letter are helpful and that you will continue with attending the discipline hearing on the 6th, rather than seek to resign. I do understand that the potential for dismissal is concerning, but I can assure you that, in reaching their decision, the Presiding Officer will take full account of the challenges you raise regarding the investigation, any representations and mitigations presented at the hearing, as well as matters such as your length of service and previous conduct and performance record. I note that you refer to hindsight and an understanding of what you should do as a manager in your letter, and it may therefore further assist you to know that the Presiding Officer will also consider what understanding and learning you have gained, as well as any further learning or training which has been sought or instigated.

[...]

31 May 2023 – occupational health report

51. On 31 May 2023 Occupational Health produced a report which recorded a recommendation that [HB282]: “[Claimant] is fit to attend the planned disciplinary hearing. Aside from allowing him to be accompanied by a companion and having the flexibility for short breaks if he is finding the process stressful, I do not recommend that there is a need for any further adjustments to support his attendance.”

6 June 2023 - Disciplinary hearing

52. Mr Gazzard Chaired the disciplinary hearing which took place on 6 June 2023 and Mrs Martin presented her grievance investigation findings to the hearing [SMWS39]. As is clear from my comments on the progress of the Tribunal Hearing, there is no transcript or note of the hearing. It is surprising that the hearing was not transcribed and that the parties only realised that the hearing had been recorded when Mr Gazzard mentioned it in evidence. As will become evident below, there two references to the recording in correspondence sent to the Claimant [HB293, HB255] and the practice of recording such hearings is referred to in the Respondent’s policies [HB514]. I am not clear why neither the Claimant nor Respondent nor any of their professional representatives noted this.

53. After the hearing Mr Gazzard completed a 'decision making record' labelled "Fair Disciplinary Hearing Decision". It included a table as follows:

<i>Reaching a decision on whether allegations proven.</i>		<i>Evidence/Reason</i>
<i>Do I genuinely believe that the employee has committed the conduct, performance or attendance issues alleged?</i>	Yes	<i>Evidence against some allegations proven:</i> <i>Allegation 1 – proven</i> <i>Allegation 2 – proven but acknowledge how would do things differently, how SA felt/made her feel</i> <i>Allegation 3 – not proven to be seeking to downplay the incident not proven sufficiently (intent), reasonably assumed it was resolved considering SA and DD messages/comms to him</i> <i>Allegation 4 – proven; breach of B&H policy (didn't act as manager should, everyone's responsibilities)</i> <i>Allegation 5 – proven; values and behaviour, disrepute (minimally), contribute towards a breakdown of trust and confidence</i>
<i>If I was challenged, can I point to reasonable evidence to substantiate, for each allegation, that my findings are fair and proportionate on the balance of probabilities (i.e. is it more likely than less likely that the employee did what is alleged)</i>	Yes	<i>As per the report and the above.</i>

<i>Has there been as much investigation as is reasonable in the circumstances and have I checked the investigation is complete – no loose ends or unquestioned witnesses.</i>	Yes	<i>Thorough and extensive investigation.</i>
<i>Have there been previous attempts to resolve the issue formally? Please note this is not always required if the issue is sufficiently serious.</i>	No	
<i>Do I believe that the case for the severity of the alleged conduct, performance or attendance issue has been proven?</i>	Yes	<i>Significantly serious consequences, but some of the allegations not proven. Nature of mitigation has lessened sanctions.</i>
<i>Have the requirements of the disciplinary procedure been properly complied up to, and including, the disciplinary hearing and outcome?</i>	Yes	<i>FBU have raised procedural concerns, namely: profound concern about grievance investigation leading to disciplinary action (lack of trust/transparency), contradict ACAS guidelines (transparent communications/procedural fairness), SB letter to SPOC ref level; respectfully request recess to consider proceedings. Noted and explanation given about SPOC decision for Level 3, email from KS about grievance interview not a factor as wording was “currently in line with grievance procedure, not discipline procedure” and grievance policy allows for move to discipline</i>

All of the above questions will help you make the judgement about whether the case is proven i.e. the employee has been responsible for the alleged conduct, performance or attendance, check that the correct process/procedure has been followed before going on to decide (see Part 2 below) the appropriate level of warning. If you reply no to any of the above, please contact your SPOC and/or HR before proceeding.

PART 2

Reaching a decision on sanction(s)		Evidence/Reason
<i>Does my proposed sanction(s) pay sufficient regard to any explanation put forward by, or on behalf of, the employee?</i>	Yes	<i>SB led by SA in not wanting to go formal, relationship with DD improved (text messages, conversations) Reflection on behaviours, lack of challenge, culture at station, how would act differently with incident in yard</i>
<i>Have I considered mitigating circumstances, if any, put forward by, or on behalf of, the employee (and any response to these by the Presenting Officer?)</i>	Yes	<i>As above</i>
<i>Have I checked what the policy says my options are for this level of disciplinary sanction?</i> <i>• No formal sanction</i> <i>• Informal advice</i> <i>• First Written Warning</i> <i>• Final Written Warning</i> <i>• Dismissal with Notice</i> <i>• Summary Dismissal</i> <i>• Demotion (either within role or no more than one role: a demotion of more than one role can only be done with the agreement of the</i>		<i>Up to and including dismissal available to me, have chosen the following:</i> <i>12 month final written warning</i> <i>Formal PIP for duration – measured, can move to capability/performance process if objectives not met.</i> <i>Move away from Avonmouth Green – space and time for development, not strong enough leadership skills, for duration of PIP then can be considered for another watch role – move to day role as WM (LG will look at what is available)</i>

employee) • <i>Disciplinary transfer (which should involve no loss of remuneration (although no additional travel costs are payable) and unless the employee agrees otherwise should be within the same duty system)</i> • <i>Loss of pay up to a maximum of 13 days</i> <i>Summary dismissal without notice and is usually only justifiable for gross misconduct. Incidents of gross misconduct should still be investigated – summary does not necessarily mean instant dismissal.</i>		<i>DICE session on positive workplace culture</i>
<i>Have I also considered whether, in addition to (or instead of) the sanctions above I should recommend remedial actions (improvement plans, mediation, support etc)</i>	Yes	<i>As above – formal PIP, development/DICE session, mentor to be considered</i>
<i>As my decision on sanction(s) within the band of reasonable responses in the circumstances?</i> <i>Therefore why, from the choices of options available to me (no action, informal, the different warning levels and fines) have I picked my chosen sanction(s)?</i> <i>You can choose multiple sanctions and remedial actions if they are appropriate and reasonable</i>	Yes	<i>To tackle Simon's poor performance, behaviour, values and leadership which contributed to grievance and culture at station a number of remedial actions have been considered and chosen to address this holistically. A demotion was not considered appropriate at this time – with the need to fulfil a formal PIP. If that doesn't progress well then consideration of a formal capability/performance process will occur which can consider demotion if no evidence of continued professional</i>

<i>for the issue</i>		<i>development takes place.</i>
<i>If the allegation is indistinguishable from recent proceedings against another employee in a similar position, am I giving the same sanction or is there a justifiable reason for my decision in this case?</i> <i>Please check with SPOC or HR for these comparators</i>	Yes	<i>Unique case – a number of management failings have taken place. This may have been dealt with locally through performance management, but this has not happened and it has contributed to a direct escalation of concerning issues and culture at station. Against a backdrop of culture and transformation journey together with zero tolerance this warrants the above sanctions.</i>
<i>Is the decision I am contemplating free from bias against the employee related to his/her sex (including gender reassignment), racial origin, disability, age or other factors?</i>	Yes	
<i>Have I ensured that, when informing the employee of the outcome verbally and in writing, that I have explained my findings, the reasons for them and informed them of the right to appeal?</i>	Yes	

54. This document gives little insight into the thought process that Mr Gazzard went through, how he reached his conclusions and what factors or evidence he weighed up. It adds little to the outcome letter that he sent (referred to below) [287-292]. Mr Gazzard accepted in evidence that he did not check the Claimant's training records.
55. The recording of the disciplinary hearing was not available but might have demonstrated one way or the other whether the Claimant had admitted hearing colleagues using inappropriate banter. However, the Claimant's reply of 22 May 2023 suggests that he knew it was taking place in that he said:

"b) I am being criticised for failing to challenge "light-hearted and jokey comments" (para 2.42) which were found to have been made by both FFSA and other watch members and were not found to have been intended to offend anyone and, (as per para 2.20 above) at no point did FFSA react or complain that she was offended by it. Jokey and light-

hearted comments are a crucial part of maintaining moral in the watch environment (which I believe the author of the report to have a limited understanding of). It is an environment which is totally distinct from many other working environments. Without the maintenance of morale in such an environment, where watch members are routinely exposed to some horrific events and experiences, the health and wellbeing of the watch members, if stifled in this way, would rapidly deteriorate and sickness absence and long-term mental health issues would increase.”.

However, this was in reply to the allegation that the Claimant had failed to challenge inappropriate comments (not the use of the term “fireman” but the more serious allegations (in the Report: “2.36 *The evidence I have gathered corroborates SA’s allegations about demeaning or offensive comments being made about women. The evidence suggest that this mainly takes the form of jokes based on stereotypes of women which are intended to be in a light hearted or jokey way, commonly termed 'banter'. 2.37 The evidence from two witnesses (namely DD and DE) also suggests the existence of demeaning and offensive comments being made in the context of Watch members 'venting' about wives and girlfriends, but this did not appear to be a commonly held view amongst the Watch as a whole that sexist jokes were made on the Claimant’s Watch*”).

Disciplinary outcome letter 12 June 2023

56. Mr Gazzard wrote to the Claimant on 12 June 2023 with his decision as follows [HB293]:

Outcome of Disciplinary Meeting

I am writing to confirm the outcome of the disciplinary meeting you attended on the 6th June 2023 chaired by myself and in the presence of Alison Short (HR), Sarah Martin (Investigating Officer from Narrow Quay HR) and Steve McGreavy (your FBU rep). This meeting was digitally recorded, and Alison has emailed you a link to the recording. If there are any issues with accessing this, please let Alison know.

The notification letter of 6th May 2023, explained the purpose of the meeting and enclosed the relevant extract of the investigation report outlining the following allegations:

[Disciplinary allegations not repeated here]

Having reviewed the evidence and the report submitted by the Investigating Officer and taking into account your mitigation, including the statement read out by your FBU rep and your own personal reflective statement, and following our discussion at the meeting, I have concluded that some of the allegations have been proven and that your actions amount to misconduct. I have set out my rationale for this decision below.

On the balance of probabilities, I conclude the following:

- **Term of reference 1 – Proven;** *there is sufficient evidence to indicate that the culture, behaviours and language used at Avonmouth Green Watch has, at times, been inappropriate in a number of ways. You accepted that, upon reflection, you would address these behaviours and lead the team in a different way.*
- **Term of reference 2 – Proven;** *you characterised this incident as a ‘mildly aggressive’ exchange but acknowledged that you should have intervened at the time. I believe that, as the line manager, you should have intervened given the way [DD]’s actions made [SA] feel and it would have been reasonable to be concerned about an escalation and/or threat of harm.*
- **Term of reference 3 – Not Proven;** *whilst there was a reluctance from you to engage with some of the Investigating Officer’s questioning, I do not think you were downplaying the incident and that you dealt with it in a manner that was appropriate based on the messages you received from [DD] after the incident indicating that they had resolved matters and a conversation you claim to have had with [SA] who stated she did not want to take it to a formal grievance.*
- **Term of reference 4 – Proven;** *section 2.2 (page 4) of the Bullying and Harassment policy refers to “every employee... has a responsibility to contribute to the elimination of bullying and harassment by... making it clear they find such behaviour unacceptable and by supporting any person who is a victim of such unwanted behaviour”. Whilst I made it clear that this was not about you displaying bullying and/or harassing behaviours, you should have intervened during the incident in the yard.*
- **Term of reference 5 – Proven;** *Some of your behaviours contravene the expected standards of the Values and Behaviour Framework, specifically around being Respectful, Inclusive and Courageous. As a result of the consequences of your misconduct, there is a possibility that you could have brought Avon Fire & Rescue Service in to disrepute and you have undermined our trust and confidence in our employment relationship.*

As outlined in the letter of 6th May 2023, at a Level 3 discipline meeting the sanctions available range from no further action up to and including dismissal. When considering the appropriate level of sanction, I took into consideration your length of service, the facts of this case as presented in the investigation report and at the disciplinary meeting, and the questions and comments you made during the meeting. In addition, I considered the impact of your actions on those you work with and on the

Service.

Sanction

My decision is to serve you with a 12-month Final Written Warning. This warning will remain live on your personal file for 12 months from the date of this meeting. Please note that during this time any subsequent misconduct may lead to further disciplinary action.

As you have been subject to formal disciplinary action and issued with a formal warning then, in line with Section 5 of the Continual Professional Development Policy, your CPD payment will be withdrawn until this warning is no longer active. After this period you may elect to complete a CPD application for the payment to be reinstated. Finance have been informed to cease your CPD payment from 6th June 2023.

Managerial Actions

There will be a robust formal Performance Improvement Plan (PIP) put in place which must be completed during the live warning period (12 months). If you do not meet the objectives of the PIP then we will look to instigate a discipline process on capability/performance grounds.

I have chosen not to serve you with a demotion, but feel it would be best for you and the Service to move you away from Avonmouth Green Watch so that you have the space and time to complete the development needed as part of your PIP. I have considered available options and a WM Role at Technical services Nova Way is going to be your substantive WM role as from 1st July or when you return to work following your sickness.

Additionally, you must attend one of the upcoming training sessions being delivered by Anne Taylor from the DICE team. Please liaise with Anne or Alison when you return to work and they will discuss the options for completing this. This should be recorded on your PDR.

Conclusion

You have the right to appeal against this outcome by writing to the SPOC, Angela Feeney, within ten working days of the date of this letter, stating the reasons for your appeal (as per section 12.1 of the discipline policy).

Finally, I understand that this will have been a difficult process for you and remind you of the support provisions that are in place including our Wellbeing Advisor (Darren Fewins), your line manager, your HR team and confidential counselling through Workout Solutions.

57. The Claimant did not appeal this decision. He explained at the hearing that he

did not do so on the advice of his Union because the disciplinary policy provided that on appeal the sanction could be increased (to dismissal) rather than decreased. At the hearing it was the Claimant's case that the Respondent's policy in this regard was a tactic to stymie appeals and that was why his disciplinary was pitched at level 3. I accept Ms Collins' evidence that this was not a tactic of the Respondent (from a policy perspective or from the perspective of the action taken against the Claimant in his individual case). However, I accept that the potential for a sanction to be elevated on appeal might cause an employee not to challenge a decision taken at Level 3 that resulted in action short of dismissal.

58. From 13 June 2023 the Claimant exchanged emails with Ms Collins in relation to his sick leave [HB304]:

28 July 2023 correspondence

59. On 28 July 2023 there was the following email exchange between Ms D Clack and Ms Collins (Ms Collins made clear in evidence that Ms Clack was the station manager at Nova Way (the location to which the Respondent intended to transfer the Claimant on his return to health)) [HB309]:

Clack to Collins:

I have just finished my phone call with Simon Bailey. We spent over an hour chatting and catching up.

He said he has already sent the sick note to RPU but has resent this to me, so I'll forward it on. Simon is [from the wider content it is clear that the word "not" was left out in error here] feeling well enough to return to work so he will arrange for another sick note from Monday. Simon said he doesn't feel any further forward from when we last spoke, however he does have a counselling session today and has recently been in touch with [..].

Simon asked me if he is able to put in a transfer request to another station when he returns to work? Or is he not allowed due to being forced moved to Nova Way and onto a different shift pattern?

Simon also asked, is he required to empty his personal locker on station, and can he go in to do this? I am not completely aware of the sanctions and what he is allowed or not allowed to do following the hearing so any advice on this would be great so I can contact Simon. Just for your information Simon doesn't have access to his work emails.

Collins to Clack

Thank you for the update.

Sorry to hear that Simon doesn't feel any better since you last spoke to him. It is positive that he is engaging in counselling provisions, so hopefully this helps.

Did you mean from your email that Simon's absence will be continuing? Has he provided any information around the reason for his absence?

I will need to touch base with the SPOC regarding a transfer request and my initial thoughts would be that he would not be able to put an immediate transfer request in, as this was the sanction of the discipline process. I would have thought that Simon would need to work within a day role for a time-bound period ahead of any transfer requests.

Let me look into this further and provide a more detailed response from the SPOC/Presiding Officer.

Simon had the option to appeal the sanction if he had any concerns regarding this outcome.

Simon isn't suspended therefore there is nothing to stop him from collecting his belongings from Avonmouth.

60. Over this period the Claimant requested a pension illustration which was provided towards at the end of August 2023 [HB342]. I accept the Claimant's evidence that he was going through a divorce, there was to be a pension sharing order and that his request for an illustration was prompted by that. I note that there is reference to the divorce and associated difficulties in the OH report I refer to below [HB323].
61. It was put to the Claimant in cross examination that he made no mention of resigning between 12 June 2023 and 10 August 2023. The Claimant agreed and said that he had no intention of resigning at that time and he accepted that he was intimating coming back by asking about transfer options.

15 August 2023 – occupational health report

62. On 15 August 2023 Occupational Health produced a report which recorded [HB323-324]:

[...]

I discussed the new role that Mr Bailey advised he has been moved to which is day shift in an office. He advised that he feels that he has been side-lined being put into this role and he feels let down and humiliated. Obviously, I cannot confirm the veracity of these issues, but it is important for management to understand how the perceived events have impacted on the employee.

[...]

Recommendations

Based on the telephone assessment of Mr Bailey it is advised that he is likely to remain off work until he feels mentally stronger. It would be appropriate to have a discussion with his manager as to whether there could be an operational shift role that he could move to rather than the day office one he has been advised he is moving to. This matter will need to be satisfactorily discussed and resolved so Mr Bailey can feel confident about returning to work.

It would be appropriate to support him in further counselling sessions.

[...]

This report is provided for advisory purposes, and management can decide what they are willing to support as far as adjustments. If further advice is required, please do not hesitate to refer him back.

63. In his witness statement the Claimant said [CWS44] *"I had hoped that after a rational discussion with my line manager we could agree to keep me in an operational role. I was told by my new line manager that under no circumstances would the outcome be changed. I was experienced and had spent 25 years working the shift system in an operational role."*

31 August 2023 – complaint about outcome

64. The Claimant remained on sick leave and on 31 August 2023 he set the Respondent the following correspondence [HB374]:

LETTER BEFORE ACTION

I write further to my recent correspondence dated 29 August 2023 and, particularly, regarding:

- My current state of health as set out in your Occupational Health Consultant's report dated 15 August 2023.*
- My continued absence from work.*
- The outcome of my disciplinary hearing held on 6 June 2023 and*
- Your request for me to attend the Employment Tribunal hearing scheduled for 13 November 2023 to 1 December 2023 (whether in whole or in part) as a witness.*

As set out both in my email to you dated 29 August 2023 and the Occupational Health report dated 15 August 2023, I am currently receiving medical attention concerning my blood pressure and my mental health. Both have been substantially affected as a direct result of the disciplinary hearing held on 6 June 2023. I have been prescribed

medication for both conditions.

I see no purpose in going through my medical report line by line; suffice to say that it sets out several important observations and recommendations:

- That I am likely to remain off work until I feel mentally stronger.*
- That it would be appropriate in the circumstances (set out below) to discuss with you whether there is an operational role that I can move to, rather than the day office role I have been moved to.*
- That this matter needs to be satisfactorily resolved so that I can feel confident about returning to work.*

As I have stated in my email to WM Di Clack dated 29 August 2023, I am currently not well enough to commit to attending an Employment Tribunal with these matters still ongoing.

Legal Position

I should point out that I hold AF&RS responsible for my current state of health and, accordingly, I have sought legal advice concerning my options in respect of the treatment I have received before, during and after my disciplinary and the current Occupational Health report. While my poor state of mental health prevents me from fully understanding the legal advice I have been given, I have been advised to summarise the legal position as follows:

- I set out in my letter to AF&RS in advance of my disciplinary hearing dated 22 May 2023 that I already had concerns about the investigation, the way in which it was conducted and the way in which the conclusions were drawn, as well as the investigation outcome report itself. My concerns were, for all intents and purposes, ignored, despite such concerns warranting further exploration and consideration.*
- While I do not consider it necessary to set out these issues in full again here, I will be referring to one aspect of the investigation in detail below, since it is inextricably bound up with the evidence your solicitors have asked me to provide in support of your case.*
- I am likely to be considered a disabled person by an Employment Tribunal for the purposes of the Equality Act 2010 and that such a finding, by itself, would be sufficient to bring about the obligation for AF&RS to consider making reasonable adjustments and that its failure to do so would result in a further finding of discrimination on the part of AF&RS (I have set out some proposed adjustments below).*
- The treatment I have received from AF&RS cumulatively amounts to a*

repudiatory breach of contract and that, should I wish to accept the breach(es) and pursue a claim for constructive dismissal, I would have very good prospects of succeeding with such a claim.

- I would not be legally required to appeal, nor would it be in my interests to do so on account of the repudiatory breach of contract having potentially resulted in the complete breakdown in the trust and confidence between me and AF&RS, particularly if the matters set out in this letter are not addressed now,

- This assessment is based on (the non-exhaustive list below):

a) The fact that I was misled during the investigation stage. I was encouraged to be open and honest and it was not properly brought to my attention that by doing so, I would be subject to disciplinary action based solely on my description of the facts as I saw them even though there was no supporting evidence to corroborate my account. My descriptions were then taken out of context and used against me.

b) That the sanctions ultimately imposed were:

i) Grossly disproportionate to the findings in the investigation report and I will assert based on the sole agenda of AF&RS pursuit of publicly demonstrating its policy of "zero tolerance".

ii) Largely disciplinary in nature, including the final written warning, notwithstanding the only findings against me being capability issues in the report. Specifically, that I had demonstrated a number of minor management failings and recommending only that I be subjected to capability and performance management intervention, not disciplinary action.

c) That many of the findings in the report were misguided and based on the subjective view of the investigating officer, who took it upon herself to substitute her own view for that of the complainant and, in many instances, failed to provide any substantive corroborating evidence for her findings or apply the correct tests in law when drawing her conclusions.

d) That the terms of reference for the investigation were biased and effectively amounted to instructions to find and pursue any and every angle against any witnesses who were called to provide evidence.

e) That despite many counter allegations made by the witnesses who were called to provide evidence against the complainant,

none of these appear to have been investigated. Many of these counter allegations were of a serious nature and this demonstrates to me that the investigation itself was unbalanced and unfair.

f) That one of the main findings against me (namely that I failed in my duty as a manager to act appropriately) was based on my own account of a discussion between [DD] and the complainant (and which is referred to on page 4 of my letter to you dated 22 May 2023; page 50 of the Investigation report dated 3 May 2023. I stated clearly to the AF&RS appointed investigator that during this discussion, I did not get the impression that the complainant was scared since she did not back away, neither did her voice give any signs that she was worried or uncomfortable. I explained that [DD] was waving his arms about, but that he was not in the complainant's face and that there was never any threat of contact. I made it clear that both parties were fighting their own corner but were not acting aggressively. I stated that it was only necessary for me to step in when I heard [DD] say that the complainant was not competent. I feel that there was no need for me to have stepped in at any earlier moment. Indeed, it is this account which AF&RS solicitors have asked me to put forward in support of AF&RS' defence at the Employment Tribunal. If this had been correctly interpreted as stated by me during the investigation (instead of the investigating officer substituting her own view of how the events unfolded and how she personally would have felt in the circumstances) then it would not have amounted to the finding that I failed in my duty as a manager. The investigating officer even went as far as to conclude that she believed that I had attempted to play down this situation to somehow avoid liability for it. Although this finding was ultimately dismissed by the panel at the disciplinary hearing, I am of the view that both findings were unjustified and, if interpreted properly, (as set out in my draft witness statement prepared by AF&RS' solicitor) would have led to a different outcome.

Reasonable Adjustments

I am asking that the following reasonable adjustments be considered to assist with my recovery and my return to work:

a) Remove the unfounded disciplinary elements contained in the disciplinary outcome letter dated 12 June 2023.

b) Review and restructure my personal improvement plan with a view to moving me back to operational duties as a Watch Manager as soon as the plan has successfully concluded, with a firm date set in place for its conclusion.

Your Request for me to Assist as a Witness

While the current circumstances remain unresolved, I unfortunately do not consider myself to be able to assist with your request. I have extremely elevated blood pressure and very low mood for which (as stated above) I am receiving medication.

It is the opinion of both AF&RS' Occupational Health Consultant and my Adviser that this situation can be resolved by:

- My return to shift following certification that I am fit to do so, including the completion of an assessment that the conditions of my personal improvement plan have been satisfactorily met.*
- That the final written warning as a disciplinary sanction be removed from my file immediately.*

I am advised that these are perfectly reasonable adjustments for AF&RS to make in order for me to make a return to work since they are not cost prohibitive, easy to implement and are justifiable so as to avoid further action. If these are agreed by AF&RS as being reasonable then I believe that I will be better placed to assist in the provision of a witness statement.

If this cannot be complied with, then I have been advised to accept your repudiatory breach of contract and resign. A claim for constructive unfair dismissal and/or the failure to consider making reasonable adjustments will follow shortly.

I respectfully request that a meeting is arranged with HR, me and my FBU representative as soon as possible to facilitate an agreement and avoid this course of action.

65. A copy of the draft witness statement produced by the Respondent's representatives for the Claimant was not approved by the Claimant or ultimately used and I do not consider that much relevance can be placed on it [HB338].
66. Ms Feeney replied on behalf of the Respondent in a letter dated 7 September 2023 which read as follows [HB395-398]:

[...]

Thank you for your letter dated 31 August 2023. I was sorry to read you are unwell and hopefully the decision to agree additional, funded counselling sessions will be of assistance to you.

I understand receipt of your letter was verbally acknowledged by HR and I have now had an opportunity to review the content. Your letter covers two main areas: engagement (as a witness) in an employment tribunal

case pursued by [SA] against the Service, and the outcome of a discipline process and hearing held on 06 June 2023. I will address the concerns you raise about the discipline process in this letter and make a suggestion regarding the transfer location. In respect of your decision making on the witness statement, a separate communication will follow from our solicitors regarding the employment tribunal process, the support available to you and the potential to explore adjustments when giving evidence, I appreciate there is a link between the matters in the investigation and the witness statement, but they are separate processes and your decision to provide a witness statement, or not, has no bearing on the potential resolution to the matters in your letter.

Turning to how your letter will be addressed, the appropriate internal mechanism to raise concerns about the discipline process and outcome is the appeal procedure which is outlined in the policy and your discipline outcome letter (dated 12 June 2023). I note in your letter that you consider there is no requirement for you to appeal, and you believe it wouldn't be in your interests to do so, but in your letter you, in effect, set out your points of appeal and ask the Service to consider them and respond/hold a meeting.

The deadline to appeal has passed. If you had raised these concerns within, or close to, the required timeframes (deadline for appeal was 26 June 2023) I would have appointed an appeal panel to meet with you. That would have enabled full consideration of your points and a review of the Presiding Officer's decision. Given the time that has elapsed, it would not be appropriate or proportionate to now appoint an appeal panel.

However in the circumstances, whilst I am not able to revisit the decisions made or outcomes of the disciplinary hearing, as SPOC there may be some procedural points in your letter that I can assist with, or clarify, in support of a pathway for your return to work and continuation of your career with the Service. That is, of course, what we would like to happen.

If I first respond to the resolutions that you are seeking in your letter. Regarding your move away from Avonmouth Green Watch you will be aware from the discipline policy that a transfer to an alternative workplace is included as a legitimate option available to the Presiding Officer and Luke outlined his reasons for applying this at the hearing and in the letter of 12 June 2023.

Regarding where you were transferred, Luke considered the available options at the time and decided on Nova Way. My understanding is that this was an appropriate and reasonable determination considering the options available then. I am sure there was no intention to humiliate you which I note is the feeling you described to Occupational Health (OH).

As three months have now passed since the discipline sanction was applied to you, it may be that alternatives to Nova Way are now available. Therefore I think we could review if there are potential alternatives at this point as long as they still align with the intentions of the Presiding officer in applying a transfer. I understand Luke's rationale for a transfer was to ensure you had the space, time, and guidance to continue your learning and complete the PIP.

Completion of the PIP was also considered the best way to enable you to make the improvements needed to return to guiding and leading an operational watch in a way which fully aligns with the Service's values and behavioural framework. Therefore, while it would be subject to successful completion of the PIP, I also consider it possible to start to identify where and when this might be to assist with your return-to-work pathway. I think we could look at providing that future clarity even if an alternative to Nova Way is not possible in the meantime.

I do not know if there are currently alternatives to Nova Way (or what they would entail), or whether succession planning can tell us where there may be operational vacancies available on the completion of the PIP, but I will ask HR to work with the relevant parties to identify any potential options to discuss with you at a meeting. I am also aware that there are number of projects in the Service which may really benefit from all your operational experience for a period of time. I note from the OH report that the transfer is the matter that OH recommend is satisfactorily discussed to assist you to feel more confident to return to work. You can, if you wish, bring a representative to the meeting with HR.

I also understand that you have not seen the draft PIP because you have not returned to work. It would clearly be helpful for you to see this. It may further help with your understanding and timeframes and enable you to raise questions and identify any further support or training which you feel is needed to assist you. Therefore I would suggest that this draft is also discussed with you in the meeting above to start the pathway to a return to work.

The Service does not consider the removal of discipline sanction/s applied in accordance with our policy, and having an outcome which was not appealed, to amount to a reasonable adjustment. However, as I have outlined, there may be a potential to revisit the location of the current transfer and agree a future posting.

Regarding the concerns you have raised on the discipline process and outcome, my understanding is that, in addition to my response to your previous letter of 22 May 2023, you have already been provided with an opportunity to raise these points for consideration in the discipline hearing and/or in an appeal meeting. I may however be able to assist with the procedural matters as follows:

- *Rather than being misleading, it is reasonable for the Service to expect that you would be honest in any responses that you give during any investigation, or other processes.*

- *While I note you don't agree with them, the reasons for the sanctions applied are set out in the disciplinary hearing outcome letter and they are within the range of reasonable responses available to the Presiding Officer. Luke confirmed that he considered your representations, and the circumstances, before making the findings and determining the appropriate sanction as required. The appeal mechanism was available to you if you had evidence to demonstrate the sanction was too severe in the circumstances.*

- *The current discipline policy refers to both conduct and performance/capability issues. Whilst you may consider that the issues giving rise to the disciplinary sanction were related purely to your capability, that was not the conclusion of the Presiding Officer based on all relevant evidence considered, including your own representations during the disciplinary hearing.*

- *The Investigating, and Presiding Officer, use the balance of probability test as set out in the discipline policy as the relevant standard of proof. Where accounts differ it is open to the Investigating Officer to reach conclusions based on the information available to them and based on professional expertise and balance of probability. The Presiding Officer can then uphold, or not uphold, those findings and, as you indicate, Luke did not uphold one element of the Investigating Officer's findings.*

- *I do not consider that the terms of reference for the investigation were biased as you have suggested. The issues raised were serious, wide ranging and involved several different individuals. The investigation was therefore broad, gathered and reviewed a significant amount of evidence and for several individuals, and reflected the context, for example the performance concerns raised around [SA]. It would not be appropriate for the Service to provide you with information in relation to the steps taken regarding others, but actions taken following the investigation were not limited to yourself.*

While you are waiting for the meeting with HR regarding a return-to-work pathway, they have confirmed that you are receiving support from a wellbeing perspective, they have written to you regarding your absence and sick pay entitlements and how you can appeal reductions in sick pay. In due course they may also write to you about the case conference process which applies to all staff after six months for sickness absence, providing a further forum to assist with your return pathway.

May I also take this opportunity to signpost you to other supportive services. This includes the Firefighters Charity, where several other counselling and support provisions are available. This includes residential rehabilitation as well as virtual counselling sessions. Details can be found via: [website]

To conclude, for the avoidance of doubt, the Service is not in repudiatory breach of your contract of employment and, should you resign, the Service does not accept that you would have been constructively dismissed. I very much hope that after many years with the Service, and with the commitment to look at an alternative transfer location on return to work and potential clarity on a future operational posting on completion of the PIP, a pathway for your return to work can be established. This continues to be our hope and focus, and a return to work can also be phased with hours and duties increasing gradually.

9 September 2023 - resignation

67. On 9 September 2023 the Claimant sent an email to the Respondent [HB404] which said *"As I have not had a response from Angela regarding my resignation, I think it relevant that I now forward it on to you. I did consult with the FBU and we agreed that this was a reasonable action to take as Angela is out of office until 26th September. Some form of acknowledgement would be greatly appreciated."* The email attached a document which said as follows [HB405-406]:

[...]

I shall keep this brief.

- For your information, I have informed your solicitors today that I will not be assisting with a witness statement for AF&RS in defence of the case brought by [SA].

- Your letter dated 7 September 2023 is non-committal and the proposals set out in that letter are of no useful value.

- While you have mentioned in your letter several times that I failed to appeal within 10 days of the sanction imposed by AM Luke Gazzard, you are also aware that I have been off sick (as diagnosed by your Occupational Health provider) since my disciplinary and have not been well enough to appeal.

- More importantly:

- you have interpreted my letter dated 31 August 2023 as an appeal letter

- This is not correct

- *I have no faith in the processes you have applied throughout. Nevertheless, my advisor and your Occupational Health provider both put forward ways of attempting to resolve this matter without having to waste public money in the Employment Tribunal.*
- *I simply repeated this in my letter to you.*
- *Notwithstanding this, you have stated a) that "in effect, I set out my points of appeal and have asked the Service to consider them and respond/hold a meeting" and that b) "The deadline to appeal has passed. If I had raised these concerns within, or close to, the required timeframes... I would have appointed an appeal panel to meet with you" and "Given the time that has elapsed, it would not be appropriate or proportionate to now appoint an appeal panel"*
- *Notwithstanding my position of vulnerability and my continued absence from work for health reasons brought about by your treatment, if you have interpreted my letter as an appeal letter, then my view is that it would have been both appropriate and proportionate to have made extended the period of 10 days and appointed an appeal panel to hear these issues.*
- *You have failed to consider this as a reasonable adjustment at all or at any stage in the process.*
- *This simply re-iterates the Service's poor position on the treatment of its employees.*
- *To conclude, for the avoidance of doubt, I do consider the Service to be in repudiatory breach of contract. Accordingly, I resign with immediate effect.*
- *Please now make the necessary arrangements for the payment of my pension.*
- *My Claim Form will follow shortly.*

[...]

68. No correspondence was brought to my attention evidencing that the Claimant had been too ill to raise an appeal against Mr Gazzard's decision and his position at the Tribunal hearing, as referred to above, was that it was not in his interests to appeal because it carried with it the risk that the sanction might be elevated to dismissal on appeal.
69. The Respondent, by letter sent by Ms Feeney dated 19 September 2023, sought to encourage the Claimant to retract his resignation. Her letter said [HB408-410].

Your letter dated 09 September 2023

Thank you for your letter which I received by email on 09 September 2023. Your letter responds to a letter dated 07 September which was emailed to you on 08 September 2023.

I am sorry to read that you continue to have concerns and I note your intention to resign, or retire, from the Service with immediate effect.

We want you to remain an employee of Avon Fire and Rescue Service and therefore I encourage you to take more time over this decision and reconsider your intention to resign.

My understanding of your previous letter of 31 August 2023, is that you asked for consideration of the removal of the disciplinary elements of the discipline sanction (and/or the removal of the disciplinary sanction) and a return to shift/operational duties as a Watch Manager after the completion of the PIP, with a firm date set for its conclusion. You asked for a meeting with HR, yourself and an FBU representative to facilitate an agreement in this regard and a return to work.

The OH report (dated 15 August 2023) also recommended a discussion with your manager as to whether there could be an operational shift you could move to on return (rather than the day office one) to assist you to feel confident about returning to work.

OH also advised it would be appropriate to support you in further counselling sessions.

In my letter of 07 September 2023, I confirmed that further funded counselling sessions had been approved. I also committed to a meeting with HR, yourself and your FBU representative to discuss and agree the potential options for your initial return to work (as opposed to a return to Nova Way as had initially been envisaged). I also proposed that we discuss and agree the timeline, and location, of your return to operational duties as a Watch Manager, after completion of the PIP.

A line manager/operational manager would attend this meeting. I also said that the draft PIP would be shared with you in advance of this meeting for discussion should you need any further support.

As all of the points that you raised, and the OH recommendations, were addressed in my letter to you of 07 September 2023, I was surprised by your decision to resign. That letter is not non-committal, as you have suggested, but instead sets out very specific steps that will be taken in light of your letter of 31 August 2023. As my letter explained, the Service is unable to remove the final written warning for the reasons provided. I am committed to identifying alternative work, and an alternative work location for you on your return from sickness absence, and to setting a

firm date and operational location for you on completion of the PIP. I do not have the detail of what station vacancies are available and when, which is why I asked HR to review and discuss these details for you. However if you prefer, I can meet with HR and the relevant operational managers instead and come back to you with these details.

With reference to my decision making on reasonable adjustments and/or the application of the discipline policy in respect of appeals, you have the opportunity to raise a grievance and for this to be investigated. Any such grievance would be investigated externally for independence.

I am not clear why you stated that it was unreasonable for the Service not to treat your letter of 31 August 2023 as an appeal against your final written warning on the basis that your letter of 31 August 2023 expressly said you did not wish to appeal and that, in your view, it would not be in your best interests to do so.

It remains the Service's wish to mutually agree a pathway for your return to work and continuation of your career within the Service. I appreciate that this is a difficult time, and you may still have concerns about the final written warning sanction, but I encourage you to take some more time to think about what is being proposed, retract your resignation, and consider any available alternative working arrangements. Even if you don't wish to retract your resignation at this stage, you could amend your notification to include a notice period during which the meetings being offered can take place in order to fully review alternative options. I would hope you would then feel more confident in returning to work as an alternative to resignation. The provision of notice may also be more helpful to you financially as pension payments will take a while to process and put into payment. The counselling provision of course also still remains available to you.

Should you wish to retract your resignation, or apply a notice period, please let Sarah Collins (Human Resources) know as soon as possible and she can either arrange for you and your FBU rep to meet with HR and an operational manager to discuss postings, or I can meet with them instead as described to obtain, and then provide you with those details. Sarah can also provide you with information on the grievance process and policy.

Should you wish to continue to resign, and with immediate effect, please also let Sarah know so the arrangements can be made. As the Service does not accept that you would have been constructively dismissed, we would progress your notification to leave through a normal retirement process and confirm when your pension will be paid.

As before, I very much hope that after many years with the Service, and with the commitments outlined in this letter, a pathway for your return to

work can be established.

70. Whilst the text of his response was not included in the bundle, it is not disputed by the parties that on 22 September 2023 the Claimant confirmed his decision to resign [HB413]. The Respondent confirmed acceptance of the Claimant's resignation on 25 September 2023 [HB414] and the Claimant confirmed his intention to immediately start to claim his pension [HB416].

THE LAW

Constructive unfair dismissal

71. Under section 95(1)(c) of the Employment Rights Act 1996 ("the **ERA**"), an employee is dismissed if he terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.
72. If the claimant's resignation can be construed to be a dismissal, then the issue of the fairness or otherwise of that dismissal is governed by section 98 (4) of the Act which provides:

"... the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and – (b) shall be determined in accordance with equity and the substantial merits of the case".

73. The best known summary of the applicable test for a claim of constructive unfair dismissal was provided by **Lord Denning MR in Western Excavating (ECC) Limited v Sharp [1978] IRLR 27:**

"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of his employer's conduct. He is constructively dismissed. The employee is entitled in these circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."

74. In **Tullett Prebon PLC and Ors v BGC Brokers LP and Ors** Maurice Kay LJ endorsed the following legal test at paragraph 20:

“... whether, looking at all the circumstances objectively, that is from the perspective of a reasonable person in the position of the innocent party, the contract breaker has clearly shown an intention to abandon and altogether refuse to perform the contract.”

75. In **Courtaulds Northern Spinning Ltd v Sibson** it was held that reasonable behaviour on the part of the employer can point evidentially to an absence of significant breach of a fundamental term of the contract. However, if there is such a breach, it is clear from **Nottingham County Council v Meikle [2005] ICR 1 CA**; **Abbey Cars (West Horndon) Ltd v Ford EAT 0472/07**; and **Wright v North Ayrshire Council [2014] IRLR 4 EAT**, that the crucial question is whether the repudiatory breach “played a part in the dismissal” and was “an” effective cause of resignation, rather than being “the” effective cause. It need not be the predominant, principal, major or main cause for the resignation.
76. There is an implied term in every employment contract that an employer ‘*will not, without reasonable and proper cause, conduct his business in a manner likely to destroy or seriously damage the relationship of trust and confidence between employer and employee*’ **Malik v Bank of Credit and Commerce International SA (in compulsory liquidation) [1997] ICR 606, HL**.
77. With regard to trust and confidence cases, Dyson LJ summarised the position thus in **Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA**:

The following basic propositions of law can be derived from the authorities:

1. The test for constructive dismissal is whether the employer’s actions or conduct amounted to a repudiatory breach of the contract of employment: Western Excavating (ECC) Limited v Sharp [1978] 1 QB 761.

2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example Malik v Bank of Credit and Commerce International SA [1998] AC 20, 34H – 35D (Lord Nicholls) and 45C – 46E (Lord Steyn). I shall refer to this as “the implied term of trust and confidence”.

3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract, see, for example, per Browne-Wilkinson J in Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA, at 672A; the very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship.

4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in Malik at page 35C,

the conduct relied on as constituting the breach must: “impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer”.

78. This has been reaffirmed in **Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445 CA**, in which the applicable test was explained as:

(i) in determining whether or not the employer is in fundamental breach of the implied term of trust and confidence the unvarnished Malik test should be applied;

(ii) If, applying Sharp principles, acceptance of that breach entitled the employee to leave, he has been constructively dismissed;

(iii) It is open to the employer to show that such dismissal was for a potentially fair reason;

*(iv) If he does so, it will then be for the employment tribunal to decide whether the dismissal for that reason, both substantively and procedurally (see **Sainsbury’s Supermarkets Ltd v Hitt [2003] IRLR 23 CA**) fell within the range of reasonable responses and was fair.”*

79. The same authorities also repeat that unreasonable conduct alone is not enough to amount to a constructive dismissal (**Claridge v Daler Rowney [2008] IRLR 672**); and that if an employee is relying on a series of acts, then the tribunal must be satisfied that the series of acts taken together cumulatively amount to a breach of the implied term (**Lewis v Motorworld Garages Ltd [1985] IRLR 465**). In addition, if relying on a series of acts the claimant must point to the final act which must be shown to have contributed or added something to the earlier series of acts which is said, taken as a whole, to have broken the contract of employment (**Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA**).

80. The judgment of Dyson LJ in **Omilaju** has been endorsed by Underhill LJ in **Kaur v Leeds Teaching Hospital NHS Trust**. Having reviewed the case law on the “last straw” doctrine, the Court concluded that an employee who is the victim of a continuing cumulative breach of contract is entitled to rely on the totality of the employer’s acts notwithstanding a prior affirmation by the employee. In **Kaur** the Court of Appeal held:

In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:

(1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?

(2) Has he or she affirmed the contract since that act?

(3) *If not, was that act (or omission) by itself a repudiatory breach of contract?*

(4) *If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the implied term of trust and confidence? (If it was, there is no need for any separate consideration of a possible previous affirmation)*

(5) *Did the employee resign in response (or partly in response) to that breach?*

None of those questions is conceptually problematic, though of course answering them in the circumstances of a particular case may not be easy.

81. In addition, it is clear from **Leeds Dental Team v Rose [2014] IRLR 8 EAT** that whether or not behaviour is said to be calculated or likely to destroy or seriously damage the trust and confidence between the parties is to be objectively assessed, and does not turn on the subjective view of the employee. In addition, it is also clear from **Hilton v Shiner Ltd - Builders Merchants [2001] IRLR 727 EAT** that even where there is conduct which objectively could be said to be calculated or likely to destroy or seriously damage the trust and confidence between the parties, if there is reasonable and proper cause for the same then there is no fundamental breach of contract.
82. As re-emphasised by the EAT in the decision of **Upton-Hansen Architects v Gyftaki UKEAT/0278/18/RN**, it is for the employer to advance in pleadings, assert in evidence, and prove a potentially fair reason for the dismissal, and a failure to do so may preclude them from a defence to a claim of constructive dismissal.
83. Counsel for the Claimant pointed me to:

83.1 **BBC v Beckett [1983] IRLR 43** and the commentary on that case in **Harvey on Industrial Relations and Employment Law** at 468:

“the EAT accepted that it can be a breach of contract for an employer to impose a disciplinary sanction which is out of all proportion to the offence. The employee had been downgraded following disciplinary proceedings having been taken against him. Even though the contract of employment explicitly provided that demotion might be imposed for an act of misconduct, the tribunal held that it was far too harsh for the particular misconduct and that when the employee resigned he was entitled to treat himself as having been constructively dismissed. The EAT refused to interfere with their determination. This decision was followed by the EAT in Cawley v South Wales Electricity Board [1985] IRLR 89 and Stanley Cole (Wainfleet) Ltd v Sheridan [2003] IRLR 52, [2003] ICR 297, EAT (upheld on other grounds [2003] EWCA Civ 1046, [2003] IRLR

885, [2003] ICR 1449).”

83.2 **Stanley Cole (Wainfleet) Ltd v Sheridan [2003] IRLR 52** in which the EAT held:

The employment tribunal had not erred in holding that the employers’ conduct in issuing the employee with a final written warning in respect of conduct which the tribunal regarded as a “relatively minor incident” amounted to a repudiatory breach of contract entitling the employee to resign and claim constructive dismissal. The imposition of a final written warning is capable of amounting to repudiatory conduct on the part of the employer. A final written warning is a severe penalty which is given for conduct which just stops short of that justifying dismissal. It is often imposed when a dismissal is an obvious and permissible sanction but, for reasons personal to the employee, is not imposed. It involves a real penalty in that there is a risk that should the employee commit any other offence during the currency of the final written warning, however minor it may seem to be on its own, it may justifiably be taken to give grounds for dismissal. A final written warning may be regarded by an employee as a statement that an employer has in mind dismissal and just pulls back from the brink. In the present case, the employment tribunal was entitled to regard the imposition of a final written warning as a disproportionate response to the employee’s conduct in absenting herself from work for a short period without permission after an altercation with another employee.

84. The Respondent referred me to **Mari v Reuters Ltd (2015) UKEAT/0539/13** and in particular [38]:

In Hadji v St Luke’s Plymouth His Honour Judge Jeffrey Burke QC summarised the position as follows (para 17):

“The essential principles are that:

(i) The employee must make up his [her] mind whether or not to resign soon after the conduct of which he complains. If he does not do so he may be regarded as having elected to affirm the contract or as having lost his right to treat himself as dismissed. Western Excavating v Sharp [1978] ICR 221as modified by W E Cox Toner (International) Ltd v Crook [1981] IRLR 443 and Cantor Fitzgerald International v Bird [2002] EWHC 2736 (QB) 29 July 2002.

(ii) Mere delay of itself, unaccompanied by express or implied affirmation of the contract, is not enough to constitute affirmation; but it is open to the Employment

Tribunal to infer implied affirmation from prolonged delay – see Cox Toner para 13 page 446.

(iii) If the employee calls on the employer to perform its obligations under the contract or otherwise indicates an intention to continue the contract, the Employment Tribunal may conclude that there has been affirmation: Fereday v S Staffs NHS Primary Care Trust (UKEAT/0513/ZT judgment 12 July 2011) paras 45/46.

(iv) There is no fixed time limit in which the employee must make up his mind; the issue of affirmation is one which, subject to these principles, the Employment Tribunal must decide on the facts; affirmation cases are fact sensitive: Fereday, para 44.”

ANALYSIS AND CONCLUSIONS

85. Before addressing the core disciplinary issues and the individual alleged breaches I must first turn to the assertion made at hearing by the Claimant that the Respondent had breached not only the implied term of mutual trust and confidence but also express terms:
- 85.1 requiring the Respondent to perform a separate disciplinary investigation before convening a disciplinary hearing;
- 85.2 preventing the Respondent from reducing the Claimant's pay for a year by removing is CPD payment.
86. I accept the Respondent's submission that the parties came to the hearing, and prepared for it, on the basis the Claimant alleged only a breach of an implied term and not a breach of any express term. I further agree that it would not be in the interests of justice to allow the Claimant, who has had legal representation (including in respect of the list of issues), to argue the claim in the additional way proposed at such a late stage. As a matter of natural justice the Respondent would in this case have needed to have advance notice of those arguments.

Comments on the core disciplinary issues

Term of reference 1

87. For ease of reference, this was the allegation:

You, failed to effectively perform your duties as a Watch Manager by not challenging inappropriate, stereotypical, demeaning and/or offensive comments which were contrary to the Service's position on harassment and inclusivity, in particular repeated use of the term 'Fireman' and comments about women that could be deemed sexist.

88. Mr Gazzard's finding on this was that it was proven and that:

There is sufficient evidence to indicate that the culture, behaviours and language used at Avonmouth Green Watch has, at times, been inappropriate in a number of ways. You accepted that, upon reflection, you would address these behaviours and lead the team in a different way.

"Fireman"

89. I agree with Mrs Martin's conclusions that the weight of evidence pointed to the term 'Fireman' being used accidentally at Avonmouth Green Watch as well as across the Service and that some felt that they should still be able to use the term. The Claimant did not challenge the use of this term when he heard it. I do not consider it a serious matter that the term 'Fireman' continued to be used on occasion on the Claimant's watch. As some of those interviewed said, it might be used by accident. I can see nothing problematic about the term being used to refer to a male firefighter. I accept the Respondent's submission that the Claimant accepted that, with hindsight, he could have challenged its use.

Sexist comments and Banter

90. For ease of reference, the Claimant's central evidence to Mrs Martin about banter on his Watch was:

As regards the Question 26: "FFSA refers to a conversation that took place on 16th July 2021. She says, 'A few members of our watch were outside whilst WM Bailey was discussing a fellow manager at Clevedon, having come off of a job with Clevedon. WM Bailey was talking about the Clevedon WM and was saying that his daughter had got into this brigade, and CM Davies immediate replied with a smirk, kicking the floor with a cigarette in his mouth and said "is she fit". Do you recall with conversation?"

"Not really. I can see someone saying it. It could have been said, but it is not appropriate."

As regards the Question: "24 Do you think you have heard a firefighter use demeaning language towards a female?"

No.

As regards the Question: "25 You don't hear sexist language?"

6.189 [demeaning comments] 'Not demeaning. There could be jokey. It is not squeaky clean all the time, but I think it is respectful. [SB]

91. I accept the Respondent's submission that the proper reading of the Claimant's response to Mrs Martin's questions is that the jokey comments that in the

Claimant's words "were not squeaky clean" were, in fact, the sexist or demeaning ones to which other firefighters referred. It was not sustainable for the Claimant to have asserted that he did not hear demeaning comments or that language used on his watch was respectful when it is clear that jokes that were demeaning and stereotyped women were made on the Watch for which he was responsible. It is not probable that, when he conceded that there were jokey comments that were not squeaky clean, the Claimant was not referring to the jokes that played on old fashioned stereotypes based on sex, as recorded in Mrs Martin's report and as reported by members of the Claimant's watch. The Claimant clearly knew that there was such a culture.

92. The Claimant confirmed to Mrs Martin that had he heard the term "stick with tits" or "snake with tits" then he would [HB172] *"challenge it at the time, with more emphasis if a female were present." In the section above I have included SB's response to the question I asked about demeaning comments and stereotypes.*
93. Mrs Martin concluded that the term 'stick with tits' was not used on the watch but that the term 'snake with tits' had been used on the Watch (albeit only two members of the Watch recognised its use) in the context of Watch members 'venting' about wives and girlfriends. Mrs Martin concluded [HB172] that the evidence corroborated *"SA's allegations about demeaning or offensive comments being made about women. The evidence suggest that this mainly takes the form of jokes based on stereotypes of women which are intended to be in a light hearted or jokey way, commonly termed 'banter'"*. Mrs Martin concluded that 'light hearted and jokey' banter, mainly based on stereotypes of women, did happen on the Claimant's watch and that it did not appear from the evidence that the Claimant challenged it when he witnessed it. In his reply to the disciplinary allegations of 22 May 2023 the Claimant did not specifically address the question of jokes based on stereotypes of women. If he did, he appeared to justify it as a *"crucial part of maintaining moral in the watch environment"*. I am sure that the firefighters on his watch did routinely have to deal with horrific events and experiences and humour might be part of who firefighters cope with that. However, that does not justify allowing sexist jokes up to the point that a complaint is made (people often do not complain straight away but the cumulative effect of demeaning jokes then becomes too much for them and they complain only when it has reached that stage).
94. I find that Mr Gazzard had a reasonable basis therefore for concluding that the culture, behaviours and language used at Avonmouth Green Watch, at times, were inappropriate in a number of ways. He fairly acknowledged that the Claimant, with the benefit of hindsight, conceded that he would have addressed such behaviours and lead the team in a different way.

Term of reference 2 - 17 July 2021 incident

95. For ease of reference "Term of Reference 2" was:

You failed to effectively perform your duties as a Watch Manager by misjudging and mishandling the situation between [DD] and

[SA] on 17 July 2021 which had the impact of a member of your staff ([SA]) feeling that there was a threat of physical assault from your Crew Manager.

96. Mr Gazzard's finding on this was that it was proven and that:

"you characterised this incident as a 'mildly aggressive' exchange but acknowledged that you should have intervened at the time. I believe that, as the line manager, you should have intervened given the way [DD]'s actions made [SA] feel and it would have been reasonable to be concerned about an escalation and/or threat of harm.

97. I do not consider that it was a serious misjudgement for the Claimant to have sought to bring DD and SA together to try to mediate the situation between them. Clearly it did not go well and with hindsight the Claimant might have done more to assess how it might go before bringing the colleagues together (by first talking more to them on an individual basis).
98. Where criticism can be more fairly levelled at the Claimant is that, when the discussion was became heated, he did not intervene, stop the meeting and seek an alternative resolution between the parties when they had had the opportunity to step back.
99. The Claimant's apparent justification for not bringing the meeting to an end sooner, insofar as it relied on the fact that DD was of slight stature and that SA appeared to be giving "*as good as she got*", was clearly not sound. Regardless of whether DD was of a small build, if he was being even mildly aggressive, puffing himself up, standing half a meter from SA and gesticulating with his arms, then he was being intimidating and the Claimant should have stepped in to end the meeting. I find that Mr Gazzard's conclusion on this allegation was reasonable and he fairly acknowledged that the Claimant, with the benefit of hindsight, agreed that he should have intervened when DD's behaviour became unacceptable.

Term of Reference 3

100. For ease of reference "Term of Reference 3" was:

You failed to demonstrate proper practice and honesty by seeking to downplay the incident above [the incident on 17 July 2021] to the investigating officer because it had the potential to reflect badly on you as a Watch Manager.

101. Mr Gazzard fairly and reasonably accepted that this allegation was not proven. For ease of reference he said:

Whilst there was a reluctance from you to engage with some of the Investigating Officer's questioning, I do not think you were

downplaying the incident and that you dealt with it in a manner that was appropriate based on the messages you received from [DD] after the incident indicating that they had resolved matters and a conversation you claim to have had with [SA] who stated she did not want to take it to a formal grievance.

Term of Reference 4

102. For ease of reference “Term of Reference 4” was more directly related to the incident on 17 July 2021 and was:

Whether, on their own or in combination, your actions constitute a breach of the Bullying and Harassment Policy as it existed at the time (now replaced by the Dignity and Respect Policy).

103. Mr Gazzard, for ease of reference, concluded that this allegation was proven and explained:

Section 2.2 (page 4) of the Bullying and Harassment policy refers to “every employee... has a responsibility to contribute to the elimination of bullying and harassment by... making it clear they find such behaviour unacceptable and by supporting any person who is a victim of such unwanted behaviour”. Whilst I made it clear that this was not about you displaying bullying and/or harassing behaviours, you should have intervened during the incident in the yard.

104. This does not add much to Term of Reference 2 but clearly, the Claimant failed to intervene to end the meeting between SA and DD, as he should have done, when DD’s behaviour became unacceptable and that failure did represent a failure by the Claimant to prevent bullying (particularly given DD’s seniority over SA) and harassing conduct.

Term of Reference 5

105. For ease of reference “Term of Reference 5” was:

Whether any, or all, of the above:

o Demonstrates conduct which contravenes our Service Values and Behaviour Framework.

o Is behaviour that could bring AF&RS into disrepute.

o Have damaged our trust and confidence in the employment relationship.

106. Mr Gazzard concluded that this allegation was proven and explained:

Some of your behaviours contravene the expected standards of the Values and Behaviour Framework, specifically around being

Respectful, Inclusive and Courageous. As a result of the consequences of your misconduct, there is a possibility that you could have brought Avon Fire & Rescue Service in to disrepute and you have undermined our trust and confidence in our employment relationship.

107. This term of reference focused on the seriousness and implications of the other terms of reference. The Claimant confirmed to Mrs Martin that, as a watch manager, it was part of his role to challenge behaviour [HB118-119].
108. I find that it could be said, given his leadership position, that the Claimant had contravened the values, ethics and behaviour framework in that he had not been sufficiently mindful of how words or behaviours might impact others and did not intervene to prevent them (albeit the words or behaviours were not his own, they were those of DD and those of firefighters that used demeaning jokes on his watch). Particularly as he held a position of seniority at the Respondent and therefore had a responsibility to help foster a workplace that was inclusive and respectful by addressing behaviour that was not inclusive or respectful, Mr Gazzard was entitled to conclude that the Claimant could have brought the Respondent into disrepute and undermined trust and confidence between the Claimant and the Respondent.

The alleged breaches

109. Turning to the breaches relied upon by the Claimant (which I have labelled **A – H**):

A. Misleading the Claimant during the investigation into [SA]’s grievance. The Claimant was encouraged to be open and honest and was not informed that he may be subject to disciplinary action based on his answers to the questions, which is what happened when disciplinary action started on 6 May 2023.

110. For the reasons I have explained in my findings of fact, the Claimant was not misled during the investigation as alleged and he knew, before the interview, that the matters that were the subject of the interview might lead to a disciplinary process of which he might be the subject.
111. As regards the Claimant’s assertion that there should have been a separate disciplinary investigation before a disciplinary hearing was called, the Claimant did not suggest that was necessary in response to the invitation to a disciplinary hearing and I am not persuaded that it would have been necessary in the circumstances of this case given the depth of the investigation already carried out. The Claimant said in his correspondence of 22 May 2023: “*I respectfully request that the stage 3 formal disciplinary hearing be relisted as a stage 2 disciplinary hearing or, more appropriately, a stage 1 performance meeting*”. He did not say there must be a disciplinary investigation first. As submitted by the Respondent, the disciplinary hearing was an opportunity for the Claimant to respond to the allegations.

B. Inviting the Claimant to a Stage 3 formal disciplinary hearing on 6 May 2023. The Respondent did not act fairly or reasonably in treating the allegations as sufficiently serious to warrant a Stage 3 formal disciplinary hearing.

112. The Claimant asserted that Mr Gazzard/Ms Feeney acted in a way that was inconsistent with the findings of Mrs Martin in calling a disciplinary hearing at stage 3 given Mrs Martin's recommendation that "[...] *AFRS takes steps to address the performance issues that I have identified in respect of redacted text and SB.*".
113. I note that there are frequent references, for example in Mr Gazzard's decision making documents, to "performance" and "poor performance". However, there is overlap in what can constitute poor performance and misconduct.
114. The Respondent submitted that a watch manager who allows his watch to engage in sexist and demeaning jokes or banter is failing to perform but it is also serious misconduct on his part because it suggests that a senior manager has not addressed potential breaches of the bullying and harassment policy and the Respondent's service values (HB572). I accept that submission.
115. Mr Gazzard was consistent in his evidence, which I accept, that the allegations he was asked to determine were conduct related. I accept his evidence, noting in particular that it does not appear that the allegations that were the subject of the disciplinary process were explained by the Claimant's lack of skill or knowledge (which might point towards them being more properly categorised as a performance issue), notwithstanding the Claimant's reliance on hindsight in accepting areas where he should have acted differently. As Ms Feeney noted in her letter of 31 May 2023, they were potentially gross misconduct issues because:

"they are fundamental to our expectation of managers (in terms of addressing unacceptable behaviours and building an improved culture) and there is a concern about honesty (which is referred to in the potential gross misconduct issue list). Managers have a responsibility to ensure the behaviours of their teams/watches (and the managers underneath them) are appropriate, that they apply the core values and contribute to the Service's significant emphasis and drive towards culture change which you will be aware of."

116. As the Respondent decided not to dismiss the Claimant it was not inconsistent or unreasonable for the Respondent to interlay a disciplinary sanction with performance focused actions. It is also relevant that the Respondent did not, at that time, have distinct performance and conduct policies (both being covered by the disciplinary policy).
117. I accept the Respondent's submission that the allegations pursued by the Respondent with the Claimant were raised in Mrs Martin's report and that the Respondent, as the employer (Mrs Martin was a consultant), was entitled to form

its own view on the seriousness and nature (conduct or performance) of the findings she made following her investigation. Only the Respondent as the Employer knew, for example, the seriousness with which, as a matter of policy, it viewed the nature of the findings Mrs Martin made.

118. I do not consider that, given the evidence in Mrs Martin's report, it was a breach of the implied term of mutual trust and confidence or unreasonable for the Respondent to have:

118.1 invited the Claimant to a Stage 3 formal disciplinary hearing on 6 May 2023; or

118.2 treated the allegations that were the subject of terms of reference 1 and 2 as sufficiently serious to warrant a Stage 3 formal disciplinary hearing.

119. I do not repeat my findings in respect of the individual disciplinary allegations, or Terms of Reference. However, clearly terms of reference 1 and 2 were serious. In particular, the Respondent was entitled to initiate disciplinary action at Stage 3 when there was evidence that the Claimant, as a manager, had not challenged jokes based on sexist stereotyping of women and had not intervened when one of his subordinate managers (DD) began acting in an inappropriate way to a subordinate female colleague (SA).

C. Deciding on 31 May 2023 to proceed with the Stage 3 disciplinary hearing. The Claimant sent a letter on 22 May 2023 pointing out his concerns with the process. The Respondent replied on 31 May 2023 dismissing the Claimant's concerns and justifying its course of action in proceeding with the Stage 3 hearing.

120. The Respondent clearly gave thought to the complaints made by the Claimant in his letter of 22 May 2023. The Respondent, given the seriousness of the matters that had arisen and the Claimant's seniority, was clearly entitled to reply in the measured way that it did on 31 May 2023 and to proceed with the Stage 3 hearing. This was not a breach of the implied term of mutual trust and confidence.
121. The Claimant suggested that adverse inferences should be drawn from the fact that Ms Feeney had not been called as a witness. I do not accept that submission. I accept that the reason why Ms Feeney was not called to give evidence was that she had since retired from the Respondent. It is not unusual for a Respondent not to call a witness who is no longer employed by them.

D. Imposing disciplinary sanctions on 12 June 2023 that were disproportionate in all the circumstances. The Respondent imposed: a final written warning and withdrawal of CPD payments for 12 months, a formal performance improvement plan to be completed within 12 months, a move from the Claimant's operational role of Watch Manager at Avonmouth Fire Station to an office-based role in Technical Services at Nova Way; and mandatory attendance at a

training session delivered by the DICE (Diversity, Inclusion, Cohesion, and Equality) team.

122. I accept the Respondent's submission that Mr Gazzard had a reasonable basis for concluding that the Claimant accepted that he had heard sexist and demeaning comments in the workplace and do not repeat my findings above. The Claimant accepted that he would conduct himself differently as a watch manager in the future. The sanctions imposed by the Respondent were clearly serious and would have had wide ranging impacts on the Claimant lasting for a material period of time:

122.1 A final written warning is a serious sanction and I remind myself of the comments of the EAT in **Stanley**.

122.2 They had financial implications;

122.3 His place of work was to change;

122.4 His status changed (in particular he would not have managerial responsibility);

122.5 His work would be fundamentally different.

123. It is clear to me that, in imposing the sanction that it did on the Claimant, the Respondent did not act in a way calculated to destroy or seriously damage the relationship of trust and confidence with the Claimant. The change in role that Mr Gazzard imposed (described as Management Action) was clearly tied up with the disciplinary sanction but in cross examination it was put to Mr Gazzard that putting the Claimant into the role he did was to put the Claimant in a cupboard, displayed no empathy and was calculated to destroy trust and confidence. Mr Gazzard's oral evidence in response was genuine and corroborated by the contemporaneous evidence and his witness statement [LGWS15-16 and SCWS30]. He asserted in reply that, to the contrary, he intended the role change to be a supportive measure that would give the Claimant a chance to step away from a Watch that was challenging to manage, have a break and reset. I accept that evidence.
124. Given in particular (i) the potentially serious consequences for the Respondent of there being a culture of sexist and demeaning banter or jokes in the workplace; (ii) the importance the Respondent rightly placed on having an inclusive and respectful working environment (iii) the important role that the Claimant played as a watch manager in ensuring that the firefighters under his command conducted themselves in a way consistent with those requirements and (iv) the failings (as explained above) of the Claimant to do so, I do not consider that the Respondent acted without reasonable and proper cause or conducted itself in a manner likely to destroy or seriously damage the relationship of confidence and trust between it and the Claimant as alleged.

- E. Displaying inconsistency in treatment in the sanctions imposed on 12 June 2023. The Respondent was inconsistent in its approach towards staff using the word “fireman”. The investigation report into [SA]’s grievance found that the term was used across the service. Whilst the Claimant was sanctioned for not challenging use of the word, others were not sanctioned for their use of the term, including members of the DICE team.**
125. As the Respondent submitted, the Claimant accepted that as a manager he was more responsible than others for the language used in his watch. In any event, the Claimant was not disciplined only for the use of the word Fireman on his watch. Whilst part of the overall picture, it was clearly the least significant issue. Clearly of far greater concern was the fact that there was found to be a culture of sexist jokes based on gender stereotypes. The Claimant conflated the question of the user of the term ‘fireman’ with this more serious issue at the end of paragraph b in his correspondence of 22 May 2023. There was no such inconsistency as alleged and no breach of the implied term of mutual trust and confidence.
- F. Moving the Claimant to a different role on 12 June 2023. One of the disciplinary sanctions included moving the Claimant from his operational role to an office-based role. Whilst the new role was of the same grade and pay, it was a clear punishment and a detrimental move as the Claimant’s management responsibilities decreased.**
126. In this regard there is nothing to add to my findings as explained with respect to alleged breach D. The Respondent did not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust.
- G. Not implementing the Occupational Health recommendation on 15 August 2023. The report said: “It would be appropriate to have a discussion with his manager as to whether there could be an operational shift role that he could move to rather than the day office one he has been advised he is moving to.” The Respondent did not implement this recommendation or discuss it with the Claimant.**
127. The Claimant accepted in submissions that the focus of the Claimant’s claim was elsewhere. In any event, Ms Feeney’s reply of 7 September 2023 [HB395-398] addressed this issue appropriately and I do not consider that the Respondent acted or failed to act without reasonable and proper cause nor did it conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust as alleged.
- H. Refusing to make changes to sanctions on 7 September 2023. The Claimant sent a letter setting out his position on 31 August 2023 asking the Respondent to make changes to the disciplinary outcome. In its response on 7 September 2023 the Respondent refused to make these changes.**
128. Taking into account in particular (i) my findings as set out above (ii) that the

Claimant's letter of 31 August 2023 came more than two months after the disciplinary outcome was issued and in circumstances where the Claimant had not appealed the disciplinary sanction and (iii) Ms Feeney replied in a reasonable manner on 7 September 2023, I do not consider that the Respondent acted or failed to act without reasonable and proper cause nor did it conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust as alleged. The Respondent had good reason in the circumstances not to change the disciplinary outcome.

Conclusion

129. For these reasons I do not consider that the Claimant was constructively dismissed. Neither individually nor cumulatively did the alleged breaches amount to conduct for which the Respondent did not have reasonable and proper cause or which were calculated or likely to destroy or seriously damage the relationship of trust and confidence between it and the Claimant. The Claimant was not unfairly dismissed.

Employment Judge Woodhead

30 September 2025

Sent to the parties on

23 October 2025

For the Tribunals Office

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint

Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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

Appendix

AGREED LIST OF ISSUES

Constructive unfair dismissal

4.1 The Claimant claims that the Respondent acted in fundamental breach of contract in respect of the implied term of the contract relating to mutual trust and confidence. The breaches were as follows:

(a) Misleading the Claimant during the investigation into [SA]'s grievance. The Claimant was encouraged to be open and honest and was not informed that he may be subject to disciplinary action based on his answers to the questions, which is what happened when disciplinary action started on 6 May 2023.

(b) Inviting the Claimant to a Stage 3 formal disciplinary hearing on 6 May 2023. The Respondent did not act fairly or reasonably in treating the allegations as sufficiently serious to warrant a Stage 3 formal disciplinary hearing.

(c) Deciding on 31 May 2023 to proceed with the Stage 3 disciplinary hearing. The Claimant sent a letter on 22 May 2023 pointing out his concerns with the process. The Respondent replied on 31 May 2023 dismissing the Claimant's concerns and justifying its course of action in proceeding with the Stage 3 hearing.

(d) Imposing disciplinary sanctions on 12 June 2023 that were disproportionate in all the circumstances. The Respondent imposed: a final written warning and withdrawal of CPD payments for 12 months, a formal performance improvement plan to be completed within 12 months, a move from the Claimant's operational role of Watch Manager at Avonmouth Fire Station to an office-based role in Technical Services at Nova Way; and mandatory attendance at a training session delivered by the DICE (Diversity, Inclusion, Cohesion, and Equality) team.

(e) Displaying inconsistency in treatment in the sanctions imposed on 12 June 2023. The Respondent was inconsistent in its approach towards staff using the word "fireman". The investigation report into [SA]'s grievance found that the term was used across the service. Whilst the Claimant was sanctioned for not challenging use of the word, others were not sanctioned for their use of the term, including members of the DICE team.

(f) Moving the Claimant to a different role on 12 June 2023. One of the disciplinary sanctions included moving the Claimant from his operational role to an

office-based role. Whilst the new role was of the same grade and pay, it was a clear punishment and a detrimental move as the Claimant's management responsibilities decreased.

(g) Not implementing the Occupational Health recommendation on 15 August 2023. The report said: "It would be appropriate to have a discussion with his manager as to whether there could be an operational shift role that he could move to rather than the day office one he has been advised he is moving to." The Respondent did not implement this recommendation or discuss it with the Claimant.

(h) Refusing to make changes to sanctions on 7 September 2023. The Claimant sent a letter setting out his position on 31 August 2023 asking the Respondent to make changes to the disciplinary outcome. In its response on 7 September 2023 the Respondent refused to make these changes.

(The last of those breaches was said to have been the 'last straw' in a series of breaches, as the concept is recognised in law).

4.2 The Tribunal will need to decide:

4.2.1 Whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

4.2.2 Whether it had reasonable and proper cause for doing so.

4.3 Did the Claimant resign because of the breach.

4.4 Did the Claimant delay before resigning and affirm the contract?

4.5 In the event that there was a constructive dismissal, was it otherwise fair within the meaning of s. 98 (4) of the Act?