THE FAIR EMPLOYMENT TRIBUNAL

CASE REFS: 23/17FET
43/17FET
54/17FET
71/17FET
7290/17IT

CLAIMANT: **1.**

RESPONDENTS: **1. Chief Constable of the Police Service of Northern Ireland**
2. 31.
3. 29.
4. Assistant Chief Constable 16.
5. Chief Superintendent 27.

JUDGMENT

The unanimous judgment of the tribunal is that all claims of unlawful discrimination on the grounds of religious belief and victimisation are dismissed.

CONSTITUTION OF TRIBUNAL

Employment Judge: **Employment Judge Hamill**

Members: **Mrs D Adams**
Mr M McKeown

APPEARANCES:

The claimant was self-represented.

The respondents were represented by Mr Ian Skelt, QC and Ms Rachel Best of counsel, instructed by the Crown Solicitor's Office.

Dates of Hearing: 27-30 April, 4,5,7,10,11 and 14 May 2021

1. The claimant brings claims for unlawful discrimination on the grounds of religion and victimisation for having done protected acts, namely the issuing of proceedings against the first-named respondent and others in 2017 and previously and raising grievances in 2017. The claimant resigned in September 2017 in response to the alleged discriminatory acts and therefore claims discriminatory constructive dismissal.

2. These proceedings have been extensively case managed since 2017. Over this period multiple individuals were joined as respondents and have subsequently been removed during case management as the first named respondent has accepted any potential liability in respect of any other named respondent. In addition to the first-named respondent there are four other named respondents. This hearing considered liability only, *per* previous directions given during the case management process.

ANONYMISATION

3. An application was made at the conclusion of the hearing of this case for the anonymisation of the witnesses and individually named respondents herein. The application was made by counsel acting for the respondents. It is opposed by the claimant.

4. The application is that it is appropriate to anonymise named individuals due to the risk to those individuals considering the prevailing security situation in Northern Ireland.

5. Rule 44 of the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020 provides:-

> **Privacy and Restrictions on Disclosure**
>
> 44.-(1) A tribunal may at any stage of the proceedings on its own initiation or on application, make an Order with a view to preventing or restricting the public disclosure of any aspect of those proceedings. Such an Order may be made in any of the following circumstances –
>
> (a) where the tribunal considers it necessary in the interests of justice;
>
> (b) in order to protect the Convention rights of any person
>
> …
>
> (d) in relation to proceedings before the Fair Employment tribunal, where the tribunal considers that-
>
> (i) the disclosure of any evidence given would be against the interests of National Security, public safety or public order;
>
> (ii) the disclosure of evidence given by any person ("P") would create a substantial risk that "P" or another individual would be subject to physical attack or sectarian harassment.
>
> (2) In considering whether to make an Order under this Rule, the tribunal shall give full weight to the principle of open justice and the Convention right to freedom of expression.

(3) Such Orders may include –

…

(b) an Order that the identities of specified parties, witnesses or other persons referred to the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in documents entered on the register or otherwise forming part of the public record.

(c) An Order for measures preventing witnesses at a public hearing being identifiable by members of the public."

6. In support of this application the respondent also refers to Section 6 of the Human Rights Act. This mandates a court or a tribunal to consider and take steps to protect human rights where appropriate. Anonymity can be granted to a party or a witness to secure rights under the ECHR Articles 2, 3 and 8, summarily the rights to life, to the prevention of inhuman or degrading treatment and to family and private life.

7. The issue for this tribunal is whether there is a real and immediate risk to the parties and witnesses in this case. To quote the judgment of Weatherup J in ***re W's application [2004] NIQB67***:-

> *"… a real risk is one that is objectively verified and an immediate risk is one that is present and continuing."*

8. The named parties and the witnesses herein are or were serving officers or employees of the PSNI.

9. The respondent has provided evidence in support of this application, which is not contested by the claimant, to show that there is currently a verified and immediate risk to the health and safety of these individuals because of the current security situation in Northern Ireland.

10. On the basis of that evidence and applying the law as summarised above and in the respondent's submissions the tribunal is satisfied that it is appropriate in the circumstances of this case to make an Order under **Rule 44(1)(b)** of the 202 Rules of Procedure Regulations, in order to protect the Convention rights of the parties and the witnesses herein, having specific regard to Articles 2, 3 and 8 of the Convention and **Rule 44(1)(d)(ii)** of the 2020 Rules cited above.

The tribunal therefore orders *per* **Rule 44(3)(b)** that the identities of all named individuals herein will be anonymised throughout the substantive judgment. Each person is identified by a number, by their rank or status and a description of their role.

SOURCES OF EVIDENCE

11. The tribunal considered only the documents to which it has been referred to during the hearing. The substantive bundle of documents totals 1,559 pages and was

prepared by the respondents. A further bundle, totalling 254 pages, was prepared by the claimant. These bundles have been considered in respect of any documents therein referred to during the hearing. The claimant had furnished the tribunal with:-

- electronic files containing recordings of radio and telephone communications between PSNI personnel during policing incidents, which the tribunal discounted for the reasons set out in paragraph 12 below;

- a recording of a meeting ("the second review) between the claimant and two officers; and

- two cassette tapes containing a recording of an interview with Chief Superintendent 30. Whilst these were produced by the claimant they were not referred to by any party and the tribunal therefore discounted them.

12. As was explained to the claimant at the outset of this hearing and throughout, the function of this tribunal is not to conduct a review of the management of individual policing incidents in which the claimant played a role. That is not a matter this tribunal can consider. This is a statutory tribunal with a specific statutory jurisdiction, the role of this industrial tribunal is to decide whether the actions of the respondents and their servants and agents subsequent to specific policing incidents were acts of unlawful discrimination as alleged by the claimant. Therefore the tribunal did not consider the contents of any of the electronic files containing recordings of radio and telephone communications between PSNI personnel. The content of the recording of the interview with Chief Superintendent 30. was not in issue at the hearing of this case.

13. All witnesses had provided written witness statements. The claimant himself provided three witness statements, with supplementary documentation, totalling 50 pages.

14. The following witnesses gave evidence on behalf of the claimant:-

(1) Ms 6., former police Sergeant and the claimant's sister, who accompanied the claimant during one meeting, the "second review" meeting.

(2) Sergeant 7., a former colleague of the claimant.

(3) The tribunal was furnished with a witness statement from 8., a former colleague of the claimant, who was uncontactable and did not attend. The statement established that this individual was not involved in any of the relevant events and therefore the tribunal discounted it.

15. The following witnesses gave evidence on behalf of the respondents:-

(1) Temporary Inspector 9., to whom the initial concerns about the claimant which led to the "first review" were made.

(2) DS 10., one of the two Tactical Firearms Officers to raise the initial concerns.

(3) Sergeant 11., the other Tactical Firearms officer raising the initial concerns

(4) Tactical Firearms Commander 12., who carried out the first review.

(5) Former Chief Superintendent 13., PSNI operational lead for firearms command, who tasked TFC 12. with the review and who removed the claimant's accreditation as Firearms Commander during the first and second reviews.

(6) Former Chief Inspector 14., the claimant's line manager.

(7) Chief Inspector 15., who passed on the reports which led to the second review and the professional standards and criminal investigations with Chief Inspector 14.

(8) Deputy Assistant Commissioner 16., the fourth respondent, who directed enquiries into the concerns raised by Constable 34. which led to the second review of the claimant.

(9) Sergeant 17., one of three officers who raised the concerns which led to the professional standards and criminal investigations.

(10) Superintendent 18., who conducted the second review with DCI 19.

(11) Detective Chief Inspector 19., see above.

(12) Ms 20., an administrative support officer who was present during a meeting with the claimant during the second review.

(13) Ms 21., who typed the transcript of the recording of that meeting.

(14) Constable 22., who copied the recording of that meeting onto a CD for the use of Ms 21.

(15) Constable 23., who reviewed certain digital records.

(16) Mr 24., who gave brief evidence regarding PSNI software and telephony.

(17) Detective Inspector 25., who was the professional standards investigating officer.

(18) Detective Sergeant 26., who was the criminal investigation officer.

(19) Chief Superintendent 27., the fifth respondent, to whom Former Chief Inspector 14. reported and who was involved in the attempted redeployment of the claimant toward the end of his employment.

(20) Mr 28., from PSN HR who was involved in managing the claimant's grievances.

(21) Mr 29., the third respondent, who was in PSNI HR and involved in the management of the claimant's grievances.

(22) Detective Chief Superintendent 30., who was investigating the claimant's grievances.

(23) Ms 31., the PSNI employed solicitor who provided advice regarding the grievance and professional standards processes.

16. The tribunal also heard evidence from Mr 32., a specialist in data recovery and forensics who produced two reports and supplementary letters on behalf of the claimant in respect of the digital recording of the "second review" meeting. A report was provided in relation to the same digital recording by Mr 33., on behalf of the respondent. 33. did not give evidence.

17. The parties provided written submissions supplemented by oral submissions at the conclusion of the hearing and the tribunal has taken account of these submissions.

RELEVANT LAW

18. ***The Fair Employment and Treatment (NI) Order 1998*** provides, insofar as is relevant to these proceedings;

"Discrimination" and "unlawful discrimination"

3.—(1) In this Order "discrimination" means—

(a) discrimination on the ground of religious belief or political opinion; or

(b) discrimination by way of victimisation; and "discriminate" shall be construed accordingly.

(2) A person discriminates against another person on the ground of religious belief or political opinion in any circumstances relevant for the purposes of a provision of this Order, other than a provision to which paragraph (2A) applies,] if—

(a) on either of those grounds he treats that other less favourably than he treats or would treat other persons; …

(3) A comparison of the cases of persons of different religious belief or political opinion under paragraph (2) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

(4) A person ("A") discriminates by way of victimisation against another person ("B") in any circumstances relevant for the purposes of this Order if—

(a) he treats B less favourably than he treats or would treat other persons in those circumstances; and

(b) he does so for a reason mentioned in paragraph (5).

(5) The reasons are that-

(a) B has—

(i) brought proceedings against A or any other person under this Order; or

(ii) given evidence or information in connection with such proceedings brought by any person or any investigation under this Order; or

(iii) alleged that A or any other person has (whether or not the allegation so states) contravened this Order; or

(iv) otherwise done anything under or by reference to this Order in relation to A or any other person; or

(b) A knows that B intends to do any of those things or suspects that B has done, or intends to do, any of those things.

(6) Paragraph (4) does not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith."

Article 94 of the Order continues:

*"**94**.—(1) For the purposes of this Order (…), the holding of the office of constable as a police officer shall be treated as employment—*

(a) by the Chief Constable as respects any act done by him in relation to that office or a holder of it;"

The Order continues:-

"Complaint to Tribunal

***38.** (1) A complaint by any person ("the complainant") that another person ("the respondent")—*

(a) has committed an act of discrimination or harassment against the complainant which is unlawful by virtue of any provision of Part III or Article 32; or

(b) by virtue of Article 35 or 36 is to be treated as having committed such an act of discrimination or harassment against the complainant, may be presented to the Tribunal.

…

Burden of proof: Tribunal

***38A.** Where, on the hearing of a complaint under Article 38, the complainant proves facts from which the Tribunal could, apart from this Article, conclude in the absence of an adequate explanation that the respondent—*

(a) has committed an act of unlawful discrimination or unlawful harassment against the complainant, or

(b) is by virtue of Article 35 or 36 to be treated as having committed such an act of discrimination or harassment against the complainant, the Tribunal shall uphold the complaint unless the respondent proves that he did not commit or, as the case may be, is not to be treated as having committed, that act."

DIRECT DISCRIMINATION

19. The claimant herein is alleging that he has been directly discriminated against on the grounds of his religion. In order to succeed he must first establish less favourable treatment than an actual comparator(s) or a hypothetical comparator and then establish that the less favourable treatment was on the grounds of the protected characteristic, his religion.

20. The classic test for discrimination was contained in ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11***, later summarised by Lord Hoffman in ***Watt (Carter) v Ahman [2008] 1AC*** *at Paragraph 36*, as follows:-

"(1) The test for discrimination involves a comparison between the treatment of the complainant and another person ('the statutory comparator') actual or hypothetical, who is not of the same sex or racial group as the case may be.

(2) The comparison requires that whether the statutory comparator is actual or hypothetical, the relevant circumstances in each case should be (or assumed to be) the same as, or not materially different from, those of the complainant.

(3) The treatment of a person who does not qualify as a statutory comparator (because the circumstances are in some material respect different) may nevertheless be evidence from which a Tribunal may infer how a hypothetical comparator would have been treated ... This is an ordinary question of relevance, which depends upon the degree of the similarity of the circumstances of the person in question ('the evidential comparator') to those of the complainant and all the other evidence in the case."

21. The claimant has, at various times throughout these proceedings, identified various individual comparators and, at various other times, has stated that he wishes to rely on hypothetical comparators. Given the large number of events and individuals about which the claimant has complained it appears to the tribunal that it would be both unduly complex and potentially confusing to embark on the more common "two-stage" approach to determining whether there has been discrimination, i.e. (1) identify the less favourable treatment by reference to a specified comparator, then (2) establish the reason why the treatment occurred and therefore the tribunal has adopted the approach proposed by Lord Hoffman and proceeded to consider the reason why the claimant was subject to the alleged acts of discrimination and victimisation.

22. In approaching this issue in the context of the present proceedings the Tribunal has regard to the guidance of Lord Nicholls in ***Shamoon v Chief Constable of the Royal Ulster Constabulary (2003)UKHL 11, (2003) IRLR 285*** at (8-12):-

> "*No doubt there are cases where it is convenient and helpful to adopt this two-step approach to what is essentially a single question: did the claimant, on the proscribed ground, receive less favourable treatment than others? But, especially where the identity of the relevant comparator is a matter of dispute, this sequential analysis may give rise to needless problems. Sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason-why issue. The two issues are intertwined.*
>
> ***9***
>
> *The present case is a good example. The relevant provisions in the Sex Discrimination (Northern Ireland) Order 1976 are in all material respects the same as those in the* ***Sex Discrimination Act 1975*** *which, for ease of discussion, I have so far referred to. Chief Inspector Shamoon claimed she was treated less favourably than two male chief inspectors. Unlike her, they retained their counselling responsibilities. Is this comparing like with like? Prima facie it is not. She had been the subject of complaints and of representations by Police Federation representatives, the male chief inspectors had not. This might be the reason why she was treated as she was. This might explain why she was relieved of her responsibilities and they were not. But whether this factual difference between their positions was in truth a material difference is an issue which cannot be resolved without determining why she was treated as she was. It might be that the reason why she was relieved of her counselling responsibilities had nothing to do with the complaints and representations. If that were so, then a comparison between her and the two male chief inspectors may well be comparing like with like, because in that event the difference between her and her two male colleagues would be an immaterial difference.*
>
> ***10***
>
> *I must take this a step further. As I have said, prima facie the comparison with the two male chief inspectors is not apt. So be it. Let it be assumed that, this being so, the most sensible course in practice is to proceed on the footing that the appropriate comparator is a hypothetical comparator: a male chief inspector regarding whose conduct similar complaints and representations had been made. On this footing, the less favourable treatment issue is this: was Chief Inspector Shamoon treated less favourably than such a male chief inspector would have been treated? But here also the question is incapable of being answered without deciding why Chief Inspector Shamoon was treated as she was. It is impossible to decide whether Chief Inspector Shamoon was treated less favourably than a hypothetical male chief inspector without identifying the ground on which she was treated as she was. Was it grounds of sex? If yes, then she was treated less favourably than a male chief inspector in her position would have*

been treated. If not, not. Thus, on this footing also, the less-favourable-treatment issue is incapable of being decided without deciding the reason-why issue. And the decision on the reason-why issue will also provide the answer to the less-favourable-treatment issue.

11

This analysis seems to me to point to the conclusion that employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. Was it on the proscribed ground which is the foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? If the latter, the application fails. If the former, there will usually be no difficulty in deciding whether the treatment, afforded to the claimant on the proscribed ground, was less favourable than was or would have been afforded to others.

12

The most convenient and appropriate way to tackle the issues arising on any discrimination application must always depend upon the nature of the issues and all the circumstances of the case. There will be cases where it is convenient to decide the less-favourable-treatment issue first. But, for the reason set out above, when formulating their decisions employment tribunals may find it helpful to consider whether they should postpone determining the less-favourable-treatment issue until after they have decided why the treatment was afforded to the claimant. Adopting this course would have simplified the issues, and assisted in their resolution, in the present case."

(tribunal's emphasis)

23. Helpful commentary is found in ***Harvey on Industrial Relations and Employment Law Division L.3. A. Discrimination*****. ©.** At para **260** *et seq*:

"The upshot is two-fold. First, it will not necessarily be a good ground of appeal that a tribunal has determined the presence of direct discrimination without having gone through a sequential process of first identifying whether there was less favourable treatment and then considering the reason for it. This was confirmed by ***Elias J in Law Society v Bahl [2003] IRLR 640****, EAT, at [115]. Second, it points the way towards the correct approach in cases where it is difficult to apply a two-stage test, which is for a tribunal, faced with the task of deciding whether discrimination has taken place, to look at all the circumstances of the case to decide why the claimant was treated as she was (****Shamoon v Chief Constable of the RUC [2003] UKHL 11, [2003] IRLR 285, [2003] ICR 337****, per Lord Nicholls at [11]–[12]). In so doing, a tribunal must take into account all potentially non-discriminatory factors which might explain the conduct of the alleged discriminator, as well as those which are indicative of discrimination.*

[260.01]

This approach was endorsed by the EAT in a case wrestling with the difficulty of identifying a comparator in a complaint of direct discrimination because of religion and belief: ***London Borough of Islington v Ladele [2009] IRLR 154, [2009] ICR 387***, EAT; upheld by CA: ***[2009] EWCA Civ 1357, [2010] IRLR 211, [2010] ICR 532***. This case involved a Christian registrar of births, deaths and marriages who objected, because of her religious beliefs, to officiating at same sex civil partnership ceremonies. The EAT held that her claim must fail. In analysing her claim for direct discrimination the EAT gave some helpful guidance, stating (at [40]):-

> *"The following propositions with respect to the concept of direct discrimination, potentially relevant to this case, seem to us to be justified by the authorities:-*
>
> *(1) In every case the tribunal has to determine the reason why the claimant was treated as he was. As Lord Nicholls put it in **Nagarajan v London Regional Transport [1999] IRLR 572, 575**—"this is the crucial question". He also observed that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator.*
>
> *(2) If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial: see the observations of Lord Nicholls in **Nagarajan** (p 576) as explained by Peter Gibson LJ in **Igen v Wong [2005] EWCA Civ 142, [2005] ICR 931, [2005] IRLR 258** paragraph 37.*
>
> *(3) As the courts have regularly recognised, direct evidence of discrimination is rare and tribunals frequently have to infer discrimination from all the material facts. The courts have adopted the two-stage test, which reflects the requirements of the Burden of Proof Directive (97/80/EEC). These are set out in **Igen v Wong**.*
>
> *(4) The explanation for the less favourable treatment does not have to be a reasonable one; it may be that the employer has treated the claimant unreasonably. That is a frequent occurrence quite irrespective of the race, sex, religion or sexual orientation of the employee. So the mere fact that the claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy stage one. …*
>
> *(5) It is not necessary in every case for a tribunal to go through the two-stage procedure. In some cases it may be appropriate for the tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other*

*evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the **Igen** test: see the decision of the Court of Appeal in **Brown v Croydon LBC [2007] EWCA Civ 32, [2007] IRLR 259** paragraphs 28–39.*
…

*(6) It is incumbent on a tribunal which seeks to infer (or indeed to decline to infer) discrimination from the surrounding facts to set out in some detail what these relevant factors are: see the observations of Sedley LJ in **Anya v University of Oxford [2001] EWCA Civ 405, [2001] IRLR 377** esp paragraph 10."*

"On the Grounds of"

24. A succinct summary of the approach to be taken in considering this issue and helpful guidance from Underhill P in ***Amnesty International v Ahmed (2009) EAT*** is found in **Harvey Division L.3.2.(e)** at paras **272.01** to **274.01**:-

> *"…the definitive approach was laid down by the House of Lords in the cases of **Nagarajan v London Regional Transport, and Chief Constable of West Yorkshire Police v Khan**.*
>
> *'In **Nagarajan v London Regional Transport [1999] IRLR 572**, HL, their Lordships held that if the protected characteristic (there, race) had a 'significant influence' on the outcome, discrimination would be made out. The crucial question in every case was, however, 'why the complainant received less favourable treatment … Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job?'*
>
> *In the victimisation case of **Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] IRLR 830, [2001] ICR 1065**, a greater distinction was drawn between the James 'but for' test and that which should be applied in employment discrimination cases. Lord Nicholls considered that the test (admittedly in the context of victimisation) must be: what was the reason why the alleged discriminator acted as they did? What, consciously or unconsciously, was their reason? Looked at as a question of causation, 'but for …' was an objective test; but the anti-discrimination legislation required something different. The test should be subjective: 'Causation is a legal conclusion. The reason why a person acted as he did is a question of fact."*
>
> ***[273]***
>
> *This approach has been applied in countless cases in the decades since **Nagarajan and Khan**. It was put succinctly by the EAT in **O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School [1996] IRLR 372, [1997] ICR 33**, where it was held that the tribunal should ask: 'What, out of the whole complex of facts … is the "effective and predominant cause" or the "real and efficient cause" of the act complained of?'*

[274]

In ***Amnesty International v Ahmed [2009] IRLR 884, [2009] ICR 1450****, EAT, Underhill P (as he then was) explained the test in the following way:-*

> *"… The basic question in a direct discrimination case is what is or are the "ground" or "grounds" for the treatment complained of. That is the language of the definitions of direct discrimination in the main discrimination statutes and the various more recent employment equality regulations. It is also the terminology used in the underlying Directives …*

In some cases the ground, or the reason, for the treatment complained of is inherent in the act itself. If an owner of premises puts up a sign saying "no blacks admitted", race is, necessarily, the ground on which (or the reason why) a black person is excluded. ***James v Eastleigh*** *is a case of this kind. There is a superficial complication, in that the rule which was claimed to be unlawful—namely that pensioners were entitled to free entry to the council's swimming-pools—was not explicitly discriminatory. But it nevertheless necessarily discriminated against men because men and women had different pensionable ages: the rule could entirely accurately have been stated as "free entry for women at 60 and men at 65". The council was therefore applying a criterion which was of its nature discriminatory: it was, as Lord Goff put it …, "gender based". In cases of this kind what was going on inside the head of the putative discriminator—whether described as his intention, his motive, his reason or his purpose—will be irrelevant. The "ground" of his action being inherent in the act itself, no further inquiry is needed …*

But that is not the only kind of case. In other cases—of which Nagarajan is an example — the act complained of is not in itself discriminatory but is rendered so by a discriminatory motivation, ie by the "mental processes" (whether conscious or unconscious) which led the putative discriminator to do the act. Establishing what those processes were is not always an easy inquiry, but tribunals are trusted to be able to draw appropriate inferences from the conduct of the putative discriminator and the surrounding circumstances (with the assistance where necessary of the burden of proof provisions). Even in such a case, however, it is important to bear in mind that the subject of the inquiry is the ground of, or reason for, the putative discriminator's action, not his motive: just as much as in the kind of case considered in ***James v Eastleigh****, a benign motive is irrelevant … The distinctions involved may seem subtle, but they are real … There is thus, we think, no real difficulty in reconciling* ***James v Eastleigh and Nagarajan****. In the analyses adopted in both cases, the ultimate question is—necessarily—what was the ground of the treatment complained of (or—if you prefer—the reason why it occurred). The difference between them simply reflects the different ways in which conduct may be discriminatory."*

[274.01]

As for the application of the 'but for' test, in Ahmed Underhill P gave the following guidance:

''… although … the test may be applied equally to both the "criterion" and the "mental processes" type of case, its real value is in the latter: if the discriminator would not have done the act complained of but for the claimant's sex … it does not matter whether you describe the mental process involved as his intention, his motive, his reason, his purpose or anything else—all that matters is that the proscribed factor operated on his mind. This is therefore a useful gloss on the statutory test; but it was propounded in order to make a particular point, and we do not believe that Lord Goff intended for a moment that it should be used as an all-purpose substitute for the statutory language. Indeed if it were, there would plainly be cases in which it was misleading. The fact that a claimant's sex or race is a part of the circumstances in which the treatment complained of occurred, or of the sequence of events leading up to it, does not necessarily mean that it formed part of the ground, or reason, for that treatment.''

Victimisation

25. In the present case the respondent accepts that the claimant has carried out a series of protected acts, as required by **Article 3(5)** of **FETO**. His first grievance of 29 March 2017 alleges religious discrimination and victimisation "*under the protected act*" and the claimant relies upon multiple grievances and five sets of tribunal proceedings, the first of which was issued on the 15 April 2017, as further protected acts.

26. The tribunal understands the protected act referred to in the first grievance - issued after the first suspension of the claimant's accreditation – was his litigation against the first respondent several years earlier. Thereafter the claimant relies on the 2017 grievances/proceedings as the protected acts motivating the various actors herein.

27. The task for the tribunal is to determine whether any and/or all of these protected acts were the reason why the claimant suffered any allegedly less favourable treatment. The claimant is required to establish that the victimiser had knowledge of the protected act at the relevant time, i.e. when the victimisation took place, see eg**. *Thompson v Central London Bus Company [2016] IRLR 9*, EAT.**

28. Guidance is found in the summary of the questions to be considered in this regard in ***Harvey***, Division L.3.D.(2).(d) para 485 et seq:-

*"The House of Lords, in two decisions (**Nagarajan and Khan**) considering the elements of victimisation under the SDA 1975 and RRA 1976 (the wording of both Acts being the same), ruled that while it must in all cases be shown that less favourable treatment of the person victimised was by reason of him having done a protected act, a simple 'but for' test was not appropriate. There is however no need to show that the doing of the protected act was the legal cause of the victimisation, nor that the alleged discriminator was consciously motivated by a wish to treat someone badly*

either because of their sex or race, or because they had engaged in protected conduct. The respondent will not be able to escape liability by showing an absence of intention to discriminate, provided that the necessary link in the mind of the discriminator between the doing of the acts and the less favourable treatment can be shown to exist.

*'**Nagarajan v London Regional Transport [1999] IRLR 572, [1999] ICR 877**, HL: Mr N had a long history of bringing discrimination claims (on grounds of race) against his employer. He complained of discrimination under the RRA 1976, following an unsuccessful job application. The employer was found not to be liable, by both the EAT and the Court of Appeal, on the ground that conscious discrimination had not been shown to exist. The House of Lords disagreed (Lord Browne-Wilkinson dissenting). The majority view was that conscious motivation was no more needed in the establishing of victimisation-discrimination under RRA 1976 s 2(1) than it was in relation to ordinary direct discrimination under RRA 1976 s 1(1)(a): cf **James v Eastleigh Borough Council [1990] IRLR 288, [1990] ICR 554**, HL. Here it was enough that the employment tribunal had found victimisation to exist on the ground that 'consciously or subconsciously' the interviewers of Mr Nagarajan for the job vacancy had been influenced by the fact that he had previously brought proceedings against the employer. If motivation is taken out of the picture, as it would appear it must be, establishing the presence of victimisation becomes very much a question of causation. (Although the **Nagarajan** decision is part of the law of racial discrimination, it should be understood as applying equally to other strands of discrimination.)*

***Chief Constable of West Yorkshire Police v Khan [2001] IRLR 830, [2001] ICR 1065**, HL: A police officer complained of victimisation following his chief constable's refusal to provide a reference for him for a new job. The Chief Constable's position was that he was unable to comment as to the officer's suitability for fear of prejudicing his (the Chief Constable's) case in proceedings in which the officer was pursuing a racial discrimination claim against him in the tribunal. In other words, the reference was refused because of pending proceedings. It was argued that this was not victimisation, because the same response would have been given in the case of anyone who had brought proceedings against the Chief Constable. The House of Lords, disagreeing with the approach taken in the courts below, accepted there was no victimisation — on the grounds of how a comparator would have been treated. The proper comparator was another employee of the police service who had requested a reference, not another employee who had brought proceedings under a different type of claim. That approach was helpful to the claimant. But at the end of the day, there was no victimisation because the reference had been refused, not because proceedings had been brought, but because proceedings were pending. The House of Lords indicated that if the same action had been taken when the proceedings had been concluded, that might well have been victimisation—but that was not the situation that applied here.'*

…

*There is no requirement, in victimisation claims, for a complainant to show that the alleged discriminator was **wholly** motivated to act by his [the*

complainant's] behaviour in carrying out a protected act. This is made clear by the decision in ***Nagarajan v Agnew [1994] IRLR 61****, EAT.*

> *'Mr Nagarajan complained of having suffered a detriment contrary to RRA 1976 s 4(2)(c), in that he was not considered for employment as a result of an adverse reference from his former manager. The alleged detriment took the form of a written reference, which was unfavourable to Mr Nagarajan and was found to have been written, at least in part, because of his previous record of complaining about racial discrimination.'*

[490]

As to the existence of mixed motives, Knox J, referring to the earlier decision of the Court of Appeal in ***Owen & Briggs v James [1982] IRLR 502, [2001] ICR 1065****, put the matter thus:-*

> *"[W]here an [employment] tribunal finds that there are mixed motives for the doing of an act, one or some but not all of which constitute unlawful discrimination, it is highly desirable for there to be an assessment of the importance from the causative point of view of the unlawful motive or motives. If the [employment] tribunal finds that the unlawful motive or motives were of sufficient weight in the decision-making process to be treated as a cause, not the sole cause but as a cause, of the act thus motivated, there will be unlawful discrimination' (p 67).'*

[491]

*Where there is more than one motive in play, all that is needed is that the discriminatory reason should be 'of sufficient weight' (****O'Donoghue v Redcar and Cleveland Borough Council [2001] EWCA Civ 701, [2001] IRLR 615****, CA). That is not a difficult test to meet."*

The Burden of Proof

29. In ***Madarassy v Nomura International PLC [2007] IRLR 246*** the Court of Appeal held, inter alia:-

> *"The burden of proof does not shift to the employer simply on the claimant establishing a difference in status (eg sex) and a difference in treatment. Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal could conclude that on the balance of probabilities the respondent had committed an unlawful act of discrimination – could conclude in Section 63A(2) must mean that 'a reasonable Tribunal could properly conclude from all the evidence before it. This would include evidence adduced by the claimant in support of the allegation of sex discrimination, such as evidence of a difference in status, difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject to the statutory absence of an adequate explanation at this stage the Tribunal needs to consider all the evidence relevant to the discrimination*

complaint, such as evidence to whether the act complained of occurred at all, evidence as to the actual comparators relied upon by the claimant to prove less favourable treatment, evidence as to whether the comparisons being made by the claimant were of like with like as required by Section 5(3) and available evidence for the reasons for the differential treatment. The correct legal position was made plain by the guidance in ***Igen v Wong****. Although Section 63A(2) involves a two-stage analysis of the evidence, it does not expressly or impliedly prevent the Tribunal at the first stage, from hearing, accepting or drawing inferences from evidence adduced by the respondent disputing or rebutting the claimant's evidence of discrimination … ."*

(tribunal's emphasis)

30. In ***Igen*** the Court of Appeal cautioned Tribunals,

> '…*against too readily inferring unlawful discrimination on a prohibited ground merely from unreasonable conduct where there is no evidence of other discriminatory behaviour on such ground*'. (para 51)

31. Where the tribunal considers that the conduct of the employer requires some explanation before the burden of proof can shift there must be something to suggest that the treatment was less favourable and by reason of the protected characteristic (see ***B and C v A [2010] IRLR 400*** *and* ***Curley v Chief Constable of the Police Service of Northern Ireland and Another [2009] NICA 8*** later in this decision).

32. As to what may constitute *the "more*' in "*without more*"– guidance is to be found in the judgment of Elias J in ***The Law Society v Bahl [2003] IRLR 640***, later approved by the Court of Appeal (***[2004] IRLR 799***). He emphasised that unreasonable treatment is not of itself a reason for drawing an inference of unlawful discrimination:-

> *"94. It is however a wholly unacceptable leap to conclude that whenever the victim of such conduct is black or a woman that it is legitimate to infer that our unreasonable treatment was because the person was black or a woman. All unlawful discriminatory treatment is unreasonable, but not all unreasonable discriminatory treatment is discriminatory, and it is not shown to be so merely because the victim is either a woman or of a minority race or colour. In order to establish unlawful discrimination it is necessary to show that the particular employer's reason for acting was one of the proscribed grounds. Simply to say that the conduct was unreasonable tells us nothing about the grounds for acting in that way. The fact that the victim is black or a woman does no more than raise the possibility that the employer could have been influenced by unlawful discriminatory consideration. Absent some independent evidence supporting the conclusion that this was indeed the reason, no finding of discrimination can possibly be made.*
>
> *96. ... Nor in our view can Sedley LJ (in* ***Anya v University of Oxford****) be taken to be saying that the employer can only establish a proper explanation if he shows that he in fact behaves equally badly to members of all minority groups. The fact that he does so will be one way of rebutting an inference of unlawful discrimination, even if there are pointers which would otherwise justify that inference. ... No doubt the mere assertion by an employer that he would treat others in the same manifestly unreasonable*

way, but with no evidence that he had in fact done so, would not carry any weight with a Tribunal which is minded to draw the inference on proper and sufficient grounds that the cause of the treatment has been an act of unlawful discrimination."

33. In **Para 101** of Elias J's judgment he explained that unreasonable conduct is not necessarily irrelevant and may provide a basis for rejecting an explanation given by the alleged discriminator noting:-

"The significance of the fact that the treatment is unreasonable is that a Tribunal will more readily in practice reject the explanation, given that it would if the treatment were reasonable. In short, it goes to credibility. If the Tribunal does not accept the reason given by the alleged discriminator, it may be open to it to infer discrimination. But it will depend upon why it has rejected the reason he has given, and whether the primary facts it finds provide another and cogent explanation for the conduct. Persons who have not discriminated on the proscribed grounds may nonetheless give a false reason for the behaviour. They may rightly consider, for example, that the true reason casts them in a less favourable light, perhaps because it discloses incompetence or insensitivity. If the findings of the Tribunal suggest there is such an explanation, then the fact that the alleged discriminator has been less than frank in the witness box when giving evidence will provide little, if any, evidence to support finding of unlawful discrimination itself."

***Para 113**:-*

"There is an obligation on the Tribunal to ensure that it has taken into consideration all potentially relevant non-discriminatory factors which might realistically explain the conduct of the alleged discriminator ... ."

Para 220:-

"An inadequate or unjustified explanation does not of itself amount to a discriminatory one."

34. In ***Nelson v Newry and Mourne District Council [2009] NICA 24***, Girvan LJ held that the words *'could conclude'* are not to be read as equivalent to *'might possibly conclude'*. He said "*the facts must lead to the inference of discrimination*". He also stated:-

*"24. This approach makes clear that the complainant's allegation of unlawful discrimination cannot be viewed in isolation from the whole relevant factual matrix out of which the complainant alleges unlawful discrimination. The whole context of the surrounding evidence must be considered in deciding whether the Tribunal could probably conclude in the absence of an adequate explanation that the respondent has committed an act of discrimination. In **Curley v Chief Constable the Police Service of Northern Ireland and Another [2009] NICA 8**, Coghlin LJ emphasised the need for a Tribunal engaged in determining this type of case to keep in mind the fact that claim put forward is an allegation of unlawful discrimination. The need for the Tribunal to retain such a focus is particularly important when*

applying the provisions of Article 63A. The Tribunal's approach must be informed by the need to stand back and focus on the issue of discrimination."

35. *Coghlin LJ,* in the case of ***Curley,*** also referred to the dicta of Carswell LCJ, as he then was, in the **Sergeant A** case, which emphasised the necessity for the tribunal to look at the matter, in the light of all the facts as found:-

> *"3. Discrepancies in evidence, weaknesses and procedures, poor record keeping, failure to follow established administrative processes or a satisfactory explanation from an employer may all constitute material from which an influence of religious discrimination may legitimately be drawn. But Tribunals should be on their guard against the tendency to assume that every such matter points towards a conclusion of religious discrimination, especially where other evidence shows such a conclusion is improbable on the facts."*

OVERVIEW

36. The present case concerns a series of events which it is agreed took place as follows between February and October 2017. In summary:-

- In February 2017 two police officers raised concerns about the claimant's performance of his duties in the role of Tactical Firearms Commander (TFC). The claimant does <u>not</u> allege that the raising of these concerns were acts of discrimination or victimisation.

- This led to the suspension of the claimant's accreditation to perform the role of Tactical Firearms Commander (TFC), pending a review (the "first review").

- Following the first review he was re-accredited to the role in May 2017.

- In late April 2017 three other officers raised concerns regarding the claimant accessing, printing, and removing various electronic records. The claimant does <u>not</u> allege that the raising of these concerns were acts of discrimination or victimisation.

- These further concerns led to the instigation of "professional standards" (disciplinary) and criminal investigations of the claimant.

- In June 2017 another officer raised concerns regarding the claimant's performance of his duties as TFC.

- This led to a second suspension of accreditation from the role of TFC, pending a further review (the "second review").

- The outcome of the second review was that the claimant's accreditation as a TFC was permanently removed in late August 2017.

- Between April and October 2017 the claimant raised 12 grievances and issued four sets of Tribunal proceedings.

- The claimant's grievances were tasked to be dealt with by Chief Superintendent 30. The claimant does not allege that this officer committed acts of discrimination or victimisation, however the claimant complains in relation to delay in the process.

- The claimant gave notice of resignation and applied for his pension in September 2017, taking effect in November 2017.

Save as noted above the claimant asserts that his removal from the role of TFC (twice), the reviews which followed, the criminal and disciplinary investigations and the handling of his grievances were all acts of direct discrimination and/or acts of victimisation.

The claimant makes further allegations of discrimination and victimisation in relation to various interactions with senior officers and HR during the period in question.

RELEVANT FINDINGS OF FACT

37. The claimant had been a police officer with the first-named respondent since July 1986. Several years before the events complained of herein, the claimant brought proceedings in the Employment Tribunals against the first-named respondent. None of the persons involved in the present proceedings were involved in those prior proceedings.

38. At the time of the matters complained of herein, the claimant was deployed in the role of "Spontaneous Tactical Firearms Commander", i.e. "TFC", in the Incident Co-Ordination Centre (ICC) in Belfast. The ICC is part of the PSNI Armed Response Unit, ("PSNIARU") a specialised branch of the Service. This is not to be confused with individual teams of trained firearms officers named "Armed Response Units", hereafter referred to as "ARU". Each ARU has a lead officer, the Operational Firearms commander (OFC).

39. The role of a Tactical Firearms Commander is to co-ordinate and direct the actions of officers at the scene of a policing incident by liaising with local police units and with Armed Response Units ("ARU") via telephone, radio and with the use of other information supplied via computer systems. Specifically and with relevance to these proceedings, the TFC will take decisions as to whether to "deploy" an ARU, meaning to instruct them to become involved in ongoing policing incidents. This is done by the TFC "declaring" a policing incident as a "Spontaneous Firearms Incident" (SFI). The TFC will also, based on the information available to them, take decisions as to how that ARU will behave in terms of its actions on the ground. The TFC reports to the strategic Firearms Commander ("SFC"), a more senior officer, who may be advised of an ongoing incident and who may provide the TFC with guidance as required.

40. The claimant emphasises a distinction between a Spontaneous Tactical Firearms Commander (STFC) and a Pre-planned Tactical Firearms Commander (PPTFC). The distinction is that a Pre-planned Firearms Commander will deal with operations involving ARUs which are, as the name suggests, pre-planned. A PPTFC will have a detailed plan for the deployment of an ARU prior to a planned operation being undertaken. As that operation continues, considering any further information which arises, the PPTFC may then modify the plan. An STFC, in contrast, responds to

policing incidents which arise without warning.

41. Of importance in this case are the National Decision Model ("NDM") and the Authorised Professional Practice for Armed Policing ("APP AP"). The NDM is a system used by police nationwide for the structured processing of information and decision-making. It requires the TFC to go through a "checklist" of risk assessments in relation to various factors to arrive at decisions, such as the decision whether or not to deploy an ARU. It is the system whereby the TFC considers the information available, the steps they may take and then assess the varieties of risk that arise from any potential decision. This process is recorded on various systems so that there is a record of how any decision was reached by the TFC.

42. The APP AP lists the duties of a TFC, relevant to these proceedings:-

> "*Where a strategic firearms commander is not yet in place, the Tactical Firearms Commander will set the working strategy, including any appropriate technical parameters. This will be reviewed and ratified by a Strategic Firearms Commander as soon as practicable.*
>
> *The Tactical Firearms Commander:-*
>
> - *Must assess and develop the available information in the intelligence, and complete the threat assessment.*
>
> *….*
>
> - *Is responsible for developing and co-ordinating the technical plan in order to achieve the strategic aims, within any technical parameters set.*
>
> *…*
>
> - *<u>Should ensure that all decisions are recorded, where practicable, in order to provide a clear audit trail.</u>*
>
> - *Provide the pivotal link in the command chain between strategic and Operational Firearms Commanders.*
>
> - *Must constantly monitor the need for the continued deployment of AFOs (Armed Firearms Officers).*
>
> - *Must review and update the tactical plan and ensure that any changes are communicated to the operational firearms commanders and, where appropriate, the Strategic Firearms Commander.*
>
> *…*
>
> - *<u>Should consider declaring and managing the event as a critical incident</u>."*
>
> *…*
>
> (tribunal emphasis)

43. The APP AP also states, in relation to record-keeping:

> "*Individual commanders must be prepared to account for their decisions and*

to explain their rationale at the time those decisions were taken. <u>All plans should be documented, including options rejected or progressed, together with the reasons why such conclusions were drawn and by whom</u>."

(tribunal emphasis)

44. The PSNI Manual of Policy, Procedure and Guidance on Conflict Management, Chapter 9, "Police Use of Firearms" states:

"<u>*Deployment of AFOs*</u> (Armed Firearms Officers)

9.220 AFOs are considered as being deployed when they are required to conduct a specific task during which the possession of a firearm with appropriate authorisation, is a required element. This includes when they self-deploy as provided for under the guidance set out below.

9.221 The deployment of AFOs should only be authorised in the following circumstances:-

- *<u>Where the officer authorising the deployment has reason to suppose that the officers may have to protect themselves or others from a person who:</u>*
- *<u>Is in possession of, or has immediate access to, a firearm or other potentially lethal weapon</u>, or*
- *Is otherwise so dangerous that the deployment of armed officers is considered to be appropriate, or*
- *As an operational contingency in a specific operation based on the threat assessment …"*

(tribunal emphasis)

45. The sections highlighted above are relevant to the concerns raised regarding the claimant's performance of his duties and the events about which he complains herein.

46. This case involves consideration of a number of simultaneous and overlapping processes, i.e. reviews, grievances and investigations. To minimise the risk of confusion the tribunal has adopted a thematic, as opposed to chronological, approach to the narrative.

47. The reporting structure within the PSNI relevant to these proceedings is that the claimant, Inspector 1., reported to Former Chief Inspector 14. Former Chief Inspector 14. reported to Superintendent 27. who in turn reported to Chief Superintendent 13. Assistant Chief Constable 16. was the most Senior Officer involved in the relevant events in these proceedings. In summary, the relevant reporting structure was:-

Assistant Chief Constable 16.
Chief Superintendent 13.

Superintendent 27.
Former Chief Inspector 14.
Inspector 1.

FEBRUARY 2017. Initial concerns and the first review.

48. On 11 February 2017 and then on 26 February 2017 the claimant was on duty as a "spontaneous" Tactical Firearms Commander. On each date policing incidents arose and the claimant, operating from the ICC, assumed command of the incidents. In three incidents the Operational Firearms Commander of an Armed Response Unit subsequently raised concerns about the decisions taken by the claimant and the instructions he issued. They recorded their concerns in post-deployment reports (PDR), an electronic record of the incident.

49. The claimant does not allege that the officers who made these initial reports were acting on the basis of discrimination or victimisation. The claimant disagreed and continues to disagree that their concerns were valid but does not accuse them of discrimination or victimisation.

50. On 11 and then on 26 February 2017 Sergeant 10. (OFC), who had 8 years' experience in the role, was leading an ARU. In two separate incidents the claimant declined to deploy the ARU, instead directing local police to deal with an armed individual. Sergeant 10.'s view was that these decisions breached PSNI training and increased the risk of harm to those involved. He stated in evidence to the tribunal:-

> "… *my honest belief was that if I did not raise the concerns I had regarding* (the claimant) *that someone would be killed or seriously injured*".

51. On 26 February 2017 Sergeant 11. was on duty as an OFC. He had been in Armed Response for approximately nine years and had a cordial working relationship with the claimant. He was concerned with directions issued by the claimant which caused confusion amongst officers on the ground and which he felt were not appropriate to deal with the situation. He stated in evidence to the tribunal:-

> "… *I had made it more formal with a report to my Inspector, because I felt that the public could have been put at risk*".

52. While not accepting their criticisms, the claimant does not challenge the honesty of these statements and the tribunal accepts that these were the professional opinions of these officers.

53. The two officers raised their concerns in PDRs (Post-Deployment Reports) and verbally to Temporary Inspector 9. of the PSNIARU. Both officers subsequently produced a written report of their involvement in the subject incidents on 14 March (Sergeant 11.) and on 15 March 2017 (Sergeant 10.). Temporary Inspector 9. had known the claimant for twenty years and worked with him in the branch for over ten. They had a cordial working relationship. Temporary Inspector 9. was concerned by both the content of their reports and that there had been three in a short period of time. He contacted the claimant for comment via email on 27 February 2017. The claimant replied on the 1 March 2017:-

"*Please listen to a download of the radio transmission ... A high risk missing person that is threatening self-harm only and may be in a possession of a knife does not fall within the remit of the definition of a firearm incident*".

54. Temporary Inspector 9. found this reply concerning, his evidence to the tribunal was:-

> *"the fact that* (the claimant) *felt that a high risk person armed with a knife did not fall into the remit for a deployment of armed officers to me was highly dangerous, and if it continued, there was the potential for serious injury or loss of life."*

55. Temporary Inspector 9. escalated the matter to the "Firearms Command Working Group". This is a forum for senior officers from all departments with responsibility for firearms operations, training, policy, equipment, tactics and command to discuss issues and to encourage good practice. A summary of the concerns were sent to Chief Superintendent 13. by Temporary Inspector 9. on 2 March 2017.

56. Chief Superintendent 13. was the PSNI Operational Lead for firearms command at the time and chaired the Firearms Command Working Group. Having been informed of the concerns he obtained records of the incidents. These records took the form of "command and control logs", which are a digital record of communications in relation to any incident that record the timing of events and information obtained as matters evolve. He also sought the PDRs.

57. Chief Superintendent 13. brought the concerns to Former Chief Inspector 14., who was the claimant's line manager in the ICC and whom the claimant alleges was at the centre of a conspiracy to discriminate against and victimise him. Chief Superintendent 13. directed that the claimant's accreditation, which provided him with the authority to act as a TFC, should be suspended pending a review of the claimant's actions. Former Chief Inspector 14. informed the claimant of his suspension from the role of TFC. This was a suspension from a specific policing role and the claimant was not at any time suspended from duty.

58. In an email sent to Former Chief Inspector 14. on 15 March 2017, Chief Superintendent 13. stated:-

> *"I believe that there is sufficient cause for concern to suspend Inspector 1's accreditation as a TFC with immediate effect. This should not impinge on any other aspect of his work in his current role.*
>
> *I confirm that the suspension of accreditation is precautionary and does not in any way prejudge any review of deployments. As part of that review, I believe it is important to give Inspector 1. an opportunity to provide explanation and rationale for any decisions which have been queried. This should not in any way be considered as a disciplinary investigation or sanction but an action to ensure that the decisions have been taken to ensure the safety of officers and the public."*

59. Chief Superintendent 13. tasked Detective Sergeant 12. to carry out the review. He was to review the incidents in question against the APP AP and the "College of Policing National Police Firearms Training Curriculum Model of learning, C2

Tactical Firearms Commander". Detective Sergeant 12. has been a Firearms Commander since 2010 and the lead Firearms Command trainer for the PSNI since 2015. He reviewed the three incidents and concluded that the claimant should have declared one as an SFI (Serious Firearms Incident), the second may have been declared an SFI and that in the third incident, while it was declared an SFI, the claimant had failed to discharge a number of his operational responsibilities as the TFC as outlined above in paragraphs 41 and 42.

60. Following completion of Detective Sergeant 12.'s report Chief Superintendent 13. arranged a meeting with the claimant and Former Chief Inspector 14. to discuss the incidents in question, the contents of the report and to give the claimant an opportunity to comment. Chief Superintendent 13. would then take a decision on the suspension of the claimant's accreditation.

61. This meeting took place on 11 May 2017. At the outset of the meeting the claimant informed those present that he had issued tribunal proceedings (case reference 23/17FET, issued on 15 April 2017). Those proceedings allege religious discrimination/political discrimination. Over the following months the claimant informed multiple officers of his ongoing tribunal proceedings. The outcome of the meeting was that the claimant's accreditation as a TFC was reinstated. In the meeting he was advised by Chief Superintendent 13. of the need to make more detailed contemporaneous records of his decision making process in future.

THE SECOND REVIEW

62. On the 15 and 18 June 2017 the claimant was TFC on duty in ICC and had command of two incidents where the deployment of ARUs was in issue.

63. On 15 June a complaint was made by a member of the public that she had observed someone pointing a gun at her. The claimant was reluctant to declare it as a firearms incident and this decision was called into question in a PDR issued by a Constable 34. (OFC) on 17 June 2017.

64. On 18 June 2017, in an incident involving a distressed individual with a knife, the claimant initially declined to declare it a firearms incident, only doing so after debating the issue with Constable 34. Constable 34. questioned the claimant's decision-making in relation to this incident in a PDR on 18 June 2017. The concerns raised by Constable 34. were again in relation to the claimant's rationale for either declaring or not declaring an SFI.

65. Constable 34. is alleged by the claimant to have victimised him in raising these concerns because he was aware that the claimant was bringing proceedings against the first-named respondent in the Industrial Tribunals and Constable 34. had previously brought proceedings against the first-named respondent. The claimant advanced no evidence as to why this would have caused that officer to victimise him.

66. The claimant accepts that the decisions he was reported as having taken during these incidents were the decisions that he took.

67. Inspector 35. raised the PDRs with Chief Inspector 15. on 18 June 2017. Chief Inspector 15. referred the matter to Former Chief Inspector 14. in a report

sent on 21 June 2017. In the report Chief Inspector 15. also stated he wished to claim whistle-blower status. He would, on occasion have to work alongside the claimant and was concerned how the claimant might react if he became aware of his actions.

68. In evidence to the tribunal Chief Inspector 15. stated:-

> *"I raised these concerns as I believed the claimant was presenting an ongoing risk to the public and officers and I outlined in my report I believed this because on a number of occasions Police Officers* (local police - that is police who are not Armed Response Unit Officers) *drew and pointed their firearms at members of the public when a less lethal option would have safeguarded the public and the officers, I believed by his actions he was endangering Police Officers. I was genuinely concerned that the way in which the claimant was managing incidents was endangering others."*

69. PDRs were circulated daily to a list of Senior Police Management for the purposes of information sharing. Assistant Chief Constable 16. noted the content of Constable 34's PDRs and emailed Chief Inspector 40. and Superintendent 36. in relation to both PDRs, directing further enquiry into the matters raised by Constable 34. Assistant Chief Constable 16. is a named respondent in these proceedings but this action appears to have been her only input into the subject events.

70. Superintendent 36. emailed Former Chief Inspector 14., referring to a dispute over procedure between the claimant and Constable 34:-

> "*Is this a policy misinterpretation by the TFC or a grey area?".*

71. Chief Inspector 40. requested Former Chief Inspector 14. to:-

> *"Please have Inspector 1. report on his command and control of the incident so that I can report back to the ACC and Superintendent. In particular it would be useful if he would outline his thought process around the declaration of an SFI".*

72. The claimant's evidence was that the reason why he was reluctant to designate certain situations as SFIs was that he was and remains of the view that a person with a weapon, such as a knife, who is threatening to "self-harm" i.e. injure or kill themselves (rather than another person) does not meet the criteria for being declared as a serious firearm incident.

73. The tribunal heard evidence from several respondents' witnesses that, when an armed person has threatened to harm themselves, there is the potential that they may "*transfer the malice*" to a third person such as a member of the public or a police officer. In those witnesses' opinions such situations have the potential to endanger life and so consideration should be given to declaring it as an SFI. On the evidence before us the tribunal finds that the claimant's view was not shared by any of the PSNI officers who were tasked with managing the claimant and reviewing his actions.

74. The "correctness" of either view of the policy is not a matter for this tribunal to determine. What the tribunal must do is consider whether the views expressed by the multiple witnesses for the respondent in this regard were the honest opinions of officers trained in this field. Based on their evidence and the documentary record including the relevant policies referred to at paragraphs 41-44 above, we do so find.

75. Former Chief Inspector 14., in an email on 22 June 2017 to relevant Senior Officers, referred to the OFCs and management concerns:-

> *"Notwithstanding Inspector 1.'s recent reaccreditation, there appears to be a deep and concerning deficit of confidence in his ability to carry out his TFC responsibilities amongst Operational Officers and TFC colleagues".*
>
> *I do not have sufficient competence, training or experience in these matters to make a credible judgement on the application of policy, however I do contend that there is a risk in letting the current situation continue given the apparent lack of trust between Operational Officers and indeed ICC colleagues of Inspector 1.*
>
> *Could I ask for some urgent consideration of the issues raised by ARU and ICC Officers and the direction on how to proceed."*

76. On 23 June Chief Inspector 13. emailed Former Chief Inspector 14. stating:-

> *"I am cognisant of the fact that recently we had cause to revoke Inspector 1.'s Firearms Command Accreditation. In the wake of that having discussed the three incidents I restored Inspector 1.'s accreditation with the advisory about maintaining written logs and records of decisions. …*
>
> *Inspector 1. presents as a competent and capable Firearms Commander when pressed. From the information that I have to hand on the original serials and again in these leads me to believe that his decision making is flawed and that he is interpreting situations outside of guidance.*
> *Again, based on the information I have to hand, I have a reasonable and genuine belief that his decision making poses a risk to members of the public.*
>
> *While the information with which I have been provided needs to be investigated in more depth, I believe that there is sufficient cause for concern to suspend Inspector 1.'s accreditation as a TFC with immediate effect. This should not impinge on any other aspect of his work in his current role.*
>
> *I confirm that the suspension of accreditation is precautionary and does not in any way prejudge any further decisions or outcomes in this matter.*
>
> *I believe it is important to give Inspector 1. an opportunity to provide explanation and rationale for any decisions which have been queried. …*
>
> *This action should not in any way be considered as a disciplinary investigation or sanction but an action to ensure that the decisions taken by Inspector 1. have been taken to ensure the safety of officers and the public and are properly logged with accompanying rationale."*

77. The claimant was notified of this second suspension from the role of TFC on 23 June 2017.

78. On 29 June Chief Superintendent 13. sent an email to Former Chief Inspector 14. noting the suspension of the accreditation and stating:-

> *"I believe that as this is the second occasion in a short space of time that such action has been taken, that it is appropriate in the circumstances that a panel be arranged to review TFC command decisions by Inspector 1.*
>
> *In order to ensure fairness and independence of scrutiny, I do not believe that I should play any part in the review beyond organising the panel."*

79. In preparation for this review the claimant was asked on a number of occasions by Chief Superintendent 13. to provide written logs, that is, all written records compiled by him during the relevant incidents setting out his decision-making process *per* the NDM. The claimant informed the Chief Superintendent that he did not have any such logs. The claimant asserts that these repeated requests were acts of victimisation.

80. The panel for the second review consisted of Superintendent 18. and Detective Chief Inspector 19. Neither had any prior involvement in these matters. Superintendent 18. has been a police officer for over 35 years and held the role of PPTFC and STFC for several years, having been trained in 2008. Detective Chief Inspector 19. has been a TFC since 2010 and acts as an Assessor for PSNI TFC training. The claimant asserts that these officers were not competent to review his performance. He bases this upon their lack of experience working within the ICC.

81. In his evidence to the tribunal, Superintendent 18. stated:-

> *"this is correct; I was and I am not entirely sighted on ICC and management of Firearms Command. I have never worked in ICC so therefore was not in possession of detailed knowledge.*
>
> *The most important aspect of the role I was given was to consider the actual management and command of the incidents in line with the training provided and standards expected …*
>
> *I believed I was required to test the reality of Inspector 1.'s delivery in ICC against what the staff were trained and expected to do, so not having any experience or knowledge of the processes in ICC was actually a strength as it ensured my independence".*

82. These officers were furnished with the records of the relevant incidents together with radio and telephone transmissions, which they listened to in advance of meeting with the claimant on 26 July.

83. The conduct of this meeting is the matter of substantial dispute between the parties. On the respondents' account those present in the room throughout the meeting were:-

- the claimant
- Sergeant 6., who accompanied him as a friend
- Superintendent 18.
- Detective Chief Inspector 19.
- Ms 20., an administrative support officer. Her purpose in being in the room was to ensure that the digital recording device being used was recording the meeting.

84. The respondents' evidence is that the meeting proceeded in a normal manner with questions being asked of the claimant and discussion around sections of recordings listened to in the meeting. The claimant confirms that he was aware that he could refer to any recordings or other material he wished during the meeting.

85. The claimant's version of the meeting is somewhat different. On the claimant's evidence the following took place:-

(1) Ms 20. left the room as soon as she started the recording and returned just before the meeting ended.

(2) At some point Detective Chief Inspector 19.' telephone went off (this is audible on the recording of the meeting). He then left the room some unspecified time later and was out of the room for an unspecified period of time.

(3) While Inspector 1. and Ms 6. were in the room alone with Superintendent 18. Superintendent 18. fell asleep and remained so until Detective Chief Inspector 19. returned.

86. The tribunal rejects the claimant's evidence in relation to these assertions for the following reasons:-

- Despite the fact that the claimant was raising multiple grievances, both before and after the date of this meeting, no grievance was ever raised about the matters set out above.

- In an email of 9 October to HR, wherein the claimant indicated his intention to resign, he alleged that the transcript of the interview was "*inaccurate and incomplete*" but made no mention of these events.

- These allegations are not made in the claimant's applications to the tribunal of the 19 August 2017 (54/17 FET), 15 October 2017 (71/17 FET) or his first witness statement, made in 2018, which refers only to an "*inaccurate transcript*" of the meeting.

- They are not mentioned in his second statement, made in September 2019, which devotes four pages to the review meeting and report.

- They are first mentioned in replies to a notice for particulars on 24 September 2020, three years after the event.

- Ms 6.'s evidence did not support the claimant. She made no reference to Ms 20 being present or leaving the room. She did not allege that Detective Chief Inspector 19. left the room for a period or that Superintendent 18. fell and remained asleep.

- The claimant did not direct the tribunal to any section of the recording to demonstrate a period when neither of the Investigating Officers spoke because of their absence or because they were asleep.

87. During his cross-examination of Ms 20. the claimant claimed that, at the point when she returned, shortly before the end on the recording, you could hear her heels as she walked and the sound of her bag being put down. This allegation was not contained in any of his three witness statements and the claimant was not able to point to the time on the recording when these sounds could be detected. Ms 20.'s immediate rejoinder was that:-

    (a) she does not wear heels in the workplace; and

    (b) while carrying out her duties she does not carry a bag with her.

88. The tribunal found Ms 20. to be a credible witness and the claimant failed to present any evidence to challenge her credibility.

89. The tribunal therefore finds, on the balance of probabilities, that the respondents' evidence in relation to the meeting on 26 July was accurate.

90. The claimant alleged that during the meeting he was asked a series of "hypothetical" questions. In the replies referred to above and paragraph 50 of his third witness statement (18 February 2021) he sets out the alleged hypothetical questions. At hearing, the claimant accepted that the examples that he has set out therein are not, in fact, hypothetical questions but are questions directed at events which had actually taken place during the relevant incidents.

91. The claimant then alleged at the tribunal hearing that the "hypothetical" questions were subsequently edited out of the audio recording at the behest of officers 18. and 19., or another unidentified person or persons.

92. He asserted that his answers to the hypothetical questions were left on the recording so that it would appear as if that he had given wrong or poor answers to questions which he had been asked.

93. The claimant accepted that, if he were asked a hypothetical question, he would give an answer which would indicate that the question had been hypothetical, ie, "*what would you do*", "*what should you do*" or "*what if X happened*" would be answered in the form "*I would do this"*, "*I could do that"* or "*I might do that*", etc. The claimant also accepted that you would not answer a hypothetical question by saying "*I did*…". The claimant was not able to direct the tribunal to any such "*hypothetical*" answer. The tribunal therefore rejects the claimant's evidence that he was asked "hypothetical" questions during the interview which were subsequently edited from the recording.

EDITED RECORDING

94. The claimant alleged that a Constable 22. edited the recording. At that time Constable 22. was working in PSNI Corporate Communications and had, at the request of Ms 20., "burnt" the recording onto a CD which was then taken, by Ms 20., to be typed up by another civilian employee. Constable 22. had no other involvement in the subject events. The claimant alleged Detective Chief Inspector 19. and Superintendent 18. had directed this editing, possibly on instruction by another, unknown, officer. These serious allegations were unsupported by any evidence.

95. In support of the allegation of the recording having been edited, the claimant relied upon the evidence of Mr 32., a specialist in data forensics. Mr 32., in his initial report dated 26 February 2020, referred to "*possible points of audio edits"* on the recording. At the tribunal hearing he stated that the recording had been edited "*at least three hundred thousand times*". It was established that what he meant by this was that the recording, as a digital recording, is comprised of multiple pieces of digital information of which there are hundreds of thousands in the recording. Each one of these pieces has digital characteristics that cause him to take the view that they are not the original recording. The tribunal notes the content of Mr 32.'s initial report on **page 4**, paragraph headed "*the MP3 frame headers were fully investigated with the following outcome*". He stated "*this is not the original MP3 file from the Phillips voice tracer digital recorder type … that was produced during the interview on 26/2/2017 and only a copy of the original file. That would explain why the comparison indicators don't match*."

96. Mr 32. confirmed that he had never listened to the full recording and he had not identified <u>where</u> any alleged edits occur on the recording.

97. Mr 32. stated that because of the technical specifications of the recording device used in the meeting, it would not be possible to record frequencies higher than 16 kHz. In his report he had produced a digital chart showing the time of the recording along one axis and the frequency (kHz) along the other. On this chart were several "spikes" where the frequency exceeded that which the device could have recorded, according to his evidence, and he stated at the tribunal that these could indicate edit points. The claimant professed he had been unaware of this and advised the tribunal that he had never considered these "*spikes*" as having any significance.

98. In order to ensure fairness to all parties, the tribunal identified the relevant sections of the recording and played them at the hearing. The tribunal listened to five different sections where a "spike" occurred. The tribunal listened to each section of the recording from approximately one to two minutes before each spike until one to two minutes after. The tribunal observed and the claimant confirmed that at no time during any of these "spikes" was there any anomaly in the recording. The tribunal reiterates, at no point has the claimant identified any edits in the recording.

99. The claimant, in closing submissions, sought to introduce a novel allegation, that the recording had had "*words moved around*" on it. This allegation was not made in his witness statements, during the hearing and was not referred to by Mr 32. in either report or his oral evidence. The claimant did not direct the tribunal to any

specific example of such "re-ordering". Based on the evidence we find that the recording was not "edited" as alleged and we find that questions and answers were not removed and/or re-ordered.

100. Subsequent to the meeting of 26 July 2017 the two officers produced a detailed report. The report is extremely critical of the claimant. It reviewed his actions in relation to the specified policing incidents and his working practices against the NDM, APP AP and training he had received. Significant extracts are as follows:-

> "*Concern exists around his absence of recording any use of the NDM rationale for declaring or otherwise firearms incidents, his professed opinion that "walking down the street with a knife isn't a firearms incident" and the process he undergoes to either declare or not as in the Armagh incident where in his words "the only reason why I declared it was simply to take away the confusion for Constable 34. …"*
>
> *"In the three incidents reviewed, he has made no reference to the NDM in the first or the second and recorded that the third was not declared without reference to the NDM".*
>
> *"The impression he provides in respect of his self-confidence and his engagement with TAC advisers and Gold* (the Strategic Firearms Commander) *results in an assessment that he is so sure of his expertise that he feels he does not need anyone guiding him. That strong word "arrogant" is again assessed as appropriate.*
>
> *It is assessed that Inspector 1. has reached a point where he believes he is infallible in respect of his management of firearms incidents to the point of providing clear evidence of not bothering to follow training, processes, procedures or safeguards".*
>
> *"Throughout the extensive discussion with him an impression was drawn that he did not consider his approach flawed and would not consider revising his attitude to declaration, consultation or recording.*
>
> *Inspector 1. is the gatekeeper protecting officers deployed into potentially life threatening situations and the members of the public they encounter. In doing so he places the PSNI in considerable danger as a service …"*

101. Three recommendations were made at the conclusion of the report. The first was a recommendation for line management discussion about his failure as TFC to keep detailed records. The second was that he should have his TFC Accreditation revoked as:-

> "*The level of risk presented to officers, members of the public and the reputation of the PSNI is considered too great to enable him to continue in the role".*

102. Thirdly, they noted:-

> "*Inspector 1. should not be permitted to undergo further training on the TFC role. He has already been trained and has undergone reaccreditation. This*

training ensures clear understanding and evidenced use of the NDM and record keeping methods and requirements to consult Tech Adviser and Gold.

It is assessed that the approach he adopts and his attitude to declaration, consultation or recording is such that after training, up to 10 years in the role and intervening reaccreditation, further training will not work".

103. The claimant accepts that the views he is recorded as expressing in the report and the actions he was recorded as having taken during the subject incidents had been his views and had been the actions that he took.

104. At the hearing of this case the claimant challenged the competence of these two officers but did not produce any evidence to substantiate this allegation. The claimant did not establish, by reference to evidence, policies and procedures or through cross-examination of the witnesses, that the conclusions of the report were unsupported by or contradictory to the information those officers had before them. The claimant asserted that their commentary and conclusions were wrong without demonstrating, in any instance, how this was so.

105. The claimant was informed of the outcome of the second review in late August 2017. On 29 August 2017 Chief Superintendent 27., the fifth named respondent, informed Former Chief Inspector 14. via email that the claimant would no longer be able to continue working in ICC as Chief Superintendent 13., on foot of the review report, revoked Inspector 1.'s TFC accreditation permanently. Chief Superintendent 27. then went on to propose alternative deployment of the claimant in Gough barracks as a temporary measure. At that time the claimant was absent from work with stress and did not return and was therefore not deployed to any other location before his resignation.

GRIEVANCES

106. On 29 March 2017 the claimant issued the first of 12 grievances. The claimant had used the grievance procedure previously and had re-read it before starting to issue grievances in 2017. The PSNI Grievance Procedure provides, of relevance to these proceedings:-

"(4) <u>Police Officers and Police Staff raising a grievance must</u>:

(a) Participate in the grievance resolution process in good faith.

(b) Attempt to resolve any grievance through constructive dialogue.

(c) *<u>Not instigate multiple</u>, spurious, malicious of vexatious complaints or <u>grievances</u>".*

(tribunal's emphasis)

107. Further within the said procedure:-

"(12) Overlapping Disputes

(a) The grievance procedure aims to ensure that the process for dealing with grievances is as clear and straightforward as possible, given the

complexity of the situations that may arise in practice, and to avoid obliging the parties to go through any unnecessary repetition of procedures. Some typical examples of "overlapping" disciplinary and grievance issues are:

(i) Where a Senior Officer (or line manager) takes disciplinary action against a Police Officer (or member of staff), this may prompt the Police Officer (or staff member) to raise a grievance against their senior officer (or line manager), either by that action or about something else or to resign and complain of constructive dismissal; or

(ii) The Senior Officer or line manager may have multiple disciplinary issues to address for the Police Office (or member of staff); or

(iii) A Police Officer (member of staff) may have multiple grievances to raise against their senior officer (or line manager).

(b) There may also be occasions when there are overlapping grievance and disciplinary issues. The principle is that criminal and misconduct issues should be investigated by professional standards department, but grievances and/or bullying and harassment issues should be dealt with by the appropriate management (ie HR Managers and Line Managers) following the appropriate procedures.

(c) Where there is an overlap of issues (eg a professional standards department investigation of a Police Officer who then raises grievance) the Equality and Diversity Unit should be consulted.

(d) <u>If there is an issue before Professional Standards Department/HR Manager for investigation, this should not prevent an officer or member of staff's grievance being addressed. However in order to progress the officer or member of staff's grievance in a timely manner, the disciplinary investigation must be allowed to progress.</u>

(e) The officer may raise their grievance at any time during the Professional Standards Department investigation. The fact that a Professional Standards Investigation is ongoing should not prevent the officer's grievance from being managed. However, it may be appropriate in some circumstances, to hold case conference with representatives from Professional Standards Department, the Equality and Diversity Unit and HR to determine the most appropriate manner in which to deal with issues raised."

(tribunal emphasis)

108. Ms 31., the second-named respondent, was an employed Solicitor with the first-named respondent at the time in question, with specific responsibility for handling the defence of proceedings brought before the Industrial and Fair Employment Tribunal. Her undisputed evidence, which the tribunal accepts, was that:-

- She had responsibility for between 200 to 250 individual claims per year brought against the first named respondent.

- The PSNI had, for over 10 years, followed the practice of suspending/pausing outstanding grievance processes in situations where the person who raised the grievance was the subject of professional conduct or criminal investigation.

- The purpose of doing so was to protect the rights of the individual bringing the grievance, avoiding the risk of prejudicing their position in those other processes.

- This was advice that she had given on many occasions and in 2017, once the claimant became the subject of professional conduct and criminal investigation, she advised that his ongoing grievances should be suspended.

109. The claimant has named Mr 29., who was involved in the processing of his grievances in HR as a named respondent. Mr 29. processed some of the grievances and was in communication with the claimant in relation to them over the course of that process and concurred with the advice referred to above from Ms 31. It is not apparent in what way he is alleged to have discriminated against or victimised the claimant individually.

110. Grievance No.1. The claimant's first grievance (29 March 2017) was in relation to the suspension of his accreditation. The grievance form had not been correctly completed and the claimant resubmitted it on 6 April 2017. In a section of the form which invites the person making the grievance to identify their preferred resolution, the claimant stated:-

> *"Monetary compensation for hurt feelings, embarrassment and distress caused. Headaches, stomach acid and disrupted sleep".*

111. This request for financial compensation was one which was repeated in several subsequent grievances and is not a remedy provided for under the PSNI Grievance Procedure.

112. Grievance No.2. On 12 April 2017 the claimant submitted a grievance, repeating his earlier complaints and also raising an issue regarding communications with his line manager in regards to communications around a fire drill.

113. Grievance No.3. Also on 12 April 2017 the claimant issued a separate grievance. This was, in substance, the same complaint made in the first grievance.

114. Grievance No.4. On 13 April 2017 he issued a grievance alleging that another officer had not had his accreditation removed and that as the claimant had had his suspended he was the victim of religious discrimination and victimisation. No evidence has been presented to the tribunal that this other Officer had been the subject of the raising of concerns by multiple OFCs. In subsequent grievances the claimant referred to other Officers involved in other incidents but, again, no evidence has been presented that they had been the subject of the raising of concerns from OFCs as the claimant had.

115. Certain of these grievances were accepted by the respondent, others were not because they had not been correctly filed or were the same grievance restated with minor variations.

116. HR tasked Detective Chief Superintendent 30. to hear the grievances. She wrote to the claimant by email on 20 April 2017 advising him of her appointment and that there would be delay in dealing with the grievances due to planned annual leave, her existing workload and as there were several people she would need to speak to because of the content of the grievances.

117. Grievance No.5. On 20 April 2017 the claimant sent a grievance restating his earlier grievance about the first review, which he characterised as *"negligent, meaningless, incomplete, insulting and inaccurate".* In an email of 21 April 2017 Mr 28. from PSNI HR referred to this latest grievance and advised the claimant that rather than issuing multiple grievances about the same matter he should discuss it with Chief Superintendent 30. at their forthcoming meeting.

118. The claimant sought a delay to a proposed meeting with Detective Chief Superintendent 30. as he had university exams in mid-May 2017.

119. Grievance No.6. On 27 April 2017 the claimant sent a grievance, referring to his earlier grievances and listing 11 policing incidents (referred to as "serials" i.e. the serial number given to each incident), stating simply *"all of the above are comparators"*.

120. Grievance No.7. On 30 April 2017 the claimant sent a further grievance referring to his grievance of 29 March 2017 and listing 15 "serials" (serial numbers of incidents), without commentary or explanation.

SUSPENSION OF THE GRIEVANCE PROCESS

121. On 4 May 2017 the claimant was informed that the grievance process was suspended *"until the outcome of Chief Superintendent's 13.'s review into the suspension of your accreditation is known".* This was the "First Review"

122. Informal resolution of the claimant's grievances was offered to the claimant, but he declined. On 11 May 2017 HR were advised that the review had concluded and that the grievances could therefore proceed. The claimant was notified of this by email of 16 May 2017.

123. The claimant attended an initial grievance meeting with Detective Chief Superintendent 30. on 23 June 2017. He advised the Detective Chief Superintendent that he had been served that morning with a "Regulation 16" notice. This is a formal notification to an officer that they are the subject of a professional standards investigation. He advised her that his accreditation had again been suspended (the "Second Review").

124. At that meeting the claimant alleged discrimination and victimisation in relation to the second review and the suspension of his accreditation. He informed Detective Chief Superintendent 30. that he had printed off a number of a number of electronic records of various "serials" (policing incidents) that he believed would be relevant to her consideration of his grievances.

125. These "serials" were documents which he had been observed by other colleagues printing and removing from the office in which he worked. This led to the

disciplinary and professional conduct investigations, which the tribunal return to below.

126. Detective Chief Superintendent 30. engaged in discussion with the claimant regarding the first review and then adjourned the hearing to seek advice in relation to how to proceed in light of the Regulation 16 issue. Reconvening the meeting the Detective Chief Superintendent informed the claimant that she would need further advice on the situation and that the meeting would have to adjourn. The claimant was asked how these matters could be resolved, the notes of the meeting record:-

> *"He advised that he would like monetary compensation like that that provided in* (the Industrial Tribunal) *and he advised that he had he had some knowledge of this area from the last 12 years".*

127. Detective Chief Superintendent 30. identified several people she would require to speak to and also advised the claimant that because of her other responsibilities it would be unlikely that they could reconvene before August. The notes record:-

> *"Inspector 1. acknowledged that he understood that this internal matter* (sic) *and that it would take time but it was important to be thorough. C/Supt. 30. thanked him for this understanding".*

128. Grievance No.8. The following day, 24 June 2017, the claimant submitted a grievance. This was in relation to the service of the Regulation 16 Notice, which he alleged was an act of victimisation due to his pending tribunal proceedings. It also referred to the raising of concerns about his decision-making by Constable 34.

129. Grievance No.9. On 8 July 2017 the claimant submitted a grievance which stated (in full):-

> *"Chief Inspector 14. came into the ICC office and asked was I involved in serial … Sergeant 17. was present. I informed Chief Inspector 14. that I was on rest days. I am alleging religious discrimination and victimisation".*

130. On 15 August 2017 the claimant was offered a further meeting with Detective Chief Inspector 30. to take place on 4 September 2017. The claimant stated that the grievances were "*parked until Mr 13. has completed his review*" (the second review).

131. Grievance No.10. On 19 August 2017 the claimant issued a grievance complaining of "*having my grievances suspended, paused and then parked by C/Supt. 13. I am alleging victimisation."*

132. On 19 August 2017 a meeting was held between Detective Chief Superintendent 30. and 31., the first named respondent's employed solicitor, for advice. Ms 31. advised the Detective Chief Superintendent that monetary compensation was not available as a remedy to grievances in the PSNI. She further advised that *"there could be no further discussion with Inspector 1. until the criminal matter had been discharged."*

133. Grievance No.11. The claimant lodged a grievance on 25 September 2017 complaining about the grievances not being dealt with properly, about *"malicious, vindictive and inaccurate reviews", "manifestly unreasonable and unfounded*" criminal and disciplinary proceedings and the failure of the PSNI in its duty of care.

134. Grievance No.12. On the same date, 25 September 2017, despite having raised it in the previous grievance, he lodged a separate grievance in relation to the second review.

135. By this time the claimant was off work through illness. He subsequently resigned, first notifying the respondent by an email of 8 October 2017. Correspondence was sent to him from HR on 29 November 2017 in relation to his outstanding grievances. The letter sets out the status of the various grievances and concludes *"I note that you have decided to resign from the Police Service of Northern Ireland, however, I would encourage you to continue to engage with Chief Superintendent 30. in an attempt to resolve these matters".*

136. The claimant did not contact Detective Chief Superintendent 30. or pursue his outstanding grievances. On the evidence before us the tribunal find that the reasons why his grievances proceeded in the manner they did and were not concluded were:-

- The number and complexity of grievances issued over the period in question.
- Detective Chief Superintendent 30.'s and the claimant's existing work and holiday commitments.
- Suspension of the process as a result of the two reviews and the criminal and disciplinary investigations.
- The claimant's failure to engage with the process after his resignation.

PROFESSIONAL STANDARDS and CRIMINAL INVESTIGATIONS

137. On 28 April 2017 an Officer 37. sent an email to Chief Inspector 15. raising concerns that he had observed the claimant in the ICC office printing off records of "serials" in which he had not been involved, questioning whether he had a legitimate reason to do so. The said records contain details of policing incidents and sensitive personal data regarding both police Officers and members of the public. On 30 April 2017 an Officer 38. raised the same concern via email. On 1 May 2017 Sergeant 17. also raised the concern, suggesting that the printouts were being taken off the premises with potential security implications.

138. The claimant does not allege that any of these three officers were discriminating against him or victimising him. The claimant accepts that, without good reason, printing off and removing such documentation would be a very serious matter involving potential data and security breaches. The claimant confirmed in evidence that he had not explained to any of the officers what he was doing and his reasons for it.

139. The claimant further confirmed in evidence that he had not sought permission from more senior management to access, print and remove the records. Chief Inspector 15. returned to work on 3 May 2017 and immediately escalated this matter to Former Chief Inspector 14. with concerns regarding potential data protection breaches. This was referred to Chief Superintendent 27., who contacted Discipline Branch, which then began professional conduct and criminal investigations.

140. The professional standards investigation was conducted by Detective Inspector 25. and the criminal investigation by Detective Constable 26., both from the Discipline Investigation Team. The claimant does not allege that Detective Constable 26. discriminated against or victimised him. The claimant asserted to the tribunal that Detective Constable 26. had been given inaccurate information by former Chief Inspector 14. who informed her, in response to a query on the issue, that the claimant had withdrawn a grievance against him. This was incorrect and the claimant asserts was intended to influence the investigation. It is not apparent to the tribunal how this would have done so and the claimant was not able to identify any substantive inaccuracy in the documentation Detective Constable 26. relied upon in her investigation. The claimant accepts that Detective Constable 26.'s summary of what he had done was accurate. The claimant provided the explanation that he was gathering the material for his grievance – as he had informed Detective Chief Superintendent 30. at his meeting with her on 23 June 2017. This explanation was accepted and both the criminal and professional conduct investigations subsequently concluded without sanction. Throughout these investigations the claimant was not removed from duty or subject to any other sanction.

141. In his grievances the claimant referred to these processes as "*manifestly unreasonable and unfounded*" but accepted at hearing that, given the initial information available to PSNI management, it was appropriate that conduct and criminal investigations should be considered. He accepted that the service of the Regulation 16 notice upon him was mandatory once his actions were under investigation.

142. Notwithstanding these concessions, the claimant continues to assert that the service of that document and the operation of these processes were acts of victimisation. The claimant did not present any evidence to substantiate this assertion and, as set out below, we reject the claimant's case on this point.

OTHER ISSUES

143. As the claimant was no longer permitted to carry out the role of TFC following the second review it was necessary that he be redeployed. It was proposed that the claimant would be transferred from ICC to another role, this would not involve any demotion or change to his terms and conditions. The claimant was initially offered a post at Gough Barracks which he indicated was not acceptable.

144. From August 2017 the claimant remained off work with "*management induced stress*" and did not return to work at any time prior to his resignation. In September 2017 the claimant began the process of accessing his pension, thereby indicating that he intended to leave the Police Service within the next few months.

145. The claimant asserts that he was further discriminated against and victimised by the failure of management to keep in contact with him over the period up to his retirement. The claimant stated, in an email to Chief Superintendent 27. of 1 September 2017 "*I would respectfully request that any future communication go via OHW. The best way for OHW to contact me is by text*."

146. The HR Department of the PSNI made repeated attempts to communicate with the claimant over the period September to November 2017. Ms 39. of HR sent the claimant a letter on 4 October noting "*I have attempted to contact you by telephone on a number of occasions to discuss your wellbeing and you should have received a number of voice messages from me*". The claimant did not dispute the content of this letter.

147. Replying to this letter, in an email of 8 October, the claimant informed 39. and, thereby, the first named respondent of his intention to resign as a consequence of the various matters set out heretofore. He summarised them as "*a process within my workplace that has been orchestrated and in my view malicious and vexatious*." The claimant then sent an email to Former Chief Inspector 14. on 14 October reiterating his intention to resign.

148. On the 30 November 2017 the claimant discovered that his locker had been opened and the contents had been moved around inside it. The claimant did not produce any evidence to show who did this or for what reason.

CREDIBILITY

149. Credibility is a central issue in this case. The claimant's contentions are based solely on his own opinion or suspicion. On multiple occasions he advised that tribunal that there *"would have been*" discussions regarding his situation or there "*must have been*" communication between individuals in support of his argument that he was the victim of a conspiracy between various senior officers. However, in no instance was the tribunal provided with any evidence to support such contentions and from our careful analysis of all the evidence in this case nothing has led us to draw inferences that might suggest a taint of discrimination or victimisation.

150. The claimant asserted throughout the hearing that the various senior officers dealing with him in the review, grievance, disciplinary and criminal processes were incompetent and/or corrupt. These very serious allegations were based upon his own opinion, unsupported by any actual evidence.

151. The claimant's contentions are not supported by corroborative evidence. He called a single witness, Sergeant 6., to one event, the "second review" interview. This witness's evidence did not support the claimant's account of the interview, specifically her evidence made no mention of the matters referred to at paragraph 85 above. The tribunal regards this as a significant point in relation to the claimant's credibility and reliability. The claimant's assertions in relation to this interview and the subsequent alleged "doctoring" of the recording, as can be seen in paragraph 90 *et seq* above, were wholly unconvincing. His attempt to alter these allegations during the submission phase of the hearing further undermined his credibility, see paragraph 99 above.

152. To take a key issue, whether the concerns regarding the claimant's performance of his duties were in fact wrong and/or unfounded. That remains the claimant's view and he asserts that everyone who disagreed with him was incompetent and/or discriminating against him. Those are experienced Firearms Officers, Commanders and other senior ranks, including the officer who had been the lead trainer for TFCs in the PSNI for three years. The claimant did not present any evidence which supported his views. Notably he did not call any witnesses, such as other TFCs or experts in the field, to support his contentions. The only additional evidence that the claimant produced to the tribunal was a FOIA response from the Metropolitan Police dated 11 September 2017 in relation to a number of questions that the claimant had asked of the Met. The section of this response, relevant to these proceedings reads as follows:-

> *"With regards to your last question namely, would it be common practice that if the subject was threatening to self-harming (*sic*) with a knife to declare the incident as a spontaneous firearms incident? I have been informed that each time a TFC considers the deployment of armed Officers he or she would utilise NDM. One of the NDM elements covers threat and risk. It is unlikely that an incident would be authorised as a spontaneous armed operation and armed Officers deployed, if there was no threat to a person. However each incident would be continually assessed in line with the NDM and judged independently."*
>
> On a plain reading this does not appear to the tribunal to support the claimant's views as referenced in paragraph 72 above.

153. In contrast the tribunal found the respondents' witnesses to be forthright and straightforward in their evidence. Each gave evidence supported by the contemporaneous documentary record and the relevant policies and procedures.

CONCLUSIONS

154. The tribunal found the case advanced by the claimant to be inherently unlikely. It is that, having worked with the claimant without incident for several years, multiple officers (from the rank of constable up to Chief Superintendent), civilian staff and an employed solicitor conspired and/or acted individually, to unlawfully discriminate against and victimise the claimant on multiple occasions via multiple processes.

155. Taking the various elements of the claimant's case in turn:

THE FIRST REVIEW

156. The first review was caused by two Operational Firearms Commanders raising concerns about the decisions being taken by the claimant. The claimant accepts that they were not discriminating against and/or victimising him in doing so. The tribunal concludes that, given:-

- the number of concerns raised within a short period;
- the extremely important and responsible role that was performed by the claimant, and

- the perceived risks to officers and members of the public

157. It was an objectively reasonable decision to remove the accreditation of the claimant as a TFC until the matter had been further investigated.

158. While the claimant professes that all the Officers involved, 14., 13. and 12. are incompetent and discriminators the tribunal has seen no evidence to sustain this allegation. On the contrary, the actions taken by the various senior officers are both objectively rational and supported by the contemporaneous documentary record. The temporary removal of accreditation, considering the serious concerns raised around the claimant's decision-making, appears to the tribunal to have been an appropriate precautionary measure having regard to the very serious risks inherent in the use of firearms and we have seen no evidence of discrimination or victimisation in this process which is sufficient to shift the burden to the respondents. The tribunal concludes that there is no prima facie evidence in relation to this allegation and then finds, in the alternative, if the burden of proof has shifted to the respondents, they have fully discharged that burden by providing a satisfactory version of events which we accept and find was non-discriminatory.

159. The claimant alleged a conspiracy amongst officers to discriminate against and victimise him. The tribunal has not been shown any evidence to support this serious allegation. The tribunal must consider the evidence of multiple witnesses, supported by documentary evidence and justified by reference to stated policies and procedures as against the claimant's suspicions. These suspicions have not been supported by any evidence and the Tribunal concludes that there was no conspiracy among officers to discriminate against or victimise the claimant.

160. In the alternative, if all or any of the involved officers were individually discriminating against the claimant, he has failed to produce any evidence, in this element of the case, of any individual so acting.

161. As to the conduct and process of the first review, on the evidence before the tribunal, the claimant was given an opportunity to state his case and to produce and rely upon whatever evidence he wished. The outcome was that he was reinstated to the role.

162. At that time he was cautioned by management to keep a fuller record of his decision making. This was a reasonable request and in line with the APP AP (see paragraphs 41-43 above). The role in which the claimant was employed was such that it was foreseeable that detailed records of every decision taken by him and the reasoning which led to that decision in any operation might be necessary at some future point by way of evidence to an inquiry, court or inquest. On the evidence presented it appears that the claimant did not do so.

163. This illustrates one of the central issues in this case. Despite being given a clear direction by a senior Officer, he continued to act as he saw fit. The repeated phrase from the claimant throughout the hearing and in the evidence was that the various senior Officers with whom he dealt throughout these processes did not know "*how things were done in ICC*".

164. This tribunal concludes that this demonstrates the claimant's failure to grasp the core of their concern. The claimant was required by the Police Service to carry out his role with adherence to procedures such as the APP AP and the NDM. The issue of record-keeping had therefore been brought to his attention in the first review and yet he failed to change his working practices. The claimant appears to have been unable to grasp the fact that, whatever his own views of how things should be done, as an officer in the PSNI he was required to carry out his duties as directed by more senior officers and to follow the policies and procedures in which he had been trained. The tribunal is conscious of the importance of these matters given the very serious risks inherent in the use of firearms by police officers..

165. The claimant has not identified an appropriate actual comparator as no other TFC has been the subject of multiple concerns escalating from OFCs in the manner the claimant has. He has failed to produce any evidence upon which this tribunal could conclude, absent any explanation from the respondent, that a non-catholic TFC in the same or very similar circumstances would be treated any differently or better and nothing arising from our analysis of the evidence has led us to draw any inferences that might suggest discrimination. The tribunal has not seen evidence that the bringing of proceedings by the claimant under the ***Fair Employment and Treatment (NI) Order*** or the raising of his twelve grievances influenced the instigation, conduct or outcome of the first review and therefore conclude that this was not an act of victimisation.

SECOND REVIEW

166. The second review was occasioned by further concerns about the claimant's decision-making raised by Constable 34. The claimant alleges that Constable 34. was victimising him. The tribunal asked the claimant to set out the basis for this allegation. He stated that:-

a. Constable 34. was aware that the claimant was bringing proceedings against the first-named respondent; and

b. Constable 34. had himself previously brought proceedings against the first-named respondent.

167. The claimant takes the view that the officer's opinion was wrong. The claimant then takes this difference of opinion, without more, and characterises it as an act of victimisation. Given that there is no "more" here the tribunal does not regard this as credible and conclude that the raising of these concerns was not an act of victimisation.

168. The concerns having been raised to management, who were aware of the previous review and the similar concerns raised therein a few months earlier, it is both understandable and reasonable that management would again seek to review the performance of the claimant. It would have been, in the opinion of the tribunal, negligent to have done otherwise given that these were further concerns in the same terms as those that had led to the earlier suspension of accreditation. The tribunal has not found anything that suggests discrimination or victimisation on the part of any of the officers involved in the instigation of the second review. After careful evaluation of the voluminous documentation and evidence herein the tribunal concludes that the instigation of the second review and second removal of

accreditation were not acts of discrimination or victimisation. The claimant has not produced any evidence sufficient to shift the burden of proof to the respondents. In the alternative, if the burden of proof had shifted to the respondents the tribunal concludes that they have fully discharged that burden by providing a satisfactory version of events which we accept and find was non-discriminatory.

169. The claimant characterised the repeated requests for his logs and written records by Chief Superintendent 13. as an act of victimisation. The keeping of such records is mandated by the APP AP. The claimant did not produce any evidence to show why Chief Superintendent 13. would wish to victimise him and it is not apparent to the tribunal how this Officer, ensuring that the claimant has been given an opportunity to provide all documentary evidence he may have by asking him on a number of occasions for such documentation could be regarded as having victimised the claimant. The tribunal concludes that these were reasonable requests and that they were not acts of victimisation.

170. The tribunal regards it as significant that, in relation to the second review, Chief Superintendent 13. removed himself from the process (see paragraph 78). We conclude that this action is not consistent with a conspiracy to discriminate against or victimise the claimant but rather is consistent with an intent to be fair to the claimant. If there was a conspiracy why would the officers orchestrating it hand the review to others, who had not previously been involved, thus ceding control over the outcome?

171. The claimant characterises the Officers who carried out the second review and produced the report, Superintendent 18. and Detective Chief Inspector 19., as incompetent. The claimant did not produce any evidence of a lack of competence on the part of either of the officers concerned and the tribunal does not regard this as a credible assertion given their experience and seniority. The claimant relies on the fact that they "*hadn't worked in ICC*". This appears to the tribunal to miss the point. The second review was not a review of how "things were done in ICC", it was a review into whether or not the claimant, in carrying out his role, was following the correct procedures and adhering to his training. The review found that he was not. During his cross-examination of these officers the claimant did not put any evidence before the tribunal to contradict their findings about his failures to follow procedures or their concerns about his decision-making. The claimant did not present any evidence from which the tribunal could conclude that either of these officers, individually or acting in concert, were seeking to discriminate against the claimant or victimise him in the conclusions which they reached and the claimant has failed to shift the burden of proof in relation to these allegations. In the alternative if the burden of proof had shifted to the respondents in relation to these allegations they have fully discharged that burden by providing a satisfactory version of events which we accept and find was non-discriminatory.

The Second Review Meeting

172. Ms 20., an administrative support worker with no connection to any of the matters that gave rise to the meeting and whose sole function in being in the meeting was to ensure that the matter was properly recorded is alleged to have left the room at the

start of the meeting and come back in at a later point. She denies this. Given her role that day the tribunal cannot see why she would have left the room but, if she had, why she would then lie about it under oath. Therefore, the tribunal conclude that this did not happen.

173. Detective Chief Inspector 19. is then alleged to have left the meeting for an unspecified period of time.

174. This was a meeting at which the claimant had the opportunity to explain why his accreditation from the role of TFC should be reinstated. We conclude that in a meeting of such high stakes for the claimant it is not credible that the absence of one of the two people tasked with making a decision that would determine if he remained a TFC would have passed without comment or complaint from the claimant.

175. Even if the tribunal allows that comment or complaint might not have been made during the interview, which we find to be highly unlikely, it is not credible that the claimant would not have complained of the absence of one of the decision makers from this part of the evidence-gathering phase of their investigation by way of subsequent grievance or other complaint. The claimant was repeatedly critical of both individuals and of their report throughout the first two witness statements that he produced in June 2018 and September 2019 yet it was not until September 2020 that he made this allegation.

176. The claimant alleges that the remaining officer, Superintendent 18., fell asleep. The claimant thus asks the tribunal to accept that both individuals were effectively absent for unspecified periods of this crucial interview, that would determine his future role in the PSNI and yet he remained silent on this, even after they had recommended he be permanently removed from the role of TFC.

177. The claimant's sister, who was present throughout the meeting and was an experienced police Sergeant, produced a witness statement in November 2019. This statement does not mention the alleged behaviour of the two officers. We conclude that her evidence further undermines these allegations and with it the claimant's credibility and reliability.

178. The tribunal concludes that these allegations are not credible. We do not believe that the claimant, who (for example) raised a grievance over simply being asked a question by a more senior officer (see paragraph 129 above) would have allowed such grossly negligent behaviour to go unchallenged and the claimant has produced no prima facie evidence in relation to this allegation. In the alternative if the burden of proof had shifted to the respondents, they have fully discharged that burden by providing a satisfactory version of events which we accept and find was non-discriminatory.

The Recording of the Meeting

179. The next issue in relation to the second review is the "editing" of the recording. The claimant has had this recording since late 2019 and has had the transcript since 2018. The claimant did not produce any evidence to show who carried out any editing of the recording, who directed it or what purpose would be served by it being tampered with.

180. We note the claimant's answers to the Tribunal following the logic of the "hypothetical questions/hypothetical answer" point noted at paragraph 93 above. When confronted with the logic of the fact that there are no "hypothetical" answers on the recording the claimant then claimed that "words have been changed" i.e. not simply that the recording had been edited but that the order of words and sentences had been changed. This is not an allegation that was made in his statements nor is it supported by his expert. We regard the claimant, on this occasion, as inventing an explanation in support of an allegation collapsing under logic. We find this further undermines the general reliability of the claimant.

181. The claimant called Mr 32. as a witness. We accept Mr 32.'s evidence that this is a copy of a recording and that the recording may have been altered by being copied, but he has not shown the tribunal an actual edit and the tribunal is not persuaded on the balance of probabilities that it was "edited" in the manner specifically alleged by the claimant.

182. This second review sought to examine the way in which the claimant was carrying out his role. The claimant was given an opportunity to provide an explanation and a rationale for his actions. He did so. At no point in his evidence or his cross-examination of those two officers did he draw their and the tribunal's attention to a specific question and a specific answer and state that it was not the answer he had given to that specific question.

183. The tribunal cannot see why the respondents or any of the various actors involved would carry out the elaborate process that the claimant wishes us to entertain. The claimant was being reviewed because of decisions that he had taken. The consequences of the review were because of decisions that he had taken and procedures he had not followed.

184. The review report, which stated that he should be removed from the role given his own view of his infallibility and "*arrogance*" was considered by the tribunal. The claimant did not, in evidence or cross examination, undermine the rationale for the conclusions of that report. The claimant has sought to argue, in each instance where he was under review, that his decisions were right but the point which the claimant seems unable to grasp is that this concern was in relation to the process he followed to reach those decisions. The concern was that the claimant was not following the correct processes and training and not recording his decision-making process in addition to his rigid views regarding the declaration of an SFI.

185. The criticisms made of the claimant in this report and the first review were consistent with his evidence to the tribunal. His position remains that he is entirely right and all of the other senior officers reviewing his actions entirely wrong. This continuing refusal to accept even the possibility that he should change his working practice appears to the tribunal to support the conclusions of the report and the permanent removal of his accreditation in the role.

186. The claimant has not identified an appropriate actual comparator and the tribunal has not been given any evidence of another TFC becoming the subject of a second review process. The claimant has failed to produce any evidence upon which this tribunal could conclude, absent any explanation from the respondent, that a non-catholic TFC in the same or very similar circumstances would have been treated

any differently or better and we conclude there was no discrimination in this process. The tribunal further found no evidence to support the claim of victimisation.

187. The tribunal therefore conclude that the claimant has not produced prima facie evidence sufficient to shift the burden of proof to the respondents in relation to the claims of discrimination and victimisation in the second review. The tribunal finds, in the alternative, if the burden of proof had shifted to the respondents, they had fully discharged that burden by providing a satisfactory version of events which we accept and find was non-discriminatory.

GRIEVANCE PROCESSES

188. The PSNI Grievance Procedure requires that officers "*must … not instigate multiple … complaints or grievances*". The claimant had read and was familiar with the procedure. He issued 12 grievances within the space of the next six months. Several of these were repetitions of existing grievances or were unclear as to what the content of the grievance was.

189. The tribunal concludes that it should have been apparent to the claimant that issuing multiple and confusing grievances would have the effect of slowing up the process. The claimant complains that this process did not adhere to the appropriate timeframe. In the view of the tribunal there is no way this could have happened given the proliferation of overlapping grievances. Detective Chief Inspector 30. explained to the claimant the other reasons why it would take longer to deal with, namely her own external commitments and the need to speak to several individuals in order to properly assess his grievance. He professed that he understood this at the time (see para 127).

190. The complaint that the grievance procedures should not have been suspended as a consequence of the reviews is untenable. The grievances were largely about the reviews and therefore, as the reviews were of critical importance to the claimant's continued role of TFC it would be unreasonable for those reviews to be suspended so that the grievance could continue. As the matters overlapped if the reviews were delayed this would lengthen the suspension of the claimant from the role of TFC. The tribunal concludes that it was in the claimant's overall interest for the grievances to be paused while the reviews were considered.

191. In respect of the specific allegations against Mr 29. and Ms 31. the claimant has failed to produce prima facie evidence sufficient to shift the burden to the respondents and the tribunal finds, in the alternative, that if the burden of proof had passed to the respondents they have fully discharged that burden by providing a satisfactory version of events which we accept and find was non-discriminatory.

192. In relation to the suspension of the process during the professional standards and criminal investigations. It was evident to the tribunal that the suspension of a grievance process would protect the claimant's interests for the reasons set out in paragraph 108 above. The tribunal therefore conclude that none of the periods of suspension of the grievance process were acts of discrimination or victimisation.

193. The tribunal concludes that the claimant has failed to produce prima facie evidence in relation to the allegations of discrimination or victimisation in either the manner in which the grievance procedure was conducted or the length of time matters took to

be addressed and has failed to shift the burden to the respondents. If the burden of proof had shifted to the respondents, they have fully discharged that burden by providing a satisfactory version of events which we accept and find was non-discriminatory.

CRIMINAL INVESTIGATION AND PROFESSIONAL STANDARDS

194. The claimant accepted at the hearing of this case that the instigation of these processes was appropriate and takes no issue with the outcome of either. He has failed to produce any evidence that the operation of these processes was in any way influenced by unlawful discrimination or victimisation. We conclude that the claimant has failed to discharge the burden of proof in relation to this allegation If the burden of proof had shifted to the respondents, they have fully discharged that burden by providing a satisfactory version of events which we accept and find was non-discriminatory.

OTHER MATTERS

195. The claimant alleged that Former Chief Inspector 14., who was the claimant's line manager at the time, was central to the discrimination and the victimisation of the claimant and orchestrated the actions of other officers to this end. Former Chief Inspector 14. had worked alongside the claimant for some years and on the claimant's evidence, neither Former Chief Inspector 14. nor any of the other officers involved had previously displayed any animosity or ill intent toward the claimant. Given the evidence presented and the findings the tribunal has made we conclude that Former Chief Inspector 14. was not involved in or directed any such enterprise.

196. In relation to communications with management over the period of his sickness absence the claimant has not produced any evidence to show that anyone was hindering or delaying communications with him from management side. The tribunal concludes that any delay was a consequence of the claimant's inability to receive communications due to poor telephone reception and of his request to communicate with management through Occupational Health via text message. The claimant has not produced any evidence to show that anyone was hindering or delaying communication with him from management side. On the contrary, we conclude that the respondents attempted to communicate with him promptly at all times prior to his resignation. We conclude that the claimant has failed to discharge the burden of proof in relation to this allegation. If the burden of proof had shifted to the respondents, they have fully discharged that burden by providing a satisfactory version of events which we accept and find was non-discriminatory.

197. He complains of material allegedly being moved around inside his locker. In the absence of any evidence as to the culprit or their motivation we conclude that the claimant has not discharged the burden of proof as to this having been an act of discrimination or victimisation.

LEGAL ISSUES

198. This is a case where the primary consideration for the tribunal at this stage is "what was the reason why the claimant was treated as he was?"

199. The tribunal concludes that the reasons the claimant was treated in the manner he complains of were:-

- That a number of concerns were raised about his decision making and the performance of his duties.
- These caused management to consider the suspension of his accreditation as TFC.
- The reason for the removal of his accreditation was concern for public and police safety.
- The initial complaints prompted the first review.
- He became the subject of criminal and performance investigations as a direct result of his own actions and the consequent concerns raised.
- The second review was occasioned by further performance concerns.
- His grievances were conducted in the manner and over the timeframe they were because of their large number, high level of detail, delays caused by the reviews and investigations and the external commitments to which both he and Inspector Hilman were subject.

200. In summary, we conclude that:

- The claimant was not subject to discrimination on the grounds of his religion as alleged or at all.
- The claimant was not victimised as alleged or at all for having done the protected acts.
- The claimant was not constructively dismissed on the grounds of discrimination or at all.
- In every instance the tribunal finds that the claimant has failed to discharge the burden of proof that would require the respondent to have to answer the claim being made by way of a lawful explanation for the conduct.

201. If the tribunal is wrong in this and the claimant has, in fact, discharged the burden in one or any of his several allegations herein the tribunal finds in each instance that the respondent has provided the tribunal with a lawful and “innocent” explanation as we have noted in relation to each issue in the preceding paragraphs.

COMPARATOR

202. The claimant is required to establish an actual and/or hypothetical comparator. A variety of actual comparators have been referred to at various points in the litigation herein and the claimant has also sought to rely on a hypothetical comparator in other instances.

Victimisation

203. The claimant has not produced any evidence from which a tribunal could conclude – in respect of each alleged act - that a non-Catholic officer, who had the same or similar concerns raised about him by colleagues and who took the same or very similar actions as the claimant did would have been treated differently and more favourably. The tribunal concludes that the actions of the respondents and servants and agents of the first-named respondent, insofar as they affected the claimant and are relevant to this case, are all objectively reasonable. The tribunal concludes that the claimant's religion had no bearing on them.

204. In relation to the several allegations of victimisation the tribunal has not been shown any evidence from which it could conclude, in the absence of an explanation from the respondent, that the fact that he had raised legal proceedings or grievances had any connection to the actions of any of the individuals concerned in these events.

205. For the reasons set out herein the tribunal finds that the claimant was not, in relation to all of the matters complained of, the victim of either unlawful discrimination on the grounds of his religion or of victimisation by way of having carried out a protected act or acts. His claims are therefore dismissed in their entirety as against all respondents.

Employment Judge: 

Date and place of hearing: 27-30 April, 4,5,7,10,11 and 14 May 2021, Belfast.

This judgment was entered in the register and issued to the parties on: