EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		Respondent
MS TURNER (C1) **MR D SMITHERS (C2)** **MS V WILDE (C3)** **MS H GORDOS (C4)**	**AND**	**NATIONAL CRIME AGENCY**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL **ON:** **17TH / 18TH / 19TH / 20TH / 24TH / 25TH / 26TH / 27TH / 28TH / 31ST MARCH / 1ST / 2ND / 3RD / 4TH / 7TH / 8TH / 9TH 10TH / 11TH APRIL 2025**

25TH APRIL 2025 (CHAMBERS MEETING – TRIBUNAL ONLY)

EMPLOYMENT JUDGE MR P CADNEY **MEMBERS:** **MS D ENGLAND**
MS L FELLOWS

APPEARANCES:-

FOR THE CLAIMANTS:- **MR D SMITHERS (C2- REPRESENTING ALL CLAIMANTS)**

FOR THE RESPONDENT:- **MS K LORAINE (COUNSEL)**

JUDGMENT

The unanimous judgment of the tribunal is that:-

First Claimant

1. The First Claimant's claims of:

i) Direct Sex Discrimination pursuant to s13 Equality Act 2010;

ii) Victmisation pursuant to s27 Equality Act 2010;

iii) Unlawful Deduction from wages pursuant to Part II Employment Rights Act 1996;

Are not well founded and are dismissed.

Second Claimant

2. The Second Claimant's claims of:

i) Constructive Unfair Dismissal

ii) Public Interest Disclosure Detriment;

iii) Automatic Constructive Unfair Dismissal (s103A ERA 1996)

iv) Victimisation pursuant to s27 Equality Act 2010

Are not well founded and are dismissed.

Third Claimant

3. The Third Claimant's claims of :

i) Direct Sex Discrimination pursuant to s13 Equality Act 2010;

ii) Harassment contrary to s 26 Equality Act 2010;

iii) Victimisation pursuant to s27 Equality Act 2010

iv) Unlawful Deduction from wages pursuant to Part II Employment Rights Act 1996;

Are not well founded and are dismissed.

Fourth Claimant

4 The Fourth Claimant's claims of:

i) Direct Sex Discrimination pursuant to s13 Equality Act 2010;

ii) Victimisation pursuant to s27 Equality Act 2010

iii) Discrimination arising from disability pursuant to s15 Equality Act 2010;

iv) Failure to make reasonable adjustments pursuant t s20/21 Equality AcT 2010

v) Unlawful Deduction from wages pursuant to Part II Employment Rights Act 1996;

Are not well founded and are dismissed.

Reasons

1. By these claims the claimants bring claims of:

   i) Direct Sex Discrimination (C1/3/4)
   ii) Victimisation (C1/2/3 4)
   iii) Harassment (C3)
   iv) Disability Discrimination -Discrimination arising from disability / failure to make reasonable adjustments (C4);
   v) Unlawful Deduction from wages (C1/3/4)
   vi) Constructive Unfair dismissal (C2);
   vii) Automatic Constructive Unfair Dismissal / Whistleblowing detriment (C2).

2. The tribunal has heard evidence from each of the claimants; and for the respondent from those set out below (the position and involvement of each will be set out in the discussion of their roles in respect of the evidence in relation to the various claims) :

   i) Mr Kyle Meredith;
   ii) Officer A
   iii) Ms Emma McGlone
   iv) Mr Paul Morris
   v) Mr Robert Richardson;
   vi) Ms Katherine Tyler
   vii) Mr Martin Grace
   viii) Mr Oliver Higgins

ix) Mr Keith Gibbens
x) Mr Tom Barford
xi) Mr Kerry Davies
xii) Mr David Hucker
xiii) Ms Deborah Palmer=Lawrence
xiv) Mr Keith Ferguson
xv) Mr Micheal Price
xvi) Ms Andrea Wilson
xvii) Mr Nigel Leary.

3. The witness statement bundle runs to some 323 pages. In addition there is a Core Document Bundle of 3373 pages (of which the index alone runs to some 33 pages);and a pleadings bundle running to 616 pages, including four separate indexes.

4. Despite the huge volume of documentary and witness evidence, there are a number of fundamental disputes at the heart of the case which we have discussed and made findings on before dealing with the individual claims; and in order to make the judgement comprehensible we have attempted to make this judgment as short as is consistent with giving a sufficient explanation of our decisions and conclusions.

Preliminary Applications

5. Anonymisation - Officer A- The respondent's witnesses are all officers within the National Crime Agency. The respondent sought an anonymity order in respect of one of its witnesses that s/he be referred to as Officer A. The claimants did not object and in our view the order was proportionate and necessary to protect their Article 8 rights, The reasons are personal to them and do not affect any of the other witnesses, and are relevant both to their personal life and their previous professional life before they joined the respondent. There was no application to anonymise the respondent itself or any of the other witnesses, or that any evidence be given in private. Having balanced those considerations against the public interest in open justice, in our judgment the public interest in the officer being identified was limited in the extreme, and given that all of the events themselves will remain in the public domain it will have no effect on the public understanding of the issues involved in the case, either in respect of any observers nor anyone reading the judgment. In the circumstances we made the order as requested.

6. Keith Gibbens (evidence via video link) – The respondent applied for permission for one of its witnesses Mr Keith Gibbens to give evidence remotely. He lives in and would have to travel from Scotland to give evidence in person; and to do so would require him to be away from home for three days which would interfere with and disrupt his caring responsibilities. Although he is the comparator for the claimants direct sex discrimination claims he is not a decision maker in respect of any of the disputed events, and his evidence is not central to the resolution of any of the disputes in this case.

7. The claimants objected; but in our view for the reasons given above it was disproportionate to require his attendance in person given that his evidence could perfectly adequately given via video and we granted permission.

General Summary

8. Overarching Claims - The claimants' individual claims are set out and dealt with below. However the claimants contend that what is important is the big picture. Whilst the respondent may have specific responses to some or all the individual allegations, they assert that the overall picture is clear. In the latter part of 2022 the three female claimants, supported by Mr Smithers, directly challenged the senior management of the respondent. They lodged grievances contending that they were being required to work for nothing, which was not true of other officers, and in particular that the treatment of them was discriminatory on the grounds of sex. Rather than deal with the allegations they were covered up and ignored by the senior management and, as a result of raising these issues, they were subjected to a campaign of punishment. They faced disciplinary allegations and had wages unlawfully deducted; and more widely their duties and parts of their role were withdrawn, to the point where the role of MSHTU Tactical Advisor no longer exists. This included withdrawing the right both to advise on an operation as a Tactical Advisor and interview witnesses within the same operation, which both diminished the role, potentially deskilling them individually; the withdrawal of international training opportunities; the reduction in and prevention of operational involvement in operations they would previously have been involved in (e.g. organ harvesting).These are all connected and are not coincidental; and whatever the purported rationale given by the respondent for individual decisions, the overall picture is of them being punished for having raised the allegations.

9. In the case of Mr Smithers (C2), he was subjected to a malicious disciplinary campaign, and was essentially forced out of the respondent because of his support for and advocacy on the part of the female claimants.

10. The first and second claimants assert at various points in their evidence that they have been the victims of the over-arching conspiracy summarised above from the moment they lodged their grievances and/or did the various protected acts. This is summarised at para 34/35 of C1/ST's witness statement; " *I believe the Senior Management Strategy from the protected disclosure being made was Minimise, Coverup, Punish and Eliminate* " and, "*I believe this strategy was set by DD Oliver Higgins".* This has proved a curious allegation, in that firstly it is not explicitly asserted by either C3 or C4; and C2 who represents all the claimants did not expressly put this to the respondent's witnesses, and in particular was extremely reluctant actually to put the allegation to Mr Higgins despite it being explicitly part of C1's evidence. However it has not been withdrawn and our conclusions are set out below.

11. Evidence – Both in support of the campaign / conspiracy allegation, and more generally, the claimants rely on and invite us to draw inferences from what they contend is the respondents failure to call "key" witnesses. This includes firstly anyone from HR, in particular Ms Miranda Retour whose evidence is said to relevant to a number of issues including the interpretation of a number of policies, role profiles, pay due, and the protected disclosures made by from DS /C2. Secondly Andrew Kent /AK, who the respondents contend is the appropriate comparator for the discrimination claims; thirdly the Director General Mr Graeme Biggar; fourthly Director General of Operations Mr Steve Rodhouse who is DS/C2's comparator in respect of the allegations in respect of his disciplinary process; fifthly Mr Paul Connop, one of the claimants' original managers who authorised the amalgamated on call claims; sixthly Ms Sue Hill who was allegedly bullied by ST/C1; and seventh Mr Liam Harrison whose connection with and visits to Mr Gibbens (KG) are said to be relevant to any comparison to the treatment of ST/C1.

12. Overarching Response – The essence of the response is that the claims are effectively manufactured and bear little or no relation to reality. They rely for the most part on assertions which are not supported by any evidence or have no factual basis; and where the evidence is against the claimants they rely on elaborate and fanciful conspiracy theories involving collusion at the highest levels of the NCA management to explain it away. Amongst many other points, they specifically point to the fact that for C1 and/or C2 to allege that the disciplinary proceedings brought against them and/or the sanction in the case of C1, is part of some overall campaign / conspiracy is absurd given that on any analysis they had both committed the misconduct alleged against them. ST/ C1 knew perfectly well at the time she made the claim that brought about the disciplinary process that she was not entitled under the policy to the sums claimed; and DS/C2 did covertly record C1's disciplinary proceedings including the private discussions of the panel. Similarly, the claimants have constructed a theory, which on any analysis is implausible in the extreme, that the respondent retrospectively invented the terms on which Mr Gibbens had returned from secondment in 2020; despite the fact that it was known to all the claimants that KG was non-operational and had not performed on call duties for over two years. The resulting construction of a baroque conspiracy theory to explain events that require no further explanation; and the assertions either that they had done nothing wrong, or should not be punished for that which they had done wrong exist only in the realm of fantasy. In her closing submissions Ms Loraine summarises the respondents position – "*The claimants and Mr. Smithers in particular appear to be under the impression that anything they do not personally agree with must therefore be based in some form of ulterior discriminatory motivation, and that no evidential basis beyond their mere assertion is required to make such serious allegations. They are wrong on both counts.".*

13. In respect of the evidence the respondent makes the simple point that in an adversarial process it is up to each party to call the witnesses it wishes to. If it fails to produce a relevant witness the tribunal may draw inferences. That is the risk each party takes. They have called all the witnesses who are directly relevant to the specific claims made

by the claimants, and it is neither necessary or proportionate to call any witness who may have some tangential involvement in the events.

14. General Conclusions - We have dealt with the claimants claims individually as set out below, but in respect of the overarching conspiracy / campaign allegations, in our judgement the respondent is correct, and there is no evidence before us that any such conspiracy or campaign against any of the claimants ever existed. Whilst this does not mean that any or all of the claimants claims are bound to fail it does mean that they have to be judged individually on their merits; and they are not, whatever the rights and wrongs in relation to the individual disputes, evidence of or the manifestations of any larger or wider campaign. Specifically there is not in our judgement any evidence of any conspiracy directed by Mr Higgins (OH), as alleged by ST/C1.

15. We also accept the respondents position as summarised above, that the claimant's chain of reasoning appears to be that they are correct in their fundamental assertions as to their right to the on-call payments, and differential treatment in comparison with KG. They do not accept that it is possible to draw any other conclusions and contend, as set out by ST above, that the respondent did in fact agree with the underlying assertions, but decided not acknowledge them but cover them up and institute a campaign of punishment against the claimants. The theory clearly rests on the proposition that it is not possible genuinely and reasonably to disagree with their underlying assertions. If however the underlying issues are at least arguably not as clear cut as the claimants assert, and if the respondent genuinely took the view that they were not entitled to the on call payments and were not the victims of discrimination in comparison with KG, which in our judgement the respondent did, the factual premise of the campaign / conspiracy falls away.

Background

16. C1(ST) /C3 (VW) / C4(HG) were all employed as National Tactical Advisors (referred to as Tac Ad before us) in the Modern Slavery and Human Trafficking Unit (MSHTU) of the NCA. They were part of a team of five including Andrew Kent (AK) and Keith Gibbens (KG). Mr Kent went on long term sick in May 2022 and played little part in the events subject to this claim. The claimants contention is that Mr Gibbens was employed in the same role as them, and he is their comparator for the direct sex discrimination claims. The respondent contends that although at the same grade (G4) and falling within the same team for management purposes that he in fact performed a different role of Child Exploitation expert. The resolution of this dispute is dealt with below. In addition the team contained a (G5) Mr George Waugh (GW) who provided administrative support.

17. C2 (DS) – DS is married to ST and employed as Operations Manager (Complex Financial Crime). He represented ST in her internal disciplinary processes; and has represented all the claimants in these proceedings. ST/ C1 and S /C2 both resigned and were no longer employed by the respondent by the time of the hearing. VW/C3 and HG /C4 both remained employed by the respondent at the date of the hearing.

18. During the period covering these claims, essentially from early 2022 onwards the MSHTU team had the following line management structure with the individual managers set out below

19. Direct line managers (G3)

    i) Mr Paul Connop (PC) until April 2022;
    ii) Mr R Richardson (RR) – (on a temporary basis) April -August 2022;
    iii) Mr Kyle Meredith (KM) – August to November 2022;
    iv) Officer A – December 2022 – March 2023;
    v) Ms Emma McGlone (EM) – March 2023 until December 2023.

20. Above them were the following managers (G2 and G1/ Deputy Director):

    G2*:* i) Mr R Richardson (RR) – Until February 2023
    ii) Mr P Morris (PM) - March – October 2023

    G1: Mr M Grace (MG); September 2021- November 2022
    Ms K Tyler (KT); November 2022 -30th August 2023

    Deputy Director – Oliver Higgins (OH).–

21. The events which form the background to, and are the subject matter of these claims, essentially begin in the early part of 2022. By September/October 2020 the Tac Ad team comprised the three female claimants and AK (and according to the claimants KG although this is in dispute); and on call duties were performed by the four of them (including AK but excluding KG), with PC their line manager helping out. Both AK and PC went on long term sick in the early part of 2022 leaving the on call duties to be performed by the three claimants, and they assert potentially KG. It is not in dispute that KG was not from this point rostered to be on call and, which again is not in dispute, that he had not previously been rostered to do so (discussed in greater detail below).

22. The MSHTU was required to provide a 24 hour service, being available to answer enquiries and give advice to police forces in relation to MS/HT. Within the MSHTU the practice was for one officer to be on call for a week. The officer detail would be held by the National Control Centre and any enquiry routed through to the individual duty officer. Thus each officer would perform their usual shifts (8.00 am to 4.00/5.00 pm from Monday to Friday) and would be on call overnight between shifts and at the weekend until the next officer took over on call duties the following Monday morning. As there were four of them in principle, subject to annual leave and other commitments each officer would be on duty one week in four. There is no complaint about this arrangement, and in particular no complaint that it was discriminatory in any way prior to 20th May 2022. That date is identified specifically as it is the date on which AK went on

long term sick. In essence the claimants claim is that the failure to require KG to perform on call duties from that point was discriminatory.

23. As is set out in greater detail below the claimants contend that their weekday on call duties lasted for some 15-16 hours (4.00 / 5.00 pm- 8.00am.) and that the standard on call shift lasted for 12 hours. They concluded from this that they were working three/four hours per shift without pay, and that they should be paid for those hours. With the agreement of Mr Connop, and subsequently at least the acquiescence of Mr Richardson they commenced the practice of submitting "amalgamated" claims for a twelve hour on call shift for an on call shift they had not actually performed to represent the aggregated 3-4 hour periods they believed themselves to have accrued. These claims were presented entirely openly, with the support of their managers, and represented time they had actually been on call, albeit not specifically for the shift against which the hours were claimed. They therefore contend that they were entitled to these payments.

24. The situation changed when Mr Meredith became their line manager. He was unhappy about signing off for payments for shifts that they had not worked. He was not, however, unsympathetic to the proposition that they were entitled to be paid for those hours and suggested that they claim for 1.25 times the shift allowance for the shifts they had actually worked. He consulted HR who informed him, and he subsequently informed the claimants in the circumstances detailed below; that the view of HR/payroll was that each on call shift of whatever length attracted the same single on call payment of £25.28 and that the claimants' contention that they were entitled to extra pay for a shift lasting beyond 12 hours was wrong. The claimants and AK, and the two managers PC and RR were subsequently given words of advice and the respondent recouped the sums from the claimants and AK which it contended were overpaid.

25. All of the events which are the subject matter of the claims stem from the fallout and consequences of these fundamental disputes as to on call duties and the payments for them.

Principal Factual Disputes / Contentions

26. Mr Gibbens (KG) - The claims of direct sex discrimination (C1/3/4) are based on a comparison with Mr Gibbens. The dispute is as to whether he is or is not an appropriate comparator. Whilst the evidence as to his position relied on by both parties and our conclusions are set out below; the essential dispute is straightforward. The claimants contend that KG was employed as a Tac Ad in the same role as them, and on contractual terms which entitled the respondent to require him to perform on call duties. The fact that they were required to perform on call duties and he was not is only explicable by the fact that they were female and he was male and is therefore discriminatory. The respondent asserts that he was in a unique position and that the agreement to his not performing on call duties was specifically made when he returned from secondment in 2020; and there is nothing to suggest that sex played any part in that agreement.

27. KG is a former Police Officer who took up a secondment with the NSPCC through the Child Exploitation and Online Protection Command (CEOP) which lasted some 10 years, ending 2020. This was his first job within the NCA, and he was recruited specifically in order to be seconded out of it into the role within the NSPCC. The role did not require him to be "operational", or for him to perform any on call duties; and during the ten year secondment with the NSPCC he did not carry out any such duties. Following the ending of the secondment he then returned to a post in the MSHTU as part of the Tac Ad team. His evidence is that he was not and never had been a fully operational Tac Ad, that his expertise lay more narrowly in child exploitation. His role was essentially to support the Tac Ad team; and it was agreed when he rejoined that he would not carry out any operational or on call duties, which reflected the reality of his role, which was essentially to carry out administrative tasks; and the reality that he had not been operational or carried out on call duties at any point during the ten years he had been employed by the respondent and been on secondment. All of the relevant respondent's witnesses support the contention that this was agreed as he asserts; and it is agreed by all parties that as a matter of fact he had not between his return to the respondent in May 2020 and AK going off sick in May 2022 performed any operational or on-call duties; which the respondent asserts demonstrates beyond doubt that this account is necessarily true.

28. The claimants do not accept this. The claimants' points are in summary :

i) The Contract of Employment was for a G4 Tac Ad, and (Clause 7.5) confirms a contractual requirement to perform on call duties if required;
ii) The Role profile RP 140000) which the respondent contends he holds is said to be an operational role;
iii) Ms McGlone replaced KG as a G4 Tac AD and her understanding was that she was moving into his role which was a Tac Ad/ SPOC for Scotland / Northern Ireland;
iv) The organisational charts showed KG as a Tac Ad.

29. The respondent submits, again in summary, that this analysis is fundamentally wrong;

i) During the period after 20th May 2022 there is no actual comparator as AK was off sick and KG continued as he had done for the previous two years to perform his role exactly as before;

ii) The fact that AK's absence left the remaining three Tac Ads to perform the on-call duties and that the remaining three Tac Ads were female is entirely fortuitous. The fact that it was the one male Tac AD who went off sick is an entirely random event, and if one of the female Tac Ads had gone off sick at that point, the three remaining Tac Ads doing all the on call work would have included two female and one male, and the question of KG being a comparator and/or any question of sex discrimination would not and could not have arisen;

iii) It follows that any comparator has to be a hypothetical comparator based on AK. What would have happened to a fully operational male Tac Ad who performed on call duties if either no one had gone off sick and/or one of the female Tac Ads had gone off sick. The answer is obvious that the fully operational on call Tac Ads would have continued to perform these duties as before.(The question of whether AK, or a hypothetical comparator based on AK is the correct comparator is discussed in greater detail below).

30. The claimants' contend that the correct starting point is the comparison of the contracts/role profiles of the ST and KG. For completeness sake we will deal with the points as raised by the claimants; although for the reasons given below in our judgement this analysis ignores the reality of the situation that KG was not required to perform operational/on-call duties because it had been agreed that on his return from secondment that he would not do so; and the assertion that he could by reference to his contractual terms have been required to do so misses the point.

31. The claimant's contract is dated 16th May 2006 when she joined the NCA (Serious Organised Crime Agency -SOCA- as it then was). Her role profile at the time of the events with which we are concerned was as set out above as an MSHTU Tactical Advisor (Tac Ad). The Role Profile (RP 140110) includes :

Represent the NCA with partner agencies involved in the investigation and prosecution of the core business of the NCA modern slavery and human trafficking unit this will involve both physical deployments and providing telephone advice.

32. KG's Offer letter/contract of employment is dated 15th September 2020 (although in fact referring back to an appointment commencing on 19th May 2020) and is headed "Subject: Appointment to the post of G4- Senior Officer – MSHT Tactical Advisor. At clause 7.5 it provides that he is required to perform On Call shifts if required. The claimants therefore submit that he was employed into an identical role with a contractual requirement to perform on call duties.

33. However, the respondent contends that KG's role Profile (RP14000) Senior Officer Operations was different from the Tac AD role profile. The role profile itself was generic and related to a number of specific roles (e.g. Senior Crime Analyst/ Strategic Analyst/ Communications Data Advisor) and does not include MSHTU Tac AD. Simply by a comparison of the Role Profiles the claimant and KG were necessarily performing different roles.

34. In addition, even if they are wrong as to him performing a different role, his employment on return from secondment was specifically subject to the agreement made between him and Mr Richardson that he would not perform operational / on call duties.

35. KGs evidence is that towards the end of his secondment he was contacted by Miranda Retour (HR Business Partner) who informed him that post secondment be would be

treated as a returning overseas international officer and would be found a similar role to that he was doing. He was not interviewed and cannot recall if he was slotted into an existing vacancy. It had been agreed between himself, Mr Richardson and Mr Connop that he would not carry out on call duties because of his age and the fact that on call duty would be more onerous for him as he lived in the Cairngorms, and had to remain in his house to get a phone signal. If he were on call he could not leave his house which was not true of the claimants.

36. The claimants or at least C1, do not accept this. Her overarching contention, as set out in her witness statement is that once the claimants lodged their grievances that the respondent knew and accepted that they had been the victims of sex discrimination; but rather than accept and address it, attempted retrospectively to manufacture differences between the claimants and KG where none in fact existed. They began *"..a Senior Management Cover up of the sex discrimination*". This "*..took the shape of a new narrative around.. KG being in a different role to C1/3/4. RR stated this in writing to KT..",* and , "*After the initial scoping, subsequent documents were adjusted / altered to reflect better on these managers*.. ". One of the documents the claimants assert is essentially fictional and has been retrospectively relied on to create a difference between their roles and KGs is the Role Profile itself. They do not accept that this is in fact his role profile; but that it has been deliberately and fraudulently placed before the tribunal as part of a conspiracy/cover up that began in the latter part of 2022.

37. The respondent submits that this a baseless and essentially absurd conspiracy theory. It overlooks one simple fact which is that everyone agrees that KG was not performing the role of an operational Tac Ad from his return from secondment, in that he did not do on call shifts and was not operational. He was therefore doing a different job from an operational Tac Ad. The simplest, best, and true explanation of why he was doing a different job to the claimants from day one of his employment is that he was employed in a non-operational role and was not a fully operational Tac Ad. They rely on the fact that the claimant herself in July 2022 advanced an analysis of KG's position which corresponds exactly with KGs own evidence, and more broadly the respondents evidence as to the agreement as to his duties when he returned to the MSHTU following his secondment with the NSPCC:

38. Conclusions / Different Role – In our judgement the dispute as to whether the claimants and KG were or were not performing different roles is a somewhat arid one. The evidence is absolutely clear that for a period of over a decade both during, and on his return from secondment he had not been required to perform operational / on call duties. This in our judgement reflects the unique circumstances of his recruitment, secondment and return. It is notable that AK, who was recruited after KG as a Tac Ad was required to perform on call and operational duties. It follows automatically the those who were regarded as Tac Ads, or Tac Ads performing the full range of duties were required to perform on call duties irrespective of sex, but that the respondent regarded KG as falling into a different category. Whether that is described as performing a different role, or the same role with different duties, is not in our judgement particularly

significant. What is significant is that KG had not since his return and prior to the critical point in May 2022, been required to perform on call duties and in our judgment that reflects the circumstances of his initial recruitment and return, and personal circumstances, not because of his sex in any way.

39. There are two consequences that follow from this. Firstly in our judgment the respondent is correct and KG is not an appropriate comparator as his role and/or duties were and had always been different from those of the claimants. Secondly even if the fact that the three female Tac Ads were required to carry out on call duties and that the remaining male Tac Ad KG was not, is enough to satisfy stage 1of the Igen v Wong test; we accept the respondent's evidence as to why he was not and that the respondent has in any event satisfied any burden of demonstrating that the reason for the difference was not sex.

Comparator AK –

40. For the reasons set out above the respondent does not accept that KG is an appropriate comparator and we have accepted the respondents submissions. For completeness sake they go on however, to assert that there is an actual direct comparator AK. Whilst AK was off sick from 20th May 2022, and if it is necessary to construct a hypothetical comparator it is one based on AK. It is not in dispute that prior to 20th May 2022 that he performed on call duties in exactly the same way as the other claimants; and the respondent submits that had he not gone off sick that would continue to have been the case. Thus the claimants had been, and would have continued to have been treated in exactly the same way as a man employed on the same terms to perform the same role.

41. In addition it contends that the claimants division of pre and post 20th May 2022 is wholly artificial. Nothing changed in relation to the duties KG was required to perform after 20th May 2022. What had changed is the absence of AK. Prior to that point AK was clearly a direct comparator, and there is no allegation prior to May 2022 of any discrimination.

42. Whilst AK might not be a direct comparator from 20th May 2022 onwards because of his absence; it is instructive to consider the position had he not gone off sick, but one of the female claimants. The position would then have been identical pre and post 20th May 2022 save that one of the remaining three Tac Ads was male and two female. There is no reason to suppose, and the claimants have never suggested that in those circumstances he would have been treated any differently from them.

43. It follows, the respondent submits, that this whole part of the claim is therefore based on the entirely fortuitous event that the Tac Ad who went off sick was male leaving the three female Tac Ads to shoulder the burden. Thus even if not an actual comparator, any hypothetical comparator would have be constructed using AK as the basis / template; and there is nothing to suggest that the hypothetical comparator would have been treated any differently.

44. Looked at through the other end of the telescope, nothing changed in relation to Mr Gibbens. He had not been operational or performed on call duties for the previous two years and continued to perform exactly the same duties as before. He was not given any special treatment. Put simply, after AK went off sick the remaining Tac Ads continued to perform their duties exactly as they had before. Thus the respondent contends that however one looks at it, this part of the claim is doomed to failure.

45. Conclusions – As set out above we accept that KG is not the appropriate comparator and also accept that AK, or a hypothetical comparator based on AK is the correct comparator.

20th May 2022

46. One of the most curious features of this case is the identification of 20th May 2022 as the point from which the discrimination began, there being no allegation of any discrimination prior to 20th May 2022. The respondent submits that at best this was wholly fortuitous in that it represents simply the date on which AK went off sick, and at worst opportunistic and actively misleading. Put simply if there was no discriminatory differential treatment in not requiring KG to perform operational / on call duties prior to 20th May 2022, it is very difficult to see how continue to treat the duties of the claimants and KG in exactly the same way after 20th May 2022, could overnight constitute unlawful discrimination, simply because another officer is off sick.

47. We accept that it is very curious that conduct and the allocation of duties which is not alleged to be discriminatory prior to 20th May 2022; should overnight become discriminatory. However, it is not theoretically at least impossible for it to be so, and we have not drawn any conclusion that any of the claimants claims are doomed to fail for this reason alone.

On Call Allowances –

48. The MSTHTU was required to provide a 24 hour service, being available to answer enquiries and give advice to Police Forces in relation to MS/HT. Within the MSHTU the policy was for one officer to be on call for a week. The officers details would be held be the National Control Centre and any enquiry routed through to the individual on duty officer. Thus each officer would perform their usual shifts (8.00 am to 4.00/5.00 pm from Monday to Friday) and would be on call overnight between shifts and at the weekend until the next officer took over on call duties the following Monday morning. As there were four of them in principle , subject to annual leave and other commitments each officer would be on duty one week in four. There is no complaint about this arrangement, and in particular no complaint that it was discriminatory prior to 20th May 2022. That date is identified specifically as it is the date on which AK went on long term

sick. In essence the claimants claim is that the failure to require KG to perform on call duties from that point was discriminatory.

49. As is set out in greater detail below the claimants contend that their weekday on call duties lasted for some 15-16 hours (4.00 / 5.00 pm- 8.00am.) and that the standard on call shift lasted for 12 hours. They concluded from this that they were working three/four hours per shift without pay, and that they should be paid for those hours. With the agreement of Mr Connop, and subsequently at least the acquiescence of Mr Richardson they commenced the practice of submitting "amalgamated" claims for 12 hour on call shift for an on call shift they had not actually performed to represent the aggregated 3-4 hour periods they believed themselves to have accrued. These claims were presented entirely openly, with the support of their managers, and represented time they had actually been on call, albeit not specifically for the shift against which the hours were claimed. They therefore contend that they were entitled to these payments.

50. As the trigger for and a significant part of the case concerns on call allowances we have set out the relevant parts of the Managing Working Time Operating Procedure below:

8 On Call

8.1 - Unless specified in the contract of employment there is no obligation to be on call. New contracts of employment (from October 2019) will include this obligation…

8.5 - A 7 day cycle has 9 periods of on call made-up as follows;

- *Working days - one period of on call per working day / non- working day that runs from the end of one period of work to the next rostered work period or rest day;*
- *Rest days – two 12 hour (approximate) periods of on-call rest per day;*
- *A normal weekend would comprise 5 periods Friday to Sunday.*

8.7 Being on-call means that officers must be able to attend work if necessary and to be in a fit state to undertake any duties. This places limits on the use of free time whilst on-call. Officers on-call must:

- *be contactable, such as being at home or ensuring a clear phone signal;*
- *be in a geographical area appropriate to be able to attend the office or other location at short notice, and be ready to set off in 10 minutes if needed;*
- *ensure a suitable means of transport is available should they be called in;*

- *not drink alcohol; and*
- *avoid activities that might lead to excess fatigue, such as competitive sports etc.*

8.12 – On call is not considered as working time and does not count towards the working week for overtime enhancement or WTR purposes. It is considered working time however, when officers are significantly restricted such as waiting at a hotel awaiting delivery of vehicles or otherwise remaining at line manager disposal and unable to use leisure time as they wish. As such managers need to determine as far as practicable the likelihood of officers having to return to work once they have been stood down.

8.13 – <u>On-Call Allowances</u>

8.13.1 Officers on… grades 4 and five on the spot rate framework are entitled to an allowance for on-call responsibilities per each period of on-call, approximately a 12 hour block; .

8.13.2 – The allowance can be claimed via HR Self-Service for each period of on call. Once authorised by a line manager, it is sent to the payroll department for processing.

8.13.3 The current rate of on call allowance as at 31st of May 2022 is £25.28 per period.

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51. The respondent contends that it is plain from the sections of the policy set out above that:

i) On call periods amount to 9 per week (8.5).

ii) On call periods between working shifts (e.g. from the end of the working shift on Monday to the beginning of the working shift on Tuesday) comprise one on call period irrespective of their length.(8.5);

iii) For each on call period a single payment of £25.28 is payable (8.13.1 and 3);

iv) The reference to each on-call being approximately 12 hours is only referable to rest day periods (8.5);

v) Alternatively, and in any event, if the anticipated duration of each on call period including week day on call periods is approximately 12 hours, there is no provision within the policy for a payment above the specific individual payment of £25.28 for any individual on call period of whatever duration; and/or

vi) The payment is a single one off payment of £25.28 for each on-call period and there is no provision either to reduce that or increase it by reference to an hourly rate in the event that the on call period is less than or greater than 12 hours;

vii) In any event an on call period does not constitute at working time either for overtime or WTR purposes (8.12);

viii) It follows that the claimants' basic proposition that they were entitled to extra payments for on-call periods which lasted more than 12 hours is not derived from the policy itself, and is specifically not permitted by the policy; and/or

ix) That claimants implicit contention that the single payment of £25.28 per on call period in fact represents an hourly rate which permits an increased pro rata payment for any on-call period lasting more than 12 hours is not derived from the policy itself, and is specifically not permitted or authorised by any provision of the policy.

52. The claimants contend that:

i) Their interpretation of the policy is correct and there was no overpayment;

ii) The basis for this is that the payment represents a single payment for a twelve hour period;

iii) The respondents payroll systems did not permit claims for more than unit for one on call period irrespective of the length of the on call period;

iv) The only way of claiming for the on call hours that were not covered by that payment (about which the claimants were entirely open) was to aggregate the hours and claim for them as one unit;

v) This was perfectly permissible and approved by the claimants' managers before KM;

vi) Even that is not correct that all the payments were approved by their line managers at the time and were therefore authorised. Even if their and their managers interpretation of the policy is wrong the fact of authorisation means that there was no overpayment;

vii) Alternatively, that the claimants' contracts were varied by custom and practice and they had become contractually entitled to those payments irrespective of the terms of the policy.

53. In essence they contend that periods on call constitute working time, at least in the general sense, even if not within the technical meaning within the National Minimum Wage Regulations. If this is correct, and if a period of on call work is defined as a twelve hour period, then they would be, if they were not paid for the extra hours, working for

free which they contend is unlawful. It follows from that that they were entitled to be paid pro rata for hours on call during any on call period longer than twelve hours. The only mechanism for doing so given that the HR/payroll system did not allow fractional payments was to aggregate the hours and claim for periods during which they were not in fact on call. If they had not done so they would not have been paid for those hours.

54. For the avoidance of doubt, and although no specific claim pursuant to the National Minimum Wage Regulations is before us, in order to determine whether they had or had not been paid the national minimum wage for any specific reference period, their total hours and total remuneration salary would have to be aggregated and divided by the number of hours worked. Although we have no specific evidence, given the claimant's salaries it is extremely unlikely in our view that it is even theoretically possible that they could have been paid less than the national minimum wage simply by reason of the addition of a relatively small number of extra hours for any on call period. .

55. Conclusions - Entitlement to the "amalgamated" on call payments - In our judgement, judged against the terms of the policy itself the respondent is clearly correct. The combination of the definition of an "on call" shift in 8.5 and the payment for each period as defined in 8.13.3 means that it is entirely clear that being on call from the end of one shift to the beginning of the next attracts, other than at weekends, a single payment irrespective of the length of the period between shifts. There is no basis for concluding that there is any right to claim anything other than the single payment for being on call for the period between the end of one shift and the beginning of the next. Essentially the claimants' case, however elaborately put, rests on the proposition that the definition of an on call period as defined in 8.5 between shifts is governed by a limitation imposed by the division of the weekend break into five twelve hour periods, with result that those periods between shifts should be limited to twelve hours and/or that if longer that further payment is required. However, this is expressly not how that period is defined in the policy , .."*one period of on call per working day / non- working day that runs from the end of one period of work to the next rostered work period or rest day",* and is simply not how on call periods between shifts are defined other than at weekends. The claimants interpretation in our judgment involves a fundamental misunderstanding of the policy. If this proposition is wrong and any on call period of whatever length attracts the same on call allowance, which in our judgement it does, the fundamental basis of the claim falls away.

56. Custom and Practice- Secondly the claimants assert that even if their interpretation of the policy is wrong and that they had no contractual entitlement to the payments originally, that they had acquired the right and/or their contracts had been varied by custom and practice so as to create the right.

57. Again the respondent submits that this argument is untenable. There was no custom and practice of paying on call allowances in the manner the claimants did; and as soon as the respondent discovered that these claims were being made it put a stop to it.

There is no evidence that anyone other than the claimants and AK had ever made any such claims.

58. In our judgement the respondent is correct and in the circumstances of this case here was no custom and practice on which to base the argument. The fact that the claimants managers allowed them to submit fictitious claims for shifts that they had not actually worked to be paid for hours during which they were on call was, on the evidence before us which we accept, unknown to anyone other than the claimants and their managers; and the fact that they got away with this subterfuge for a significant period does not create any right to the payments themselves by custom or practice unless that fell within the terms of the policy, which in our judgement it did not.

59. Unlawful Deduction - The claimants alternative position, as discussed in relation to the claims for unlawful deduction from wages, is that even if their interpretation was wrong, it was shared by their managers and the payments were approved; and that even if they could be prevented from continuing to claim going forward, that there was no basis for recouping payments already made. In their closing submissions they assert that as they were not paid in error there was no basis to recover the sums paid out.

60. The respondent submits that this is unsustainable. If they were not entitled to the payments, the fact that their managers shared their misinterpretation of the policy does not create any entitlement to keep any money wrongly obtained outside the policy. The respondent has never accused any of those involved with dishonesty or deliberate fraud, and has accepted that the claimants and their managers honestly, albeit wrongly, believed that they were entitled to those payments. However the fact that the payments were approved in error does not create any right to keep monies that should never have been paid in the first place.

61. For completeness sake the evidence of Ms Tyler is that she initially took the view that any overpayment should not be recouped, essentially as the payments had been approved by the then managers. Mr Higgins took the view that they should be recouped, and they took advice from HR which was to the effect that the respondent would always seek to recoup overpayments made to employees. As a result it was decided that the sums would be recouped, but that that decision would not be communicated until all three of the claimants were at work, which resulted in the delay in the monies being recovered.

62. In our judgement the respondent is correct in its submissions both as to the underlying interpretation of the policy and as to the issues arising from managerial approval and custom and practice. It is notable that claimants accept the respondents contention that if the payments were overpayments the respondent would have had the contractual right to deduct them (Closing submissions para 39); which is in any event correct in our judgement. As, for the reasons given above we have concluded that the claimants were not under the policy entitled to those payments, it follows automatically that they were

overpayments which the respondent was entitled to deduct; and that the deductions were necessarily not unlawful.

63. The Claiming of On-Call Allowances Investigation / Disciplinary process – The background is that on 16th September 2022 KM received a request to approve an on call claim for C1/ST which included an on call period she had not worked. He suggested that the claimant claim for 1.25 units per on call shift. Following an exchange of emails with HR/Payroll on 7th October 2022 KM received an email setting out the respondents understanding of the policy, which was that only one payment could be claimed for any on call period irrespective of length. In fact, ST had herself emailed payroll on 20th September to ask about KM's proposal to claim for fractions of the on call payment. In the reply she was explicitly informed that officers were only entitled to a single payment for an on call period between the end of one shift and the start of the next. The respondent submits that the claimant therefore knew, independently of any communication from KM, as early as 20th September 2022, that to claim extra payment for an on call period of longer than twelve hours was simply not permissible.

64. On 17th October KM held a meeting which C1/ST was not able to attend but C3 and C4 did and explained that the respondent's position was that the on call claims were not valid and there was to be a PSU investigation. The PSU investigation was carried out by Mr Mark Kerr (Senior Investigating Officer). His conclusion was that the claimants and AK should receive management words of advice, and that the overpayments should be recovered by payroll. This in fact what occurred and all of those involved including Mr Kent, Mr Connop and Mr Richardson had received words of advice at the end of October/ beginning of November 2022; and that all of those who had received overpayments had them recouped.

65. The respondent submits that it follows automatically that in respect of the underlying allegations all of the Tac Ads and their managers, both male and female were treated identically and that irrespective of their views as to the merits of the underlying disputes that any allegation of differential treatment of the female Tac Ads is factually incorrect and untenable. In our judgement this must be correct.

66. On 24th October 2022 ST submitted a further claim for on call payments for aggregated hours taken from sixteen separate on call periods. This was investigated by Mr Kerr, with two allegations being investigated; failing to adhere to a reasonable management instruction; and, knowing the policy deliberately submitting a claim for on-call payments to which she was not entitled. He concluded that there was a case to answer on the second allegation and that it would, if proven constitute misconduct.

67. The claimant contends that she made the application for the payment in good faith, and prior to receiving management words of advice in November 2022. The respondent accepts that the latter point is true, but contends that the claimant had known that the respondent did not regard "amalgamated" claims as legitimate as early as 20th September 2022; and had evidently been told of the contents of the meeting with KM on

17th October as she spoke to him about the issue shortly after. It follows that the submission of the claim was not simply the innocent continuation of a course of conduct which she understood to be acceptable; but one which she knew at the time she submitted the claim was regarded as unacceptable as the sums were not due under the policy.

68. The claimant submitted a wealth of documentary evidence to the panel including specifically a lengthy defence document. The document makes detailed allegations of procedural unfairness, and re-iterates the background and the claimants contentions as to the entitlement to amalgamated on call claims. In addition she also asserts that there are only two issues before the panel, firstly whether on its correct interpretation the policy did prohibit the making of amalgamated claims. The claimants position was, as it has been before us that her interpretation was correct. Secondly that even if the claimant was wrong in that assertion she believed her interpretation of the policy was correct, and accordingly she did not possess the "mens rea" for the commission of the offence as she did not know or believe that to submit the claim was contrary to policy. In essence her defence was simple, she was either correct in her interpretation of the policy, in which case the claim was not in breach of policy; and in the alternative that as long as she genuinely believed that to be correct she did not know or believe that it was contrary to policy and was not guilty of misconduct in submitting it.

69. The hearing itself was conducted Ms Palmer-Lawrence with Mr Keith Ferguson and Mr Fred Wilson (HR Advisor). The conclusion was to make a finding of misconduct and issue her with a First Written Warning. Ms Palmer-Lawrence's evidence, which we accept is that the finding was based solely on the evidence before the panel. The original hearing had to be adjourned because of the events surrounding DS/ C2's covert recording of the hearing (see below). When the hearing was resumed on 15th June 2023 ST/C1 was informed of the decision to uphold the misconduct allegation and impose a First Written Warning on the basis that the claimant "*knowingly acted against policy and reasonable management instruction by making a further claim for amalgamated on -call allowances".*

70. As is set out below, the claimant contends that this was an act of victmisation; which claim depends upon the assertion that irrespective of whether the claimant or the panel was correct in its analysis, that the real reason for the decision was that in whole or in part the fact that the claimant had made a number of protected acts. However, we accept the evidence of the respondents witnesses, and in particular that of Ms Palmer-Lawrence for a number of reasons. Firstly, in our judgement it is irrefutable, although the claimant has never accepted it, that she submitted the claim at a time when she knew that the respondents view was that she was not entitled to make any "amalgamated" claim. For reasons which are not obvious she determined that she was right and they were wrong. On any analysis the panel's conclusion was on the evidence rationally open to them, and in reality the conclusion that she had committed the misconduct alleged was inevitable, given the evidence. Secondly, all the incidents of making approved claims by the claimants and AK were met with the same outcome,

management words of advice together with the recoupment of the money paid. No one else was subjected to any disciplinary sanction except ST/C1. It must follow that the reason in the case of ST/C1 was separate from and additional to the basic amalgamated claims. Finally there is no evidence of any wider campaign / conspiracy, for the reasons given above, and there is no evidence from which we could hold or infer that reasons given by the panel for imposing the disciplinary sanction were not the genuine reasons.

71. Operational Decisions- Part of the claimants' case, and in particular a large number of the victimisation claims set out below, is that purportedly operational decisions made in particular during 2023 were not made for the operational reasons advanced, but as part of the overall campaign against the claimants. These include the decision to remove Tac Ads from conducting face to face interviews during operations on which they were also advising; and decisions as to attending meetings and training sessions.

72. The specific details are set out in the discussions of the individual claims; however, the respondents evidence as to the larger picture is that it is correct that in or about 2022/2023 the respondents focus was recast onto Organised Immigration Crime (OIC – which included the issue of illegal immigration via small boats or other means, which was a significant political issue). This resulted in discussions about restructuring the unit as a whole and re-organising the Tac AdS to become much more focused on OIC work including potentially changing the title to "MSOIC Tactical Advisor". It is not therefore in dispute that at the time of the events encompassing these claims that the role and function of a Tac Ad was under serious and significant review. However the respondent submits that the idea that a wholesale reorganisation would not have been considered on its own merits, but simply as a disguised means of punishing the claimants is a ludicrous fantasy.

73. Having heard the evidence we are entirely satisfied that as a general proposition the operational reasons given by the respondents witnesses for making the decisions in dispute, were the genuine reasons and not part of a campaign against the claimants.

74. DS / C2 - Misconduct / Suspension / Disciplinary Charge-

75. In outline the facts which led to the suspension and proposed disciplinary process in respect of DS/C2 are not in dispute. Mr Smithers represented ST/C1 in her disciplinary hearing on 30th May 2023. He decided to covertly record the proceedings and left the recording device running in the room whilst the panel was sitting in private to consider their decision, so that the panel's private deliberations were being recorded. The panel became suspicious and discovered the recording device. The hearing was adjourned and the matter referred to the PSU. The Head of the PSU Mr Price contacted Mr Leary to authorise the suspension of DS/C2, which Mr Leary did because he considered that the three criteria for suspension were satisfied; in that his continued presence at work may prejudice the investigation; it was in the public interest, and his continued presence at work posed a significant risk to the respondent. As an automatic consequence of

suspension he was not entitled to retain any NCA assets. In addition by a letter of 2nd June 2023 his designation as an NCA officer was withdrawn and he lost his operational powers.

76. On 12th June 2023 DS/C2 resigned by letter with immediate effect.

77. The disciplinary proceedings continued and there was a disciplinary hearing on 14th November 2023 chaired by Ms Wilson (AW) . The conclusion of that was that he was guilty of gross misconduct and would have been summarily dismissed had he still been employed. The basis of the DS/C2's defence; and the basis of his subsequent appeal is set out at considerable length and in considerable detail but in essence he contends:

i) That the panel were required in the interests of fairness to investigate all of the allegations relating to the three female claimants in this case to form an independent view of the merits of their allegations;
ii) Had they done so they would or at least should have concluded that those allegations were well founded and accepted the existence of the campaign against them;
iii) Even if the evidence of the fact of the covert recording were admissible, which he contends it is not, this would have demonstrated that his belief in a campaign/conspiracy was justified and that it follows that he was justified in suspecting that the panel itself was part of the campaign, and that his covert recording the proceedings to determine whether the panel was part of the campaign/ conspiracy was therefore entirely justified;
iv) The evidence derived from the unlawful search of his property, which led to the discovery of the covert recording was in any event inadmissible.

78. As is set out below the DS/C2 asserts that the events summarised above are acts of victmisation and/or public interest disclosure detriment and/or breaches of the implied term of mutual trust and confidence. His case is that the respondent's own actions demonstrate that the fact of his covertly recording ST/C1s disciplinary hearing was not the real reason for the suspension/disciplinary proceedings. He relies firstly on a comparison with the DGO Mr Steve Rodborough who had been alleged to have committed gross misconduct in relation to Operation Midland, and who faced disciplinary charges but who was not, as far as he is aware, suspended. Similarly he alleges that at around the same time another unnamed officer faced charges of sexual assault/harassment, for which he was subsequently dismissed but not suspended. Finally he relies on the conduct of Mr Ferguson and /or Ms Palmer Lawrence. He contends that they respectively carried out or permitted an unlawful search of his property. The basis for that assertion relates to the powers of search and seizure possessed by officers of the NCA. He contends that they were officers of the NCA and could only lawfully exercise those powers in accordance with the appropriate procedural requirements. As they did not follow the procedural requirements the search was unlawful; and must have been known to be unlawful to the members of the panel when it was carried out.

79. The respondent submits that this is a prime example of DS/C2 attempting to bury a very simple point in a mountain of detail and obfuscation. As the panel found, he had committed the misconduct alleged. However much DS/C2 tries to avoid it, this conclusion was correct and inevitable given that he had in fact done so; and been caught red handed. The points as to the search and whether the evidence would have been admissible in any subsequent criminal proceedings misses the point completely, and is an essentially a nonsensical proposition. These were internal disciplinary proceedings, during which the panel suspected that Mr Smithers was covertly recording the proceedings, which would necessarily be at least misconduct. All they did was look to see if their suspicions were correct and discovered that they were. They were not conducting a criminal investigation, and the issue is not whether had there been some subsequent criminal proceeding whether the evidence would or would not be admissible. Having discovered that DS/C2 was covertly recording both the hearing, and in particular the private discussions of the panel, the suggestion that the respondent was either entitled, or obliged to overlook very significant and serious misconduct committed by one of its own officers is absurd.

80. Conclusions - Our conclusions are that we accept the respondents submissions and evidence. This was at heart a very simple misconduct process in which the actions constituting misconduct were not denied. The panel's task was to decide whether DS/C2s own explanation and motivation mitigated the severity of the misconduct and/or the sanction that should be applied. We are entirely satisfied on the evidence that the reason for the suspension, institution of disciplinary proceedings and the disciplinary outcome are those given by the respondent, that DS/C2 had been found to be covertly recording the disciplinary proceedings. For the reasons set out above in our judgement the potential admissibility of the evidence in any hypothetical future criminal proceedings has no bearing on the admissibility of the evidence of the covert recording in internal disciplinary proceedings

81. Time Limits – In respect of all of the claimants there are issues in respect of time limits. As we have considered and determined all of the claims on their merits and dismissed them; it is not necessary to consider any of the time points.

Individual Claims

82. We have gone onto consider the individual claims as set out below.

Claimant 1 / ST

83. The first claims as set out in the List of Issues are claims of direct discrimination:

> C 1/3/4 – Direct sex discrimination of the First, Third and Fourth Claimants (Ms Turner, Ms Wilde and Ms Gordos) (Equality Act 2010 section 13):-

5.1 Did the Respondent do the following things:

5.1.1 Unequally distributed work in the Modern Slavery team by requiring the First, Third and Fourth Claimants to:

5.1.1.1 Undertake 16 hour on-call shifts from 20 May 2022 and 4 December 2022 but only paid them for 12 hours, Mr Gibbens was not required to do this. This did not form part of their contractual requirements.

5.1.1.2 Between 20 May 2022 and 4 December 2022 required them to undertake significantly more training design and training delivery than Mr Gibbens.

5.1.1.3 The training events often occurred the day after an on- call night, which made them tired and exhausted. Mr Gibbens did not have this problem because he was not allocated on-call work.

5.1.1.4 In relation to operational deployment, between 20 May 2022 and 4 December 2022 the Claimants were required to undertake significantly more deployments than Mr Gibbens.

5.1.1.5 The Claimants were required to complete first aid and officer safety training. Mr Gibbens was not required to do this.

5.1.2 In November 2022, removed time off in lieu for the First, Third and Fourth Claimants.

5.1.3 On his appointment as manager on 15 August 2022, Mr Meredith increased the First, Third and Fourth Claimants' workload by:

5.1.3.1 Increasing the number of on-call shifts, without allocating any to Mr Gibbens;

5.1.3.2 Allocated the training programme starting on 9 September 2022, in which the Claimants undertook significantly more events than Mr Gibbens and did not take into account the on-call shifts.

5.2 Was that less favourable treatment? The Tribunal will have to decide whether the Claimants were treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been

treated. The Claimants says they treated worse than Mr Gibbens and/or a hypothetical comparator.

5.3 If so, was it because of sex?

5.4 Is the Respondent able to prove a reason for the treatment occurred for a non- discriminatory reason not connected to sex?

Direct Discrimination

83. Section 13 (1) Equality Act 2010 provides – *A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*

84. This requires the tribunal to identify three elements of:

i) Less favourable treatment; which is
ii) "Because of" a protected characteristic;
iii) In comparison with a an actual or hypothetical comparator.

85. Less favourable treatment – The test for whether treatment is "less favourable" is objective, although the tribunal can take into account the claimant's perception that it was less favourable in determining whether objectively it was.

86. "Because of" – The nature of the requirement for a finding that any less favourable treatment was "because of" the protected characteristic was summarised by Linden J in *Gould v St John's Downshire Hill 2021 ICR 1 EAT*: "*The question whether an alleged discriminator acted "because of" a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the "reason why" question and the test is subjective… For the tort of direct discrimination to have been committed, it is sufficient that the protected characteristic had a "significant influence" on the decision to act in the manner complained of. It need not be the sole ground for the decision… [and] the influence of the protected characteristic may be conscious or subconscious."*

87. Burden of Proof – S136(2) Equality Act 2010 provides: *'If there are facts from which the court [or tribunal] could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*' This is the requirement for the claimant to establish a 'prima facie case' of discrimination, 'stage one' of the test. If the burden does shift s136 (3) provides that s136(2) does not apply if 'A shows that A did not contravene the provision', "stage two'.

88. Evidentially the process required of the tribunal was summarised by Lord Nicholls in *Nagarajan v London Regional Transport 1999 ICR 877, HL*: '*Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which*

follows from a decision. Direct evidence of a decision to discriminate on [protected] grounds will seldom be forthcoming. Usually the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances.

89. Comparator – Claims of direct sex discrimination require an actual or hypothetical comparator against which to judge the less favourable treatment allege and determine whether here is acausal link between it and sex. As set out above the claimants submit that the appropriate comparator is KG. The respondent disputes this and contends that the correct comparator is either AK, or a hypothetical comparator based on AK. For the reasons given above we accept that the respondent is correct. This means that the claimants' case as advanced before is bound to fail as we accept that the reason for the difference in treatment between the claimants and KG was not because of sex. We have, however, set out our findings as to the specific allegations, in case we are wrong in that conclusion.

90. Less favourable Treatment – In addition, and specifically in relation to on call work the respondent does not accept, in any event, that the first claimant at least was treated less favourably in comparison with KG. The basis for this is that although the alleged discrimination is said to have commenced in May 2022, that as late as 27th July 2022 in an exchange with KG himself, KG asks ST whether she has bought some new shoes, she replies that she has and continues "*roll on more on call…".* It follows automatically, the respondent submits, that at least as late as July 2022 that C1 /ST welcomed the opportunity to carry out on call duties; and that by definition it cannot be less favourable treatment to give her the opportunity to carry out duties she actively wanted to carry out.

91. In our judgement thus is a very curious piece of evidence and difficult to reconcile with the claimant's later complaints about performing on call duty during this period. However, given out overall conclusions as to the appropriateness of KG as a comparator, and the individual conclusions as to the factual allegations as set out below, it is not in our judgment necessary to consider if there was a point after July 27th 2022 at which the claimant changed her mind about the desirability of performing on call duties, and if in those circumstances it constituted less favourable treatment from some point after 20th May 2022.

92. 5.1.1 / 5.1.3.1 On Call – It is not in dispute that from 20th May 2022 until 4th December 2022 that the claimants undertook on call periods which regularly, if not always, lasted longer than twelve hours. There are two claims in relation to on call shifts. The first is the general requirement for the three Tac Ads to perform them from 20th May without any assistance from AK/PC which is necessarily factually true. However the evidence of the respondent is that they were not in any event and in fact, rostered to perform on call duties. From April 2022 to August 2022 RR temporarily stepped into the G3 management role which had previously been performed by PC. His evidence is that during this period he essentially left the team of the remaining three Tac Ads and Mr Gibbens to organise their own work; and he did not in fact roster any of the claimants into any specific on call rota; they sorted it out themselves. Insofar as any carried out on call work that was not at his

direction. If this is correct, and we accept his evidence, it follows that there was no less favourable treatment irrespective of the identity of the comparator.

93. The second is that (5.1.3.1) that Mr Meredith (KM) increased the on call shifts. Given the way that on call shifts worked it is difficult to see how this can be factually correct, given the factual allegation that from 20th May 2022 that the female Tac Ads were already performing all of the on-call shifts. KM's evidence is that he did not allocate on call work in any event; and factually the increase in on-call work had resulted from AKs absence from 20th May 2022. There was as a matter of fact no increase in on call work from the date of KMs appointment. KM was not challenged about this and there is no evidence before us supporting the factual allegations. It follows that these allegations would have been dismissed as not factually well founded in any event.

94. 5.1.1.2 + 5.1.3.2 – Training Design / Training Delivery – Again there appear to be two separate factual allegations, the first that the claimants undertook more Training design and/or training than Mr Gibbens after 20th May 2022; and that Mr Meredith increased this after his appointment on 15th August 2022. The allegations in respect of training design and allocation derive from a statistical analysis of the work records by Mr Smithers. From it he asserts that the figures demonstrate significant statistical differences between the training required of the claimants and KG, which on the face of the figures is necessarily correct.

95. Mr Gibbens does not accept that the figures can possibly be accurate. He contends that he and C1,3, and 4 were all constantly busy from the point at which AK went off sick; and all were pulling their weight. In any event, for the reasons given above we have concluded that KG is not an appropriate comparator because his role was in fact and reality wholly different to that of the claimants. If he is not the correct comparator it follows automatically that differences between his and the claimants duties, either in quality or quantity are not relevant.

96. In any event, in our judgement, in order to determine whether any differential the treatment of the claimants and KG was discriminatory, there would have to be a comparison between the duties before and after 20th May 2022, given that it is no part of the claimants claims that any differential treatment prior to 20th May 2022 was discriminatory. As the only figures the claimants have produced post-date 20th May 2022, it is not in our judgement possible to draw any conclusions from them in any event.

97. However for completeness sake, the evidence of KM which we accept is that when he took over each Tac Ad had an area of geographical responsibility; ST/C1 – South West ; VW / C3 North East ; HG North West and KG Scotland and Northern Ireland. AK was off sick. In terms of specific training he was asked by RR to provide training to investigations staff across the NCA. The three claimants were the primary experts in modern slavery and the training was allocated according to availability. His evidence, which we accept, is that he offered assistance to the claimants by including three people from the Regional Organised Crime Unit to assist in delivering the training but this was rejected by the claimants.

98. As set out above, as we do not accept that KG is an appropriate comparator, and as the figures in and of themselves are not sufficient to allow an appropriate comparison to be drawn; it follows that we are not able to identify any less favourable treatment in comparison with KG and/or any evidence from which we could properly draw any inference simply from the figures themselves that the reason for any difference was sex.

99. 5.1.2 + 5.1.3.2 - Training event following on call shifts which did not affect KG – In our judgement this is not in fact a separate allegation of discrimination but a combination of the two previous allegations; and essentially a consequence of the allegations of performing more on call and/or training duties than KG. It is not in our judgment in fact a separate allegation of discrimination.

100. For completeness sake, as we do not accept that KG is the appropriate comparator, this claim would be bound to fail in any event.

101. 5.1.1.4/5 – Operational Deployment / KG not required to compete first aid and/or Officer Safety Training (OST) –

102. The respondent's evidence, which we accept, is that both these are requirements for operational officers. As KG was not employed in an operational role he necessarily he did not receive either first aid training or OST, which the claimants did as they were operational officers. It follows automatically that there is no appropriate comparison between the claimants and KG. Even if this difference had been sufficient to meet the threshold of stage 1of the Igen v Wong test we are satisfied on the evidence that the reason KG did not undertake training as an operational officer, is that he was not an operational officer and the respondent would have satisfied the burden in any event.

103. 5.1.2 -Re Toil – The dispute re TOIL relates to travel from home to work. On her appointment as manager in November 2022 Officer A declined to approve some TOIL requests, on the grounds that the time claimed included time which represented home to work travel time (i.e. if the claimants normal home to work travel time would be one hour – and they had travelled from home to a location three hours away they were claiming the full three hours which Officer A contended was incorrect). The claimants do not dispute that Officer A was correct, but contend that no such checks were carried out in respect of Mr KGs travel claims and/or that this did not apply to KG who was permitted to claim pay /TOIL for all of his travel time.

104. The evidence of Officer A, is that in respect of C1/3/4 that she had discussions with all of them about the correct process for claiming TOIL which could not include travel time which included time which represented time which would ordinarily represent travel to work. This was not recoverable and she advised the claimants to amend their claims to remove travel to work time. The difference between them and KG is that KG had not submitted any claims for TOIL. Mr Gibbens evidence is that he did not claim for travel to or from work when he went to Glasgow; and if he travelled further afield he claimed the time from Glasgow. It is not true that he claimed travel from home; and in his case the issue simply did not arise.

This is confirmed by KM, in relation to his decision to ask the team (including KG and GW) to move to the Indigo online system, that KG had not made any claims whilst he was their line manager. Officer A also confirmed this and that the only TOIL claimed by KG was 36 hours which related to an historic claim which was processed as part of his termination payments. It is specifically not true as alleged that the C1/3/4 had TOIL removed, simply that they were required to correctly claim it, which would also have applied to KG had he claimed.

105. We accept this evidence, and accept that there is no appropriate factual comparison between the claimants and KG in respect of this issue. Again if the difference is sufficient to satisfy stage 1 of the Igen v Wong test we accept the respondent's evidence that the reason for the difference is that KG had not claimed TOIL and that they would have satisfied any burden.

C1 - Victimisation

106. Protected Acts – There is no dispute that the protected acts set out below were protected acts within the meaning of s27 Equality Act. 2010:

7.1.1 On 19 July 2022, in a meeting with Mr Grace that there had been sex discrimination;

7.1.2 In correspondence to Mr Richardson on 12 September 2022 that there had been sex discrimination;

7.1.3 In correspondence to Mr Richardson on 18 October 2022 that there had been sex discrimination;

7.1.4 In correspondence to Mr Richardson on 19 October 2022 that there had been sex discrimination;

7.1.5 In correspondence to the professional standard unit on 21 October 2022 that there had been sex discrimination;

7.1.6 In her grievance dated 24 October 2022 that there had been sex discrimination.

107. Detriments

7.2.1 On 2 November 2022 served Ms Turner with a misconduct notice for an on call claim of 'on call' hours worked;

7.2.2 Subjected Ms Turner to disciplinary proceedings;

7.2.3 Found Ms Turner guilty of misconduct and applied a sanction to her and published the details on the front page of the newsletter and misquoted her;

7.2.4 Stalled Ms Turner's application for a different NCA job. This was an external application so that she could re-join so that it did not adversely affect her police pension;

7.2.5 On 21 May 2022 she was told that she had to pay the amalgamated pay from the on-call claims and this was taken from her July 2023 wages.

7.2.6 Between 24 August 2023 and 14 September 2023 not providing Ms Turner with a certificate of service (aka a "DG Letter of Thanks") that she had been asked to write herself and had been submitted via her line manager on 24 August 2023.

7.2.7 On 14 September 2023 no managers attending Ms Turner's last date of service or sending her messages of thanks.

108. The primary question in relation to the alleged detriments is whether there is any causal link between them and all or any of the accepted protected disclosures set out above.

109. In order to succeed the claimant must be subjected to the detriment by the discriminator, consciously or unconsciously, "because of" one or more of the protected acts. This is the same question as that set out in respect of direct discrimination above and requires us to consider the issue in accordance with the same test (save that I respect of victmisation we have to consider the influence of the protected act not characteristic) , "..*it is sufficient that the protected (act) had a "significant influence" on the decision to act in the manner complained of. It need not be the sole ground for the decision… [and] the influence of the protected act may be conscious or subconscious."* We have accordingly considered in respect of each of the detriments whether all or any of the protected acts had any influence, and if so whether that was a significant influence on the decision. In common with all discrimination jurisprudence a significant influence is one which is more than minor or trivial.

7.2.1 / 2 / 3 **-**Disciplinary Process-

110. The first three allegations relate to the disciplinary process. Our conclusions are set out above. Specifically in relation to the allegation of victimisation, we accept that there is no causal link between any of the protected acts and the decision to institute disciplinary proceedings or the outcome of those proceedings.

111. The only factual allegation not dealt with above relates to the publication of the outcome of the disciplinary process. The respondent's evidence, which we accept, is that the fact of publication, is an automatic consequence of the finding of misconduct. The reference to misquoting refers to the fact that it referred to her admitting the misconduct, which the claimant asserts that she did not. This is, in our judgement a somewhat semantic dispute, in that the claimant had admitted the underlying allegation found to constitute misconduct, the submitting of the amalgamated claim, but not that it was misconduct.

In relation to publication we accept the respondents evidence that it was the automatic consequence of the finding, and it follows that there was no causal link between the publication and protected act. In respect of the misquoting allegation, it is in our judgement arguable that was not an entirely accurate summary of the claimant's defence, but again there is not in our judgement any evidence from which we could draw the inference that there was any causal link between the summary and any protected act, not least because there is no evidence before us as to of who wrote the summary, and whether s/he had any knowledge of any protected act; and it follows that these allegations must be dismissed.

7.2.4 – "Stalled" retirement application –

112. It is not entirely clear what the claimant is referring to in the stalling of her application. The issue is only referred to at two points in her witness statement (paras 48 and 53.5) and neither refer to any allegation of "stalling"; and it is not referred to in the closing submissions.

113. However, the background to this allegation is that ST/C1 had applied via an external process for a MSHT Tac Ad post in or about July 2022, in order to be able to retire and then rejoin the NCA. Ms McGlone had also applied and scored more highly than ST/C1 with the result that ST/C1 was on the reserve list.

114. On 11th September 2022 ST emailed KM to indicate that she wished to retire from the NCA. However she also wished subsequently to rejoin and wanted to retire as soon as she was "in receipt of an agreed contract to rejoin the NCA". The claimant's evidence is that this was standard practice within the NCA as it allows an officer to retire to receive a police pension, and then subsequently to return to the same job from which they had notionally retired. KM had been externally recruited to the NCA and did not believe that he could agree to her retirement on those terms, but that resignation / retirement and any subsequent re-hiring would or should be entirely separate processes.

115. The claimant essentially submits that KM either knew, or should have known or discovered that the request she was making was standard practice within the NCA and that there was no basis to refuse her request both to be permitted to resign but simultaneously be guaranteed to be permitted to return to the same job within the NCA after a few months.

116. We accept KM's evidence that it was not a practice he had ever come across before and genuinely did not believe that it was possible, and there is no evidence that there is any link between his conclusions and any protected act. In any event there was a subsequent meeting arranged between the claimant and KM and Keith Smith to discuss the issue.

117. Mr Morris's evidence is that he became involved in March 2023, and that in April 2023 the issue was with the SCS, which had proposed awaiting the outcome of the disciplinary hearing before making a decision. His evidence is that if there was any delay/stalling in considering the application it is because it had to await the outcome of the disciplinary hearing. On the evidence before us, and in our judgement, this must be correct and we

cannot identify any delay in the process which has any causal link to any protected act; and it follows that this allegation must be dismissed.

7.2.5 – Deduction of paid on-call allowances-

118. As set out above we accept the respondents evidence as to the process and reasoning for the deductions; and do not find that there is any causal link between the deductions and any protected act.

7.2.6 Certificate of Service / Letter of Thanks –

119. It is not in dispute that C1/ST did not receive a certificate of service/letter of thanks. Mr Morris accepts that a draft was sent to him by Ms McGlone on 25th September 2023. He has no recollection of receiving it and did not deal with it. This may be explained that by the fact that he was in his last few weeks before retirement on 31st October 2023. The respondent's evidence is, therefore that at the time this was simply overlooked.

120. However the evidence of Mr Leary is that in May 2024 he was asked to consider the issue and recommended that ST/C1 should not receive a valedictory letter on the basis that he considered it highly unlikely that she was not aware that DS/C2 had used a covert recording device during the disciplinary hearing. Whilst both ST/C1 and DS/C2 dispute this conclusion and assert that ST/C1 did not know, we accept Mr Leary's evidence that this was the reason for not providing a letter of thanks in or about May 2024; and that there is no causal connection between his decision and any protected act.

121. We accept the evidence of both Mr Morris and Mr Leary and do not find that there is any causal link between any protected act, and either Mr Morris's failure to provide one, or Mr Leary's decision not to authorise one. It follows that these allegations must be dismissed.

7.2.7 No other officer attending on the Claimant's last day-

122. It is accepted that Ms McGlone did not attend on the claimant's last day, Her evidence is that she intended to and had the week before asked ST/C1 whether she wanted to go out for a drink or meal with her and Mr Morris. The claimant declined that offer. Unfortunately she had had to have a tooth extracted resulting in an infection. She took the view that it would be unsafe for her to drive to Exeter from the North West. The fact that she did not attend is completely explained by this account. Mr. Morris's evidence is that he did not attend as the C1/ST had made it clear that she did not want a social event to mark her last day and so did not go.

123. Again we accept the evidence of both the respondents witnesses and do not find that there is any causal link between the failure of either to attend and any protected disclosure.

Unauthorised Deduction from Wages (First Claimant)

10.1 Did the Respondent make unauthorised deductions from the Claimant's wages by clawing back amalgamated on-call shift payments in July and August 2023 a total of £455. And if so how much was deducted?

10.2 Were the wages paid to the Claimant between October 2022 and December 2022 in respect of on-call shifts less than the wages she should have been paid?

10.3 Failed to reimburse the Claimant in respect of the Christmas 2022 bank holidays whilst she was off sick.

10.4 Was any deduction required or authorised by statute?

10.5 Was any deduction required or authorised by a written term of the contract?

10.6 Did the Claimant have a copy of the contract or written notice of the contract term before the deduction was made?

10.7 Did the Claimant agree in writing to the deduction before it was made?

10.8 How much is the Claimant owed?

124. 10.1 and 10.2 – For the reasons given above in our judgment there was no unlawful deduction in the failure to make amalgamated on call payments, or in the subsequent recoupment of those paid. There was, put simply, no right to receive the payments under the policy; and there was a contractual right to recover overpayments, which these were. There is therefore no unlawful deduction in respect of either.

125. 10.3 Christmas 2022 Bank Holidays – It is not in dispute that whilst the claimant was off sick over Christmas 2022 that there were three bank holidays which, had she not been off sick she would have been entitled to take as annual leave. She subsequently applied to be paid three days holiday pay for those days. The respondent declined on the basis that to do so would amount to double recovery as she had in fact been paid in full for those days in

any event. In the emails surrounding this issue it is accepted that this policy was not always consistently applied, and that there were examples of people who had received holiday pay in similar circumstances. However the view of HR was that this was wrong and that ST/C1 was not entitled to any further payment.

126. In our judgement this is correct. Where an employee is off sick during what would otherwise be annual leave, it is open to them subsequently to request to be permitted to take leave to compensate for the untaken leave during sickness absence. Whilst it would have been open to the claimant to request unused annual leave as she had not been able to take those days as annual leave because of sickness; we are not aware of any authority that would allow simply her to be paid twice for the same days as both sickness absence and annual leave.

127. For completeness sake, it is possible, in those circumstances, that at the termination of her employment that she may actually have been entitled on this basis to three further days holiday pay. However this is not how the claimant puts her case, and there is no evidence before us as to the calculation of any outstanding pay on termination, or any assertion that the claimant was underpaid outstanding holiday pay on termination. In the circumstances it is simply not possible to make any finding of fact in respect of termination payments; and the claim as put before us is in our judgement bound to fail as a claim for unlawful deduction from wages.

128. Overall Conclusions- For the reasons given above we have concluded that all of ST/C1s claims must be dismissed.

Claimant 3 – Ms V Wilde

C 1/3/4 - Direct sex discrimination of the First, Third and Fourth Claimants (Ms Turner, Ms Wilde and Ms Gordos) (Equality Act 2010 section 13)

129. These are the same allegations as set out in relation to ST/C1 above, and for the same reasons as given above these claims must also fail.

Harassment of the Third Claimant (Ms Wilde) related to sex, (Equality Act 2010 s. 26)

130. Harassment - *Harassment Related to Sex (s26 Equality Act 2010)*

S26 Equality Act 2010 provides:

(1)A person (A) harasses another (B) if—

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

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

(i) violating B's dignity, or

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

(2)A also harasses B if—

(a)A engages in unwanted conduct of a sexual nature, and

(b)the conduct has the purpose or effect referred to in subsection (1)(b).

(3)A also harasses B if—

(a)A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b)the conduct has the purpose or effect referred to in subsection (1)(b), and

(c)because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a)the perception of B;

(b)the other circumstances of the case;

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

131. "Related to" - No specific definition is given in the Act, but the phrase allows for a wider causal connection than the "because of" test for direct discrimination. In determining whether specific conduct is related to a particular protected characteristic the tribunal is entitled to take into account the context of the conduct alleged.

132. The allegations of unwanted conduct related to sex are:

6.1 Did the Respondent do the following things:

6.1.1 On 31 August 2022, Mr Meredith followed up with an inspector from the East Midlands about operational advice she had given and offered support. Following that she had no further contact with the Inspector.

6.1.2 On 24 October 2022 after submitting foreign expense fees to Mr Meredith. She said she was nervous about submitting them after being accused of theft and fraud. Mr Meredith forward the e-mail she sent to payroll and the foreign currency department.

6.1.3 On 1 November 2022, Ms Wilde and Mr Gibbens were due to give training in London. Mr Gibbens phoned in sick. Ms Wilde told Mr Meredith she was not willing to do it on her own . He told her to cancel the hotel looking to set her up. Mr Meredith said he would let the people being trained that they would not attend, however he did not and she was called the next day.

6.2 If so, was that unwanted conduct?

6.3 Did it relate to the Claimant's protected characteristic, namely sex?

6.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

6.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

6.1.1 - 13th August / KM's contact with an East Midlands Officer–

133. VW / C3's evidence is that she had provided operational advice to an officer from the East Midlands after a different team had indicated it was not within their remit. She alleges that she told KM in order for him to address the matter internally, but that KM spoke to the East Midlands officer. She contends that KM had no previous MSHTU experience, and that he had embarrassed her by speaking to the officer from the East Midlands. KM has no recollection of this at all; and as is set out in the claim VW/C3 had no further contact with the East Midlands officer. It is alleged to be unwanted conduct and is related to sex in that VW/C3 is not aware of KM following up with other officers following any similar conversation with KG.

134. For our purposes it is extremely difficult to establish the basic facts of the complaint. If KM did in fact speak to the other officer there is no evidence of what he said; or whether he said anything that could have embarrassed VW/C3. The evidence is, even from VW/C3's perspective, that nothing happened as a result of this conversation, and there was no further contact from either KM or the other officer in respect of this matter. Equally, as the comparison is with KG, there is no evidence that he ever had any similar conversation with KG. Put simply there is in our judgement insufficient evidence to allow us to make any factual findings. We are

left simply with the claimant's assertion that KM spoke to the other officer, which she found embarassing.

135. In our judgement it is impossible to conclude that simply speaking to this other officer could constitute unwanted conduct, or that it was related to sex; and there is no evidence from which we can draw any inferences sufficient to satisfy stage 1 of the Igen v Wong test and transfer the burden of proof.

6.1.2 24th October email –

136. On 20th October 2022 VW/C3 submitted an expenses claim which she asked to be authorised following the allegations of "theft and fraud" in relation to the on call payments. It is not in dispute that KM did receive the email in question and did forward it without editing or revision to the foreign currency department . Once it had been approved he forwarded the email chain to payroll. In doing so he did forward to the foreign currency department and payroll the original email in which she expressed her concerns, which disclosed those matters to the recipients. On 24th October VW/C3 emailed KM asking him to be more mindful about forwarding emails with sensitive content; and he replied apologising.

137. It is clear that forwarding the unedited original email was unwanted conduct.. However KM simply did what he was asked to and obtained authorisation for the payment as VW/C3 had requested, but had not edited the original email when he did so. When this was drawn to his attention he apologised.

138. In our judgement, however, there is no evidence before us that this failure to edit the original email was related to sex, or from which we could infer in the absence of an explanation, that it was related to sex. It follows that this claim must be dismissed.

6.1.3 1st November 2022-

139. This in fact relates to a training event on 2nd /3rd November 2022. KG and VW were due to deliver the training in Sunderland, but KG informed KM that he was unwell and would not be able to attend the following day. KM contacted VW, who stated that she would not be able to deliver two days training alone; and suggested cancelling the event. KM accepted this and asked her to cancel her hotel booking but when she did so she discovered that it had already been cancelled, apparently by KM. VW alleges that this was KM looking to set her up.

140. In respect of cancelling the training KM did prepare an email to inform an officer in Sunderland that the event had been cancelled; but it may not have been

sent, or if it was it does not appear that it was read or acted on. As a result VW received a call the following day from officers who were unaware that the training had been cancelled. She alleges that KM did this deliberately to humiliate her. This is an allegation which, in our judgement is difficult to understand. One of two people were responsible for the cancellation of the event not being notified to those attending; either KM if he did not send the email, or if he did the officer who received it. It has never been suggested by anyone that any fault attached to VW.

141. These are in our judgement very difficult allegations to follow. We would first have to find as a fact that KM did cancel the hotel booking; and that he had failed to notify the cancellation of training course. There is in our judgement insufficient factual evidence that he had done either; and nothing from which we could conclude that this conduct even if he had and even if this unwanted conduct that it was related to sex; and in our judgement viewed objectively, and within the meaning of s26 (4), there is nothing in either of the factual allegations which could reasonably be held to have had the effect of creating one or more of the proscribed environments.

Victimisation of the Third Claimant (Ms Wilde) (Equality Act 2010 s. 27)

142. Protected Acts - It is accepted that the protected acts as set out below are protected acts within the meaning of s27 Equality Act 2010:-

8.1 The Respondent accepts that the Claimant did the following protected acts:

8.1.1 On 1 September 2022, in a meeting with Mr Grace that there had been sex discrimination and referred to anxiety and distress;

8.1.2 In a telephone call with Mr Richardson on 18 October 2022 to express concerns about the management of the team;

8.1.3 In her grievance dated 31 October 2022 which included that there had been sex discrimination.

8.2 Did the Respondent do the following things:

8.2.1 On 4 November 2022, Ms Tyler, told her that she had been given management advice with regards to the on-call claims. She says this was a form of disciplinary sanction;

8.2.2 On 21 May 2022 she was told that she had to pay the amalgamated pay from the on-call claims and this was taken from her July 2023 wages;

8.2.3 Following her return from sick leave on 27 March 2023:

8.2.3.1 On 29 March 2023 Ms McGlone removing Ms Wilde and Ms Turner from conducting visually recorded interviews.

8.2.3.2 Between 31 March 2023 and 6 April 2023 Mr Morris refused Ms Wilde permission to attend a training event in Romania.

8.2.3.3 Between 3 April 2023 and 9 May 2023 Mr Morris refused to allow Ms Wilde and Ms Gordos to deliver training to CEPOL.

8.2.3.4 Between 12 May 2023 and 26 May 2023 Mr Morris and Ms McGlone frustrated Ms Wilde's travel arrangements to attend a conference in Romania.

8.2.3.5 On 17 May 2023 Ms McGlone stated that she had concerns that there would be a review of their function.

8.2.3.6 Between 27 June 2023 and 3 July 2023 Ms McGlone informed Ms Wilde that she would no longer be required to dial into several regular meetings she had previously attended.

8.2.3.7 Between 27 March 2023 and 25 August 2023 Ms McGlone excluding Ms Wilde from participating in operational/tactical work in relation to tissue/organ harvesting, visa abuse and missing children. And on 7 September 2023 Ms McGlone excluding Ms Wilde from a team meeting concerning matters of general importance to Ms Wilde's team.

8.2.3.8 On or around 9 June 2023 excluding Ms Wilde from participating in the leaving collection for Mr Gibbens.

8.2.3.9 Between 27 March 2023 and 2 July 2023 Ms McGlone delaying and not processing Ms Wilde's claims for expenses.

8.2.3.10 Between 6 July 2023 and 25 July 2023 Mr Morris questioning the validity of a report Ms Wilde made to Ms McGlone regarding the behaviour of a colleague.

8.2.3.11 Between 28 July 2023 and 10 August 2023 Ms McGlone refusing to allow Ms Wilde to attend an event in Vienna.

8.2.3.12 Ms McGlone not completing a stress risk assessment for Ms Wilde until 24 April 2023, failing to record 'control measures' for the 'hazard factors' identified in the SRA in the action plan and thereafter failing to comply with the plan for weekly 1:1s identified in the SRA.

8.2.3.13 On 15 May 2023 not acting upon Ms Wilde's request to be referred for a psychological assessment up to 8 September 2023.

8.2.3.14 On 19 June 2023 Mr Morris caused distress and intimidation to Ms Wilde after she asked not to be contacted after working hours by Ms McGlone.

8.3 By doing so, did the Respondent subject the Claimant to detriment?

8.4 If so, was it because the Claimant had done the protected acts?

143. General Comments - The individual claims are dealt with below. However, as is set out above, the primary issue is whether there is any causal link between any of the events alleged to amount to detriments and all or any of the protected acts; and the law that we have applied is as set out above. In addition, and in general terms, these allegations are in our view prime examples of the approach to the disputes between the parties set out above. The claimants accept that there may be explanations for some or all of the conduct alleged to be acts of victimisation; but contend that we should step back and look at the events in the round and conclude that even if there is no evidence to contradict the respondent's account, or evidence to support it, that we should view the events as constituting a pattern of behaviour from which we can conclude the allegations of victimisation are made out irrespective of our findings as to the individual allegations. The difficulty for the claimants with this approach is, in our view, that it invites us to assume what must be proven. If there is no evidence of any link between the matters complained of and any protected act, we should assume or infer a link from the number of events to which the claimants' take objection. In our judgement we are obliged to consider the specific evidence in relation to each allegation and make findings as to whether there is or is not any evidential link between the protected act and the detriment, and cannot simply assume from the number of allegations that they are true.

8.2.1 On 4 November 2022, Ms Tyler, told her that she had been given management advice with regards to the on-call claims. She says this was a form of disciplinary sanction;

144. Our conclusions in respect of the issues relating to on call claims are set out above, and for those reasons we are entirely satisfied that the reasons for the management words of advice being given are those given by the respondent; and were not causally linked to any protected acts but were entirely determined by the respondent's conclusions as to the amalgamated on call claims.

8.2.2 On 21 May 2022 she was told that she had to pay the amalgamated pay from the on-call claims and this was taken from her July 2023 wages;

145. Again for the same reasons given above we accept the respondent's evidence as to these decisions; and were not causally linked to any protected acts but were

entirely determined by the respondent's conclusions as to the amalgamated on call claims.

8.2.3 Following her return from sick leave on 27 March 2023:

8.2.3.1 On 29 March 2023 Ms McGlone removing Ms Wilde and Ms Turner from conducting visually recorded interviews.

146. It is not in dispute that a decision was taken that Tac Ads should not both advise on an operation and interview the witnesses; and that requests for interviews should be passed to the Specialist Witness Team (SWT).Ms McGlone's evidence which we accept is that a decision was taken to that effect and was conveyed to her by her manager Officer A, and she passed on that instruction to the Tac Ads. The claimants were extremely unhappy about this, and considered it part of their roles and resulted in a diminution of the role itself.

147. As set out above, the respondent submits that it is absurd to allege that an operational decision as to whether Tac Ads should both advise on operations and interview witnesses, or that interviewing witnesses should be referred to the SWT, was taken to punish VW/C3 or any the claimants generally. As is summarised above this is a paradigm example of an operational decision with which one or more of the claimants disagreed being elevated to an allegation of victimisation simply by assertion, and with no supporting evidence.

148. Once again we accept the respondents evidence as to why the policy was decided upon, and that there is no causal link between this decision and any protected act.

8.2.3.2 Between 31 March 2023 and 6 April 2023 Mr Morris refused Ms Wilde permission to attend a training event in Romania.

149. Mr Morris's evidence is that this is factually correct. The claimant had only returned from a significant period of sickness absence on 27th March 2023 and was returning under a phased return to work with her hours increasing by one hour per week over a six week period. In those circumstances it would not have been appropriate to attend the event, and in addition and in any event he concluded that the respondent did not need to send a delegate to the event and none was sent.

150. Once again we accept the respondent's evidence as to why this decision was taken, and that there is no causal link between this decision and any protected act.

8.2.3.3 Between 3 April 2023 and 9 May 2023 Mr Morris refused to allow Ms Wilde and Ms Gordos to deliver training to CEPOL.

151. Again this allegation is not factually in dispute. On 10th May 2023 Mr Morris explained in an email that due to current capacity and priorities the CEPOL event

would not be supported and that there was no need for either VW/C3 or HG/C4 to attend. This was part of the larger re-focussing of NCA operations.

152. We accept Mr Morris's evidence that this was a genuine operational decision and that there is no causal link between this decision and all or any of the protected acts.

8.2.3.4 Between 12 May 2023 and 26 May 2023 Mr Morris and Ms McGlone frustrated Ms Wilde's travel arrangements to attend a conference in Romania.

153. This allegation relates to a four day conference which VW was due to attend. She was to deliver training on one of those days. Mr Morris did not believe that her attendance at the whole conference was necessary and sanctioned her attendance on the day she was due to deliver the training, with a travel day either side. He later approved her suggestion to stay on as a tourist in Romania after the training. Again, we accept Mr Morris's evidence that this was a genuine operational decision and that there is no causal link between this decision and any of the protected acts.

8.2.3.5 On 17 May 2023 Ms McGlone stated that she had concerns that there would be a review of their function.

154. For the reasons set out above Ms McGlone accepts that this is true; and it reflects the fact the role of a Tac Ad was under review and that she was concerned about it. It is in any event a curious allegation, that it was a detriment to VW/C3 that Ms McGlone should share with her a concern as to the review of the Tac Ad role; or that it has ay causal link to any protected act.

155. In our judgement it is difficult to conclude that this is a detriment, but in any event we accept Ms McGlone's evidence, and find that there was no causal link between her remarks and any protected act.

8.2.3.6 Between 27 June 2023 and 3 July 2023 Ms McGlone informed Ms Wilde that she would no longer be required to dial into several regular meetings she had previously attended.

156. This is again accepted as factually correct. Ms McGlone's evidence is that she was told by Mr Morris after a meeting in June 2023, which had been attended by her and the Tac Ads, that Ms Tyler only wanted the G3 manager to attend the meeting in future, or to nominate an attendee if she could not attend as it was not necessary for the whole team to attend. This is supported by the evidence of Ms Tyler.

157. There is no evidence at all that the reason given for the decision is not the real reason, and again, we accept the respondents evidence that this was a genuine operational decision; and find that there is no causal link between this decision and all or any of the protected acts.

8.2.3.7 Between 27 March 2023 and 25 August 2023 Ms McGlone excluding Ms Wilde from participating in operational/tactical work in relation to tissue/organ harvesting, visa abuse and missing children; and on 7 September 2023 Ms McGlone excluding Ms Wilde from a team meeting concerning matters of general importance to Ms Wilde's team.

158. Tissue/Organ Harvesting – Ms McGlone's evidence is that she was contacted by Liam Harrison and provided tactical advice in relation to an organ harvesting investigation. Very shortly thereafter the whole team went off sick and she continued to liaise with Liam Harrison. There was no reason, or possibility, at that stage for VW/C3 or HG/C4 to be involved. In addition Liam Harrison was being supported by AK who had moved into his team. Ms McGlone was informed that there were issues between the claimants and AK; and it was not thought necessary or appropriate for VW/C3 to be involved. Ms McGlone's evidence is that it was not related in any way to any protected act on the part of the claimant.

159. Again in our view this is a curious allegation. There is no evidence that the claimant would or should ordinarily have been involved in this operation in any event; and we accept Ms McGlone's evidence, and find that there is no causal link between this decision and all or any of the protected acts.

7 September meeting-

160. Ms McGlone's evidence, which we accept, is that she attended alone for the same reasons as given above. Again we accept this evidence and find that there is no causal link between this decision and all or any of the protected acts.

8.2.3.8 On or around 9 June 2023 excluding Ms Wilde from participating in the leaving collection for Mr Gibbens.

161. The respondent accepts that a decision was taken not to include the claimants as it was regarded as the most sensitive course to take given the ongoing disputes between the claimants and KG. The question of whether there is a link between any protected act and this decision is more finely balanced. It is obviously correct that the dispute between the claimants and KG, and the allegation that the differential treatment was discriminatory was one of the primary allegations in the protected acts. There is therefore at least the possibility that the fact of the making of the protected acts had influenced the decision. On the other hand, the respondent submits that this was simply a practical resolution of a particular state of affairs. The claimants were at daggers drawn with KG having explicitly accused him, and more senior managers who supported him of lying about his role and duties as a Tac Ad and retrospectively creating a fictional history. In those circumstances permitting the claimant to have participated in his leaving collection would appear wildly insensitive. KGs evidence is that this decision was correct and

that he would not have wanted, and would have been upset if the claimants had been permitted to participate in his leaving collection.

162 Although this is more finely balanced we have concluded that we accept the respondents evidence that the decision was taken so as not to inflame the situation, and that there is no causal link between this decision and any protected act.

8.2.3.9 Between 27 March 2023 and 2 July 2023 Ms McGlone delaying and not processing Ms Wilde's claims for expenses.

163. Ms McGlone's evidence is that there were some delays in processing expenses claims. Firstly there was a delay in HR processing her promotion until which time she could not process applications. There was a specific delay in relation to a claim submitted in November 2022 to Officer A which had not been approved because of the TOIL issue referred to above; and some occasions where VW/C3 had not supplied all the necessary information. She does not accept that any delay was causally related to any protected act

164. We accept Ms McGlone's evidence, and find that there is no causal link between this decision and any of the protected acts.

8.2.3.10 Between 6 July 2023 and 25 July 2023 Mr Morris questioning the validity of a report Ms Wilde made to Ms McGlone regarding the behaviour of a colleague.

165. This allegation arises from a meeting held as part of an operation (Operation D), as part of which VW and HG were providing Tac AD advice. One of the issues that arose during this operation was whether or not the Tac Ads should interview witnesses, or whether that may involve a conflict of interest. In addition the claimant had complained about the conduct of a DI involved in the operation which she considered "tantamount to misogyny". Due to the seriousness of the allegation Ms McGlone forwarded it to Mr Morris, who referred the matter to the PSU.

166. The complaint essentially revolves around the terms in which he did so. On 25th July 2023 HG sent an email to Ms McGlone, copying in ST/C1 who had not been at the previous day's meeting. She complained about the DI being condescending towards, and his reference to the strategy as being fit for purpose, as humiliating to VW and HG. Ms McGlone forwarded it to Mr Morris; and later the same day he replied to all three recording the conversation he had had with Ms McGlone. He records Ms McGlone as telling him that she did not feel, and saw no reason for her team to feel humiliated; or that the DI conducted himself in a misogynistic way. Mr Morris expressed his concern that Ms McGlone and VW/HG had vastly different interpretations of the meeting. In the email in which he

forwarded the allegations to the PSU he commented that on the basis of his conversation with Ms McGlone that the allegations were "irrational at best" and "malicious at worst.".

167. The evidence of Mr Morris and Ms McGlone is simply that the opinions expressed are their genuine opinions; Ms McGlone did not accept or agree that the allegations were correct or well founded, and Mr Morris's email to the PSU reflected that information.

168**.** We accept that in this case Mr Morris's speculation as to the claimnt's motives could amount to a detriment; but issue before us is not whether the claimants or Ms Glone were correct in their assessment, but whether in particular Mr Morris's views as expressed to the PSU genuinely represented his views, and even if he did whether their expression was causally related to any protected act. In our judgment there is no evidence that the views expressed by Ms McGlone or Morris were not their genuine views, or of any connection to any protected act.; there is no evidence before us from which we could conclude there is any causal link between them and any protected act.

8.2.3.11 Between 28 July 2023 and 10 August 2023 Ms McGlone refusing to allow Ms Wilde to attend an event in Vienna.

169. Again it is not in dispute that this is factually correct. VW/C3 emailed Ms McGlone about attending the event in August. It in fact clashed with another training event already booked for VW; but in any event on enquiry Ms McGlone discovered that the main topics were corruption and child trafficking and concluded that it was not necessary to send a delegate.

170. We accept Ms McGlone's evidence, and find that there is no causal link between this decision and all or any of the protected acts.

8.2.3.12 Ms McGlone not completing a stress risk assessment for Ms Wilde until 24 April 2023, failing to record 'control measures' for the 'hazard factors' identified in the SRA in the action plan and thereafter failing to comply with the plan for weekly 1:1s identified in the SRA.

8.2.3.13 On 15 May 2023 not acting upon Ms Wilde's request to be referred for a psychological assessment up to 8 September 2023.

171. These allegations form part of the same factual matrix and we will deal with them together. We have set out the factual background below; but in summary we cannot identify any evidence from which we could conclude or infer that any of the events below had any causal connection with any protected act. It is striking that whilst there is in the claimant's closing submissions criticism of Ms McGlone actions or failures to act there is no attempt to link any of them to any protected act. This

again exemplifies the claimants' approach in our judgement. Effectively the claimant simply invites us to conclude that if we can identify any failing or delay in Ms McGlone's approach to the management of the claimant's ill health during this period that that is enough in and of itself to allow us to infer victimisation and to transfer the burden of proof. However, in our judgement the events set out below are ordinary daily events and there is nothing to suggest that Ms McGlone was not genuinely seeking to assist the claimant as best she could in relation to the health issues. However the individual allegations are discussed below.

172. VW/C3 first went off sick on 24th November 2022. At that point Officer A was her line manager, remaining so until 23rd March 2023, at which point Ms McGlone became the G3 Operations Manager. Unlike HG/C4 VW does not make any allegation against Officer A, but only the allegations above against Ms McGlone which can therefore, only relate to the period after 23rd March 2023.

173. VW/C3 returned to work from sick leave on 27th March 2023 on a phased return to work. She attended an OH referral on 6th April 2023. Ms McGlone saw it on her own return on 11th April 2023. VW returned then completed the WSRA, and VW and Ms McGlone had a meeting on 24th April to discuss it.

174. WRSA / Control Measures - In her closing submissions the claimant contends that the stress risk assessment should have been completed promptly following the completion of the OH referral; and that Ms McGlone did not record control measures identified in the WSRA in the action plan. These are in effect freestanding allegations and there is no evidence as to how or why either of these caused any detriment. The second allegation is not referred to in VW/C3s witness statement or her closing submissions, and what control measures she contends should have been recorded and why that is significant is not identified.

175. Failing to have 1 – 1 meetings – It does not appear that there were formal 1-1 meetings specifically to address any concerns raised in the WRSA, but Ms McGlone contends that the purpose was to ensure that she provided support to VW which she did through regular phone calls and emails in any event; and that whole this may not formally have been adhered to, in practice it was. Again it s not clear how the claimant contends that this was a detriment.

176. Failing to act on VW's request for a psychological assessment. – The respondent's evidence is that all members of staff had routine bi-annual psychological assessments. VW's current assessment expired at the end of April 2023; and she attended the assessment on 12th May 2023. The OH report from 6th April did not suggest any further referral to psychological services. Following the Bi-annual assessment in May 2023 counselling was recommended for VW .

177. However on 15th May 2023 VW requested a further full psychological assessment. On 18th May McGlone emailed for clarification and on 24th May 2023

was told that the senior OHA would review her case; and her subsequent bi-annual review was brought forward to August 2023. Ms McGlone's evidence is that only an OH advisor /clinician could refer VW for a full psychological assessment; and one had not been recommended in the April OH report. There was in effect nothing more she could do. The claimant does not accept this. She contends that Ms McGlone deliberately failed to assist as she knew that a full psychological assessment would reveal that the respondent was responsible for the psychological harm, and deliberately delayed or attempted to delay the process.

178. In our judgement , as set out above, we accept that at all stages Ms McGlone was attempting to assist the claimant in the management of her health; and specifically that there is no evidence of any causal link between any failure or delay and any protected act.

8.2.3.14 On 19 June 2023 Mr Morris caused distress and intimidation to Ms Wilde after she asked not to be contacted after working hours by Ms McGlone.

179. The factual background to this is that on 19th June 2023 VW/C3 contacted Ms McGlone to clarify her position about being contacted out of hours. Ms McGlone apologised by email to VW/C3 for inadvertently contacting her on the previous Saturday. Mr Morris emailed later the same day reminding the claimant that although there was no contractual requirement to accept on call duties, that there was a requirement for flexibility where necessary, and that he agreed to Ms McGlone's suggestion that the claimant turn off her work phone outside working hours.

180. It is not at all clear how Mr Morris's agreement to the course proposed by Ms McGlone is a detriment; and again and in any event there is not in our judgement any evidence of any link between this allegation and any protected act.

181. It follows that all of VW / C3'sclaims will be dismissed for the reasons given above.

Claimant 4 - Ms H Gordos

C 1/3/4 - Direct sex discrimination of the First, Third and Fourth Claimants (Ms Turner, Ms Wilde and Ms Gordos) (Equality Act 2010 section 13)

182. These claims are the same as those set out above, and must be dismissed for the same reasons.

Disability

183. The Respondent accepts that the Claimant was disabled by reason of symptoms of menopause / perimenopause at all relevant times, namely between November 2022 and Spring 2023.

184. Claims – The respondent submits that by reason of her answers in cross examination that C4/HG has effectively abandoned all of her disability discrimination claims. The basis for this is that the claimant accepted that her section 15 claim rested on the basis that the unfavourable treatment had heightened her pre-existing anxiety. The respondent submits that this is in effect the wrong way round. The unfavourable treatment must be causally linked to the something arising from disability, not the other way round. In addition they point to the fact that irrespective of the issues of substantial disadvantage and the identification of the PCP, that the claimant accepted in respect of the reasonable adjustments claim that all the adjustments she sought had been made in any event. It followed automatically that both claims were bound to fail, and the claimant appeared to have accepted this in cross examination.

185. However on the basis of the written submissions they are still clearly pursued, and we have dealt with them as set out below on the basis that they have not been withdrawn.

Discrimination arising from disability (Fourth Claimant Ms Gordos) (Equality Act 2010 section 15)

3.1 Did the Respondent treat the Claimant unfavourably by:

3.1.1 Failing to conduct a timely occupational health assessment. The Claimant requested an assessment in November 2022 and it was not referred until 8 December 2022;

3.1.2 On 8 December 2022, the Claimant's line manager told her to remove her suggested reasonable adjustments from the referral.

3.1.3 The occupational health report dated 14 December 2022 suggested a risk assessment was undertaken and it was not acted on.

186. These three issues fall naturally together. These issues arose whilst Officer A was HG/C4's line manager. She replaced KM in November 2022.The facts are set out below.

187. In relation to the first two allegations, HG/C4 first requested an Occupational Health referral on 11th November 2022. She was on leave until 2nd December 2022. On 7th December Officer A sent a draft referral to C4. C4 made a number of amendments to the draft and requested that her amendment be used. Officer A did

not think that this was appropriate as the amendments consisted of the claimant's complaints, some of which had already been addressed in any event in that on call duties had already been removed, and training was now being conducted in pairs. She however advised C4 to send those matters separately to HR, which she did, and which resolved the impasse as to he wording of the OH referral. The OH report was requested, using Officer A's draft on 8th December 2022 and received on 14th December 2022.

188. In respect of the allegation that the suggestion of a risk assessment was not acted upon, Officer A's evidence is that she was on leave until 3rd January 2023. On 9th January 2023 she emailed C4 to attempt to arrange a meeting to complete the WSRA. On 10th January HG/ C4 went off sick until 17th February 2023. She was advised by Miranda Retour(HR) not to complete the WSRA during her sickness absence . She shared this advice with HG/C4s NCOA representative, which he in turn shared with her; and subsequently confirmed that she was available to complete it at a mutually convenient time. On 31st January 2023 Officer A emailed HG/C4 with a WSRA form for her to complete as Officer A had only been her line manager for a short period. In fact C4 had not completed it before Officer A ceased to be her line manager. Line Management responsibilities were taken over by Ms McGlone on 27th March 2023.

189. HG/ C4 had a further period of sickness absence, returning on 25th April 2023. On that day Ms McGlone contacted her about the WSRA and HG/C4 stated she would complete it herself. It was sent on18th May 2023; and on 23rd May a meeting was held about it. On 1st June 2023 the completed WSRA was sent by HG/C4.

3.1.4 On 6 January 2022, the Claimant's line manager told the Claimant that the report did not recommend reasonable adjustments.

190. The respondents evidence, as supported by the OH referral itself is that this factually correct. It recommended a WSRA, but did not recommend any specific adjustments.

3.1.5 On about 6 January 2022, the Claimant was told that the hybrid working policy would be enforced and she needed to be in the office for 3 days the following week.

191. Hybrid Working Policy – On 5th January 2023 Officer A shared an email from Ms Tyler to the whole team relating to the hybrid working policy, which necessarily applied to all members of the team.

3.2 Did the following things arise in consequence of the Claimant's disability? The Claimant's case is that she says that she was feeling anxious about going to work and the anxiety worsens brain fog and causes emotional distress and upset and her sleep was affected.

192. As set out above the respondent submits that there is clearly no causal link between any of those events and the "something arising from disability". Indeed the claimant's case appears to be the other way round; that the events caused emotional distress and upset her which is the "something arising from disability".

193. In our judgment the respondent is correct and we cannot identify any causal link between the "something arising from disability" and the unfavourable treatment alleged ; and it follows that these claims must be dismissed. Specifically in relation to 3.1.5 above the respondent submits that is obvious that sharing an email from Ms Tyler with whole team, which applied to the whole team, is not causally linked to something arising from disability. In our judgment this must be correct. As all the claims must be dismissed on these grounds it is not necessary to deal with any of the remaining issues in relation to these claims

Reasonable Adjustments (Equality Act 2010 ss. 20 & 21)

4.1 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

4.2 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:

4.2.1 The requirement to work on a hybrid basis from January 2023;

4.2.2 The requirement to provide training to people away from her workplace.

4.3 Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that she says that she was feeling anxious about going to work and the anxiety worsens brain fog and causes emotional distress and upset and her sleep was affected. She suffered from extreme tiredness and anxiety exacerbated?

4.4 Did the Respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

4.5 What steps (the 'adjustments') could have been taken to avoid the disadvantage? The Claimant suggests:

4.5.1 She should have been given a stress risk assessment;

194 . The respondent contends that an WSRA assessment was carried out; and that in any event the failure to conduct one would not be a failure to make a reasonable adjustment which is correct as a matter of law.

4.5.2 Allowed her to work from home and given her flexibility about where she worked from;

195. The respondent submits that, as the claimant accepted in cross examination this was always in place in any event.

4.5.3 Permitting her to take the train to travel to training events;

195. The respondents evidence is that no adjustment to achieve this was required as officers were entitled to travel to events by their own choice of transport. There was never any requirement to drive or use any particular form of transport and it was always open to her to travel by train if she wished to.

4.5.4 Training in pairs when it was a full day.

196. Again the respondent submits that, as the claimant accepted in cross examination this had been put in place.

4.6 Was it reasonable for the Respondent to have to take those steps and when?

4.7 Did the Respondent fail to take those steps?

197. As set out above the respondent understood the claimant to have abandoned these claims as she accepted in cross examination that the adjustments contended for were either not necessary or had I fact been made. That was certainly the tribunal's understanding of her evidence and it is not at all clear why those clams were still pursued. In any event even without the claimant's concession we would have accepted the respondents evidence and dismissed these claims.

Victimisation (Equality Act 2010 s. 27)

198. Protected Acts – It is accepted that the protected acts set out below are protected acts within the meaning of s27 Equality Act 2010.

9.1 The Respondent accepts that the Claimant did the following protected acts:

9.1.1 On 20 July 2022, in a meeting with Mr Grace that there had been sex discrimination;

9.1.2 In an e-mail in October 2022, to Mr Grace and Mr Robinson about the ongoing issues with Mr Meredith and his behaviour was sex discrimination. She also referred to her peri-menopause symptoms;

9.1.3 In her grievance dated 2 November 2022, in which she said there had

been sex discrimination.

9.2 Did the Respondent do the following things:

9.2.1 On 4 November 2022, Ms Tyler, told her that she had been given management advice with regards to the on-call claims. She says this was a form of disciplinary sanction;

9.2.2 On about 29 May 2022 she was told that she had to pay the amalgamated pay from the on-call claims and this was taken from her July 2023 wages;

9.2.3 Following her return from sick leave on 25 April 2023:

9.2.3.1 Between 4 November 2022 and 9 January 2023, whilst Ms Gordos was still at work, Officer A delayed submitting an OH referral. Having received the OH report for Ms Gordos on 21 December 2022, Officer A failed to implement advice within it including undertaking a stress risk assessment and to consider adjustments. This led to Ms Gordos's sickness on 10 January 2023.

9.2.3.2 Between 14 January 2023 and 17 February 2023 (when Ms Gordos remained on sick leave) Officer A failed to undertake a Stress Risk Assessment and failed to undertake formal and informal sickness reviews with Ms Gordos.

9.2.3.3 Between 25 April 2023 and 25 August 2023 Ms McGlone and Mr Morris taking 4 weeks to complete the SRA, which was completed incorrectly. Ms McGlone failed carry out regular reviews.

9.2.3.4 Between 11 July 2023 and 10 August 2023 Ms McGlone failing to read a psychological assessment in relation to Ms Gordos or to implement its relevant recommendations of:

- On a weekly basis the line manager and officer meet to discuss both work demands and the officer's health adjustment at that stage.
- Continues with both national and international training with caveats attached.
- Is redeployed in meaningful work as being bored by uninteresting, below par activities can further burnout and undermine confidence.
- Open discussion on the demands of the project/case in hand, making joint decisions.

9.2.3.5 On 3 April 2023 Mr Morris refused to allow Ms Wilde and Ms Gordos to deliver training to CEPOL.

9.2.3.6 On 3 August 2023 Mr Morris refused to allow Ms Gordos to deliver training in Nigeria and Ghana.

9.2.3.7 On or around 9 June 2023 excluding Ms Gordos from participating in the leaving collection for Mr Gibbens

9.2.3.8 On 27 June 2023 Ms Gordos being told that the tactical advisors were no longer required to attend two national meetings pertinent to their role and on 3 July 2023 Ms Gordos being told that the tactical advisors were no longer required to dial into the national Sexual Exploitation Working Group.

9.2.3.9 On or around 29 June 2023 Ms McGlone telling Ms Gordos not to contact the Specialist Witness Team directly going forward and then on 20 July 2023 Ms McGlone informing Ms Gordos that the SWT would take over victim engagement from her on Operation L, a Modern Slavery investigation.

9.2.3.10 On or about 6 July 2023 Ms Tyler taking no action in response to Ms Gordos raising the fact she had an outstanding grievance since November 2022.

9.2.3.11 On or about 25 July 2023 Mr Morris dismissing concerns raised about a colleague in SWT behaving in a misogynistic way and removing Ms Gordos from the substantive investigation she was working on in response to her raising those concerns.

9.2.3.12 Between 27 March 2023 and 25 August 2023 Ms McGlone excluding Ms Gordos from participating in operational/tactical work in relation to tissue/organ harvesting, visa abuse and missing children.

9.3 By doing so, did the Respondent subject the Claimant to detriment?

Detriments

199. 9.2.1/2 – These allegations are dealt with above and for the same reasons already given we accept that there was no causal link between these events and any protected act.

200. 9.2.3 .1 – This is dealt with factually above and in our judgement there is no evidence that any delay between 21st December 2022 and 10th January 2023 was causally linked to any protected act.

201. 9.2.3.2 **–** Again this is deal with factually above, and we accept Officer A's evidence that this was on advice from HR. We cannot identify any causal link, between this and any protected act.

202. 9.2.3.3 - Miss McGlone disputes this and contends that in any event the process of the completion of the WSRA needs to be seen in context. The claimant returned to work on the

25th of April and Ms McGlone asked the claimant how she wished to complete it. The claimant chose to do so herself and sent it to Ms McGlone 18th May 2023. On the 23rd May they met to discuss it. Ms McGlone provided additional comments on the 26th May before she went on leave and the completed WSRA that was sent on the 1st June 2023. There were further meetings to review it on the 10th July and the 17th November as it was a live document. She does not accept that there was any unreasonable delay at any point. Mr Morris's evidence is that he was not involved in this process at all.

203. In her closing submissions the claimant accepts that WRSA was completed by the end of May 2023 and it follows that the four week period being referred to is the initial period covered by Ms McGlone's evidence. In our judgement there is no evidence of any unreasonable delay in completing it and no evidence of any link between the process of completion and any protected act.

204. 9.2.3.4 Ms McGlone accepted in evidence that she did not read the psychological assessment for the simple reason that it was not sent to her. In her discussion of this in her witness statement she refers to the OH referrals at or about the same time and asserts that she did implement all recommendations in the relevant OH referrals. We accept Ms McGlone's evidence and it follows automatically that there is no link between this allegation and any protected act.

205. 9.2.3.5/6 – These are dealt with factually above and were in our judgement, for the reasons already given operational decisions made for the reasons given; and which were not causally linked to any protected disclosures

206. 9.2.3.7 This dealt with above; and in our judgement for the reasons given there is no causal link between this decision and any protected act.

207. 9.2. 3. 8 / 9 / 10 / 11 / 12 - These are all dealt with above and for the reasons given there is no causal link between these events and any protected act.

<u>Unauthorised deductions (Part II of the Employment Rights Act 1996)</u>

12.1 Did the Respondent make unauthorised deductions from the Claimant's wages by clawing back amalgamated on-call shift payments on 25 July a total of approximately £300. and if so how much was deducted?

12.2 Were the wages paid to the Claimant between October 2022 and December 2022 in respect of on-call shifts less than the wages she should have been paid?

12.3 Was any deduction required or authorised by statute?

12.4 Was any deduction required or authorised by a written term of the contract?

12.5 Did the Claimant have a copy of the contract or written notice of the contract term before the deduction was made?

12.6 Did the Claimant agree in writing to the deduction before it was made?

12.7 How much is the Claimant owed?

208. These claims are dismissed for the same reasons already set out above in relation to C1 and C3's claims.

209. It follows that all of c3'sclaims must be dismissed.

Claimant 2 / Mr D Smithers

210. A number of the claimant's claims form part of a number of the legal claims. As a result all of the claims are set out initially below and then discussed in their factual context.

Time limits

1.1 Claim forms 2301006/2023, 2301007/2023, 2301008/2023 and 2301009/2023 were presented on 3 March 2023 and claim forms 2301031/2023, 2301032/2023, 2301033/2023 & 2301034/2023, presented on 4 March 2023. The claimant commenced the Early Conciliation process with ACAS on 10 January 2023 (Day A). The Early Conciliation Certificate was issued on 8 February 2023 (Day B).

Accordingly, any act or omission which took place before 11 October 2022 (which allows for any extension under the Early Conciliation provisions) is potentially out of time so that the Tribunal may not have jurisdiction to hear that complaint.

1.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

Victimisation of the Second Claimant (Equality Act 2010 s. 27)

13.1 The Respondent accepts that the Claimant did the following protected acts:

13.1.1 On 12 September 2022, to Mr Richardson by e-mail that there had been unlawful discrimination and an unlawful deduction from wages in respect of the three female Claimants;

13.1.2 On 18 October 2022, Mr Smithers reported to Mr Richardson and Mr Higgins by e-mail reaffirming the previous e-mail and clarifying that they were making complaints of bullying and discrimination and acts were taken to protect them and Ms Turner's external recruitment was not adversely affected;

13.1.3 On 19 October 2022, to Mr Richardson by e-mail reaffirming what he had said and that the treatment against them was ongoing;

13.1.4 Supported Ms Turner in a meeting on 21 October 2022 with Mr Grace, when he said that she had been discriminated against;

13.1.5 On 21 October in an e-mail to the professional standards unit saying that discrimination had occurred against the female Claimants;

13.1.6 In his grievance dated 27 October 2022.

13.2 Did the Respondent do the following things:

13.2.1 On 21 October 2022, Mr Barford told the Claimant that someone wanted him spoken to, to ensure his welfare and to be cautious

of who he spoke to and what he said. This related to his support of Ms Turner;

13.2.2 In his grievance meeting in about November 2022, Mr Davies interrogated the Claimant on why he was supporting the female officers and what his role was, rather than the complaints he had made;

13.2.3 On 25 May 2023 dismissed his grievance, 7.5 months after he raised it. He was told he could raise an appeal within 7 days and needed to state the grounds but had not given the material on which the decision was based;

13.2.4 On 30 May 2023, whilst acting as Ms Turner's companion and representative at her misconduct panel, his belongings were searched whilst he was out of the room;

13.2.5 On 30 May 2023, suspended Mr Smithers for having a personal recording device in the meeting;

13.2.6 On 5 June 2023, withdrew Mr Smithers' powers of designation;

13.2.7 Failed to respond to his subject access requests and when they were responded to more than 5 months later they were overly redacted.

13.3 By doing so, did the Respondent subject the Claimant to detriment?

13.4 If so, was it because the Claimant had done the protected acts?

14. **Constructive unfair dismissal (Second Claimant, Mr Smithers)**

14.1 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 breach(es) was / were as follows;

14.1.1 The professional standards unit refused to investigate his formal complaints raised on 21 October 2022;

14.1.2 On 21 October 2022, Mr Barford told the Claimant that someone wanted him spoken to, to ensure his welfare and to be cautious of who he spoke to and what he said. This related to his support of Ms Turner;

14.1.3 In his grievance meeting in about November 2022, Mr Davies interrogated the Claimant on why he was supporting the female officers and what his role was, rather than the complaints he had made;

14.1.4 On 25 May 2023 dismissed his grievance, 7.5 months after he raised it. He was told he could raise an appeal within 7 days and needed to state the grounds but had not given the material on which the decision was based;

14.1.5 Observed the Respondent fail to take the First, Second and Fourth Claimant's grievances seriously;

14.1.6 Observed the First Claimant be wrongly accused and be referred to misconduct and a biased investigation unfold;

14.1.7 Between November 2022 and 30 May 2023, the disciplinary/investigation officers/HR refused to accept Mr Smithers proposed amendments to the investigation summary into Ms Turner's alleged misconduct;

14.1.8 On 30 May 2023, whilst acting as Ms Turner's companion and representative at her misconduct panel, his belongings were searched whilst he was out of the room;

14.1.9 On 30 May 2023, suspended Mr Smithers for having a personal recording device in the meeting;

14.1.10 On 5 June 2023, withdrew Mr Smithers' powers of designation;

14.1.11 Failed to respond to his subject access requests and when they were responded to more than 5 months later they were overly redacted.

(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).

14.2 The Tribunal will need to decide:

14.2.1 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

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

14.3 Did the Claimant resign because of the breach? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

14.4 Did the Claimant tarry before resigning and affirm the contract? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

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

15. **Protected disclosure ('whistle blowing') by the Second Claimant (Mr Smithers)**

15.1 Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

15.1.1 What did the Claimant say or write? When? To whom? The Respondent accepts that the Claimant made disclosures on these occasions:

15.1.1.1 On 11 November 2022, by e-mail to Mr Farrimond, NCA Director, that offences contrary to the Equality Act 2010 had occurred, and there had been stoppage of pay, breach of NCA policy and the Civil Service Code and the Health and Safety at Work Act;

15.1.1.2 On 29 November 2022, by e-mail to Mr Farrimond, repeating the matters raised on 11 November and adding further acts which had taken place since 15 November 2022 and raising that the female complainants had been signed off sick and their allegations were being ignored;

15.1.1.3 On 2 December 2022, the Claimant forwarded his e- mails to Mr Farrimond dated 11 and 29 October 2022 to the Director General, Mr Biggar.

15.1.2 Were the disclosures of 'information'?

15.1.3 Did he believe the disclosure of information was made in the public interest? The Claimant says it related to people other than himself and was in the political and public interest because it referred to misogyny and discrimination within policing. Further it was closely

linked to the HMICFRS reporting on the NCA, which was an international law enforcement agency. The details of this case were not given to HMICFRS when they were doing their inspection for the purposes of their report.

15.1.4 Was that belief reasonable?

15.1.5 Did he believe it tended to show that:

15.1.5.1 a person had failed, was failing or was likely to fail to comply with any legal obligation, namely not to discriminate under the Equality Act 2010 (disclosures 1, 2 & 3);

15.1.5.2 the health or safety of any individual had been, was being or was likely to be endangered, namely the female Claimants; (disclosures 1, 2 & 3)

15.1.5.3 information tending to show any of these things had been, was being or was likely to be deliberately concealed. (disclosures 1, 2 & 3)

15.1.6 Was that belief reasonable?

15.2 If the Claimant made a qualifying disclosure, was a protected disclosure because it was made to the Claimant's employer? The Respondent accepts that these disclosures were made to the Claimant's employer.

16. **Detriment (Employment Rights Act 1996 section 47B) (Second Claimant, Mr Smithers)**

16.1 Did the Respondent do the following things:

16.1.1 On 30 May 2023, the Respondent searched his personal and private property, in the workplace, whilst he was out of the room and viewed his private papers.

16.1.2 On 30 May 2023, the Respondent attended his home and insisted on taking NCA assets.

16.1.3 When conducting the disciplinary process the Respondent:

16.1.3.1 Failed to have an independent chair

16.1.3.2 Failed to appropriately disclose their case, namely they said he had made a recording but did not disclose the recording, failed to provide all witness statements, failed to provide some of the appendices to witness statements. The Respondent refused to admit available evidence provided by the Claimant, namely a piece of video evidence.

16.1.4 Between November 2022 and the end of his employment, denied the Claimant his certificate of service.

16.1.5 Not paid his outstanding expenses and overtime owed on termination of employment.

16.1.6 The Respondent will tell any future employer that he was suspended due to misconduct.

16.2 By doing so, did it subject the Claimant to detriment?

16.3 If so, was it done on the ground that he had made the protected disclosure(s) set out above?

17. **Dismissal (Employment Rights Act s. 103A) (Second Claimant, Mr Smithers)**

17.1 Was the making of any proven protected disclosure the principal reason for the Claimant's dismissal? The Claimant relied upon the acts of detriment as partially causing his resignation.

17.2 The Claimant did have two years' service and the questions which the Tribunal will have to address are:

17.2.1 Has the Claimant produced sufficient evidence to raise the question whether the reason for the dismissal was the protected disclosures?

17.2.2 Has the Respondent proved its reason for the dismissal, namely resignation not amounting to dismissal?

17.2.3 If not, does the Tribunal accept the reason put forward by the Claimant or does it decide that there was a different reason for the dismissal?

The Relevant Law

211 Victimisation - The relevant law as to victimisation has been set out above in relation to the three other claimants.

212 Public Interest Disclosure – As is set out above it is not in dispute that the disclosures relied on were public interest disclosures within the meaning of s43 ERA 1996. The issue before us is whether there is the requisite causal link between them and any detriment:-

Causation –

i) There are two questions - was the worker subjected to the detriment by the employer; and

ii) Was the worker subjected to that detriment because he had made a protected disclosure? .

Burden of Proof –

i) It is for the employer to show the ground on which any act, or deliberate failure to act, was done (S.48(2) EAR)

"On the grounds that " –

i) The requisite causal link is identical to that required for discrimination claims (See *Fecitt and ors v NHS Manchester (Public Concern at Work intervening) 2012 ICR 372, CA*,)

Constructive Dismissal

213. The claimant relies on the breach or breaches of the implied term of mutual trust and confidence as the fundamental breach relied on. The test to be applied is that set out in *Malik v BCCI SA [1997] ICR 606* ::

" The employer shall not without reasonable and proper cause conduct itself in manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee"

214. If such a breach or breaches is established it need only be part of the reason for resignation to found a successful claim : *Nottinghamshire County Council v Meikle [2004] IRLR 703).*

215. The test is objective, and the respondent relies on *Tullet Prebon PLC and others v BCG Broker LP[2011] IRLR 240,* in which it was held that the central question is whether objectively considered the employer's conduct has evinced an intention to abandon and altogether refuse to perform the contract.

216. In respect of the last straw, Underhill LJ has set out five questions for the tribunal to address (*Kaur v Leeds Teaching Hospitals NHS Trust [2019] ICR1):*

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

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

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

iv) If not, was it nevertheless a part (applying the approach explained in LB Waltham Forest v Omilaju [2005] ICR 481) of a course of conduct comprising several acts and omissions, which viewed cumulatively amounted to a breach of the Malik term?

v) Did the employee resign in response (or partly in response) to that breach

217. There are in essence three possible findings in respect of the last straw. It may firstly, in and of itself a repudiatory breach of contract. Secondly it may not constitute such a breach in and of itself but did so, when considered cumulatively with other acts or omissions. Thirdly it may be an entirely innocuous act which is not capable either individually or cumulatively of contributing to a repudiatory reach (see Omilaju). The relevant passages from Omilaju in respect of this question are:

19. The question specifically raised by this appeal is: what is the necessary quality of a final straw if it is to be successfully relied on by the employee as a repudiation of the contract? When Glidewell LJ said that it need not itself be a breach of contract, he must have had in mind, amongst others, the kind of case mentioned in Woods at p 671F-G where Browne-Wilkinson J referred to the employer who, stopping short of a breach of contract, "squeezes out" an employee by making the employee's life so uncomfortable that he resigns. A final straw, not itself a breach of contract, may result in a breach of the implied term of trust and confidence. The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase "an act in a series" in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and

confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.

20. *I see no need to characterise the final straw as "unreasonable" or "blameworthy" conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy. But, viewed in isolation, the final straw may not always be unreasonable, still less blameworthy. Nor do I see any reason why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred.*

21. *If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect. Suppose that an employer has committed a series of acts which amount to a breach of the implied term of trust and confidence, but the employee does not resign his employment. Instead, he soldiers on and affirms the contract. He cannot subsequently rely on these acts to justify a constructive dismissal unless he can point to a later act which enables him to do so. If the later act on which he seeks to rely is entirely innocuous, it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the final straw principle.*

22. *Moreover, an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in his employer. The test of whether the employee's trust and confidence has been undermined is objective (see the fourth proposition in para 14 above).*

Factual Allegations / Victimisation – Constructive Unfair Dismissal

218. A number of the factual allegations are relied on as acts of victmisation and/or breaches of the implied term of mutual trust and confidence and we will deal with these claims together

219. 14.1.1 The professional standards unit refused to investigate his formal complaints raised on 21 October 2022;

220. The background is that three female claimants raised grievances between 24th October 2022 and 2nd November 2022.. Prior to that DS/C2 had emailed the PSU on 21st October setting out an email chain relating to the subject matter of many of

the disputes before us. On that same day Ms Samantha Ellwood of the PSU expressed the view that it should probably be dealt with as a grievance, which is what occurred. They were all subsequently investigated by Mr David Hucker. He did not uphold any of the grievances; and subsequent appeals were rejected. There are no complaints or allegations made by any of the female claimants that relate to the grievances or their outcomes and it is not necessary to deal with them further.

221. The respondent submits that the conclusion that they should first be investigated as grievances was clearly a sensible conclusion, and the assertion that they should have been investigated first by the PSU is a curious one; and that had Mr Hucker either during or as part of the outcome wished to refer any of the matters to the PSU it was open to him to do so. The decision to proceed with them as grievances initially did limit or curtail the possibility of subsequent references to PSU. In any event no complaint about the conduct or outcome of the grievances is made before us by any of those who brought the grievances. Given that the grievances were investigated, and the absence of complaint as to any aspect from those who lodged them, it is in the circumstances it is difficult to see how this failure to refer to PSU could individually or cumulatively form part of any breach of the implied term of mutual trust and confidence in relation to DS/C2 himself.

222. 13.2.1/ 14.1.2 On 21 October 2022, Mr Barford told the Claimant that someone wanted him spoken to, to ensure his welfare and to be cautious of who he spoke to and what he said. This related to his support of Ms Turner;

223. Mr Barford's evidence is that he did speak to C2/DS about his involvement in C1/ST's grievance on 21st October 2022. The request that he speak to DS had come from Mr Grace via Mr Cathcart. Mr Smithers accepts that he advised him to consider whether it was wise to represent C/ST and whether she would not be better served by having an independent trade union representative representing her. The respondent submits that this was clearly and obviously raised out of concern for DS/C2 and was in his best interests . If DS/C2 had taken this advice he could always have assisted C1/ST but she would also have received independent objective advice and representation. There was clearly no attempt from the respondent to avoid C1/ST having appropriate representation but the suggestion that C2/DS should not be the person representing her. The respondent submits that albeit with the benefit of hindsight this was clearly good advice and that DS/C2 would have been sensible to have taken it.

224. Even if DS/C2 believed it was unacceptable to give him that advice it was clearly based on the fact of his representing C1/ST and not the fact of any protected act; and in the context of the implied term the respondent clearly had good reason for acting as they did in that they were concerned, for reasons that were subsequently proven to be correct that C2/DS would be too close and insufficiently objective in representing C1/ST.

225. In our judgement both of these propositions are correct.; and do not find any causal link with any protected act or anything which would individually or cumulatively compromise a breach of the implied term.

226. 13.2.2 / 14.1.3 In his grievance meeting in about November 2022, Mr Davies interrogated the Claimant on why he was supporting the female officers and what his role was, rather than the complaints he had made;

227. Mr Davies's evidence is firstly that he disputes that he "interrogated" C2/DS, but that in any event this needs to be placed in context. There was a "sterile corridor" between himself and Mr Hucker who was investigating the grievances of the three female complainants grievances. He was investigating C2/DS's grievance against Oliver Higgins and Martin Grace which explicitly concerned the advice / questioning of whether it was appropriate for him to be representing C1/DS as set out above. His questioning was addressed to understanding the grievances precisely in order that they could be investigated.

228. The claimnt's witness statement does not explicitly address what is meant by interrogated or by any perceived failure to establish the grievances. He does complain of the grievance effectively being predetermined and of the involvement of HR and Mr Higgins; but they are not complaints before us. We have read the notes of the interview and are not able ourselves to identify any inappropriate questions or anything which appears to be "interrogation". In the circumstances this allegation is not upheld on the facts.

229. 13.2.3 / 14.1.4 It is unquestionably correct that the grievance investigation took a substantial time, and that in the circumstances granting to the claimant the standard seven days as set out in the policy might be difficult to achieve. However this was the standard time limit as set out in the policy and there was nothing to prevent the claimant from seeking an extension, or submitting a subsequent appeal which he did. In the circumstances in our judgement simply referring to the standard timescale in the policy for an appeal in the grievance outcome cannot in and of itself amount to a breach individually or cumulatively, of the implied term. Similarly we are not able to identify any causal link between these events and any protected act.

230. 14.1.5 Observed the Respondent fail to take the First, Second and Fourth Claimant's grievances seriously;

231. As set out above this is a curious allegation as there is no complaint to any similar effect from any of the claimants who had lodged the grievances that they were not taken seriously, and even if there were it is hard to see how this could constitute a breach of the implied term of the claimant's contract of employment, simply because he was their representative.

232. In our judgement this allegation must be dismissed both factually, on the basis that the allegation is not made or supported by the other claimants, and that it could

not in any event involve any breach of the implied term of the claimants contract of employment.

233. 14.1.6 Observed the First Claimant be wrongly accused and be referred to misconduct and a biased investigation unfold;

234. For the reasons set out above in our judgement this is simply factually incorrect. C1/ST was not wrongly accused or the subject of a biased investigation; and again even if she were it is hard to see how this could constitute a breach of the claimant's contract of employment. Again this allegation must be dismissed on both grounds.

235 1 4.1.7 Between November 2022 and 30 May 2023, the disciplinary/investigation officers/HR refused to accept Mr Smithers proposed amendments to the investigation summary into Ms Turner's alleged misconduct.

236.. Without descending into the detail this relates to an error in the investigation summary as to whether C1/ST had received management words of advice prior to submitting the disputed claims. It was accepted that in fact she had not, but for the reasons set out above the respondent contended that even on the factually correct basis that she had not, that she was in any event well aware that she was not entitled to make the claims under the policy (for the reasons set out above). The error was subsequently correct. Again, whatever the rights or wrongs of this dispute, at most it would have entitled C1/ST to have appealed any disciplinary sanction on the basis that it resulted from a factual error; and this does not appear in our judgement to be capable of amounting individually or cumulatively to a breach of the implied term of the claimnt's contract simply because he was her representative.

237. 14.1.8 On 30 May 2023, whilst acting as Ms Turner's companion and representative at her misconduct panel, his belongings were searched whilst he was out of the room; / 14.1.9 On 30 May 2023, suspended Mr Smithers for having a personal recording device in the meeting; / 14.1.10 On 5 June 2023, withdrew Mr Smithers' powers of designation (also 13.2.4 / 5 / 6 and 16.1.2 /3);

238. It is convenient to deal with these allegations together. For the reasons set out above we accept that the covet recording of the disciplinary hearing, and in particular covertly recording the private deliberations of the panel was self-evidently misconduct, and the search of his property was entirely justified in the circumstances; and that the other two allegations were the inevitable consequence of the misconduct itself. In our judgement on any analysis the respondent had good reason to act as it did and we cannot identify any breach of the implied term.

239. Similarly we accept the respondent's evidence that their actions derived from the suspicion, and subsequent discovery that the suspicion was correct, that he

was covertly recording the hearing; and that there is no causal link between any of these events and any protected act and/or any protected disclosure .

240. 13.2.7 / 14.1.11 Failed to respond to his subject access requests and when they were responded to more than 5 months later they were overly redacted. ((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).

241. The SARs in issue were requests made on 9th January 2023 and the reference to over redaction relates to a finding that the they were overly redacted made by the ICO. The respondent simply contends that it responded in accordance with its policies and procedures; and we have little or no evidence as to this issue. . Dealing with the allegation of victimisation first there is, in our judgement no evidence that those responding to the SARs had any knowledge of any protected acts; or any evidence of any link between the responses to the SARS and any protected act.

242. In respect of the claim that the failures were breaches of the implied term of trust and confidence the situation is in our judgement somewhat more complicated. In theory in our judgement they could arguably amount to breaches, at least as part of a cumulative series of events, of the implied term, and in the List of Issues they are said to be the last straw. However, this is not how the claimant puts it in his witness statement. He does not refer to these events explicitly , although he does rely on his resignation letter, but explicitly states that the last straw was the events of 30th May, in which I his view amounted to a covert and unlawful search of his property. This in our judgement is necessarily realistic given that those were evets of obviously far greater significance than the results of the response to the DSARs.

243. For the reasons given above we have not identified any of the matters above as individually or cumulatively as constituting or contributing to a reach of the implied term of mutual trust and confidence. Given the paucity of evidence before us, all we have is the assertion that ICO took a different view of the SAR obligations to that of the respondent, and the respondent that it had supplied them in accordance with its policies, it is in our judgement impossible to make any firm findings of fact as to this issue. Given that fact, and the fact that the claimant does not himself identify this as the last straw, at most it would be capable of cumulatively contributing to a breach of the implied term. As a standalone failing it would not be sufficient in our judgement to amount to a fundamental repudiatory breach. In those circumstances it cannot in and of itself amount to a breach of he implied term.

244 – Conclusions – For the reasons given above it follows that the claims of victimisation and constructive unfair dismissal must be dismissed.

Public Interest Disclosure claims – Factual Assertions

16.1.1 On 30 May 2023, the Respondent searched his personal and private property, in the workplace, whilst he was out of the room and viewed his private papers.

16.1.2 On 30 May 2023, the Respondent attended his home and insisted on taking NCA assets.

245. These are in our judgement an automatic consequence of the events described above, and for the reasons set out we have not concluded that there is any causal link between these events and any protected disclosure.

16.1.3 When conducting the disciplinary process the Respondent:

16.1.3.1 Failed to have an independent chair

16.1.3.2 Failed to appropriately disclose their case, namely they said he had made a recording but did not disclose the recording, failed to provide all witness statements, failed to provide some of the appendices to witness statements. The Respondent refused to admit available evidence provided by the Claimant, namely a piece of video evidence.

246. We should say at the outset that we accept the evidence of Ms Wilson that she was not aware of the protected disclosures; which is fatal to these allegations in any event However the basis of them is set out below for completeness sake. The first of these refers to the fact that the claimant contended that Ms Wilson was not independent as she had shared an office with Mr Higgins. This is correct and Ms Wilson accepts that the information conveyed to the claimant prior to the hearing that she had not done so was incorrect. However she contends that she and Mr Higgins were very rarely in the office together. More significantly she and the respondent rely on the fact that that was in the end irrelevant as nothing turned on any relationship with Mr Higgins. In addition the criticisms of the process are equally irrelevant. The claimant did not dispute making the covert recording; and the only issue was whether that was conduct sufficiently serious to justify dismissal, which they concluded it was.

247. There is our judgment no evidence of, and we accept the evidence of Ms Wilson that she was not aware of any protected disclosure, any causal link between any protected disclosure and either the appointment of Ms Wilson or her refusal to recuse herself, or the conduct of the process.

248. 16.1.4 Between November 2022 and the end of his employment, denied the Claimant his certificate of service.

249. The evidence in respect of this is that it relates C"s service prior to retirement in 2020. For reasons that are not at all clear, the certificate of service/ letter of thanks was not processed at that time. From the evidence before us it appears that Mr Cathcart believed that he had requested Ms Kitney to provide it but she had no recollection of this. Whatever the truth of these events this was not processed in 2020 and the issue was not raised again until after C2/DS's resignation . As the initial failure occurred in 2020 prior to any protected disclosure those events cannot be causally linked to it; and the reason that one was not supplied between November 2022 and the claimant's resignation was that the respondent was unaware it had not been issued, and no request had been made by the claimant. We accept this and it follows that we cannot identify any causal link between the failure to provide it and any protected disclosure.

250. 16.1.5 Not paid his outstanding expenses and overtime owed on termination of employment.

251. The respondent's position is that the claimant was paid on termination all sums owing. The claimnt's case is that post termination he was in correspondence which demonstrated that he was owed TOIL for which he had not received payment. The respondent's position is set out in a letter of 17th April 2024. It is not possible for us to determine whether the claimant or respondent is correct in this dispute. However, it is clear that the respondent genuinely takes the view that no sums are owing for the reasons set out in the letter; and we are unable to identify any causal link between failure to pay any sum that may have been due, and any protected disclosure.

252. 16.1.6 The Respondent will tell any future employer that he was suspended due to misconduct.

253. This may or may not be correct; but is in our if, even if correct, a factual consequence of the events described above. We are no in any event unaware of any jurisdiction to find an anticipatory detriment in relation to events which have not yet occurred.

254. Conclusions – Public Interest Disclosure Detriment – For the reasons given above we have not upheld any of these claims and the public interest disclosure detriments claims must be dismissed.

Automatic Unfair Dismissal (s103A ERA 1996 – public interest disclosure).

255. The claimant contends that the reason or principal reason for his resignation was the detriments suffered as a consequence of making the protected disclosures. As we have dismissed those claims and not found or upheld any link

between any detriment and any protected disclosure, it follows that this claim must also be dismissed.

Employment Judge Cadney
Dated: 17 April 2026

Judgment and reasons to the parties on 20 April 2026

Jade Lobb
For the Tribunal Office