EMPLOYMENT TRIBUNALS

Claimant: **Mr M Rashad**

Respondent: **The Chief Constable of Cleveland Police**

Heard at **Newcastle**

On: **15-19, 22, 23, 25, 26, 29-31 January and 1 February 2024**

In Chambers: **5, 7 and 8 February and 21 March 2024**

Before: **Employment Judge Aspden**
Members: **Ms S Don**
Mr E Euers

Representation

Claimant: **Ms Hogben, counsel**
Respondent: **Mr Healy, counsel**

RESERVED JUDGMENT

The unanimous Judgment of the Employment Tribunal is that:

1. The complaints referred to in these proceedings as Complaints 1 to 12 are struck out because the tribunal does not have jurisdiction to determine them.

2. None of the claimant's remaining complaints are well founded. The complaints are dismissed.

REASONS

Introductory matters

1. The claimant complains that the respondent contravened the Equality Act 2010 by doing a number of acts or omissions that constituted:

1.1. victimisation contrary to s39 of the Equality Act 2010 read with section 27; and

1.2. in some cases, harassment related to race contrary to s40 of the Equality Act 2010 read with section 26; or

1.3. direct race discrimination contrary to s39 of the Equality Act 2010 read with section 13.

2. The procedural history to the claims is not straightforward.

3. The proceedings began on 20 August 2021, when the claimant submitted his ET1 to the Employment Tribunal. He was legally represented at the time and has been throughout.

4. The claimant (or his representative) ticked the box on the claim indicating he was making a claim that he had been discriminated against on the ground of race. He (or his representative) also ticked the box saying he was making another type of claim which the Tribunal can deal with. In the space provided for the claimant to set out the nature of that claim the claimant (or his representative) wrote 'victimisation and harassment'.

5. Section 8.2 of form ET1 contains a space for the claimant to set out the background and details of the claim(s) being made. In that space the claimant (or his representative) simply said this:

> *'The claimant wishes to bring a claim for victimisation, harassment and other discriminatory treatment contrary to the Equality Act 2010 against the respondent. The claimant hereby applies for and invites the Tribunal to agree to an extension of time for the claimant's submission of further and better particulars of his claim …'*

6. The claim form contained no detail at all of the alleged acts of victimisation, harassment or race discrimination.

7. The Employment Tribunal acknowledged the claimant's claim. The letter acknowledging his claim said 'You must submit the particulars of claim by 14 September 2021.'

8. On 14 September 2021 the claimant submitted a document described as 'Further and Better Particulars of Claim.' The claims included factual allegations said to date between August 2018 and June/July 2021.

9. In Chandhok v Tirkey [2015] IRLR 195, [2015] ICR 527 the then President of the EAT, Langstaff J, said this:

> *'The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely on their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a respondent is required to respond. A respondent is not required to answer a witness statement, nor a document, but the claims made—meaning, under the Employment Tribunals Rules of Procedure 2013 (SI 2013/1237), the claim as set out in the ET1'.'*

10. Although the claim form itself did not set out even the essence of the claimant's claim, and the claimant did not apply for permission to amend his claim to make complaints set out in the Further and Better Particulars filed on 14 September 2021, the respondent has not taken issue with this. Rather, that document has

been treated by the parties as the pleading of the claimant's claims that were made in his claim form filed on 20 August 2021.

11. The Further and Better Particulars filed on 14 September 2021 is in the 'narrative style' that HHJ Tucker advised legally represented parties against in the case of C v D UKEAT/0132/19 (19 September 2020, unreported). The document begins by describing certain protected acts the claimant did (within the meaning of that term in the Equality Act 2010). The document then makes the following allegations:

> *'6. From 2018 to date the Respondent has continued to subject the Claimant to detrimental treatment because of those protected acts, contrary to s27 of EqA.*
>
> *7. Further or alternatively, he alleges that he was subjected to unlawful harassment related to race contrary to s26 of EqA.'*

At the end of the document, the following allegations are made:

> *'29. The Claimant avers that the matters stated herein and the Respondent's failure to take any adequate steps to deal with his complaints and/or protect him from further discrimination, amount to:-*
>
> *a. Harassment related to race.*
> *b. Further or alternatively, victimisation because he did the protected acts outlined at paragraph 3 above.*
> *c. Further or alternatively, direct discrimination because of race. The Claimant relies upon a hypothetical comparator.'*

12. In between those references to three categories of complaints, the document recites facts (or alleged facts) but without identifying which of the alleged acts or omissions the claimant was asserting were acts of victimisation, which were said to be acts of harassment, which direct race discrimination, and which were included as background and context. Some of the allegations were set out in very broad terms, including an allegation that 'Sgt Harker would frequently and openly use racist language in front of the Claimant, including on or around 26 August 2018 when he used the term 'black bastard' in his presence' and an averment that 'the Respondent denied and continues to deny the Claimant a fair opportunity for promotion.'

13. Because the claims had not been pleaded in the original claim form, the respondent had been given an extension of time to respond to the claims. The respondent filed an ET3 and Grounds of Resistance within the extended time allowed.

14. Ahead of a preliminary hearing for case management on 3 November 2021, the claimant's representative prepared a draft List of Issues from which it was apparent that the claimant was suggesting all of the matters referred to in that document constituted race related harassment or direct race discrimination and victimisation.

15. That draft List of Issues was not discussed at the preliminary hearing. Employment Judge Morris directed the claimant to provide further information about allegations contained in paragraph 10 of the further particulars document. Subject to Orders for the provision of further information and a response to that information from the respondent, EJ Morris stayed the proceedings until 1 March

2022 on the respondent's application, which the respondent said was to enable it to complete investigations into allegations made by the claimant. A further preliminary hearing for case management was scheduled for 11 March 2022.

16. On 17 November 2021 the claimant filed an 'Updated' Further and Better Particulars document. In addition to setting out some additional information about allegations contained in paragraph 10 of the original Further and Better Particulars document, the claimant had added the following allegations:

> *'10…Indeed, these individuals [Sgt Harker, Mr Pitt and Mr Moir] were in the habit of tolerating racist language and behaviour as 'banter'. For example, at a leaving party for PC Shaun Close at an Asian restaurant in or around February 2020, Sgt Harker asked the Claimant whether he got a family discount, even though he was fully aware that the Claimant was unrelated to the proprietors. Both Inspector Pitt and Dave Moir were present and laughed at the comment.'*

17. The claimant did not apply for permission to amend his claim to add these additional allegations as complaints under the Equality Act. In its response to the additional information, the respondent made the point that the allegation that Sgt Harker made a racially offensive comment towards the Claimant in February 2020, witnessed by Insp Pitt and Mr Moir, had not been made in the Further and Particulars document filed on 14 September. It was not apparent at this time that the claimant might be seeking to make a complaint that Insp Pitt and Mr Moir laughing in response to the alleged comment by Sgt Harker was a further act of harassment, discrimination or victimisation. Subsequently, however, the respondent's representatives agreed a draft list of issues that included the allegations referred to above. The unorthodox route whereby these matters have come to be treated as part of the claimant's claims only became apparent to us during our deliberations. As explained further below, at the outset of this hearing we spent some considerable time in discussion with the parties' representatives to identify precisely what the claimant was saying the respondent had done that contravened the Equality Act. During those discussions Mr Healy did not suggest that these allegations did not form part of the claimant's claim. Nor has he made that point in his closing submissions. Given that the parties have treated this additional paragraph as part of the pleading of the claimant's claims that were made in his claim form filed on 20 August 2021, we have done the same.

18. On 7 February 2022 the claimant applied to amend his claim to add a new complaint of victimisation concerning allegations of misconduct that had been made against him between September and November 2021. The application was not opposed and Employment Judge Loy allowed the amendment in an Order made at a preliminary hearing on 11 March 2022. The claimant subsequently applied for permission to amend these additional allegations. That application was considered by Employment Judge Smith, who allowed a further amendment on the terms set out in Orders made on 14 June 2023.

19. At the hearing on 11 March 2022, Ms Hogben indicated that the claimant wished to further amend his claim to add an additional complaint in respect of another allegation of misconduct that had been made against him two days before the preliminary hearing. EJ Loy set a time within which any application to amend must be made and a time by which the respondent was to raise any objection. The claimant duly made an application to amend to add complaints of victimisation

and race related harassment in a document dated 25 March 2022. The respondent did not object. On 22 April 2022 Employment Judge Loy directed that the claimant's amended claim and the respondent's reply 'are both accepted.' That appears to have been intended, and was interpreted by the parties, as an order amending the claim (and the response).

20. On 9 May 2023, the claimant applied to amend his claim to add further complaints of victimisation (alternatively harassment) relating to a misconduct investigation concerning retired Sergeant Harker. At a preliminary hearing in June 2023 Employment Judge Smith granted that application.

21. At the March 2022 preliminary hearing EJ Loy had directed the parties to agree a list of issues for the Tribunal's determination. EJ Loy said ' The list will be treated as final unless the Tribunal decides otherwise.' By the time of the hearing in June 2023 the parties had not agreed a list of issues. EJ Smith directed them to cooperate to agree a comprehensive and finalised list of issues.

22. In C v D HHJ Tucker warned that if a claim is not set out with sufficient legal precision, valuable time can be lost. That happened in this case. Although the parties had, between them, prepared a draft List of Issues ahead of this hearing, when we began our reading at the start of the claim the precise claims being made by the claimant were not clear to us from that draft document. Furthermore, it was unclear to us how some of the issues referred to in the list arose from the claims being made. The draft list also appeared to include as issues for the Tribunal to determine matters that seemed from the pleadings not to be in dispute as well as issues relating to certain complaints that had been withdrawn by the claimant.

23. Accordingly, we prepared, for discussion with the representatives, a list setting out the claims it appeared the claimant was seeking to make. We had to spend some time at the hearing discussing that list to identify what the claimant was contending the respondent had done (or omitted to do) that contravened the Equality Act and to ascertain the respondent's position in respect of the complaints, including which factual allegations were admitted, not admitted or denied.

24. That discussion resulted in a list of complaints and issues for determination by the tribunal. We have set out those complaints and issues in the Schedule to this judgment. Ms Hogben and Mr Healy confirmed that they agreed the following:

24.1. The complaints made by virtue of the claimant's claim form presented in August 2021 (albeit not clarified until later) are those referred to as complaints 1 to 16 in the Schedule.

24.2. The complaints made by virtue of the claimant's application to amend made on 7 February 2022 and EJ Loy's Order made on 11 March 2022, as amended by EJ Smith's Order of 14 June 2023) are those referred to as complaints 17 and 18 in the Schedule (excluding the wording in square brackets, which we explain below).

24.3. The complaints made by virtue of the claimant's application to amend made on 25 March 2022 and EJ Loy's direction of 22 April 2022 'accepting' the amendment are those referred to as complaints 19 and 20 in the Schedule.

24.4. The complaints made by virtue of the claimant's application to amend made on 9 May 2023 and EJ Smith's Order made on 14 June 2023 are those referred to as complaints 21 and 22 in the Schedule.

25. Ms Hogben and Mr Healy agreed that the disputed issues for determination by the tribunal are as set out in the Schedule.

26. Notwithstanding that discussion and agreement, several days into the hearing, Ms Hogben contended that Complaint 17 did not accurately reflect the claim that had been made by the claimant. After hearing submissions and considering the matter we decided that Ms Hogben was incorrect and the claim that had been made was as set out in the Schedule. Ms Hogben then made an application to amend the claim on 30 January 2024, which was opposed by Mr Healy. We allowed the amendment for reasons given at the hearing. The amendment made to Complaint 17 is shown in square brackets in the schedule.

27. Subsequently, when the respondent's final witness was giving evidence, Ms Hogben suggested that the complaints made by virtue of the claimant's application to amend made on 25 March 2022 were more extensive than are set out in complaints 19 and 20 in the Schedule. Ms Hogben referred to the following sentence which appeared in the application to amend: 'The Claimant contends that there is now a concerted attempt on the part of the Respondent to discredit him because of the protected acts outlined above.'

28. We asked Ms Hogben to identify what she was suggesting the respondent had actually done or omitted to do (in an attempt to discredit the claimant) that constituted an act of victimisation or harassment other than the acts/omissions already referred to as Complaints 19 and 20. In respect of each additional alleged unlawful act or omission we also asked Ms Hogben to tell us who the claimant alleges did that thing, or those things, and when they did them. Ms Hogben replied that they did not know what the unlawful acts/omissions were. She said the claimant may make an application for specific disclosure. Ms Hogben subsequently confirmed that the claimant would not be making any such application. However, Ms Hogben told us she may make further submissions on the matter of the scope of the claimant's claims.

29. In her closing submissions Ms Hogben maintained that the amendment made included a complaint of unlawful conduct going beyond what is stated in Complaints 19 and 20. Yet still Ms Hogben has not identified the actual acts or omissions said to be unlawful ie what was actually done or omitted to be done in an attempt to discredit the claimant that constituted detrimental treatment constituting victimisation or conduct constituting harassment.

30. In the written application to amend of 25 March 2022 the claimant had said, in relation to the Regulation 17 notice served on 8 March 2022:

> *'It is alleged by C8733 Tony Hudspith that at some point after the speeding incident, the Claimant went into the office and asked to be shown the CCTV footage. It is alleged that having seen the footage, C8733 Hudspith*

suggested he might be able to do a speed awareness course but the Claimant said nothing and walked away.
The allegation made against the Claimant is categorically denied. At all times, the Claimant acted with honesty and integrity. The Claimant contends that there is now a concerted attempt on the part of the Respondent to discredit him because of the protected acts outlined above.'

31. During our discussions in the early stages of the hearing Ms Hogben had suggested that the amendment included a complaint that Mr Hudspith had harassed the claimant or victimised him by alleging (to DC Moore) that the claimant had viewed the CCTV footage at some point after the speeding incident. Mr Healy said he did not think the amendment contained such complaints. We adjourned to enable the parties to discuss the matter further in private. When we returned, Ms Hogben told us the claimant was not pursuing any complaints about the conduct of Mr Hudspith. Ms Hogben has not said the claimant is seeking to resile from that position. Furthermore we note that Mr Hudspith's evidence at this hearing was unchallenged and Ms Hogben did not ask him any questions on cross-examination.

32. In the written application to amend of 25 March 2022 the claimant had also said:

'The service of the Regulation 17 notice and all of the misconduct investigations into the Claimant since 24 September 2021 amount to:- Victimisation contrary to s27 EqA;
Further or alternatively, harassment related to race contrary to s26 EqA.'

33. During our discussions at the start of the hearing we expressly asked Ms Hogben whether the claimant was making a complaint that the respondent had harassed the claimant or victimised him by serving regulation 17 notices or conducting misconduct investigations into the matters referred to as Allegations 1, 2 and 3. Ms Hogben said she would take instructions. She subsequently told us that no such complaints were being pursued and they should be removed from the list of complaints we had prepared. Again, Ms Hogben does not say the claimant is seeking to resile from that position.

34. Ms Hogben says in her closing submissions that the service of the final Regulation 17 notice on 8 March 2022 is 'indicative of wider co-ordination'. She makes reference to the existence of a 'wider unit' including Mr Craig, Ms Badger, DS Mick Campbell, DCI Murphy-King, Mr McLouglin, DS Henderson, DC Moore and Ms Clynch from HR and the fact that Mr Bell was involved in the investigation. She alleges 'Mr Bonner, DC Moore and others within the special unit' were 'acting together to discredit' the claimant. Yet Ms Hogben does not actually say what those individuals actually did (in an attempt to discredit the claimant) that constituted detrimental treatment constituting victimisation or conduct constituting harassment. Ms Hogben referred to thigs referred to in DC Moore's daybook entries from 12 January 2023 onwards and submits that they show she was 'working in concert with others in the separate unit in respect of the investigation'. However, those matters post-date the application to amend (and EJ Loy's direction 'accepting' the amendment) by many months. Whatever Ms Hogben says was meant in the application to amend when it referred to there

being 'a concerted attempt to discredit' the claimant, it must have been an allegation about something that had happened before the application to amend was made on 25 March 2022 and, even if it was ongoing, the complaint can only be about an act or omission that occurred before the amendment was made (ie 22 April 2022). Evidence of what happened subsequently may well be relevant in determining whether the acts that form the subject matter of the complaint were unlawful, but the claimant still has to identify the acts or omissions forming the subject matter of the (alleged) complaint.

35. There was some suggestion during the hearing that the reason this was being brought up late was somehow connected with the fact that the respondent had disclosed a large volume of documents very late in the day. As noted above, Ms Hogben has referred to entries in DC Moore's daybook. If the suggestion is that the claimant only became aware of matters about which he may wish to complain when looking at the daybook, that undermines Ms Hogben's submission that the claimant made this complaint (whatever it may be) in the application to amend filed on 25 March 2022.

36. The Tribunal has jurisdiction to determine a complaint by an employee that their employer (acting themselves or through their employees or agents) has contravened the Equality Act 2010. It is for the claimant to set out in his complaint the things the respondent has done or omitted to do that, on his case, contravened the Act. We cannot examine the motivations of a putative victimiser/harasser for doing something if we do not know the thing they are alleged to have done. The failure to identify the treatment or conduct that is said to have contravened the Equality Act is fatal to Ms Hogben's submission that the complaints made by virtue of the claimant's application to amend made on 25 March 2022 were more extensive than are set out in complaints 19 and 20 in the Schedule.

37. It is our conclusion that the claims made by the claimant by way of the amendment application made on 25 March 2022 are confined to those as set out as Complaints 19 and 20 in the Schedule.

38. Even if that were not the case, we would not be permit the claimant to advance additional complaints. There was extensive discussion of the Schedule of Complaints early in the hearing. The time to say that the Schedule did not include all of the complaints was then, not at the very end of the hearing. Furthermore, as Mr Healy pointed out, even the draft List of Issues prepared by the parties ahead of this hearing did not contain the additional 'complaint' the claimant now seeks to pursue.

39. Aside from the time taken up by discussions that were needed to clarify the claims being made and the disputed issues, and then dealing with the claimant's belated requests to revisit the agreed Schedule of Claims and issues and amend the claim, a very considerable amount of time was lost during the hearing due to the late disclosure by the respondent of a large volume of documents, largely comprising redacted copies of DC Moore's daybooks. The hearing had to be adjourned for a significant period to give the claimant and his representatives time to review those documents.

Legal framework

40. It is unlawful for an employer to discriminate against or to victimise an employee as to their terms of employment; in the way the employer affords them access, or by not affording them access, to opportunities for transfer or training or for receiving any other benefit, facility or service; by dismissing them or by subjecting them to any other detriment: section 39(2) and (4) Equality Act 2010. It is also unlawful for an employer to harass an employee: Equality Act 2010 section 40.

41. For these purposes, section 109 of the Equality Act 2010 provides that the acts of the employer's other employees are treated as acts of the employer provided they are done in the course of employment. Similarly, an employer is responsible for acts that are done for them, with their authority, by an agent. This is the case even if the employer neither knows nor approves of the acts in question.

Direct discrimination and victimisation

42. Section 13 of the Equality Act 2010 provides that it is direct discrimination to treat an employee less favourably because of race than the employer treats or would treat others.

43. In determining whether there is direct discrimination it is necessary to compare like with like. This is provided for by section 23 of the Act, which says that in a comparison for the purposes of section 13 there must be no material difference between the circumstances relating to each case.

44. Section 27 of the Equality Act 2010 defines victimisation. It provides as follows:

> *"(1) A person (A) victimises another person (B) if A subjects B to a detriment because—*
>
> *(a) B does a protected act, or*
>
> *(b) A believes that B has done, or may do, a protected act.*
>
> *(2) Each of the following is a protected act—*
>
> *(a) bringing proceedings under this Act;*
>
> *(b) giving evidence or information in connection with proceedings under this Act;*
>
> *(c) doing any other thing for the purposes of or in connection with this Act;*
>
> *(d) making an allegation (whether or not express) that A or another person has contravened this Act.*
>
> *(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith…."*

45. For the purposes of sections 27 and 39, a detriment exists if a reasonable worker (in the position of the claimant) would or might take the view that the treatment accorded to them had, in all the circumstances, been to their detriment: Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337. As May LJ put it in De Souza v Automobile Association [1986] ICR 514, 522G, the tribunal must find that, by reason of the act or acts complained of, a reasonable worker would or might take the view that they had thereby been disadvantaged in the circumstances in which they had thereafter to work. An alleged victim cannot establish 'detriment' merely by showing that they had suffered mental distress; before they could succeed it would have to be objectively reasonable in all the

circumstances: St Helen's Metropolitan Borough Council v Derbyshire [2007] IRLR 540, [2007] UKHL 16.

46. For a claim of direct discrimination to be made out, the conduct complained of must be because of the protected characteristic (the claimant's race in this case). For a claim of victimisation to be made out, the conduct complained of must be because the claimant did a protected act (or because the respondent believed the claimant had done or may do a protected act). In both cases, the protected characteristic or protected act need not be the only reason for the detrimental treatment, provided it had a material influence on the outcome.

47. There are some forms of direct discrimination in which the discrimination is inherent in the treatment. However, in the majority of cases the employment tribunal must consider the mental processes of a decision-maker or decision-makers: Nagarajan v London Regional Transport [1999] IRLR 572, HL; Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] IRLR 830. The test is: what was the reason why the alleged discriminator acted as they did; what, consciously or unconsciously, was their reason? The subject of the inquiry is the ground of, or reason for, the putative discriminator's action, not his or her motive: Amnesty International v Ahmed [2009] IRLR 884, EAT.

48. That causation must relate to the motivation or reason of the final decision-taker, rather than of others who might have played an earlier part in the process leading to that decision: CLFIS (UK) Ltd v Reynolds [2015] EWCA Civ 439, [2015] IRLR 562. Ms Hogben submitted that the question as to whether the so-called Iago scenario discussed in the whistleblowing case of Royal Mail Group Ltd v Jhuti [2019] UKSC 55 could apply to claims under the Equality Act 2010 is not settled. We do not accept that submission. The matter was addressed by the EAT in Alcedo Orange Limited v Ferridge-Gunn [2023] EAT 78. The position as set out in Reynolds remains good law.

Harassment

49. The definition of harassment is contained in section 26 of the Act. So far as relevant, section 26 provides as follows:

> *'(1) A person (A) harasses another (B) if—*
> *(a)A engages in unwanted conduct related to a relevant protected characteristic, and*
> *(b)the conduct has the purpose or effect of—*
> *(i)violating B's dignity, or*
> *(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*
> *....*
> *(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
> *(a)the perception of B;*
> *(b)the other circumstances of the case;*
> *(c)whether it is reasonable for the conduct to have that effect.'*

50. In deciding whether conduct is 'related to' a protected characteristic, the Tribunal must apply an objective test; the intention of the actors concerned might form part of the relevant circumstances but will not be determinative of the question the tribunal has to answer: UNITE the Union v Nailard [2018] EWCA Civ 1203, [2018]

IRLR 730. As was said in Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and another [2020] IRLR 495, a finding about the motivation of the individual concerned is not the necessary or only possible route to the conclusion that an individual's conduct was related to the characteristic in question. Nevertheless, there must be still, in any given case, be some feature of the factual matrix which can properly lead the tribunal to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claimant.

51. In Nailard the Court of Appeal allowed an appeal against an employment tribunal's decision that a failure to address a sexual harassment complaint could itself amount to harassment related to sex 'because of the background of harassment related to sex' where the tribunal had not made any findings as to the mental processes of those who were dealing with the complaint and whether they had been motivated by sex discrimination. Similarly, in Worcestershire Health and Care NHS Trust v Allen [2024] EAT 40 (unreported) the EAT stressed that it is the 'conduct' that must be 'related to' the protected characteristic. It held that if it is asserted that a failure properly to investigate a grievance alleging discrimination constitutes harassment it is not sufficient that the grievance was related to the protected characteristic; the failure properly to investigate the grievance, which constitutes the conduct, must be related to the protected characteristic. Accordingly, the EAT held, it will generally be necessary to consider the mental process of the person who considered the grievance and decide whether the failure to investigate was related to the protected characteristic, such as if the person considered that protection of the protected characteristic is of no importance and so did not treat the grievance as seriously as other types of grievance would have been treated.

52. Where a Claimant contends that the employer's conduct has had the effect of creating the proscribed environment for them, they must actually have felt or perceived that their dignity was violated or an intimidating, hostile, degrading, humiliating or offensive environment was created for them: Richmond Pharmacology v Dhaliwal [2009] ICR 724, EAT.

53. Even if the claimant did, subjectively, feel or perceive that the employer's conduct had that effect, a claim of harassment will not be made out on the basis of that effect if it is not reasonable for the conduct to have the effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee: Ahmed v Cardinal Hume Academies (29 March 2019, unreported).

54. Conduct may constitute harassment of an employee even if it was not specifically directed at that employee. However, the fact that the conduct was not directed at the claimant may be a relevant factor to take into account in deciding whether its effect was to create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant: see Weeks v Newham College of Further Education UKEAT/0630/11, [2012] EqLR 788, EAT.

55. The fact that an employee is slightly upset or mildly offended by the conduct may not be enough to bring about a violation of dignity or an offensive environment. In Richmond Pharmacology v Dhaliwal, the EAT (Underhill P) held that, in assessing whether the effect of the conduct was to violate an employee's dignity or create a proscribed environment for the employee:

> 'One question that may be material is whether it should reasonably have been apparent whether the conduct was, or was not, intended to cause offence (or, more precisely, to produce the proscribed consequences): the same remark may have a very different weight if it was evidently innocently intended that if it was evidently intended to hurt.'

56. In that same case, Mr Justice Underhill President observed that, when assessing the effect of a remark, the context in which it is given is always highly material, and said:

> ‘We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the [Equality Act 2010]) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.’

57. The Court of Appeal has also warned tribunals against cheapening the significance of the words of the Act as they are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment: Land Registry v Grant [2011] ICR 1390, CA.

58. Furthermore, whilst a one-off incident may amount to harassment, a Tribunal must bear in mind when applying the test that an 'environment' is a state of affairs. It may be created by an incident, but the effects are of longer duration: Weeks v Newham College of Further Education UKEAT/0630/11, [2012] EqLR 788, EAT.

Burden of proof

59. The burden of proof in relation to allegations of discrimination, victimisation and harassment is dealt with in section 136 of the 2010 Act as follows:

> ‘*136 Burden of proof*
>
> *…*
>
> *(2)If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3)But subsection (2) does not apply if A shows that A did not contravene the provision….’*

60. Section 136 provides a two-stage test. At the first stage, the claimant has to prove facts from which the tribunal could infer that discrimination has taken place. It is only if such facts have been made out (on the balance of probabilities) that the second stage is engaged.

61. At the second stage the burden shifts to the respondent to prove (on the balance of probabilities) that the treatment in question was ‘in no sense whatsoever’ because of the prohibited reason: Igen Ltd v Wong [2005] EWCA Civ 142; [2005] ICR 931 CA.

62. In some cases it may be appropriate for a tribunal to effectively assume the burden has shifted, and to look to the respondent to provide an explanation for the treatment in question: Laing v Manchester City Council [2006] ICR 1519, EAT.

In this respect, it is important to keep in mind the purpose that underpins section 136; as Elias P (as he then was) observed in Laing:

> *'76. ... The reason for the two-stage approach is that there may be circumstances where it would be to the detriment of the employee if there were a prima facie case and no burden was placed on the employer, because they may be imposing a burden on the employee which he cannot fairly be expected to have discharged and which should evidentially have shifted to the employer. But where the tribunal has effectively acted at least on the assumption that the burden may have shifted, and has considered the explanation put forward by the employer, then there is no prejudice to the employee whatsoever.*
>
> *77. Indeed, it is important to emphasise that it is not the employee who will be disadvantaged if the tribunal focuses only on the second stage. Rather the risk is to an employer who may be found not to have discharged a burden which the tribunal ought not to have placed on him in the first place. That is something which tribunals will have to bear in mind if they miss out the first stage. Moreover, if the employer's evidence strongly suggests that he was in fact discriminating on grounds of race, that evidence could surely be relied on by the tribunal to reach a finding of discrimination even if the prima facie case had not been established. The tribunal cannot ignore damning evidence from the employer as to the explanation for his conduct simply because the employee has not raised a sufficiently strong case at the first stage. That would be to let form rule over substance.'*

63. In Hewage v Grampian Health Board [2012] ICR 1054, SC, the Supreme Court stressed the need to avoid an overly technical approach to the application of section 136. Lord Hope observed:

> *'32. … it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.'*

64. The burden of proof still requires careful consideration if there is room for doubt. As HHJ James Tayler emphasised in Field v Steve Pye & Co [2022] IRLR 948 EAT:

> *'42. Where there is significant evidence that could establish that there has been discrimination it cannot be ignored. In such a case, if the employment tribunal moves directly to the reason why question, it should generally explain why it has done so and why the evidence that was suggestive of discrimination was not considered at the first stage in an Igen analysis.*
>
> *….*
>
> *44. If having heard all of the evidence, the tribunal concludes that there is some evidence that could indicate discrimination but, nonetheless, is fully convinced that the impugned treatment was in no sense whatsoever because of the protected characteristic, it is permissible for the employment tribunal to reach its conclusion at the second stage only. But … it is hard to see what the advantage is. …'*

65. As for what is required to discharge the burden at the first stage, the following principles have been established.

66. It is important to bear in mind in deciding whether the claimant has proved facts from which the tribunal could conclude that there has been discrimination that it is unusual to find direct evidence of discrimination: few employers would be prepared to admit such discrimination, even to themselves and in some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in.' The outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal: Igen Ltd v Wong [2005] EWCA Civ 142, [2005] IRLR 258; Nagarajan v London Regional Transport [2000] 1 AC 501 HL.

67. All the evidence as to the facts before the tribunal must be considered, not just evidence adduced by the claimant. However, facts and explanations should be carefully distinguished from each other since s 136(2) requires that any explanation provided by the employer should not be taken into account at this first burden-shifting stage: Efobi v Royal Mail Group Ltd [2021] UKSC 33, [2021] IRLR 811, [2021] ICR 1263.

68. There must be something more than a difference in the relevant protected characteristic and a difference in treatment: Madarassy v Nomura International plc [2007] ICR 867, CA. The 'something more' required at the first stage need not, however, be a great deal: Deman v EHRC [2010] EWCA Civ 1279.

69. A finding that an employer has behaved unreasonably, or treated an employee badly, will not be sufficient, of itself, to cause the burden of proof to shift. As Lord Browne-Wilkinson explained in Glasgow City Council v Zafar [1998] ICR 120, at 124B:

> *'… the conduct of a hypothetical reasonable employer is irrelevant. The alleged discriminator may or may not be a reasonable employer. If he is not a reasonable employer, he might well have treated another employee in just the same unsatisfactory way as he treated the complainant, in which case he would not have treated the complainant 'less favourably'.'*

70. That said, whether the putative discriminator would treat all employees in 'the same unsatisfactory way' is not something that will be established by mere assertion. Sedley LJ noted in Anya v Oxford University and anor [2001] EWCA Civ 405: 'whether there is such an explanation … will depend not on a theoretical possibility that the employer behaves equally badly to employees of all [relevant characteristics] but on evidence that he does.' Absent such evidence, the inference of discrimination comes not from the unreasonable treatment, but from the absence of any (consistent) explanation for it: see Law Society v Bahl [2004] IRLR 799, per Peter Gibson LJ, and Veolia Environmental Services UK v Gumbs UKEAT/0487/12 per HHJ Hand QC.

71. In Field HHJ Taylor said: '46. Where a claimant contends that there is evidence that should result in a shift in the burden of proof they should state concisely what that evidence is in closing submissions, …'

72. In determining whether an inference could be drawn from the facts established by the complainant, a tribunal must bear in mind that the relevant protected characteristic, or protected act, need not be the only reason for the decision in

issue, it would be sufficient that it was a significant or material influence: Nagarajan v London Regional Transport [2000] 1 AC 501 HL.

73. In deciding whether to draw an inference the tribunal should have regard to the totality of the relevant circumstances: Talbot v Costain Oil UKEAT/0283/16 per HHJ Shanks.

74. The relevant circumstances may include evidence which demonstrates that discriminatory conduct and attitudes are widespread within the organisation provided that that the Tribunal is able to specify the particular reasons why it considers the material in question to have probative value: Chief Constable of Greater Manchester Police -v- Bailey [2017] EWCA Civ 425.

75. The tribunal is also required to consider any parts of the Equality and Human Rights Commission Code of Practice for Employment) that appear relevant and, where relevant, the ACAS Code of Practice on Discipline and Grievances.

76. In deciding whether the burden of proof has reversed under s136 in a claim of direct discrimination, we must keep in mind s23 of the Equality Act 2010. In Virgin Active Ltd v Hughes [2023] EAT 130, [2024] IRLR 4, HHJ Tayler said this:

> *'…If there are no material differences between the circumstances of the claimant and the person with whom the comparison is made (the person is usually referred to as an actual comparator), this provides significant evidence that there could have been discrimination. … The second situation in which a comparison with the treatment of another person may provide evidence of discrimination is where the circumstances are similar, but not sufficiently alike for the person to be an actual comparator. The treatment of such a person may provide evidence that supports the drawing of an inference of discrimination, sometimes by helping to consider how a hypothetical person whose circumstances did not materially differ to those of the claimant would have been treated (generally referred to as a hypothetical comparator). Evidence of the treatment of a person whose circumstances materially differ to those of the claimant is inherently less persuasive than that of a person whose circumstances do not materially differ to those of the claimant. …*
>
> *…*
>
> *Accordingly, where a claimant compares his treatment with that of another person, it is important to consider whether that other person is an actual comparator or not. To do this the employment tribunal must consider whether there are material differences between the claimant and the person with whom the claimant compares his treatment. The greater the differences between their situations the less likely it is that the difference of treatment suggests discrimination.'*

Time limit

77. Section 123 of the Equality Act 2010 provides as follows:
Time limits
(1) Subject to section 140B, proceedings on a complaint within section 120 may not be brought after the end of—
(a) the period of 3 months starting with the date of the act to which the complaint relates, or
(b) such other period as the employment tribunal thinks just and equitable.

…
(3) For the purposes of this section—
(a) conduct extending over a period is to be treated as done at the end of the period;
(b) failure to do something is to be treated as occurring when the person in question decided on it.
(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
(a) when P does an act inconsistent with doing it, or
(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

78. The three month primary time limit is calculated taking into account section 140B, which provides for the extension of time limits to facilitate conciliation before institution of proceedings

79. In deciding whether there was 'conduct extending over a period' in cases involving numerous discriminatory acts or omissions, it is not necessary for the claimant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather, what he or she has to prove, in order to establish conduct extending over a period, is that (a) the incidents are linked to each other, and (b) that they are evidence of a 'continuing discriminatory state of affairs': Hendricks v Metropolitan Police Comr [2002] EWCA Civ 1686, [2003] IRLR 96.

80. In South Western Ambulance Service NHS Foundation Trust v King [2020] IRLR 168, the EAT considered the authorities on this issue and held that the only acts that can be considered as part of a continuing course of conduct are those that are upheld as acts of discrimination or some other contravention of the Equality Act 2010.

81. Section 123(1) gives the Tribunal a broad discretion to extend time for claiming beyond the three-month time limit.

82. In Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23, Lord Justice Underhill said 'the best approach for a tribunal in considering the exercise of the discretion under section 123 (1) (b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time. Factors that are almost always relevant are the length of, and the reasons for, the delay; and whether the delay has prejudiced the respondent (for example by preventing or inhibiting it from investigating the allegations while the matters were still fresh).

83. The Court of Appeal has held that there is no requirement that the Tribunal be satisfied that there was a good reason for any delay in claiming and time may even be extended in the absence of any explanation of the delay from the claimant: Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640, [2018] IRLR 1050. 24.

84. There is, however, no presumption that the ET should exercise its discretion to extend time. The burden is on the claimant to persuade the tribunal to exercise its discretion in their favour.

85. Delay caused by a claimant invoking an internal grievance procedure before making a tribunal claim may justify the grant of an extension of time but it is just

one factor that must be weighed in the balance along with others that may be present: Robinson v Post Office [2000] IRLR 804. As the EAT said in Wells Cathedral School Ltd v Souter EA-2020-000801 (20 July 2021, unreported) 'It is, in principle, desirable that parties be encouraged to resolve their disputes, so far as reasonably possible, by mechanisms short of litigation. But there is also a public policy in those who may be on the receiving end of litigation benefitting, so far as possible, from the certainty and finality which the enforcement of time limits potentially gives them.'

86. In Robertson v Bexley Community Centre [2003] IRLR 434, Auld LJ observed that 'the exercise of discretion is the exception rather than the rule' it is not the case that discretion may only be exercised in exceptional circumstances.

87. A relevant factor is the relative prejudice to the parties in granting or refusing an extension of time. In this regard, if a claim is or appears to have merit, the prejudice to the claimant of time not being extended is greater than if the claim is weak. But even if a claim has very good merits (or has even been successful, if it has reached the stage of a determination at a full hearing) that does not automatically require a tribunal to extend time for it: Ahmed v Ministry of Justice UKEAT/0390/14 (7 July 2015, unreported).

88. If the respondent may have experienced forensic prejudice in defending a claim that has been brought outside the primary time limit (for example because evidence has degraded or relevant witnesses have left their employment) that will be a factor weighing against granting an extension of time.

Police Conduct Regulations

89. At the time of the matters with which we are concerned, the conduct of a police officer in police service was regulated by the Police (Conduct) Regulations 2020.

90. Regulation 4(1) provides that the regulations apply to serving police officers 'where an allegation comes to the attention of an appropriate authority which indicates that the conduct of a police officer may amount to misconduct, gross misconduct or practice requiring improvement.'

91. The terms 'misconduct', 'gross misconduct' and 'practice requiring improvement' are all defined in regulation 2. The concepts of misconduct and gross misconduct concern breaches of the Standards of Professional Behaviour described in Schedule 2 to the Regulations. Those Standards include, amongst others, the following:

> ***Honesty and Integrity***
>
> *Police officers are honest, act with integrity and do not compromise or abuse their position.*
>
> ***Authority, Respect and Courtesy***
>
> *Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.*
>
> *Police officers do not abuse their powers or authority and respect the rights of all individuals.*
>
> ***Equality and Diversity***

Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.

...

Challenging and Reporting Improper Conduct

Police officers report, challenge or take action against the conduct of colleagues which has fallen below the Standards of Professional Behaviour.

92. Part 3 of the Regulations deals with investigations. Regulation 14 requires the appropriate authority to make a severity assessment in relation to the conduct which is the subject matter of the allegation. It provides as follows:

14 Severity assessment

(1) The appropriate authority must assess whether the conduct which is the subject matter of the allegation, if proved, would amount to misconduct or gross misconduct or neither ('the severity assessment').

…

(5) Where the appropriate authority assesses that the conduct, if proved, would amount to misconduct or gross misconduct—
(a) the matter must be investigated, and
(b) the appropriate authority must assess whether, if the matter were to be referred to misconduct proceedings under regulation 23, those would be likely to be a misconduct meeting or a misconduct hearing.

(6) At any time before the start of misconduct proceedings, the appropriate authority may revise its severity assessment under this regulation if it considers it appropriate to do so.

93. Where regulation 14(2) requires a matter to be investigated, the appropriate authority must appoint a person to investigate the matter (reg 15). The purpose of such an investigation is as set out in regulation 16(1) as follows:

(1) The purpose of the investigation is to—
(a) gather evidence to establish the facts and circumstances of the alleged misconduct or gross misconduct, and
(b) assist the appropriate authority to establish whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

94. With limited exceptions, Regulation 17 requires the investigator to give the officer being investigated a written notice. That notice must state, amongst other things: that there is to be an investigation; the conduct that is the subject matter of the investigation and how that conduct is alleged to fall below the Standards of Professional Behaviour; and the result of the severity assessment.

95. On completion of the investigation Regulation 21 requires the investigator to submit a written report on the investigation to the appropriate authority as soon as practicable. Regulation 23 then applies. It provides as follows:

23 Referral of case to misconduct proceedings

(1) Subject to regulation 49, on receipt of the investigator's report under regulation 21(1), the appropriate authority must, as soon as practicable, determine—

(a) whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or whether the officer has no case to answer;

(b) if there is a case to answer, whether or not misconduct proceedings should be brought against the officer, and

(c) if so, and subject to paragraph (10), what form the misconduct proceedings should take.

96. Regulation 4(9) permits an appropriate authority to treat multiple allegations as a single allegation. It provides as follows:

(9) Where an appropriate authority is considering more than one allegation in relation to the same police officer, or person in relation to whom these Regulations apply by virtue of paragraph (2), the allegations may be taken together and treated as a single allegation for the purposes of any provision of these Regulations which requires a person to make an assessment, finding, determination or decision in connection with conduct which is the subject matter of an allegation.

97. By virtue of regulation 4(2), the Regulations also apply, with the modifications set out in Schedule 1, to former police officers in some circumstances. Regulation 4(2) provides as follows:

(2) Except as set out in paragraph (8), these Regulations also apply, with the modifications set out in Schedule 1, where—
(a) an allegation comes to the attention of a relevant body which indicates that the conduct of a person who at the time of the alleged conduct was a police officer ('P') may amount to gross misconduct, and
(b) condition A, B or C is satisfied.

(3) Condition A is that P ceased to be a police officer after the allegation first came to the attention of a relevant body.

(4) Condition B is that—
(a) P ceased to be a police officer before the allegation first came to the attention of a relevant body, and
(b) the period between the date P ceased to be a police officer and the date the allegation first came to the attention of the relevant body did not exceed 12 months.

(5) Condition C is that—
(a) P ceased to be a police officer before the allegation first came to the attention of a relevant body;

(b) the period between the date P ceased be a police officer and the date the allegation first came to the attention of the relevant body exceeded 12 months, and
(c) the Director General makes a Condition C special determination under Part 1A of these Regulations (as inserted by way of modification of these Regulations by paragraph (2) and Schedule 1) that taking disciplinary proceedings against P in respect of the alleged gross misconduct would be reasonable and proportionate.

…

98. As set out in Regulation 4(2), the Regulations only apply to former officers in cases where an allegation indicates that the conduct of the former officer may have amounted to gross misconduct. Schedule 1 contains modifications to Regulations 14-17, 21 and 23 to reflect the fact that the regulations only apply to former officers in respect of alleged gross misconduct.

99. The modifications in Schedule 1 also include a modified definition of 'gross misconduct'. In respect of former officers, 'gross misconduct' means:

'a breach of the Standards of Professional Behaviour that is so serious that the officer concerned would have been dismissed if the officer had not ceased to be a member of a police force or a special constable.'

Evidence and Primary Findings of Fact

100. We heard evidence from the claimant and, in support of his case:

100.1. Mr Sewell, a police officer who, since January 2021, has worked in the respondent's Dog Section Unit (also referred to in these proceedings as the Dog Support Unit).

100.2. Mr Gobie, who was a police officer in the respondent's force for 30 years, 24 of which were spent on the Dog Section, where he was a police dog instructor. He retired from the force in December 2021.

100.3. Mr Hunt, who was a police officer in the respondent's Dog Support Unit for 20 years until October 2017. Mr Hunt retired from the force in April 2020.

100.4. Mr Khan, who was an Inspector with Cleveland Polce until he retired in 2022.

100.5. Mr Skirving-Chehab, who has been a police officer in the Respondent's force for many years.

101. For the respondent we heard evidence from the following witnesses:

101.1. Mr Williamson, currently a Sergeant in the force. He worked with the claimant in the Dog Support Unit in 2018/2019.

101.2. Mr Bell, who joined Cleveland Police as Inspector in the Firearms and Traffic Policing unit in August 2020 (he has since been promoted to the rank of chief inspector).

101.3. Ms Dack, a temporary Inspector in Cleveland Police.

101.4. Mr Pitt, who was responsible for the Dog Support Unit as an Inspector, and as such the claimant's second line manager. He is now a Chief Inspector in the force.

101.5. Ms Wilson, who was a Chief Inspector within Cleveland and Durham Specialist Operations Unit and is currently a Superintendent in Cleveland Police.

101.6. Mr Bainbridge, who was Chief Inspector within the force control room at material times.

101.7. Mr Singh, an Equality, Diversity and Inclusion manager for the force.

101.8. Ms Clynch, who is a Senior Human Resources Business Partner with Cleveland Police. She has held that position since January 2001. In that role she manages the employee relations team, acts as HR advisor in office and misconduct meetings, is the relevant HR advisor at Regulation 13 meetings, participates as a member on the panel at police staff gross misconduct hearings, and provides advice to the Force on a range of HR matters.

101.9. Mr Hudspith, a Camera Enforcement Officer with the force.

101.10. Mr Bonner, a Detective Chief Inspector. At the material times he was head of the force's Complaints and Discipline arm of the Directorate of Standards and Ethics (DSE).

101.11. Mr Agar, who carries out the role of Appropriate Authority in the force.

101.12. Mr Marchant, a Sergeant in the Dog Support Unit from late 2020 and, in that role, the claimant's first line manager.

101.13. Ms Moore, a counter corruption Detective Constable in the DSE at Cleveland Police. Her role is to investigate complaints about police officers and members of staff that may amount to misconduct, corruption, or criminal activity.

102. We took account of unchallenged evidence from Mr Snaith, a Detective Chief Inspector with Cleveland Police. He became the claimant's mentor in August 2018.

103. We took into account the content of a written statement from Ms Theaker. The respondent had intended to call Ms Theaker as a witness but she was not well enough to attend the hearing. When deciding what weight to accord her evidence we bear in mind that the claimant has not had an opportunity to test and challenge the evidence through the process of cross examination.

104. We took into account numerous documents to which we were referred.

105. Elements of this case were dependent on evidence based on people's recollection of events that happened many months (and in some respects, several years) ago. In assessing that evidence we bear in mind the guidance given in the case of Gestmin SGPS v Credit Suisse (UK) Limited [2013] EWHC 360. In that case, Mr Justice Leggatt (as he was then) observed that it is well established, through a century of psychological research, that human memories are fallible. They are not always a perfectly accurate record of what happened, no matter how strongly somebody may think they remember something clearly. One of the reasons for that is that people's perceptions and interpretations of events differ. External information can affect how and which memories are created as can an individual's thoughts and beliefs, experiences and world view. What is remembered may also be affected by what appeared most significant to an individual at the time. Unconscious biases might also make us more inclined to embed as a memory something that reflects what we wanted or expected to see or hear or that portrays us or others we respect in a more favourable light. Also, as Mr Justice Leggatt described in Gestmin, memories are fluid and

changeable: they are constantly re-written. So memories can change over the passage of time as they are retrieved. The process of going through Tribunal proceedings itself can create biases in memories. Witnesses may have a stake in a particular version of events, especially those who are parties to a claim or those with ties of loyalty to parties. All of this means people can sometimes genuinely recall as a memory something which did not occur, or did not happen in the way it is recalled. In short, even if a witness has confidence in his or her recollection and appears honest, evidence based on that recollection might not provide a reliable guide to the truth.

106. In light of those matters, inferences drawn from the documentary evidence (particularly contemporaneous documents) and known or probable facts can frequently be a more reliable guide to what happened than witnesses' recollections. However, we also bear in mind that even these matters suffer from fallibilities. Even if a document is written immediately after an event, it may record a perception or interpretation of the event that is itself not an accurate reflection of what happened. Furthermore, the purpose for which a document is created may influence, consciously or unconsciously, decisions by the author as to its contents and how it is written.

107. In her closing submissions, Ms Hogben conceded that complaints 1 to 12, if considered in isolation, were presented outside of the primary time limit. It follows that the Tribunal only has jurisdiction to consider those complaints if one of the following conditions is satisfied:

107.1. At least one of the more recent complaints is well founded and forms part of unlawful conduct extending over a period with the alleged detrimental treatment or unwanted conduct about which the claimant complains in complaints 1 to 12.

107.2. Or we consider it just and equitable to extend time to bring the earlier complaint.

108. Whilst we took into account all of the evidence in the case insofar as we considered it to be probative, the findings of fact we have set out below are those that we considered had most bearing on the more recent claims (ie complaints 14 onwards) or the question of whether time should be extended.

109. The claimant's service with Cleveland Police began on 16 October 2008.

110. In May 2015 the claimant gave a witness statement in support of a claim of race discrimination brought by a PC Saddique against the respondent in the Employment Tribunal.

111. In November 2015 the claimant himself presented a claim of race discrimination against the respondent in the Employment Tribunal. That claim included allegations against Ms Dack who, at the time, was a police constable. The allegations were about things PC Dack was alleged to have said or done in 2008 or 2009. Inspector Wilson (as she was then) told PC Dack about the allegations and asked PC Dack to provide an account of the alleged incidents. PC Dack was upset, especially as she was being contacted whilst on maternity leave. She accepted in cross-examination that she may have been a bit angry at the time and that the allegations the claimant had made, if they had been proven, would have been career ending.

112. The claimant subsequently discontinued the Tribunal proceedings.

113. The claimant joined the respondent's dog support unit (DSU) in June 2016. In March 2018 Inspector Pitt took on responsibility for the Tri-Force DSU. He became the claimant's second line manager.

114. The DSU, Roads Policing Unit and Firearms Unit all worked together in collaboration out of a site at Wynyard. They were collectively known as the Cleveland and Durham Specialist Operations Unit (CDSOU). Within CDSOU Cleveland police operated four separate shifts: A relief, B relief, C relief and D relief. Each shift comprised members of the DSU and members of Firearms and the Roads Policing Unit. When the claimant joined the DSU he was placed on A relief.

115. In March 2018 the claimant presented a second claim of race discrimination in the Employment Tribunal. The claimant discontinued that claim on 29 August 2018. The parties agreed at the time that Inspector Snaith would be appointed as the claimant's mentor and that Ms Clynch would be appointed as a specific point of contact (SPOC) for the claimant. The idea of having a SPOC was that Ms Clynch would be somebody the claimant could contact if he believed he had been or was being subjected to discrimination or detriment.

116. Some time in late 2018 or early 2019 some officers from the CDSOU went away together on a social trip. There were rumours at the time that one of the officers in the DSU, PC Sutcliffe, had been the butt of jokes during the social trip and had been subjected to taunts by people saying he looked like a Syrian bomber or refugee. Not long after that social trip PC Sutcliffe, was moved out of C shift to a different shift.

117. In January 2019 Sergeant Harker joined the DSU and became the claimant's line manager. Complaints 1 to 4 comprise allegations about things Sgt Harker is alleged to have said or done (or omitted to do) before and during the time he was the claimant's line manager.

Shift change

118. In the latter part of 2020 Sergeant Marchant joined the DSU to take over from Sergeant Harker who was retiring. In his witness statement Sergeant Marchant said he had joined the DSU in December 2020. However, on cross-examination when shown an email dating from November 2020 he accepted he may have in fact joined the DSU in the November of 2020. We find that it is more likely than not Sergeant Marchant joined the DSU as sergeant in November 2020. Sergeant Marchant reported to Insp Speakman. Sergeant Harker went to work for the harbour police and officially retired from the respondent's force in February 2021.

119. Sergeant Marchant had not previously worked at Wynyard. Before Sergeant Marchant took over from Sergeant Harker, he did not discuss the members of the team or the structure of the DSU with Sergeant Harker.

120. On 17 November 2020 Sergeant Marchant had his first one to one meeting with the claimant. At that meeting the claimant explained to Sergeant Marchant some concerns he had had about getting a second dog. At this meeting Sergeant Marchant and the claimant also discussed the possibility of the claimant having the opportunity to act up to sergeant to assist with future promotion prospects. Subsequently the claimant was secured an acting up period in Hartlepool.

121. After he took up his post in the DSU, Sergeant Marchant spent some time familiarising himself with how the Unit functioned. Part of Sergeant Marchant's

role was to try to strike the right balance between experienced handlers and experienced dogs with varied skill sets across the four teams to meet operational demand. Sergeant Marchant's opinion was that specialist dog handlers should be spread evenly across all four shifts. He soon formed the view that the four teams, A, B, C and D relief, were unbalanced in terms of skills and experience.

122. In or around December 2020 Sergeant Marchant had a discussion with Insp Speakman about his view that there was an imbalance of skill set and experience on the shifts. Following that discussion Sergeant Marchant decided to move officers to different teams to achieve what he believed would be a better balance in skill sets and experience on each shifts. Insp Speakman told Sergeant Marchant she was happy with his proposal.

123. On 13 January 2021 Sergeant Marchant emailed Ms Clynch in HR asking how much notice he would need to give the officers involved before implementing the proposed shift changes. He followed this up with a telephone call and Ms Clynch told him that he would need to give 28 days' notice before he could implement a shift change.

124. Sergeant Marchant then spoke with the trainers in the DSU to seek their views on his proposed changes. The trainers did not provide any input as to who to put on which teams. They agreed with the proposal to make changes. Sergeant Marchant did not consult with any of the officers in the DSU other than the trainers.

125. On 20 January 2021 Sergeant Marchant sent an email to all team members affected by the shift changes, including the claimant. In that email he referred to the fact that he had been reviewing the balance of skills and experience across the current teams with Insp Speakman. He went on to say 'after much consideration we have come to the new teams, set out below. This now balances experience and skill set which we all feel the benefit as a unit moving forward …' He went on to say he was giving 28 days' notice of the shift changes and that therefore the first set of shifts would commence on Monday 22 February 2021. He went on to set out the makeup of the new shifts. The changed shifts meant the claimant moving from team A to team C. PC Sutcliffe was also moving to team C.

126. Ms Hogben submits that it is inconceivable that Sergeant Marchant did not know of the claimant's previous claims that he made in 2015 and 2018 and that the claimant had given evidence in Mr Saddique's claim in 2015 and rumours that were said to have circulated in 2018/2019 about the reason for PC Sutcliffe's move out of C relief. We do not find that inconceivable at all given that Sergeant Marchant had not worked at Wynyard until he took up this post at the end of 2020. We accept his evidence that when he made these relief changes in 2021 he did not know about either of the claimant's previous Tribunal claims or that the claimant had given evidence in Mr Saddique's claim. Nor did he know that Mr Sutcliffe had previously moved out of C relief to A relief or that Mr Sutcliffe may have been subjected to race related comments on a social trip before that move. We accept that Sergeant Marchant had no reason to think that putting the claimant on C relief might create any problems for the claimant or that the claimant might be unhappy being placed on C relief.

127. The claimant suggested during cross examination that Sergeant Marchant conspired with Chief Inspector Pitt and Mr Moir to move him out of A relief because he was getting on too well on A relief. There was no evidence that

Sergeant Marchant even discussed his proposed shift changes with either CI Pitt or Mr Moir before making his decision. We accept CI Pitt's evidence that he was not working in the DSU at this time and was not involved in this decision in any way.

C relief WhatsApp group

128. When the shift changes took effect in the DSU in late February 2021, the claimant was working out of Hartlepool in an acting sergeant role. The claimant returned to the DSU from his acting sergeant's post at Hartlepool on 20 April 2021.

129. One of the claimant's complaints is that the respondent excluded him from C relief's WhatsApp group.

130. PC Sewell gave evidence to this Tribunal that shortly after the claimant joined C shift the claimant approached him to ask whether there was a private WhatsApp group for the shift and that he replied that there was. Mr Sewell said he could not recall when this conversation took place but that he thought it was some time shortly after February 2021. Before the shift changes Mr Sewell had been on C shift. As part of the shift changes he was moved to A shift.

131. The claimant's evidence is that when he started working on C relief he was told by PC Morris and PC Kindon that there was no WhatsApp group for the shift. The claimant did not say in his evidence in chief that he had asked anyone on C relief to add him to the WhatsApp group. In cross-examination, however, the claimant said for the first time that he had asked PC Morris and PC Kindon to join the WhatsApp group and it was in response to this that they said there was no WhatsApp group. On cross-examination the claimant also said he had raised his exclusion from the WhatsApp group with Sergeant Marchant and Insp Speakman. However, he did not say that in his witness statement. Although he says he told them he was unhappy he did not say in his witness statement that he told them he had been excluded from the WhatsApp group or that he felt isolated. Nor did he say in a lengthy written grievance he subsequently raised that he had been excluded from a WhatsApp group.

132. Looking at the evidence in the round, we are not persuaded by the claimant that it is more likely than not that he did ask PC Morris or PC Kindon or anyone else to join a WhatsApp group for C relief. Furthermore, there is no evidence before us as to the identity of any administrator of the WhatsApp group that PC Sewell referred to and who, therefore, might have been able to add the claimant to the group. Indeed, there is no evidence before us that anyone with administration rights was still part of C relief at the time the claimant started work on the shift in April 2021. We do not consider it more likely than not that anyone decided to exclude the claimant from a WhatsApp group for C relief.

RPU vacancy

133. In August 2020 Insp Bell joined Cleveland Police as Inspector of Firearms and Traffic Policing. Insp Bell joined the respondent's force from Northumbria Police, where he had worked for 21 years, first as a PC and then as a sergeant. Insp Bell had no line management responsibilities for the claimant but worked from the same specialist base as him at Wynyard.

134. When Inspector Bell joined there were only two road police sergeants. He believed that was not enough. He put this to the executive and persuaded them that two additional sergeants should be appointed. The Assistant Chief

Constable decided at the time that only substantive sergeants would be able to apply. Inspector Bell was made aware of that.

135. In late 2020 a vacancy arose in the RPU for an acting sergeant for a period of a couple of weeks. Inspector Bell allocated that role to a PC who was working in the RPU and whom Inspector Bell knew was seeking promotion to sergeant. That PC had current up to date knowledge of road policing given that he worked in the department. Inspector Bell did not consider offering the opportunity to the claimant or anybody else from outside the RPU. We accept Mr Bell's evidence that it is normal, when appointing such a role, to draw from the pool of individuals currently in the department in which the vacancy arises. Mr Bell would not, in any event, have had the authority to offer such an opportunity to someone from outside his department without the individual being released from their own department (the DSU in the claimant's case).

136. Shortly afterwards, again in late 2020, the claimant heard that one or more sergeant positions were going to become available in the RPU. The claimant, who had passed his sergeant's exams in 2020, asked Inspector Bell about the role. Inspector Bell told the claimant that he would not be able to apply for it as the position was going to be open to substantive sergeants only. That reflected Inspector Bell's understanding at the time.

137. The claimant also asked Inspector Bell if there were any acting sergeant opportunities in RPU. Inspector Bell told the claimant there were none available. We accept Mr Bell's evidence that at the time the claimant asked this question there were no acting roles available.

138. After speaking with Inspector Bell about the forthcoming sergeant opportunity, the claimant asked Insp Speakman about it. She, in turn, spoke to Inspector Bell who told her the same as he had told the claimant ie that it was for substantive sergeants only. She told the claimant that is what she had been told.

139. We accept that Inspector Bell did not know anybody from Cleveland Police before he joined the Force and that nobody told him about the claimant's Employment Tribunal claims or the fact that he had given evidence in Mr Saddique's claim. We find that, at the time of these conversations, Inspector Bell knew nothing of the claimant's previous Employment Tribunal claims or the fact that the claimant had given evidence in Mr Saddique's Tribunal claim.

140. Subsequently Inspector Bell was told that the position had changed and that a wider range of individuals would be permitted to apply. Inspector Bell was not involved in the discussions that led to that change in approach.

141. In January 2021 the sergeant's post in the road policing team was advertised. The advert did not say the post was only open to substantive sergeants. Rather it said that it was open 'on transfer and on promotion'.

142. The claimant applied for the role. Inspector Bell marked the claimant's application form and shortlisted him for interview. Although the application form was anonymised, Inspector Bell knew that it was the claimant's application based on the information the claimant had put on the form.

143. A number of other individuals were shortlisted and interviews were to take place on the 3, 5 and 8 March. The claimant was told that his interview would be at 12:45 on 5 March 2021. It is more likely than not that the interview times were

fixed by HR rather than anybody on the interview panel and we find that was the case.

144. The claimant's mentor, DCI Snaith, gave the claimant some advice as to how to prepare for his interview and suggested the claimant contact a sergeant who had worked in the road department and who might be able to help the claimant.

145. Whoever was successful in being appointed to the sergeant's role would be reporting to Inspector Bell and so Chief Inspector Theaker asked him to be on the interview panel. Ms Wilson was soon to be joining the RPU as Chief Inspector. CI Theaker asked her to be on the interview panel too. CI Theaker asked Mr Maratty, head of armed policing, to chair the interview panel.

146. By this time, Ms Dack was a Temporary Inspector. CI Theaker asked T/Insp Dack if she would be the independent member on the interview panel. An independent panel member's role is to ensure the process is being carried out fairly and consistently and that every candidate treated equally in the interviewing process. Independent panel members can participate in the panel's discussions about candidates and score them against the relevant criteria; however, any score is not taken into account when panel members scores are tallied. Interviewees can ask for independent panel members to leave the interview if they wish.

147. T/Insp Dack agreed to be the independent panel member. At that time T/Insp Dack did not know the claimant was one of the shortlisted candidates; she did not find out until the day of the interviews who the interviewees were.

148. On 5 March 2021, when T/Insp Dack became aware that the claimant was one of the interviewees, she told the other panel members that the claimant had previously made allegations against her. There then followed a conversation about this matter and in particular whether or not T/Insp Dack should step down from the position as independent member or recuse herself. During that conversation T/Insp Dack confirmed that the complaint had concerned matters from many years previously and that she had not been subjected to any sanction as a result of the complaint. None of the panel members suggested T/Insp Dack should step down from the panel. Inspector Bell considered it a matter for Mr Maratty as chair of the panel. Mr Maratty said he did not see it as an issue. T/Insp Dack remained as an independent member of the panel.

149. At some point during the morning of 5 March 2021 the interview panel discussed whether to ask the claimant to come in early for his interview. Subsequently the claimant received a telephone call from somebody in HR. The claimant said in evidence he thought this was at approximately 10am. A disputed issue in this case is whether the person from HR 'told' the claimant to attend early for his interview (as the claimant alleges) or merely asked if he would do so (as the respondent alleges). The claimant's evidence to the Tribunal in his witness statement was that he was 'ordered' to come in for interview an hour earlier than had been scheduled. On cross-examination, however, the claimant said he could not recall exactly what had been said in the conversation. The claimant suggested on cross-examination that even if he was merely asked to attend earlier he had no real choice than to agree because, in effect, he was obliged to do what HR asked of him. We did not find him credible on this point. We note that within a few hours of his interview ending the claimant emailed a Police Federation representative, Mr Teeley, setting out concerns he had about the interview. In that email the claimant said 'I was contacted today earlier by HR asking if I could come one hour early. (Not that I wasn't under enough pressure

anyway). I agreed and attended early as requested.' In an email the claimant sent to Ms Clynch raising a grievance on 8 March 2021 the claimant said 'on the date of the interview, I was contacted and asked to come in one hour early. I made representation about how it was extremely short notice but I was still told to come. I agreed as potentially I didn't want it to look bad on my part for the role.'

150. We consider that the account the claimant gave in his email to Mr Teeley just a matter of hours after the interview is more likely to be an accurate record of what HR said to the claimant when they called him. We find that the caller from HR did not tell the claimant to attend for interview early and nor did anyone else. The claimant was merely asked if he would attend earlier. He could have declined to do so but he did not. Instead he agreed to attend earlier.

151. The claimant performed poorly at interview. The interview panel members noticed he appeared nervous. We accept the evidence of the respondent's witnesses that they did not believe at the time that the claimant appeared any more nervous than they would have expected for somebody being interviewed for a sergeant's role: they did not perceive that there was anything out of the ordinary about the claimant's behaviour. Nor, we find, was the fact that the claimant performed poorly something that led the members of the panel to think that the claimant's performance had been affected by the presence of T/Insp Dack. We accept the evidence of the respondent's witnesses that the claimant performed badly on things that they would have expected him to have performed better on if he had prepared well for the interview, especially in relation to a presentation he gave. We find that the panel believed the claimant had not prepared as well as he should have done.

152. The claimant knew he had not performed well. A few hours after his interview he emailed Mr Teeley seeking his help raising a grievance. The claimant told Mr Teeley that it was T/Insp Dack's presence on the interview panel that led to him performing poorly. Around about this time the claimant also told Sergeant Marchant that he felt the interview had not gone well, saying he could not concentrate due to the presence of T/Insp Dack.

Claimant's grievances

153. On Monday 8 March 2021 the claimant sent an email to Ms Clynch saying he wanted to raise a grievance about the promotion board. In relation to T/Insp Dack's presence on the promotion board he said:

> *'I cannot even describe how I felt other than sick. I was now stuck and just had to answer whatever I could to get out. I answered everything but my world collapsed. I couldn't focus, couldn't concentrate and physically couldn't even engage my brain with my research. I felt disgusted at the force for putting me in this position yet again. Everything was brought back and even made me understand why as BAME staff we are underrepresented and why we need to work harder compared to our white colleagues.*
>
> *I accept that I could have bumped into Leigh Dack at any time but I would make every effort possible not to see her or have any contact with her. On this occasion I believe the force has had every opportunity to prepare and despite this the force has put me in a position of weakness and embarrassment.*

To give you a typical example of how I perceive it or compare to is:

'I would never put a victim of crime in the same room as the subject and then allow the subject to ask him/her questions'. This is exactly how I felt and humiliated by Cleveland Police.

I left the interview going home and couldn't even speak to my father who is a retired Cleveland Police officer. I felt sick and my mental health was severely affected. Numerous colleagues contacted me including one who I informed that I was interviewed by Leigh DACK. Their response was 'MATE IM SO SORRY'. This is a colleague who was not subject to my employment tribunal, not subject to knowing anything about the interview but simply witnessed how I was treated by Leigh DACK on the shift.

To continue how I felt, I couldn't eat for the rest of the day and even had to make contact with my doctor as an emergency when I requested stronger medication to assist me with stress. I then had a sleepless night and this has continued...

Even explaining its extremely difficult remembering names and who else was there as a result of what occurred.

Is it also fair that Leigh Dack is now assessing me, makes a decision on how I performed and asking me questions?

I feel this has been done intentionally by the force my reasons being this has been a long drawn out process with planning and foresight. I am even more saddened that I am trying to move on with my life and career and once again I am blocked within my career by Cleveland Police due to no fault of my own.

I would like this investigating and would like to raise a formal grievance. If you would like me to alternatively raise it through the formal grievance procedure then I will.'

154. On the day she received that email from the claimant Ms Clynch forwarded the claimant's email to Ms Lindberg who was head of HR, for her to review it. That was standard procedure when grievances were received. That same day Ms Clynch also contacted the force's legal department. In addition she spoke to the claimant and sent him an email which began:

'Thank you for your email, I'm sorry to hear of the matters that have caused you concern over the recent days. As per our conversation just now I have rung Michelle Phillips in legal and with your agreement I am going to share your email with her.

Apologies it might take a little time to work out next steps and to determine if you need to fill in a formal grievance form, I will come back to your tomorrow no matter what, with as much of an update as I can. Please if there is anything that either myself or well-being can do let us know.'

155. The claimant did not say in his email of 8 March or in response to Ms Clynch's email that he thought the interview should be re-run.

156. For her part, Ms Clynch was surprised to learn that T/Insp Dack had not recused herself based on what the claimant had told her in his grievance about the previous Tribunal claim.

157. The next day, Tuesday 9 March, Ms Clynch discussed the claimant's grievance with Ms Lindberg. Ms Clynch also forwarded the claimant's grievance to Ms Swift, HR director. In addition, she made enquiries with Mr Young in the recruitment team that had been in charge of organising the interviews. By the Friday of that week Ms Clynch had not been in touch with the claimant further about his grievance.

158. Ms Clynch was on leave during the following week (week commencing 15 March) and also during week commencing 22 March and week commencing 29 March. That is apparent from the email at page 730 of the bundle of documents.

159. On 9 March 2021, Chief Inspector Wilson phoned the claimant and told him that he had been unsuccessful in the recruitment exercise. The claimant told Insp Speakman.

160. On Monday 15 March 2021 CI Wilson emailed the claimant offering to meet him with Mr Maratty to give feedback about his interview performance. We accept her evidence that she sent an email in the same terms to all unsuccessful candidates. She offered the claimant a choice of three dates to meet to be given feedback (19 March, 7 April and 9 April) and said that they would try their best to accommodate the claimant if he could not make them.

161. The claimant replied to CI Wilson's email on 16 March asking if he could have written feedback. He said in his email that he could 'wait longer than the dates provided'. It is apparent that he was suggesting he was content to wait until after 9 April for the feedback. That evening CI Wilson responded by email saying she could not see any reason why written feedback could not be provided and she had asked HR how they would go about providing it and what the format should be. She told the claimant that she would complete the feedback as soon as possible after getting a response from HR and that the claimant should still have it within the time-frame she had given for meeting him to give feedback. She also said she would be happy to discuss the feedback with the claimant if he wanted to do so.

162. Seven days later, on 23 March 2021, the claimant met with Insp Speakman. Insp Speakman then spoke with Mr Moir, head of specialist support, and asked him to get in touch with HR to chase the 'feedback.'

163. That day, 23 March, Mr Moir emailed Ms Clynch. He said

> *'I write on behalf of one of my team in the form of PC Rashad. You may recall that we spoke about his negative experience at the recent interview for RPU sergeant/promotion in which T/DI Dack was involved? To date PC Rashad has, I understand, received no feedback and at his one to one with Inspector Speakman today he has requested that we escalate same, hence this correspondence. Can I therefore request that PC Rashad receives contact/feedback and soonest regarding his board etc.'*

164. We infer from this email that both Insp Speakman and Mr Moir thought that the claimant had been asking to 'escalate' his request for feedback from the interview panel. Mr Moir copied the claimant in on that email. The claimant then emailed Mr Moir in response saying:

> *'Sorry boss.*
>
> *I have had contact informing me they have received my grievance but nothing more than that. In regards to the feedback which I don't feel will be a true reflection anyway, I have requested in writing which I am still waiting to here back.'*

165. In response to Mr Moir's email Ms Clynch got in touch with Mr Moir and told him the legal team was looking at it. She forwarded Mr Moir's email to Mr Puech in the legal department and told Insp Speakman that was what she had done. Then, on 24 March, Insp Speakman emailed the claimant saying:

> *'HR have updated to say the case is with the legal department, …. [Ms Clynch] has emailed him to get in touch with you, she believes the solicitor has a couple of ETs ongoing which may be the cause of the delay. I reiterated that you require an update and what the plans/proposals are and some timescales regarding what is happening and when. [Ms Clynch] was on annual leave last week and will be next week so if we need to recontact her it will be after next week.'*

166. Also on 24 March Mr Puech wrote to Ms Clynch asking for further details of the concern raised by the claimant.

167. On 7 April the claimant received written feedback from the promotion board.

168. Ms Clynch had returned from annual leave on Tuesday 6 April 2021. On 15 April Ms Clynch emailed the claimant saying 'I hope that you are okay, a quick line has legal come back to you??'

169. The following day, Friday 16 April, Mr Teeley, the claimant's police federation rep, spoke to Chief Constable Lewis about the claimant's grievance. Subsequently, on the same day, the claimant emailed Ms Clynch telling her he had had no update on his complaint but that he was aware that Mr Teeley had spoken to the chief constable about it that day. The claimant said 'he seems very positive'. Upon reading this email, therefore, Ms Clynch knew the Chief Constable had become involved in some way with the claimant's grievance.

170. On Monday 19 April at 9:30pm Ms Clynch emailed the claimant thanking him for his email and saying she would 'do a chase around tomorrow'. She also, that day, replied to Mr Puech's email asking for further information about the claimant's complaint. This was 13 calendar days after her return from annual leave.

171. On 22 April 2021 the claimant contacted ACAS for early conciliation. ACAS issued an early conciliation certificate by email the following day, 23 April.

172. Following Mr Teeley's meeting with CC Lewis, CC Lewis asked his personal assistant to arrange a meeting between the claimant, Mr Teeley and temporary Assistant Chief Constable Theaker. That meeting was arranged for 7 May 2021.

173. T/ACC Theaker had been due to attend this Tribunal hearing to give evidence and had prepared a witness statement. However, for reasons of ill health she did not attend. We accept the evidence in her witness statement that, ahead of the meeting, she thought the meeting had been arranged to discuss the claimant's recent interview, and particularly T/Insp Dack's presence as an independent panel member on the promotion board. With that in mind she asked CI Wilson to provide her with the claimant's application for the sergeant's role as well as information about the paper sift process. Although it appears that T/ACC Theaker

had not received this information by the time of the meeting, she understood CI Wilson was liaising with HR to obtain it.

174. On 1 May Ms Clynch emailed Mr Puech again sending him a more detailed overview of the claimant's complaint. At the time Ms Clynch was not aware of the meeting that was to take place on 7 May although, as noted above, she was aware that Mr Teeley had spoken to the chief constable and the chief constable was now involved in some way.

175. We find that, between the claimant raising his grievance by email on 8 March 2021, and early May, when she became aware that T/ACC Theaker was speaking to the claimant about the grievance, Ms Clynch dealt with the grievance about Insp Dack in a manner that was both appropriate and reasonably timely, bearing in mind she was on holiday for part of this time. She was not, we find, dragging her feet. We bear in mind that the ACAS Code on discipline and grievances says employers should arrange for a formal meeting to be held without unreasonable delay when a formal grievance is received. In this case, however, the circumstances were complicated by the fact that the grievance referred to matters relating to previous claims and in respect of which Ms Clynch was seeking legal advice because she was aware that the claimant and the respondent had resolved the earlier proceedings on agreed terms but was not privy to those terms. She had previously been told that matters such as this should be referred to the legal team and she acted in accordance with those instructions.

176. On 7 May 2021 the meeting between the claimant, Mr Teeley and ACC Theaker took place. Before the meeting the claimant had prepared a three-page note setting out a number of complaints he wished to make. They went far beyond complaints about the interview panel. The claimant handed over his three-page note at this meeting. At that point T/ACC Theaker realised that the claimant did not want to just discuss the sergeant promotion.

177. The matters raised by the claimant in this document included the following:

- The claimant alleged that he had been harassed and victimised since returning to work after his previous Employment Tribunal claim. He alleged that for 'reasonable requests' he had either had to go to the police federation or raise a complaint.
- The claimant complained that no officer involved in his previous Employment Tribunal had been subjected to any disciplinary action or received any training.
- He alleged that officers had been 'promoted on the back of my previous Employment Tribunals as a direct result to humiliate me.'
- He alleged that one of those officers, who had by this time retired, had harassed him in unspecified ways.
- He alleged that Sergeant Harker, who by now had retired, had carried out a PNC check on his personal vehicle without a legitimate reason while it was parked up at the staff car park at Wynyard.
- He alleged that Sergeant Harker had searched his locker and replaced the locks for 'no apparent reason and no explanation.'
- He alleged that Sergeant Harker had been moved on to the dog section without any suitability assessment or interview and had been 'carefully

selected' by ACC Adrian Roberts (who by this time had retired) 'knowing he had targeted me before'.

- He alleged that another PC, who by this time had also retired, had moved off the dog section due to the claimant being posted to the dog section and that 'people were made to think it was my fault.'
- He alleged that he had been harassed by staff and officers at Durham Police as a result of a sergeant (who was now retired) having made 'malicious comments' about him. One of the officers at Durham Police about whom the claimant was complaining had also by this time retired.
- The claimant complained about being allocated a spaniel breed dog which he had allergies to and Sergeant Harker taking the dog from him without explanation or handover.
- He alleged that Sergeant Harker had allowed a spaniel to stay in the office despite knowing the claimant had allergies to it.
- The claimant criticised Sergeant Harker for decisions he made with regard to allocation of other dogs. Indeed, the bulk of the points the claimant made in his document concerned those decisions.
- The claimant also complained about not being chosen to go on a particular course.
- The claimant complained about being 'informed third hand' whilst on leave that his shifts were changing in January 2021. He alleged that he was being put on a shift where 'a previous racist complaint was made against the shift for racism'. He said he believed every other officer was consulted before the move by Sergeant Marchant but he was not.
- The claimant also made a complaint about another PC being offered acting experience rather than him and being told he could not apply for the substantive sergeant post in the recruitment exercise that was then forthcoming.
- The claimant alleged in this grievance in relation to the interview for the sergeant's post that he was called on the day of the interview and 'told to come in early'.
- The claimant also referred to T/Insp Dack being on the interview board. In this regard the claimant said: *'I attended my interview and on the board was A/INS DACK who was named on my previous employment tribunal for making racist comments to me, targeting and victimising me. This ultimately severely affected my mental health and brought up everything from the past about how she had treated me. The organisation was already aware of my treatment by this officer.'* The claimant did not expressly allege in this document that T/Insp Dack had deliberately chosen not to recuse herself so that she could influence the panel against him, or that T/Insp Dack had been included on the panel because of his previous claims or because of his race.
- The claimant alleged that his complaint about the interview had not been taken seriously and said 'I haven't been kept up to date with anything.'
- The claimant complained about Sergeant Marchant telling him something about a drugs course.

178. At the end of the document the claimant wrote:

> *'The above has had a severe impact on my mental health and wellbeing where things are only getting worse and I am now receiving anti-depressants and recently had to change due to the worsening treatment. It is also having an effect on my sleep where I am severely struggling.'*

179. The claimant did not suggest in this document that he believed he should be re-interviewed for one of the sergeant's vacancies. It was now two months since interviews had taken place. There was no suggestion before us that the posts were not filled as a result of the March interviews. It was put to the claimant on cross examination that he had not asked for interviews to be rerun. His response was that he was waiting for the grievance process to be completed. We find that at no time before the claimant started these proceedings did he or Mr Teeley on his behalf ask for the interviews to be rerun.

180. In Complaint 10 the claimant alleges that the respondent victimised him and harassed or directly discriminated against him by failing to rerun the Sergeant's interview. There is no evidence that it is the usual practice of the respondent to rerun interviews where an unsuccessful candidate makes a complaint about the interview process and there would have been only a narrow window within which it would have been feasible to rerun interviews, given the potential impact on other candidates. Ms Hogben did not put it to Ms Clynch that she or anyone else deliberately decided not to rerun the interview. Nor did she put it to Ms Clynch that the interview was not rerun for a reason connected with the claimant's colour or national origins or his previous tribunal claims or involvement in Mr Saddique's claim. We find there was no conscious decision by anyone not to rerun the interviews.

181. T/ACC Theaker, Mr Teeley and the claimant agreed during the 7 May meeting that the following steps would be taken:

    (1) Mr Teeley would contact DSE and give them formal notice of the claimant's complaints.

    (2) T/ACC Theaker would identify a suitable welfare officer for the claimant. She suggested CI Wilson and Mr Teeley said he would confirm whether or not they believed she was a suitable person by the following Monday.

    (3) They agreed that T/ACC Theaker was to make executive members of the Cleveland police team aware of the claimant's unsuccessful interview and tell them of the other actions that had been agreed.

182. Mr Teeley subsequently emailed T/ACC Theaker to confirm the claimant was happy to have CI Wilson as his point of contact.

183. On 7 May 2021 there was an exchange of emails between CI Wilson and Ms Moffatt in HR. CI Wilson asked that the claimant's application for the sergeant's post and the feedback he'd been given be sent to ACC Theaker. By now Ms Clynch was aware that T/ACC Theaker was involved with the grievance raised by the claimant about T/Insp Dack's presence on the interview panel.

184. On 10 May 2021 T/ACC Theaker sent an email to Mr Teeley and Chief Superintendent Waugh. Chief Supt Waugh was the superintendent in DSE at the time. In that email T/ACC Theaker told CS Waugh that she understood Mr Teeley would contact DSE about issues raised by the claimant. She also said she would allocate CI Wilson as welfare officer and asked that CI Wilson be included in

briefings with DSE so that the claimant would not have to keep repeating himself. On 10 May CS Waugh responded to T/ACC Theaker's email confirming that he would ensure CI Wilson was included. He also said to Mr Teeley 'I will allocate someone to get in touch to arrange the best time and date to speak to [the claimant]'.

185. T/ACC Theaker then forwarded that email to Ms Clynch saying 'I haven't had chance to brief you yet re the below but will try and catch you tomorrow … below sent just so you are sighted in case you found out before I spoke to you.'

186. On or around 11 May T/ACC Theaker spoke to Ms Clynch. Ms Clynch's evidence to us was that T/ACC Theaker told her that, having spoken to the federation about the promotion grievance, the matter had been dealt with and was now closed. This account accords with what Ms Clynch said in an email to a Mr Bradley on 3 August 2021. We accept Ms Clynch's evidence and find that on or around 11 May Ms Clynch had a conversation with T/ACC Theaker and, as a result of what was said during that conversation, Ms Clynch believed the grievance about Insp Dack had been dealt with and there was nothing more for her to do.

187. Following the meeting on 7 May the claimant and/or Mr Teeley were put in touch with DC McLoughlin who was a Detective Constable in the DSE. DC McLoughlin has since retired from the force.

188. There followed a meeting on 19 May 2021 between the claimant, Mr Teeley, DC McLoughlin and Ms Houchen (also of DSE) to discuss the complaints that the claimant had made to ACC Theaker. DC McLoughlin and Ms Houchen were given the same three page note that the claimant had given T/ACC Theaker in the meeting. Those present then had a discussion about the matters raised in that note. This was quite a long discussion. They included the matters in relation to the sergeant's interview and T/Insp Dack's presence on the interview panel.

189. On 10 June DC McLoughlin emailed the claimant to follow up on what was discussed at the meeting on 19 May 2021. He explained that he had, so far, made contact with Durham DSE to make sure they were not duplicating any matters that were already being investigated there. He told the claimant he was half way through the document the claimant had produced and the notes he himself had taken and the transcript of the interview which he now had. He said 'once the precis is complete I will forward to the AA for assessment.' He then asked the claimant for some further information. He ended the email saying 'please don't try to handle things on your own. We are here to help. I will keep you updated as I progress and this may result in an ABE interview at some point as explained when we met. If there is anything I need to know I will drop you a line and copy [Mr Teeley] in.'

Conduct of dispatcher

190. On 4 June 2021 a member of the public made a 999 call to the police. The caller disconnected and was called back by a call handler. It was difficult for the call handler to get a clear picture of what had prompted the caller to dial 999 because the caller was simultaneously talking and arguing with another person. During that call the caller said he had been 'grabbed' by people he initially described as 'p*kis' before then saying they were 'Asian lads'. The call handler inputted the details of the call on to the system whilst handling the call. That was picked up by a police dispatcher. The dispatcher radioed units to try to get an officer to respond. In doing so the dispatcher said '*Caller has said he's been grabbed by*

*all these p*kis…*'. The dispatcher did not receive an immediate response and so made enquiries to ascertain who could respond to the call. Having identified someone who may be able to respond the dispatcher confirmed what she had been told about the reason for the call. In doing so she said: *'He's been assaulted by who he describes as erm all these p*kis in a black Jeep…*'

191. The claimant heard the dispatcher's call go out over the radio.

192. After finishing his shift the claimant emailed Inspector Khan. He said:

> *'I send you this email this late and over an hour late from duty to how I feel as I couldn't send it without going off. The IP contacts police refers to the assailants as 'PAKIS'. Whilst listening, on two occasions the comms operator has used this term: I fully appreciate that she hasn't said it herself but to just repeat the term twice I found was wrong. Furthermore you will see the job closed off with no advice given with reference to the comments by the IP.*
>
> *How do you honestly move on from our experience?*
>
> *I don't know if I'm overthinking it but just didn't sit comfortable with me.'*

193. The evidence of the claimant to this Tribunal in his witness statement was that he 'felt sickened and heartbroken' by what he heard over the radio. He said:

> *'I wasn't just disgusted at what was said but also the fact it was over the open air radio. I don't wear an earpiece because I suffer from ear infections and numerous officers don't wear ear pieces either. I attend numerous addresses where my radio can be heard. I have in the past been sent to communities who have problems with Cleveland police for being racist in an effort to try and repair the bridges. If they heard those comments over the radio, it would have ruined all the good work that Jason Bowes and I had achieved in restoring some faith in the organisation. I would have had no excuse or justification for those words being used over the radio. I also thought that if I had been with my family when those words were heard over the radio, they would have wanted me to resign straight away.*

194. The claimant did not suggest that anybody else was in fact in earshot of his radio when this particular call went out and we infer that nobody was.

195. On 7 June 2021 Inspector Khan replied to the claimant's email saying 'I agree'. He copied Mr Singh to this email. Mr Singh is an Equality and Diversity Officer in the Force. Mr Singh then forwarded the email chain to T/Supt Galloway who was temporary superintendent in the control room at the time. Mr Singh asked her if they could have a conversation about the email. That same day T/Supt Galloway forwarded the email chain to Mr Gray and CI Bainbridge. She asked Mr Gray to send the recording of the call to herself and to CI Bainbridge and asked CI Bainbridge in turn to review the recording and identify the call handler. She told them she had asked Mr Singh to call her the following day.

196. The next day, 8 June 2021, Mr Gray replied to that email attaching recordings of the dispatcher's radio transmission and the calls between the original caller and the call taker. CI Bainbridge then listened to the recordings and on that day, 8 June, he sent an email to Mr Singh and Superintendent Galloway. In his email he said this:

> *'I have reviewed these calls where the following chronology takes place –*

- *It is the second call from the IP where he uses this term to describe his attackers.*
- *The dispatcher is trying to get the call out and explains verbatim the description that the IP used.*
- *The dispatcher continues to try and get the call out following the escalation policy. That is why it was said twice, and when she does get a unit explains to them that the male had said and uses the words 'what he describes as' and then uses the term again.*

Having listened to the calls I do not believe there was any intention from the dispatcher to cause any offence or upset. She was simply telling the unit that was attending verbatim what this male had said. This male was very irate and under the influence which could have led to him being arrested himself. I do not see that the dispatcher has done anything wrong except relay the exact information that has been passed to them. Call takers and dispatchers sometimes hear horrendous things on calls that have to be passed to others and we train our dispatchers to use accuracy, brevity and clarity.

Please let me know if you need anything else.'

197. The claimant's case is that 'on 8 June 2021 CI Bainbridge concluded that the dispatcher had not done anything wrong in relation to the above incident.' The claimant relies on what CI Bainbridge said in this email of that date. In that email, however, CI Bainbridge did not in fact say that the dispatcher had not done anything wrong. He said the dispatcher had not done anything wrong 'except relay the exact information that has been passed to them'. It is implicit from that sentence that CI Bainbridge was of the view that the dispatcher had done something 'wrong' by relaying the exact information that had been passed to them.

198. Later that day Mr Singh replied to CI Bainbridge by email asking if he could listen to the call himself. Mr Singh then forwarded that email chain to the claimant and Inspector Khan.

199. CI Bainbridge, Mr Singh and Superintendent Galloway then listened to the calls together. Subsequently, on 10 June 2021, CI Bainbridge sent an email to the Force Control Room Trainer and the Digital Learning Trainer. In that email DI Bainbridge said:

> *'We had a job in the other day where there were racial comments made which were recorded on the incident and then the dispatcher used those same comments across the airwaves. This could have been written and communicated in a different manner which offended some officers, and had the potential to offend members of the public hearing it over the airwaves.*
>
> *So with this in mind, I have discussed this with [Mr Singh] who I have copied in who is from the Equality, Diversity and Inclusion Team. He has kindly agreed to help us with a guest speaker input from his department explaining what they do and the funnelling down on to the use of and recordings of communication. Could you please link in with [Mr Singh] and arrange for these inputs in this cohort and future ones.'*

200. We find that, after discussing matters and listening to the call with Mr Singh, CI Bainbridge was of the view that the dispatcher could have communicated in a different manner. On cross examination, CI Bainbridge accepted that the dispatcher could have used the word 'Asian' to describe the alleged assailants, although he was not sure whether the call handler had mentioned in their report on the system that the caller had himself 'corrected' himself and used that term. It was clear that he did not consider that there had been any misconduct on the part of the dispatcher, however.

201. On 11 June 2021 the claimant emailed Mr Singh copying in Insp Khan. When he sent this email the claimant was unaware of CI Bainbridge's email of 10 June 2021. The claimant said in this email he was 'saddened' by CI Bainbridge's response of 8 June and 'would like to escalate this further.' The claimant also said he wanted the call that had been put out recorded as 'a RMI' which we infer means 'racially motivated incident'. The claimant said in his email 'I physically cannot trust the job and don't feel safe at work and this is a prime example of why we are institutionally racist when you have the likes of our senior officers supporting staff and in my view encouraging this unprofessional racist behaviour.'

202. On 13 June 2021 Mr Singh forwarded to the claimant the email CI Bainbridge had sent to the Force Control Room Trainer and the Digital Learning Trainer on 10 June and said he would call the claimant the following Monday.

203. The evidence of Insp Khan to this Tribunal is that he spoke to Mr Singh at this point and Mr Singh said he was going to take matters further and that he was 'disgusted'. Mr Singh's evidence was that this was not the case. We prefer the evidence of Mr Singh, whom we found to be a measured and compelling witness.

204. In July or August 2021 Mr Singh and other EDI officers developed some training for staff in the dispatch unit. The training was delivered to the staff in the dispatch unit over a 12 month period.

205. CI Bainbridge did not have the training. He did not consider undertaking the training himself and neither Supt Galloway nor Mr Singh suggested he should. Nor did the claimant suggest CI Bainbridge should undertake the training. It was only when he particularised his tribunal claim that the claimant alleged that failing to require CI Bainbridge to undertake training was race related harassment of him, or less favourable treatment of him because of race, and victimisation of him because of his previous tribunal claims or the fact that he had given evidence in a colleague's tribunal claim.

The claimant's grievances cont.

206. On 24 June 2021 there was an interaction between Ms Clynch and Mr Puech of legal about the claimant's promotion grievance. We infer from subsequent emails sent from Ms Clynch that she told him she was not dealing with it and that others either were dealing or had dealt with it.

207. On 24 June there was a meeting between DCI Murphy-King (head of the CCU), Mr Puech, DC McLoughlin, DS Heron and Mr Arundale. By this time DC McLoughlin had put together a document outlining the matters he had discussed with the claimant. The matters referred to in the document were discussed at this meeting. Later that day DCI Murphy-King sent an email to those who had been present at the meeting. He referred to the matter as a 'complex case'. He described the claimant as a whistleblower and said he should be managed in accordance with the Force's whistleblowing policy. DI Agar was copied in on that

email. We accept his evidence that he did not read the email at the time and that he was copied in on a lot of correspondence at the time in his role as Appropriate Authority.

208. On 29 July 2021 a meeting took place between Mr Bradley of HR, Mr Puech of legal and someone from DSE. Following that meeting Mr Bradley emailed Ms Clynch. He said in his email:

> *'Brian referred to an email you sent to him June advising that the officer's submitted grievance was not being dealt with as a grievance and that the executive would be dealing with it. Can you provide further details so that I can report back. Things which would assist for example – what is the current status of the grievance? When was it submitted? If it is not being dealt with as a grievance who is dealing with the issues raised? If not a grievance what was the rationale for that? Is the officer aware of what is happening, being kept up to date and notified of rationale for decisions made etc. Anything else you feel may be relevant.'*

209. On 3 August Ms Clynch replied to Mr Bradley's email saying that the claimant had submitted his grievance in an email rather than on a grievance form. She said she would forward to him the various emails so that he could see what was done with the grievance. She went on to say 'Lisa Theaker advised that she had spoken to federation (acting on behalf of Mo) and that all matters had been dealt with and the matter was closed.' She went on to say that the matter had not been 'recorded as a grievance', meaning it had not been entered on the system as a grievance. She ended by asking Mr Bradley if he needed 'all of the emails.'

210. Mr Bradley replied to that email saying he did not need any more emails. He asked, 're the Lisa Theaker bit below – do you know when this took place (even approximately)? Was there a final summary/document produced showing how all matters had been dealt with do you know? Was it the officer who agreed that the matter was now closed?'

211. Ms Clynch replied the same day saying 'early May – the email to Julia from Lisa Theaker is indicative of the timeframe – and will have spoken to her about the same time. I don't know if there was a final summary document, or the nature of the conversation with Mo/federation.'

212. We infer from that email exchange that at this stage Ms Clynch still believed that others had dealt with or were dealing with the claimant's grievance and that she was not being asked to investigate or take forward the grievance herself.

213. In Autumn 2021 certain changes were made to the recruitment process in that candidates were now to be told the names of those on the interview panel in advance and the panel were to be told of the names of the candidates in advance. This change was made as a consequence of the claimant's complaint about T/Insp Dack's presence on the interview panel.

214. We make further findings of fact as to the handling of the claimant's grievance below.

Claimant's grievance about kennel inspection

215. Officers in the DSU unit are supposed to have regular kennel inspections at approximately six month intervals. However, by September 2021 the claimant had not had a kennel inspection for approximately two years. On 14 September Sergeant Marchant had told the claimant he wanted to carry out a kennel

inspection. He had already inspected some kennels belonging to other officers. Later that day, however, Sergeant Marchant told the claimant he had changed his mind and they would do the kennel inspection on another day because it was raining. The following day, 15 September, Sergeant Marchant carried out a kennel inspection at the kennels used by the claimant at his father's house. This happened at approximately 9pm. The next day, 16 September, Sergeant Marchant carried out a further inspection of one of the kennels at the claimant's father's house. He had not been able to see that kennel properly the previous night because it had been dark. Following this inspection Sergeant Marchant told the claimant this kennel was unsuitable and that it was too small for the claimant's dog. The claimant's dog, Mayday, was removed from the claimant.

216. On 20 September 2021 the claimant submitted a grievance to the respondent which included an allegation that he was being victimised and singled out by Sergeant Marchant. The grievance concerned the kennel inspections carried out by Sergeant Marchant on 15 and 16 September 2021.

217. On 21 September 2021 the claimant told CI Pitt that he had put in a grievance about the kennel inspections. He also told CI Pitt he had lodged a 'separate matter' regarding his recent promotion process. From what the claimant said CI Pitt assumed that the claimant may have been alluding to a Tribunal claim.

218. CI Pitt recorded in his day book:

> *'Mo discussed that he had a separate matter lodged [ET?] regarding his recent promotion process which involved ACC Lisa Theaker. He stated that he trusted me and Insp Speakman but felt that Sergeant Marchant was being manipulated by the trainers and consequently was being treated differently than other handlers. He was aware that other handlers were getting kennel checks although it is details of when/how that he alluded to as being different.'*

219. That same day, 21 September 2021, CI Pitt called Sergeant Marchant and told him about the grievance.

220. The next day CI Grainge was appointed grievance manager in relation to the complaint about retired Sgt Marchant. He first saw the claimant about the grievance on 29 September.

Concerns raised about claimant anonymously (incidents/allegations 1 and 2)

221. In 2019 Cleveland Police was placed into special measures and subjected to formal oversight processes involving HM Inspectorate of Constabulary and Fire and Rescue Services, the college of policing and the Home Office. Consequently the Force started putting in place additional measures to prevent and deal with misconduct. Those measures included the introduction of an anonymous reporting system known as 'Break the Silence'. The purpose of this system is to enable officers or staff to anonymously report concerns about police officers or police staff. Individuals are encouraged to report any suspected breaches of the codes of ethics or concerns around integrity, corruption, vulnerability, or misconduct based concerns. The system is intended to be completely anonymous for complainants.

222. On 24 September the claimant moved a private car belonging to him from the private car compound at Wynyard. The car, a Renault Megane, had been in the

compound for some months and had been uninsured. Before he moved the car the claimant had arranged insurance to cover him to drive it to get an MOT.

223. On or before 29 September 2021 an officer or employee of the Force spoke to Mr Moir raising a concern of possible wrong-doing by the claimant. We refer to that individual as XYZ. XYZ spoke to Mr Moir about an occasion when an officer had stopped the claimant while driving and asked about whether his vehicle was insured.

224. On 29 September Mr Moir met with CI Pitt and Insp Speakman. Mr Moir said that XYZ had raised a concern about the claimant being stopped by another officer and the vehicle being uninsured. CI Pitt's opinion was that this was a serious allegation and should be passed to DSE for independent investigation. CI Pitt was made aware of the identity of XYZ at that time and wondered how XYZ had been informed about the alleged incident. CI Pitt expressed a concern at this meeting that one or more persons in the Force had known about this possible issue but had not reported it sooner. CI Pitt asked Mr Moir to ask XYZ to produce a report for DSE that day.

225. Subsequently, at 12:25 that day, Mr Moir spoke to CI Pitt saying XYZ had already sent in a confidential email in relation to the claimant in which XYZ had disclosed the concern about the insurance. Immediately after that conversation, CI Pitt wrote in his day book 'I remain inclined to make contact with DSE ref the earlier disclosure from [Mr Moir] in relation to same to satisfy myself that DSE are aware of same.' CI Pitt believed Mr Moir was somewhat reluctant to pursue the matter raised by XYZ. Therefore, he decided to contact DSE himself. Within half an hour of speaking to Mr Moir, CI Pitt emailed DCI Bonner. DCI Bonner was, at the time, head of the Force's complaints and discipline arm of the Directorate of Standards and Ethics. In one of his earlier Employment Tribunal claims, the claimant had alleged that DCI Bonner and DS Wilson (as she then was) had interrogated him during a meeting.

226. In his email to DCI Bonner CI Pitt said:

> *'I have been made aware of a potential matter in relation to an officer on the Dog Support Unit.*
>
> *In a nutshell as I understand the matter it involves the disclosure that the officer was stopped in their vehicle without insurance and there is an allegation that the officer may have lied to the IRT officer involved in the stop. Apologies I don't have any firm details of dates/times/vehicles/IRT officer.*
>
> *Following a meeting today with Dave Moir I requested that the source of the allegation produce an officer's report for reporting into DSE so that the necessary checks could be made.*
>
> *I understand that the officer has stated that he has already submitted a confidential email in relation to same.*
>
> *Can I therefore ask if this is correct and that it has been picked up by DSE?'*

227. Later that day, Sergeant Marchant came into the office CI Pitt shared with Insp Speakman. CI Pitt thought that Sergeant Marchant seemed agitated. CI Pitt's perception was that Sergeant Marchant was upset about the grievance the claimant had made against him.

228. In his day book CI Pitt made a note in the following terms:

'It is clear to me that PS Marchant is very concerned regarding a pending grievance from MR and we reassured him that he should still interact as normal with him as a supervisor and further support was offered. I do have some concerns regarding potential reactionary action from PS Marchant as he reiterated his concern regarding lying about whether the kennels at his sister (his address) were up or down, although this has not XX with him and I do not feel that this is a matter of formal discipline as PS Marchant would suggest. I am also concerned that PS Marchant has carried out some mileage audits and he has particular named issue with MR on one XX [I am concerned notwithstanding the validity of what he has found that he is XX for evidence against MR – this is just a feeling at present and I was reassured a little by LS that PS Marchant was auditing all log books but I have yet to see evidence of this.

I made a point of raising recording audits in general with PS Marchant and Insp LS. PS Marchant suggested that PD Mayday is not given back to PC MR based on XX (muscle mass loss - no exercise). I raised immediate concern regarding this as I felt again that this was not .. proportionate action in the circumstances that I am aware of. PS Marchant would say (3rd hand) that the vet stated that muscle mass loss could only have occurred due to lack of exercise.

Although I would always take the views of a vet, in particular to animal welfare with the upmost weight, with my limited experience I would question that it could be only cause of muscle mass loss.

I am also concerned that PS Marchant is suggesting that PD Mayday be not returned to MR based upon animal welfare grounds and MR be left with PD Rocky. This is not a rational decision in my view.

I am also concerned that PS Marchant is not in possession of the vet's advice in written form (if indeed it exists)….'

229. When recording his concerns about the possibility that PS Marchant might retaliate against the claimant for submitting a grievance about him, CI Pitt did not make any reference to the concern that he knew had been raised with Mr Moir about the claimant. CI Pitt knew who had raised that concern. It would have been fresh in his mind because he had only been made aware of it earlier that same day. If XYZ was Sergeant Marchant we consider it likely that CI Pitt would have referred to that fact it in his daybook in the context of outlining his concerns about the possibility of Sergeant Marchant retaliating against the claimant. The fact that he made no such note supports the respondent's case that it was not Sergeant Marchant who raised that concern with Mr Moir.

230. Later that day, XYZ made anonymous allegations about the claimant through the respondent's 'Break the Silence' system. We refer to this as the 'BTS report'. In the BTS report XYZ recorded their 'concern' in the following terms:

'I would like to report a 'suspected breath of ethics by means of honesty and integrity with a serving police constable.

I have been made aware of an incident involving PC 2310 Mo Rashad, PC Rashad has allegedly made a falsehood to a fellow officer to avoid prosecution of an offence.
The incident involves PC Rashad being routinely stopped in his personal motor vehicle by PC 2484 Leen (date/Time and vehicle unknown). PC Leen was not aware PC Rashad was a police officer, upon conducting pnc checks PC Leen found that PC Rashad's vehicle did not have a valid insurance policy.
PC Leen questioned PC Rashad who identified himself as being a Police officer, he further stated he was a dog handler and that Cleveland Police pays for his insurance as he transports police dogs in his own car. He also stated that PNC would not reflect this as police vehicles don't show up on pnc.
PC Leen was unsure of this information and contacted his Sgt (unknown) for advice who accepted PC Rashad's account in good faith and instructed PC Leen to let the officer on his way.
I know Cleveland Police do not pay for dog officers insurance, they receive essential users allowance but have to insure the vehicles themselves. PC Rashad will be fully aware of this and therefore stated a falsehood to avoid prosecution.
Pc Rashad now owns at least 3 private motor vehicles, a Ford Mustang, a Renault Espace and a Renault Laguna (….). The vehicle … has recently been moved from Wynyard Police office by PC Rashad and taken to an unknown location, it is suspected that this does not have insurance and has recently been driven on a public road. CCTV at Wynyard office should be available to view this movement.'

231. In a section of the online form asking for the reason for not reporting the matter to line management XYZ wrote 'I fear supervision may be afraid to challenge PC Rashad due to previous complaints and grievances.' In fact XYZ had reported the matter to line management by speaking to Mr Moir before making this BTS report.

232. XYZ's BTS report contained two allegations. The first concerned something the claimant was alleged to have said to a traffic officer, PC Leen, when PC Leen had cause to stop the claimant while driving and carry out a vehicle check on an unspecified date. This has been referred to in these proceedings as Allegation 1. The second allegation, (referred to in these proceedings as Allegation 2) was that the claimant had 'recently' driven a vehicle on a public road which XYZ suspected did not have insurance. XYZ referred to the vehicle as a Renault Laguna although the vehicle in question was in fact a Renault Megane.

233. That BTS report was referred to Detective Sergeant Heron in the CCU. He sent an email to XYZ saying 'scoping' into the matter would start immediately and asking XYZ if they would be willing to meet up with CCU to talk about it further. DS Heron told XYZ they would be protected under the Force whistleblowing policy.

234. On the morning of 30 September DCI Bonner telephoned CI Pitt in response to CI Pitt's email to him of the previous day. CI Pitt told DCI Bonner the name of the person who had raised the concerns (XYZ) and that the allegations concerned the claimant. Based on that information, DCI Bonner, was satisfied that the case was not being managed within the complaints and discipline team.

DCI Bonner then contacted DS Heron to ask if the case was being managed within the Counter Corruption Unit. DS Heron told DCI Bonner that it was.

235. The allegations made against the claimant in the BTS report were referred to DC Moore for investigation. Her day to day job involved investigating allegations made against officers and members of staff that criminal offences may have taken place and/or where alleged conduct has fallen below the standards of professional behaviour. Before this investigation DC Moore had had no involvement with the claimant.

236. On the afternoon of 30 September CI Pitt contacted DC Moore saying he had spoken to Mr Moir who said XYZ is a bit sensitive about the disclosure and his advice would be not to speak to XYZ at the moment. He said he would try to speak to XYZ the following week. The following day CI Pitt told DC Moore that he was likely to be speaking with XYZ the following Tuesday.

237. DC Moore made some initial enquiries about the allegations that had been made. Those enquiries included the following.

237.1. She spoke with PC Leen. PC Leen recounted that, approximately three and a half years previously, whilst on duty in a marked police vehicle, he had pulled over the claimant due to the way the claimant had been driving. PC Leen said that, having checked the insurance status of the vehicle, he told the claimant he was not insured to drive the vehicle, whereupon the claimant had said that it should be insured on the Cleveland Police insurance policy and that was why it was not showing on the police national computer. DC Moore spoke with Ms Clynch to ask whether dog handlers were covered by Cleveland Police car insurance. Ms Clynch told her the Force did not provide insurance for handlers transporting dogs to and from work.

237.2. DC Moore checked, or arranged for somebody else to check, CCTV footage of the car park at the Wynyard office and established that there was footage showing the claimant leaving the car park at on 24 September 2021 in a vehicle that was registered to him. On 4 October 2021 a PNC check was carried out in respect of that vehicle. That PNC check did not reveal any policy of insurance covering the vehicle as at 24 September 2021. Further checks revealed that a statutory off road notification declaration was in place when the vehicle had been moved and that the vehicle had undergone an MOT on 24 September 2021 ie the date the car had been moved.

238. DC Moore is not a specialist in road traffic policing matters. Accordingly, CI Wilson in the Road Traffic Unit was asked to nominate someone who could advise on such matters. Inspector Bell was given that responsibility.

239. DC Moore prepared a precis of information regarding the allegations against the claimant and sent it to temporary Detective Inspector Agar on 4 October 2021. The following day she reported the allegations to the IOPC.

240. On 29 October 2021 DC Moore drafted a severity assessment into the two allegations that had been made through the Break the Silence system. She sent the severity assessment to the head of counter corruption, DCI Murphy-King, as appropriate authority for the case.

241. With regard to Incident/Allegation 1 DC Moore identified that what was alleged was potentially a criminal offence perverting the course of justice. Accordingly, a crime report was submitted. A criminal investigation then began. Because a

criminal investigation was to take place, DC Moore recorded in her precis that the misconduct investigation should be 'classified as sub judice till such time as the criminal investigation reaches a conclusion.'

242. As far as the second allegation/incident was concerned, DC Moore's initial checks suggested the claimant's vehicle did not have a valid insurance policy in place when it was moved. DC Moore sought advice from Inspector Bell who confirmed that a vehicle needs to have a valid insurance policy prior to it being driven on a public road.

243. That same day DCI Murphy-King replied to DC Moore by email saying that he agreed with her severity assessment and way forward.

244. On 4 November 2021 the claimant was served with a Regulation 17 notice in respect of Allegations 1 and 2.

245. In the Regulation 17 notice the allegations were described as follows.

> *Allegation 1*
>
> *It is alleged that you made a falsehood to a fellow officer to avoid prosecution of an offence with the circumstances being as follows: You were routinely stopped in a personal motor vehicle by PC 2484 Leen. Upon conducting PNC checks PC Leen found that the vehicle you were driving did not have a valid insurance policy. Whilst being questioned by PC Leen you identified yourself as a Police officer. Furthermore, you stated you were a dog handler and that Cleveland Police paid for your insurance as you transport Police dogs in your own car. You also told PC Leen that PNC would not reflect this as Police vehicles don't show up on PNC. At the time your account was accepted in good faith and you were allowed on your way (Enquiries indicate the stop took place about 11:50 on 14/03/18 and the VRM was …).*
>
> *Allegation 2*
>
> *It is alleged that you have recently moved a Renault Laguna (…) from the car park at the Wynyard office and in doing so you have driven the vehicle on a public road when it was not covered by a valid insurance policy (Enquiries indicate the vehicle was moved on 24/09/21).*

246. In Complaint 17, the claimant's primary case is that it was PS Marchant who made the BTS report ie XYZ is PS Marchant. Alternatively, the claimant alleges that PS Marchant 'coordinated' the making of that complaint by XYZ. The allegation is supported by the following facts and evidence in particular:

246.1. The BTS report was made just nine days after the claimant submitted a grievance to the respondent about the kennel inspections carried out by Sergeant Marchant. Sergeant Marchant had known about the grievance since 21 September 2021 and was upset about it. On 29 September (the day the BTS report was made) Sergeant Marchant spoke to CI Pitt, who thought he seemed agitated about the grievance. Some things Sergeant Marchant said to CI Pitt on that day caused CI Pitt to be concerned that Sergeant Marchant might use his position to take action against the claimant in retaliation for his grievance.

246.2. The BTS report refers to fears that supervision may be afraid to challenge the claimant due to previous complaints and grievances. That might have been a reference to the grievance recently made against Sergeant Marchant. Equally,

however, it could have been a reference to previous grievance and tribunal complaints, which the claimant has suggested were commonly known about, at least among those who worked at Wynyard.

246.3. Allegation 1 refers to a vehicle stop that happened in 2018. The fact that XYZ only raised the concern in September 2021 suggests there may have been a recent event that triggered the BTS report. That recent event could have been the grievance against Sergeant Marchant. Equally, however, the trigger could have been the fact that the claimant had, just five days earlier, driven a vehicle out of Wynyard carpark that someone who worked at Wynyard would have had reasonable cause to suspect was uninsured given that it had not been moved for months.

246.4. The BTS report refers to the Essential Car Users' allowance. Someone who works, or has worked, within the DSU is more likely to have known about that allowance than someone who has not worked in the DSU. Having said that, Sergeant Marchant was just one of several individuals who worked, or had worked, in the DSU.

246.5. Allegation 2 concerned the claimant moving his car from the Wynyard carpark. That XYZ knew (or believed) the claimant had moved his vehicle and suspected it to be uninsured suggests that XYZ worked at or out of Wynyard or was given information by someone who worked at or out of Wynyard. Again, however, a number of people worked out of Wynyard.

246.6. In the BTS report, XYZ mistakenly referred to the claimant's car as a Laguna. Earlier in the month Sergeant Marchant had sent the claimant a message in which he had mistakenly referred to the claimant's car as a Laguna.

247. There are other facts, and there is other evidence, that suggest Sergeant Marchant did not make the BTS complaint and did not 'coordinate' the making of the complaint. In particular:

247.1. When, on 29 September, CI Pitt recorded in his daybook his concerns about the possibility that PS Marchant might retaliate against the claimant for submitting a grievance about him, CI Pitt did not make any reference to the concern that he knew had been raised with Mr Moir about the claimant. CI Pitt knew who had raised that concern. It would have been fresh in his mind because he had only been made aware of it earlier that same day. If XYZ was Sergeant Marchant we consider it likely that CI Pitt would have referred to that fact it in his daybook in the context of outlining his concerns about the possibility of Sergeant Marchant retaliating against the claimant. The fact that he made no such note supports the respondent's case that it was not Sergeant Marchant who raised that concern with Mr Moir.

247.2. Sergeant Marchant did not start work at Wynyard and the DSU until November 2020, more than two years after the claimant's vehicle had been stopped by PC Leen. It is unlikely that he heard of the 2018 vehicle stop at the time.

247.3. Most compelling of all was DC Moore's evidence. DC Moore met with XYZ on a number of occasions during the course of her investigation into Allegations 1 and 2. She asked XYZ how he/she came to know or believe the things referred

to in the BTS report. XYZ told DC Moore that some (if not all) of the information XYZ set out in their BTS report was passed to XYZ by someone else. DC Moore also spoke with that person. Her evidence was that Sergeant Marchant was neither the author of the BTS report (XYZ) nor the person who had provided XYZ with information set out in the BTS report. We found DC Moore to be a straightforward and compelling witness.

248. Sergeant Marchant's evidence to us was that he did not make the BTS report and nor did he supply anyone else with information so that they could make the BTS report or coordinate the BTS report in any other way. As we explain later in our judgment, we did not find Sergeant Marchant's evidence as to Allegation 3 (below) to be reliable. However, that is not to say we found him to be a dishonest witness. Rather, we considered his recollection with regard to Allegation 3 to be unreliable.

249. Having considered all the evidence in the round, we found the evidence of DC Moore to be particularly persuasive. We find it is more likely than not that Sergeant Marchant was not involved in the making of the BTS report. He neither made the BTS report himself nor 'coordinated' the making of that report.

250. The claimant alleges in the alternative that the BTS report was made by CI Pitt, Mr Moir or DCI Bonner or that they 'coordinated' the making of the report. The allegation that any of these individuals made the BTS report is unsupported by the facts we have found. Mr Moir was the person to whom XYZ first spoke about Allegation 1. Mr Moir then spoke with CI Pitt. If either Mr Moir or CI Pitt had been XYZ these discussions would make no sense. As for DCI Bonner, if he was the author of the BTS report it would have made no sense for CI Pitt to email him on 29 September 2021 in the terms he did. We find that none of these individuals made the BTS report.

251. As for the allegation that they 'coordinated' the making of the allegation, DC Moore's clear evidence, which we accept, is that none of these three officers was the person who passed the information to XYZ that formed the basis of the BTS report.

252. DCI Bonner's involvement was simply in responding to CI Pitt's question about whether the allegation made by XYZ had been referred to DSE. He made enquiries and identified that the complaint was being dealt with in the CCU. That cannot, on any view, be construed as 'coordinating' the allegation.

253. As for CI Pitt and Mr Moir, they only became involved after XYZ spoke to Mr Moir about Allegation 1. Mr Moir then spoke with CI Pitt about Allegation 1 and CI Pitt encouraged Mr Moir to speak with XYZ again and encourage XYZ to refer the matter to the DSE. Mr Moir did speak to XYZ again, whereupon XYZ told Mr Moir he had already referred the matter on anonymously.

Allegation against claimant concerning speeding exemption form: allegation/incident 3

254. On 29 September 2021 a vehicle registered to Cleveland Police was captured on speed camera being driven at a speed in excess of the speed limit.

255. A notice of intended prosecution was issued and on 7 October 2021. Ms Walker of the Force's ticket office sent a copy of it under cover of an email to Sergeant Marchant and another officer. Ms Walker asked them to let her know who was driving or complete an 'exemption form' that she attached to her email. Sergeant Marchant made some enquiries and established that the driver had been the claimant.

256. The claimant was on annual leave at this time and did not return until 23 October 2021.

257. Upon the claimant's return from annual leave Sergeant Marchant spoke to him about the notice of intended prosecution and asked him about the circumstances that led to him driving in excess of the speed limit. The claimant told Sergeant Marchant he could not recall the circumstances and said something along the lines of needing to check his pocket book.

258. On 27 October the claimant completed an exemption form giving a reason why he had been driving above the speed limit. In that form the claimant said 'I was attempting to conduct a moving vehicle speed check on the vehicle I was following at the time on the A174 (lights would spook the driver).

259. The claimant passed the form to Sergeant Marchant who emailed it to Ms Walker.

260. Subsequently Sgt Marchant made further enquiries. He spoke with PC Coates, Camera Enforcement Officer, and asked him whether the camera footage at the relevant time showed any vehicles behind or in front of the marked police vehicle being driven by the claimant. Sgt Marchant understood from that conversation that the only vehicle that was speeding was in front of the claimant's vehicle, 15 to 20 seconds ahead of the claimant's vehicle. Sergeant Marchant also made enquiries with Mr Gray, Quality and Review Officer, who told Sergeant Marchant that there was no record of the claimant having radio-ed in at the relevant time to report that he was carrying out a moving speed check.

261. An issue that arises in this case is the reason Sgt Marchant made those further enquiries. There were significant inconsistencies in Sgt Marchant's evidence on this matter. In his witness statement he said the reason he spoke with PC Coates was that what the claimant wrote on the exemption form directly contradicted what the claimant had told him earlier. However, when questioned about the alleged inconsistencies, his responses were unclear and contradictory. When questioned further, he suggested that the reason he spoke with PC Coates was that he had been told by Ms Walker that it was his responsibility to check whether what the claimant had said in his exemption form was supported by evidence or not. However, Sergeant Marchant did not mention that in his witness statement.

262. For those reasons, we doubted the reliability of Sergeant Marchant's witness evidence on this matter. However, Sergeant Marchant's account of having been asked by Ms Walker if the claimant's account was supported by evidence is supported by other evidence. Specifically, DC Moore's final report into Allegation 3 records that Ms Walker gave two statements during the course of the investigation (on 28 January 2022 and 6 September 2022) and in one (or possibly both) of those statements she said that after Sergeant Marchant had emailed her the claimant's completed form she asked Sergeant Marchant to confirm if he was happy with the reason the claimant had given for speeding so that she could cancel the ticket and Sergeant Marchant then said he would carry out a few more checks and get back to her.

263. We find as fact that, after Sgt Marchant sent the claimant's exemption form to Ms Walker, she asked him if he had carried out enquiries to check whether what was said in the exemption form was supported by evidence or not. It was only after Ms Walker asked Sgt Marchant this that he made the enquiries he did of PC Coates and Mr Gray.

264. Having made those enquiries, Sgt Marchant spoke with CI Pitt saying he had concerns that the claimant's explanation may not be true. CI Pitt told Sgt Marchant to speak with DC Moore. Sgt Marchant did then speak with DC Moore on 5 November and she asked him to set out the circumstances and his concerns in an email. Sergeant Marchant then sent an email to DC Moore on 5 November in which he said the following:

> *'PC RASHAD has completed the exemption document (attached) and his explanation was that he was carrying out a moving speeding check, he didn't illuminate the lights or sirens of the vehicle as he didn't want to 'spook' the driver?*
>
> *I have carried out further checks and there is no record of any report of a speeding car or PNC checks reported/carried out by PC RASHAD.*
>
> *I have made enquires with the camera enforcement officer (PC Vince Coates) asking to check the camera during that time frame for any vehicles either behind or in front of the marked police vehicle.*
>
> *The only vehicle that was speeding was in front of the police vehicle was a white transit connect which was recorded at 57 mph. This vehicle was 15-20 seconds ahead of the Zafira.*
>
> *My Concerns are that if this explanation was true then why wasn't a PNC check conducted, stop the vehicle and driver details recorded or warned of driving etc?*
>
> *I have asked PC RASHAD if he recalls the incident and he couldn't but return the form some hours later with this explanation. Like I previously mentioned PC RASHAD has a grievance complaint against me at present so I haven't sat him down further and gone through any of my findings yet apart from trying to jog his memory by asking was a van or a car that you carried out the moving speed check.*
>
> *I am not sure what constitutes a moving vehicle speed check. I am aware that PC RASHAD is an advanced driver as his previous role was a traffic officer.'*

265. In Complaint 18 the claimant alleges that PS Marchant made an allegation that the claimant had lied to avoid prosecution following an alleged speeding offence on 29 September 2021. Sergeant Marchant's email of 5 November does not contain an express allegation that the claimant had lied. Rather, it seems, the claimant suggests the following words constituted an allegation that the claimant had lied '*My Concerns are that if this explanation was true then why wasn't a PNC check conducted, stop the vehicle and driver details recorded or warned of driving etc'.* This sentence must be read in context. In setting out reasons for doubting the claimant's explanation, Sergeant Marchant: accurately described what he had

been told by the camera enforcement officer and the quality and review officer; made clear that he did not know what constitutes a moving speed check, thereby acknowledging that he was not best placed to judge if the claimant had done anything wrong; referred to the claimant being an advanced driver and his previous role as a traffic officer, thereby flagging a factor that might support the claimant's claim to have been carrying out a moving speed check; said he had not spoken to the claimant about what he had been told by the camera enforcement officer or the quality and review officer, thereby acknowledging that he did not have a full picture; and was candid about the fact that the claimant had a grievance against him. Looking at that sentence in context, we find that, at its highest, that email expressed a belief that the claimant *might* not have told the truth (ie he might have lied). It did not, however, contain an allegation that the claimant had lied and nor do we find that Sergeant Marchant had alleged that the claimant had lied in other communications with CI Pitt or DC Moore.

Investigation into Allegation 2

266. On 11 November 2021 a further PNC check was carried out on the vehicle the claimant had moved from the Wynyard carpark on 24 September 2021. On this date the police national computer showed that the claimant's vehicle had been insured for 24 hours starting during the day on which the vehicle had been moved.

267. The respondent then requested a copy of the insurance certificate from the insurance company. The information from the insurance company arrived on 2 December 2021. It confirmed that the vehicle had been insured from 3pm on 24 September 2021.

268. DC Moore completed a revised severity assessment on 7 December 2021, five days after confirmation of insurance had been received from the insurance company. In her assessment she said:

> *'evidence gathered to date indicates that [the claimant] had insured [his vehicle] for the purpose of taking it for a pre-arranged MOT and in doing so he has not committed a criminal offence … in light of the above information I am of the opinion that PC Rashad has 'no case to answer' in respect of the allegation [that he had driven a vehicle on a public road when it was not covered by a valid insurance policy].'*

269. The following day, 8 December 2021, the claimant was told by the Appropriate Authority that he had no case to answer in respect of Allegation 2.

Investigation into Allegations 1 and 3

270. In relation to Allegation 1, in November 2018 DC Moore received confirmation that the claimant was covered by a policy of insurance held by a third party at the time of the traffic stop on 14 March 2018. However, the matter under investigation was not whether or not the claimant had been insured on that date but what the claimant had told PC Leen about his insurance status. PC Leen had told DC Moore that the claimant had suggested at the time that he was covered by a policy of insurance held by Cleveland Police, not that he was covered by a policy of insurance held by another individual. Therefore, DC Moore did not consider that the new evidence necessarily meant the matter was closed. Rather, she wished to ask questions of the claimant. On 20 December 2021, however, the claimant was signed off work as not fit for duties.

271. Meanwhile, on 19 November, DC Moore had carried out a severity assessment in relation to the matter raised by Sergeant Marchant (referred to as Allegation 3 in these proceedings). She assessed the matter as potentially amounting to gross misconduct and an offence of attempting to pervert the course of justice.

272. On 19 November 2021 the claimant was served with a second Regulation 17 notice. This one was for alleged dishonesty in relation to what he had said about speeding on 29 September 2021. The allegation was set out as follows:

> *Allegation:*
>
> *On 29th September 2021, the speed enforcement camera was deployed on the A174 Lazenby Bypass and captured a marked police Vauxhall Zafira VRM NU63 JXA travelling at 57mph (the speed limit for that stretch of road is 50mph). Subsequent enquires showed you were the driver of the Police vehicle.*
> *Having received a 'Notice of Intended Prosecution' (NIP) you completed the exemption document and provided the following explanation:*
> *'I was attempting to conduct a moving vehicle speed check on the vehicle I was following at the time on the A174 (lights would spook the driver)'.*
>
> *Enquiries were made with the camera enforcement officer who confirmed the only vehicle that was speeding in front of you was a white transit connect which was recorded as travelling at 57mph. Having said you couldn't recall the incident you returned the exemption form some hours later with the explanation recorded as above.*
>
> *At this stage it is alleged you have lied in order to avoid prosecution.*

273. A criminal investigation then began into Allegation 3 and the claimant's solicitor was told the conduct investigation would only begin once the criminal investigation had been concluded.

274. On 10 January 2022 DC Moore spoke to Mr Hudspith in the Camera Enforcement Office. Mr Hudspith told DC Moore that the claimant had been into the office asking to see the camera footage from when he had been caught speeding and that he, Mr Hudspith, had allowed the claimant to view that footage.

275. On 11 January 2022 DC Moore interviewed the claimant about allegations/incidents 1 and 3. The claimant had written a statement in advance of that meeting which his representative, Mr Haigh, read out. In that statement the claimant said he suspected that the source of the referral may include Sgt Marchant and that, if so, he had concerns that the 'referral to CCU may be malevolent and a reprisal following a grievance that I submitted regarding Sergeant Marchant's conduct in August/ September 2021, before the events that the allegation pertains to.' At the end of the statement the claimant said: 'I believe again that the allegations that have been made against me are to undermine me and an attempt at destroying my character. I have grave reservations that there is a seam of racism that permeates through the core of Cleveland Police and if an officer calls out such behaviour, that they themselves run the risk of being investigated as a form of malicious reprisal.'

276. During the interview DC Moore showed the claimant and Mr Haigh the camera footage from the van that had caught the claimant speeding in 2021. The claimant said during that meeting that he had not seen that footage previously

and that this was the first time he had seen it. That was at odds with what Mr Hudspith had told DC Moore the previous day.

277. On 28 January 2022 DC Moore emailed the claimant's legal representative, Mr Haigh. She told him that in relation to the traffic stop on 14 March 2018 (Allegation 1) the appropriate authority and she had concluded that the criminal matter would be 'finalised' as 'no further action' and the misconduct side of things will be finalised as 'no case to answer'. She explained that at that point the update was being provided in advance of the final reports being drafted re the investigating officer's report by her and the appropriate authority's report. However, she said 'I confirm that the conclusions will remain the same.' With regard to the matters that were being investigated in relation to the speeding incident on 29 September 2021 (Allegation 3) DC Moore said 'this matter is still under investigation'.

278. We have concluded that the respondent did not delay the investigation, or the conclusion of the investigation, into Allegation 1. DC Moore wished to ask questions of the claimant. She did that in January and having done that a decision was taken to take no further action soon after that.

279. Ms Hogben put it to DC Moore on cross examination that, during her investigation into Allegations 1 and 2, she did not consider whether the claimant's race or the fact that he had made discrimination complaints were factors that triggered the making of allegations against him. DC Moore denied that was the case. She knew that XYZ was not Sgt Marchant and nor was the person who had given information to XYZ. Furthermore, DC Moore said, and we accept, that she spoke to XYZ on a number of occasions and had asked them to tell her how they came across the information and in response XYZ gave a full explanation and told her where they had got their information from; she also spoke to the person who had provided XYZ with information. DC Moore's evidence was that she was '100% satisfied the information provided in the Break the Silence concerns was provided in good faith and that the information she was given explained why it took three and a half years for the information forming the basis of Allegation 1 to 'come out'. She told us that she could not explain what that information was without revealing the identity of XYZ.

280. As recorded above, we found DC Moore to be a straightforward and compelling witness. We accept her evidence and find that she embarked on the investigation into Allegations 1 and 2 with an open mind as to the motivations of XYZ. She is an experienced investigator and was well aware of the potential for the Break the Silence system to be used for improper motives. We find that she satisfied herself in this case that there was nothing untoward about the motives of XYZ in raising allegations through the Break the Silence system.

Allegation 4

281. As noted above, when DC Moore showed the claimant and Mr Haigh the speed camera footage on 11 January 2022, the claimant said that he had not seen that footage previously and that this was the first time he had seen it. That was at odds with what Mr Hudspith had told DC Moore the previous day.

282. DC Moore believed Mr Hudspith had been clear when he told her that the claimant had seen the footage already. DC Moore believed that was something that needed to be explored further. She considered at the time that it gave rise to two potential issues if Mr Hudspith was right: misconduct on the part of the

claimant and a possible criminal investigation of attempting to pervert the course of justice. DC Moore started 'scoping' these matters including by interviewing Mr Hudspith. Mr Hudspith gave two statements in February 2022. As is clear from DC Moore's investigation report of 24 November 2023, he remained adamant that he had shown the claimant the camera footage of him speeding.

283. On 1 March DC Moore carried out a severity assessment into what has been described as Allegation 4. She assessed the claimant's conduct as potentially amounting to gross misconduct.

284. On 8 or 9 March 2022 the claimant was served with a third Regulation 17 notice. This one was in respect of Allegation 4. The allegation was described as follows:

> *'On 11/2/2022 and whilst at the Fed building you said the voluntary interview was the first time you had seen the footage of the speeding incident from 29 September 2021. According to [Mr] Hudspith this is untrue. He has stated that at some point after the speeding incident you went into the office and spoke to him about it. You also asked to be shown the footage. Having been shown the footage and having confirmed it was you who was driving the police vehicle he said you might be able to get a speed awareness course because of the speed you were doing. He has stated that you didn't comment, you just turned round and walked off towards the parade room.*
>
> *This is contrary to:*
>
> *Paragraph 1 (Honesty and Integrity) of Schedule 2 to The Police (Conduct) Regulations 2020 and the College of Policing Code of Ethics.'*

Continuing investigation into Allegations 3 and 4

285. At this stage, the investigation into Allegation 3 remained a criminal investigation, with the conduct investigation on hold until the criminal investigation was concluded.

286. In the course of the investigations, various statements were taken and evidence secured as set out in DC Moore's investigation report of 24 November 2023.

287. In parallel with the investigation, the claimant was being prosecuted for speeding. At the end of February the fixed penalty notice in relation to the speeding incident on 29 September 2021 had been re-issued. The claimant challenged the fixed penalty notice, asking for a court hearing. The CPS advised that the speeding ticket prosecution would need to be concluded before the other matters under investigation could progress.

288. In October 2022 the respondent made an application to vacate the final hearing in these proceedings on the basis that the respondent was unable to enter a substantive response in respect of the most recent complaints made by the claimant due to the ongoing criminal proceedings.

289. On 8 November 2022 the claimant was convicted of speeding at Teesside Magistrates Court. The claimant indicated an intention to appeal. Therefore, the pause on the investigation by DSE into Allegations 3 and 4 remained in abeyance. On 17 November 2022 the claimant lodged an appeal against his conviction for speeding at Teesside Magistrate's Court. On 19 May 2023 the claimant's appeal against his conviction for speeding was successful at Teesside Magistrate's Court, the recorder having concluded that the claimant 'could have been doing as he said'.

290. Following the claimant's successful appeal DC Moore told the claimant's legal representative that the claimant would not be charged with attempting to pervert the course of justice. However, she explained that the 'misconduct side of things is still live'. As part of that investigation DC Moore obtained a transcript from the appeal and made some further enquiries. Having reviewed the evidence DC Moore completed her report into her investigation in relation to Allegations 3 and 4 on 24 November 2023. In that report she expressed the opinion that the claimant had 'a case to answer in respect of gross misconduct' in relation to Allegation 3 (lying about his reasons for speeding) but did not have a case to answer in respect of Allegation 4 (telling DC Moore that he had not previously seen the camera footage of him speeding during their interview in January 2022).

291. This report was passed to DCI Naunton as appropriate authority. Her decision was that there was no case for the claimant to answer in respect of either Allegation 3 or 4. She completed her report on 3 January 2024 and signed it on 11 January confirming that decision. In respect of Allegation 3 it is clear that her decision was influenced by the outcome of the claimant's appeal against his speeding conviction and the proportionality of 'rerunning the case on which an appeal court has already found in favour of [the claimant]' notwithstanding the lower standard of proof in misconduct cases.

Continuing investigation of claimant's grievances

292. While the CCU was investigating the claimant's conduct from September 2021, DSE continued its consideration of the grievances the claimant had raised.

293. In or around September 2021 DI Agar met with DI Pringle, DS Henderson and DC McLoughlin and they discussed the claimant's complaint document and how to deal with the complaints made.

294. DI Agar held the position of Appropriate Authority. The role of an Appropriate Authority includes reviewing information provided regarding allegations of misconduct by police officers and making a determination as to whether there are merits to the information warranting a formal investigation. Usually this is done based on initial information regarding the complaints from the officer dealing with the issue. This takes the form of a precis of information. The Appropriate Authority reads the information that is initially sent and makes a decision as to whether it needs a formal assessment. If the Appropriate Authority is satisfied there is an indication that the issue meets the threshold, the AA will perform an initial assessment of conduct. DI Agar has assessed and acted as Appropriate Authority in more than a hundred cases on behalf of Cleveland Police.

295. On or shortly before 15 September 2021 DC McLoughlin gave DI Agar a written precis of the matters the claimant had complained about. This had been prepared by DC McLoughlin. The contents were similar, if not identical, to the 24 June 2021 email.

296. On 15 September 2021 DI Agar reviewed the claimant's complaint document and the precis prepared by DC McLoughlin. He identified five allegations concerning retired Sergeant Harker that he thought were potentially conduct issues and that should be investigated as such. He also identified a number of other matters that he thought were clearly grievances and not appropriate to be dealt with in DSE, including the complaint about T/Insp Dack being on the interview panel.

297. DI Agar prepared a draft report. He did not complete the report immediately at the time because there were a couple of matters that required further 'scoping'. Therefore he asked for some further information from CCU.

298. On 29 October 2021 DC McLoughlin sent an email to Ms Clynch saying he had spoken with the claimant and the claimant had said he wanted to make sure all the things he had raised in May were recorded under a grievance. DC McLoughlin said he had met with the claimant in September and told him that the issues he had raised were being split between grievance matters and conduct matters. DC McLoughlin said the claimant had said he had raised the promotion issues with Ms Clynch. DC McLoughlin asked her to 'review this' and let them know whether they were 'recorded under a grievance'.

Conduct Investigation concerning retired Sgt Harker

299. The respondent made an application to stay the Tribunal proceedings for four months to enable it to complete a misconduct investigation into retired Sergeant Harker. At a case management hearing 3 November 2021 Employment Judge Morris agreed to stay the proceedings until 1 March 2022 subject to the following points: the claimant was ordered to provide updated further and better particulars of his claim by 17 November 2022; and the respondent was ordered to respond by 6 January 2022.

300. On 4 November 2021 DI Agar completed a severity assessment in respect of the claimant's allegations against retired Sergeant Harker. In his report DI Agar identified that the allegations concerned the following standards of professional behaviour: authority, respect and courtesy; discreditable conduct; confidentiality; and honesty and integrity. The report did not mention the standard of equality and diversity. DI Agar concluded that the alleged breaches of the standards of professional behaviour would, if proven, amount to gross misconduct. The fact that the alleged misconduct arose as potentially gross misconduct meant that the Force could carry out an investigation notwithstanding that Sergeant Harker had now retired.

301. On 10 December 2021 retired Sergeant Harker was issued with a Regulation 17 notice in respect of the claimant's complaints. We accept DI Agar's evidence as to why it took until 10 December to serve this notice when a decision had been made to do so some weeks before then. They had wanted to serve the Regulation 17 notice on Sergeant Harker face to face but a meeting took a while to arrange partly because Sergeant Harker had left the Force but also because Sergeant Harker was understood to have been in 'a bad place'.

302. The allegations forming part of the investigation were as follows:

> *'**Breach 1** – on a social night out in a restaurant with PC Rashad and being served by a waiter who was black, Sergeant Harker asked if he could get a family discount. PC Rashad believed this statement was a direct reference to his ethnicity.*
> ***Breach 2** – on 23 February 2017, Sergeant Harker completed a PNC check on PC Rashad's private motor vehicle parked in Wynyard. It is alleged that there was no policing purpose for this check.*
> ***Breach 3** – Sergeant Harker retold a story involving a derogatory statement in the presence of PC Rashad. Specifically, whilst on holiday in Wales with his son, Sergeant Harker was asked what a sign stating*

*"ARAF" meant to which Sergeant Harker responded "there are no P*kis in Wales son".*
***Breach 4** – Whilst PC Rashad was working a football match to gain experience of crowd control with his dog, it was alleged that Sergeant Harker was present when PC Rashad removed his dog from the van. After removing the dog, Sergeant Harker said "here's the little black bastard". PC Rashad believed the comment was directed towards him.*
***Breach 5** – Sergeant Harker forced open the works locker belonging to PC Rashad for unknown reasons. ….'*

303. On 7 January 2022 DC McLoughlin sent questionnaires to several potential witnesses to the allegations raised against Sergeant Harker. They included PC Grieves, PC Lambert, PC Sewell, Retired PC Hunt, PC Sutcliffe, Sergeant Williamson, CI Pitt, a Mr Alan, Retired PC Gobie and Mr Moir.

304. DC McLoughlin sent the claimant a date for an interview in respect of his allegations against retired Sergeant Harker. The claimant cancelled the meeting saying he did not wish to be interviewed and was not in the right frame of mind. He subsequently answered some questions sent to him by DC McLoughlin by email.

305. On 15 February 2022 DC McLoughlin conducted a misconduct interview with retired Sergeant Harker.

306. It is clear from the final report by DI Agar that some of the of the potential witnesses and officers who might have been able to give evidence about the alleged incidents had by now moved on or retired and refused to get involved any further or provide a statement.

307. Other individuals that had been asked to complete questionnaires by DC McLoughlin returned their questionnaires on various dated between January and June 2022. The majority of the questionnaires were returned in in May 2022. A couple of individuals completed statements.

308. One of the individuals who completed a questionnaire was a Mr Lambert. Mr Lambert alleged that Sergeant Harker had made an inappropriate comment related to race in the claimant's presence. This was not something the claimant had mentioned himself. DC McLoughlin made DI Agar aware of that allegation and provided a precis of it for DI Agar on 24 June 2022.

309. DI Agar carried out an assessment of that allegation. Initially he prepared a report saying that, if proved, the allegation would not constitute gross misconduct. That would mean that, as Sergeant Harker had retired, the Force would have no power to investigate the allegation. By 19 July 2022, DI Agar had reconsidered the matter. He now concluded that, if proven, this allegation would constitute or may constitute gross misconduct. DI Agar said that he was now looking at the matter in combination with the other allegations and considered that if all the allegations were proven then, in combination, they would amount to gross misconduct. He said he was also treating it as having come to light within 12 months of Sergeant Harker ceasing to be an officer. It followed that DI Agar's revised view was that there should and could be an investigation into this new allegation. Accordingly, he asked DC McLoughlin to investigate the matter.

310. On 27 July 2022 retired Sergeant Harker was served with a Regulation 17 notice in respect of this further allegation, which came to be known as Breach 6. The

allegation was that on an occasion when PC Lambert was recounting to the claimant that when he joined the force he had been warned about the '4 P's in policing', Sergeant Harker interrupted the conversation and claimed that one of the P's stood for 'Pakistanis'.

311. Retired Sergeant Harker declined to cooperate with the investigation into this new allegation. A further statement was obtained from PC Lambert.

312. As part of his investigation, DC McLoughlin approached Cleveland Police's Equality and Diversity team for their views on the alleged comments made by Sgt Harker and their opinion of the gravity of such comments in the context described.

313. On 17 October 2022 DC McLoughlin completed his report into Sergeant Harker and submitted it to DI Agar. His opinion was that there was a case to answer in respect of two of the six allegations that had been investigated. These were those labelled Breach 1 and Breach 6. Breach 1 concerned the incident at the restaurant that forms the basis of Complaint 4 in these proceedings. Breach 6 was described as 'the alleged comment from Paul Harker around the 4P's.' His opinion was that, taken together, there was a case to answer in respect of misconduct but not gross misconduct.

314. DC McLoughlin concluded there was no case to answer in respect of the other four allegations which concerned, respectively: a PNC check of the claimant's private vehicle; an alleged comment made by Sergeant Harker in relation to a holiday in Wales; the alleged comment that forms the basis of Complaint 2 in these proceedings; and the locker check that forms the basis of complaint 1 in these proceedings.

315. DI Agar considered that a couple more points needed to be investigated further. However DC McLoughlin retired at the end of October 2022. Therefore, DI Agar had to ask somebody else to deal with that matter. His evidence was 'that there were a number of delays internally and externally due to sickness, availability, leave, internal processes and so on that further delayed me being able to draft my final assessment.'

316. In December 2022 DI Agar completed his final assessment in draft form. DI Agar had been told the Force's solicitors wanted to see the report so he sent it through to them.

317. In December 2022 Employment Judge Johnson ordered the respondent to inform the claimant by no later than 20 January 2023 as to the outcome of its investigation into the conduct of Sergeant Harker and state whether any disciplinary action had been taken against him, or otherwise state why that information should not be disclosed. Further to that Order, on 20 January 2023, the respondent's representatives wrote saying 'the outcome of the disciplinary investigation into Officer Harker was 'not known at present due to it being a live investigation.''

318. On or around 2 May 2023 DI Agar completed his final assessment of the alleged breaches by retired Sergeant Harker. His final assessment was that of the six allegations there was evidence on balance to determine that there was a case to answer for Breaches 1 and 6. He determined that there was no case to answer for the other four alleged breaches.

319. DI Agar concluded that Breaches 1 and 2 amounted to misconduct but not gross misconduct. In reaching that decision on the severity of the conduct, it is clear from his report that he took account of the following, amongst other things:

319.1. The fact that the comment made in the restaurant was said in a public setting.

319.2. His view that the comment about family discount was discriminatory language, which was serious, but was not 'a volley of expressions' and was not an expression that was in itself 'overtly vile or racist.'

319.3. His view that the comment relating to Breach 6 concerned discriminatory language but, on the evidence before him, was probably unconscious rather than conscious discrimination. In forming that view he took into account the view of the EDI team that this comment was less severe than the comment made in the restaurant. He also took into account the fact that the claimant had not complained about the comment at the time or when making his grievance and that PC Lambert's evidence had been that the claimant had brushed off the comment at the time as Sergeant Harker just 'having a laugh'. He had also formed the view, from things some witnesses said, that Sergeant Harker had dealt with the claimant positively over the course of their working relationship, including by giving help with studying for promotion and study leave.

319.4. The IOPC 'learning report' from Operation Hotton, which he said assisted 'in understanding the issues nationally about discriminatory and misogynistic behaviour.'

320. He also took account of the Police Conduct Regulations, which he understood to mean that conduct would only be gross misconduct if he was satisfied that, if the misconduct was proved, Sergeant Harker would (not just could) have been dismissed had he still been serving. DI Agar was of the view that, even if Breaches 1 and 6 had been proved at a misconduct hearing, the conduct in question was not so serious that he could conclude that Mr Harker would inevitably be dismissed for it had he been serving.

321. In Complaint 12 the claimant alleges that, between 7 May 2021 and the date the claim was made (in August 2021) the respondent failed to take adequate and prompt action to resolve a complaint he made on 7 May to ACC Theaker. In complaint 21 (which was added by amendment in 2023) the claimant alleges that the respondent's DSE deliberately failed to promptly deal with the claimant's grievances about Sgt Harker.

322. Whilst we can see that it took a considerable time to conclude the investigation into Sgt Harker, that on its own does not persuade us there was any deliberate delay on the part of DSE. The timeline of dealing with the complaints can be summarised as follows (with further details in our findings of fact above):

322.1. The claimant's complaints were passed to ACC Theaker in a meeting on 7 May 2021 with the claimant and Mr Teeley. It was agreed in that meeting that the way forward was to refer the complaints to the DSE and ACC took prompt action to involve them: the DSE became involved with the claimant's grievance on 10 May 2021. DC McLoughlin met with the claimant and Mr Teeley promptly on 19 May 2021. At some point the claimant added new allegations about Sgt Harker to those detailed in the document dated 7 May 2021. DC McLoughlin began looking into the allegations promptly. DC McLoughlin attended meetings on 24 June and 29 July 2021 and in the first half of September 2021 to discuss the claimant's complaint document and how to deal with the complaints made.

322.2. The claimant's grievances did not just concern Sgt Harker. They were exceptionally wide in scope. It is obvious that it would not have been possible to resolve the grievances quickly. The fact that they involved individuals who had left the force and another force and the terms on which the claimant had resolved earlier tribunal claims added to the complexity. It also meant legal advice was sought by DSE in dealing with the grievances, which added to the time taken to resolve matters.

322.3. Shortly after the September meeting DC McLoughlin gave DI Agar a written precis of the matters complained about. Then by 15 September 2021 DI Agar reviewed the claimant's complaint document and the precis prepared by DC McLoughlin and identified which allegations concerning retired Sergeant Harker were potentially conduct issues and that should be investigated as such. Further scoping then followed and by 4 November 2021 DI Agar had completed a severity assessment in respect of the claimant's allegations against retired Sergeant Harker and decided a conduct investigation should follow.

322.4. The respondent was then obliged to serve a Regulation 17 on Mr Harker. For good reasons, the DSE wished to serve the Regulation 17 notice on Sergeant Harker face to face but that took a while to arrange. The DSE did not deliberately delay serving the notice.

322.5. After the Christmas period DC McLoughlin sought to obtain evidence on the allegations from a number of potential witnesses. It took several months to obtain that evidence. That, we find, was not due to any deliberate delay on the part of the DSE. Furthermore, some refused to get involved any further or provide a statement; that is likely to have added to the time taken to complete the investigation. In the meantime, DC McLoughlin interviewed retired Sgt Harker but the claimant declined to be interviewed. The claimant's decision not to submit to an interview did not help the DSE to conclude its investigation in a more timely way.

322.6. The investigation took longer than it otherwise would have done because the DSE decided to investigate a further allegation that the claimant himself had not raised (Breach 6). That was not done to deliberately delay the conclusion of the investigation. Indeed the fact that it was done at all undermines the claimant's submission that the DSE were seeking to avoid any negative findings that would undermine the respondent's defence to the claims made by the claimant.

322.7. Mr Harker then declined to cooperate with the investigation into this new allegation. That will not have helped the respondent to conclude the investigation in a timely manner.

322.8. On 17 October 2022 DC McLoughlin completed his report into Sergeant Harker and submitted it to DI Agar. DI Agar considered that a couple more points needed to be investigated further. However because DC McLoughlin had retired somebody else had to be brought in to deal with that matter. As a consequence, there was a delay in concluding the report. That was not deliberate delay by the DSE. DI Agar's ability to conclude his report was also hampered by sickness absences and leave. Again, we do not find that the DSE was deliberately delaying concluding the report.

322.9. DI Agar completed his final assessment in draft form in December 2022 and passed it to the legal department. There is no evidence that the fact that it took until 2 May 2023 to complete the final report was due to deliberate delay by anyone in the DSE.

323. Based on that timeline we make the following findings of fact:

323.1. The respondent did not, as alleged, fail to take adequate and prompt action to resolve the complaint the claimant made on 7 May to ACC Theaker.

323.2. Neither DC McLoughlin nor DI Agar (or anyone else in the DSE) deliberately failed to promptly deal with the claimant's grievances about Sgt Harker.

Conclusion of grievance regarding Insp Dack

324. On 8 August 2022 Ms Clynch drafted a letter to the claimant about his grievance about T/Insp Dack. She did this following a conversation she had with Mr Puech of legal. That letter was emailed to the claimant on 16 August 2022. The letter is headed 'outcome of the investigation into the issues raised in relation to interview panel membership in your PC to Sergeant interview.'

325. In the letter Ms Clynch said 'I confirm that the issues were investigated under the auspices of the Cleveland Police Grievance Policy. She went on to refer to 'improvements' that had been made to the promotion processes in the Force. Attached to the letter was a document purporting to explain how the grievance had been dealt with. It included a section headed 'background information/summary of ER manager findings'. In that section Ms Clynch made the point that acting inspector Dack would not have known who was to be seen by the panel the day of the interview and the recruitment team who organised the interviews would not have known about the claimant's previous Tribunal proceedings or the names of the individuals involved. Ms Clynch did not say or make any findings or comments on the failure of Inspector Dack to stand down from the interview panel on the day of the interview. Rather, the document went on to refer to changes made to processes so that those involved in interviews whether as interviewer or interviewee would be aware of who would be interviewed/interviewing. The document ended by saying that the Force 'would like to offer the opportunity for you to be interviewed again for promotion' and 'we'll also facilitate to acting duties in advance of this, at a suitable time following your return to work if this is something you would want.'

326. Although Ms Clynch believed that Inspector Dack should have recused herself on the day, she did not say that in response to the claimant's grievance. She was unable to offer an explanation for that omission when asked at this hearing.

<u>Conclusions</u>

327. Claims numbered 1 to 16 were brought on 20 August 2021. Claims numbered 17 to 22 were made later by way of amendment.

328. The claimant complied with section 18A of the Employment Tribunals Act 1996 in relation to claims numbered 1 to 16 on 22 April 2021. That is Day A for the purpose of EqA 2010 section 140B. Acas sent the early conciliation certificate the following day, 23 April 2021. That is Day B. Any complaint relating to an act which was done or occurred before 20 May 2021, (or which, by virtue of s123(3), is to be treated has having been done or having occurred before that date), has been brought outside the primary three month time limit in section 123(1)(a) and can

only be considered if we decide the claim falls within section 123(1)(b), thereby extending time for bringing the claim.

329. In her closing submissions, Ms Hogben conceded that complaints 1 to 12, if considered in isolation from later acts said to have contravened the Equality Act 2010, were presented outside of the primary time limit in section 123 of the Equality Act 2010. The claimant's position, however, is that those acts were part of conduct extending over a period together with the acts to which complaints 14 to 22 relate.

330. In order to determine whether Complaints 1 to 12 formed part of unlawful conduct extending over a period, it is first necessary to determine whether any of the more recent complaints (ie complaints 14 to 22) are well founded. For that reason we have addressed those more recent complaints first below.

NB There is no complaint 13. There was an error in the numbering of the Tribunal's list of complaints produced at the hearing in that. We have retained the numbering from that list rather than attempt to correct it.

<u>Complaints 14-16: complaints made by virtue of the claimant's claim form presented in August 2021</u>

Complaint 14 – complaint about language used by police dispatcher in or around June 2021

331. Up until Ms Hogben's closing submissions, the claimant's case was that the police dispatcher's choice of language was not only harassment related to race but was (in the alternative) direct race discrimination and, in any event, victimisation contrary to s39 of the Equality Act 2010 read with section 27. In respect of harassment, the claimant's case was not simply that the police dispatcher's choice of language had had the effect of violating his dignity, or creating an intimidating hostile, degrading, humiliating or offensive environment for him, but that that had been the purpose of the police dispatcher's conduct.

332. In her closing submissions, Ms Hogben said: 'Having reflected on the evidence before the Tribunal, C advances his case on the basis of unlawful harassment only. The claims of direct discrimination and victimisation are withdrawn. Further, he contends that the unwanted conduct related to race outlined above had the effect of violating his dignity, or creating an intimidating hostile, degrading, humiliating or offensive environment for him.'

333. In other words, this complaint is now confined to a claim that the dispatcher's choice of language was unwanted conduct related to race that had the effect (though not the purpose) of violating the claimant's dignity, or creating an intimidating hostile, degrading, humiliating or offensive environment for him.

334. It is not in dispute that the police dispatcher twice used the work 'p*kis' on the occasion in question.

335. The context was that the dispatcher was using the language used by the caller to describe his alleged assailants.

336. It is well known that this is a pejorative term which, for many decades, has been used as a racial slur. Mr Healy submitted that for the dispatcher's use of this term to be conduct related to race, it must relate to the claimant's race. If Mr Healy

was suggesting that this would only be conduct relating to race if the dispatcher chose to use the language because of the claimant's race then we reject the submission. And whilst we accept that the dispatcher used the word because that is the word used by the member of the public, we do not accept that it follows from that that this was not conduct related to race. For although we accept that dispatchers are required to convey reports from members of the public accurately, CI Bainbridge himself accepted that, on this occasion, the dispatcher could have communicated in a different manner. In the circumstances we accept that on this occasion the way the dispatcher communicated was conduct related to race. We also find that this conduct was unwanted by the claimant, as is evidenced by the fact that he complained about it at the time.

337. The question, then, is whether the dispatcher's use of this word had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In this regard, the fact that the conduct of the dispatcher was not directed at the claimant, or for that matter at any other individual, is a relevant factor.

338. Looking at the evidence in the round, we have concluded that although the claimant was uncomfortable and unhappy with the use of the word, he did not feel or perceive that his dignity was violated or an intimidating, hostile, degrading, humiliating or offensive environment was created for him. We say that for the following reasons:

338.1. The claimant knew that the dispatcher was repeating the language used by the caller. He said as much in his email to Insp Khan after finishing his shift. It was apparent to him that the conduct of the dispatcher was not, intended to cause offence or to produce the proscribed consequences.

338.2. The final sentence of that email to Insp Khan ('I don't know if I am overthinking it…') indicates that the claimant was aware that others might take a different view of the dispatcher using the offending word.

338.3. Although in his witness statement the claimant now said he felt 'sickened and heartbroken' by the dispatcher's use of language, the claimant's acknowledgement in the email from the time that he may be 'overthinking it' and the reference in that email to it 'not sitting comfortable' with him suggests that his reaction to the dispatcher's language at the time was more measured.

338.4. In his witness statement, the claimant explained the reasons for his unhappiness by reference to what might have happened if members of his family had overheard the dispatcher using a word widely recognised as a racial slur. This suggests that the claimant's concern was not with the environment that had been created for him on this occasion, but the environment that could have been created if the circumstances had been different.

338.5. In his witness statement the claimant also expressed concern about what other members of the public might think if they heard the word being used. He suggested that it would have 'ruined all the good work that Jason Bowes and I had achieved in restoring some faith in the organisation.' Whilst that might create a hostile or offensive environment for some members of the public, that is not the test; the test is whether it created the proscribed environment for the claimant himself.

339. Even if we had found that the claimant did, subjectively, feel or perceive that the dispatcher's conduct had the proscribed effect, we find that it was not reasonable for it to have that effect given the context in which the language was used. It was apparent that the conduct of the dispatcher was not intended to cause offence or to produce the proscribed consequences. Furthermore, it ought to have been apparent to the claimant that the dispatcher had to relay information with accuracy and speed. We accept Mr Healy's submission that, in those circumstances, it would not be reasonable to expect a call dispatcher to filter every item of offensive language reported to them, when relaying it via radio transmission to professional police officers. The dispatcher had to make a decision at that moment as to how to relay what the member of the public had said. With the benefit of hindsight, it may be said that the dispatcher could have worded the call differently; that certainly was the view of CI Bainbridge after he looked into the matter. It would be unreasonable, however, for the claimant to take great exception to the dispatcher's failure to achieve that standard on an isolated occasion such as this.

340. In light of the above, we have concluded that the unwanted language did not have the effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Therefore Complaint 14 is not well founded.

Complaint 15 – complaint about CI Bainbridge's handling of complaint about call dispatcher

341. The claimant's case is that 'on 8 June 2021 CI Bainbridge concluded that the dispatcher had not done anything wrong in relation to the above incident.'

342. The claim fails on the facts. CI Bainbridge did not conclude that the dispatcher had not done anything wrong and nor did his email of 8 June 2021 say that.

343. Complaint 15 is not well founded.

Complaint 16 – complaint about failing to require CI Bainbridge to undertake equality and diversity training

344. This is a complaint about the respondent's failure, between 11 June 2021 and August 2021 (the date of his claim), to require CI Bainbridge to undertake equality and diversity training.

345. The claimant's case was that this failure was: harassment related to race; (in the alternative) direct race discrimination and, in any event, victimisation contrary to s39 of the Equality Act 2010 read with section 27. In respect of harassment, the claimant's case was not simply that this omission had the effect of violating his dignity, or creating an intimidating hostile, degrading, humiliating or offensive environment for him, but also that that was its purpose.

346. In her closing submissions, Ms Hogben addresses only the harassment complaint and, in doing so, deals only with the effect of the omission and not its purpose. It appears, therefore, that this complaint is now confined to a claim that

the omission was unwanted conduct related to race that had the effect (though not the purpose) of violating the claimant's dignity, or creating an intimidating hostile, degrading, humiliating or offensive environment for him.

347. The claim made on this basis is not well founded, for the reasons that follow.

348. The definition of harassment in section 26 requires there to be some 'conduct' on the part of the respondent. In this instance the complaint is about a failure to do something. Whilst we accept that a failure to act might constitute conduct in its own right in some circumstances, such as where there has been a conscious decision not to do something, we do not accept that CI Bainbridge not undertaking equality and diversity training was such a case. The training arranged following the claimant's complaint was designed for call dispatchers. It was put in place to address a specific concern raised by the claimant about the language used by a call dispatcher over the radio. CI Bainbridge was not a call dispatcher. He was not part of the cohort for whom the training was conceived. The fact that he was not required to have training designed for people in a different role was not 'conduct' by the respondent.

349. Even if not requiring CI Bainbridge to undertake the training could be said to be 'conduct', it was not, in our view, conduct related to race. The fact that the offending language used by the dispatcher was related to race was merely the background against which the training was arranged. It is clear from the Court of Appeal's decision in Nailard that the mere fact that the trigger for the training was conduct related to race is not enough to establish that a failure to require CI Bainbridge to undergo training was itself related to race, particularly when the conduct that the training was designed to address was the conduct of call dispatchers rather than CI Bainbridge.

350. In any event, we accept Mr Healy's submission that any 'conduct' in failing to require CI Bainbridge to attend this training was not 'unwanted' conduct, given that the claimant did not at the time suggest that CI Bainbridge should undertake the training.

351. As far as the claims of direct discrimination and victimisation are concerned, these complaints were not addressed by Ms Hogben in her submissions. Our conclusion is that those claims fail for the following reasons:

351.1. CI Bainbridge not having training was not detrimental treatment of the claimant.

351.2. The claimant has not shown facts from which we could conclude that not requiring CI Bainbridge to take the training was in any way influenced by the claimant's previous tribunal claims or him being a witness in his colleague's claim.

351.3. The claimant has not shown facts from which we could conclude that, by not requiring CI Bainbridge to take the training, the respondent treated the claimant less favourably than the respondent would have treated anyone else in the same material circumstances, and did so because of race.

352. For those reasons Complaint 16 is not well founded.

Complaints 17 and 18: complaints made by virtue of the claimant's application to amend made on 7 February 2022 and EJ Loy's Order made on 11 March 2022, as amended by EJ Smith's Order of 14 June 2023 and at this hearing

Complaint 17 – complaint about anonymous allegations made in September 2021

353. It is not disputed that in September 2021 one or more of the respondent's employees or agents made anonymous allegations to the respondent's Counter Corruption Unit stating that:

353.1. on 14 March 2018 the claimant had made a falsehood to a fellow officer to avoid being prosecuted for an offence of driving without insurance; and

353.2. on 24 September 2021 the claimant had driven a car on a public road when not covered by a policy of insurance.

354. The claimant's primary case is that it was PS Marchant who made the allegations, or CI Pitt, Mr Moir or DCI Bonner. We have found as a fact that the allegations to the CCU were not made by any of those individuals.

355. The claimant also complains that PS Marchant, CI Pitt, Mr Moir and DCI Bonner 'coordinated the making of the allegations to the CCU. We have found as a fact that neither Sergeant Marchant nor DCI Bonner coordinated the making of the allegations to CCU.

356. As for CI Pitt and Mr Moir, their only involvement arose after XYZ spoke to Mr Moir about Allegation 1. Mr Moir then spoke with CI Pitt about Allegation 1 and CI Pitt encouraged Mr Moir to speak with XYZ again and encourage XYZ to refer the matter to the DSE. Mr Moir did speak to XYZ again, whereupon XYZ told Mr Moir he had already referred the matter on anonymously. We do not think the word 'coordination' is apt to describe these actions. But even if it is, in taking these steps CI Pitt and Mr Moir did exactly what we would expect them to do when made aware of an allegation that one of the officers under their command may have done something that could have amounted to a criminal offence: they encouraged the person making the allegation to refer the matter to the unit whose responsibility it was to investigate these kind of allegations. We have no doubt that, in taking these actions, neither Mr Moir nor CI Pitt were motivated or influenced at all by any of the following things: the fact that the claimant had brought tribunal proceedings on 20 August 2021; the fact that the claimant had filed and served particulars of his claims on 14 September 2021 or the fact that the claimant had raised a grievance about Sergeant Marchant on 20 September 2021; or a belief that the claimant may do a protected act in the future.

357. It follows that, insofar as complaint 17 concerns the actions or alleged actions of Sergeant Marchant, Mr Moir, CI Pitt and DCI Bonner, the claim is not well founded.

358. The anonymous allegations made to the respondent's Counter Corruption Unit were made by someone other than those named individuals. The respondent accepts that this person (XYZ) was an employee of the respondent and therefore their actions in making the complaint are treated as those of the respondent.

359. The facts suggest that XYZ may have either worked at Wynyard or been provided with information within the allegations by someone who worked at Wynyard. There is no evidence, however, that it was common knowledge amongst those

who worked at Wynyard that the claimant had done any of the protected acts relied on ie brought tribunal proceedings on 20 August 2021; filed and served particulars of his claims on 14 September 2021 or raised a grievance about Sergeant Marchant on 20 September 2021. Indeed we would find it surprising if those matters were common knowledge, certainly by 29 September 2021 when the allegations were made to CCU. The claimant had not given any details of his claim when he brought proceedings in August 2021. Those details were only forthcoming on 14 September 2021, when he particularised his claims. Even then, it seems unlikely that the legal team would have shared details of the allegations at that stage beyond those who needed to know about them, and the claimant himself does not suggest he told others at Wynyard about his claim at this time. As for the complaint against Sergeant Marchant, there is no evidence that information about this complaint was shared with others.

360. The claimant has not persuaded us that there are facts from which we could conclude, in the absence of an alternative explanation, that it is more likely than not that XYZ made their report to the CCU for any of the following reasons: the fact that the claimant had brought tribunal proceedings on 20 August 2021; the fact that the claimant had filed and served particulars of his claims on 14 September 2021 or the fact that the claimant had raised a grievance about Sergeant Marchant on 20 September 2021; or a belief that the claimant may do a protected act in the future.

361. Complaint 17 is not made out.

Complaint 18 – complaint about allegation made in November 2021

362. The claimant alleges that, between 29 September 2021 and 19 November 2021 PS Marchant made an allegation that the claimant had lied to avoid prosecution following an alleged speeding offence on 29 September 2021 and that this was an act of victimisation. The claimant further contends that CI Pitt coordinated the making of that allegation against him and that too was an act of victimisation.

363. We have found that Sergeant Marchant did not in fact allege that the claimant had lied. The furthest Sergeant Marchant went was to express a belief, in an email of 5 November 2021, that the claimant might not have told the truth (ie he might have lied). Therefore, the claim made by the claimant is not made out on the facts.

364. If, contrary to that conclusion, the claimant's claim can be viewed as encompassing Sergeant Marchant raising the matters he did in the terms set out in his email of 5 November 2021, our conclusions are as set out below.

365. We accept that a person in the claimant's position could reasonably perceive that act as being to his disadvantage.

366. Ms Hogben submitted that the evidence/facts suggest that Sergeant Marchant 'manufactured inconsistencies which did not exist.' We do not agree with that submission. It is our conclusion that, on any reasonable view, the information the camera enforcement officer and quality and review officer gave Sergeant Marchant cast doubt on the veracity of the explanation for speeding the claimant had given on the exemption form.

367. Ms Hogben also submitted that Sergeant Marchant 'conducted an investigation of his own' and that his investigation 'looked for evidence in order to discredit C'.

368. We consider that the fact that Sergeant Marchant was upset about the grievance the claimant had made against him, and that he had, on 29 September 2021, said things to CI Pitt that caused CI Pitt to be concerned that Sgt Marchant might use his position to take action against the claimant in retaliation for his grievance are facts from which we could infer, in the absence of any other explanation, that Sergeant Marchant's decision to look into the claimant's explanation for speeding, and the enquiries he made were at least partly influenced by the fact that the claimant had filed a grievance (which the parties agree was a protected act). Therefore, the burden of proof shifts to the respondent.

369. We are satisfied that Sergeant Marchant's decision to investigate the claimant's explanation for speeding, and the way he went about those enquiries, was in no sense whatsoever because of the fact that the claimant had raised a grievance against him and nor was his decision to involve CCU or him raising the matters he did in the terms set out in his email of 5 November 2021. Nor, for that matter, were any of those things because the claimant had brought tribunal proceedings under the Equality Act 2010 in August 2021 and subsequently particularised those claims, or because Sergeant Marchant believed the claimant may do a protected act in the future such as bringing a claim under the Equality Act. In particular we are satisfied that Sergeant Marchant did not, as has been alleged, look for evidence in order to discredit the claimant. We reach this conclusion for the following reasons:

369.1. Sergeant Marchant initially simply forwarded the claimant's exemption form on to Ms Walker in the ticket office without querying it. He only began investigating the veracity of the reason given by the claimant for speeding after Ms Walker told him it was his responsibility to satisfy himself that the reason was accurate.

369.2. The enquiries made by Sergeant Marchant of the camera enforcement officer and Quality and Review Officer are exactly the sort of enquiries one would expect Sergeant Marchant to make in the circumstances.

369.3. As already noted, on any reasonable view the information relayed to Sergeant Marchant by those two officers cast doubt on the veracity of the explanation for speeding the claimant had given on the exemption form.

369.4. Having received that information, Sgt Marchant took advice from his line manager, CI Pitt, about his concerns that the claimant's explanation may not be true. In then referring the matter on to DC Moore in CCU without making further enquiries of the claimant himself, Sgt Marchant was acting in accordance with CI Pitt's advice.

369.5. The fact that Sgt Marchant did not make further enquiries himself of the claimant before doing so was entirely sensible and appropriate given: the fact that the initial enquiries suggested there was evidence that the claimant may not have told the truth in his exemption form (something that could have amounted to the offence of attempting to pervert the course of justice); CI Pitt's advice to refer the matter to DC Moore; that it was DC Moore's job to investigate misconduct and potential criminal offences by police officers and she was already investigating whether the claimant had attempted to pervert the course

of justice on an earlier occasion; and the fact that the existing grievance brought by the claimant could lead to questions being raised as to Sgt Marchant's impartiality if he were to investigate further.

369.6. Sgt Marshall's email of 5 November in which he expressed a belief that the claimant might not have told the truth and said why, was in response to a specific request by DC Moore that he set out in writing the circumstances and his concerns.

369.7. In that email Sergeant Marchant: accurately described what he had been told by the camera enforcement officer and the quality and review officer; made clear that he did not know what constitutes a moving speed check, thereby acknowledging that he was not best placed to judge if the claimant had done anything wrong; referred to the claimant being an advanced driver and his previous role as a traffic officer, thereby flagging a factor that might support the claimant's claim to have been carrying out a moving speed check; said he had not spoken to the claimant about what he had been told by the camera enforcement officer or the quality and review officer, thereby acknowledging that he did not have a full picture; and was candid about the fact that the claimant had a grievance against him.

370. As for the allegation that CI Pitt 'coordinated' the making of the allegation against the claimant, CI Pitt's involvement in the making of this allegation was simply to ensure the concerns that Sergeant Marchant had were investigated appropriately by advising him to raise his concerns with CCU. That advice was entirely appropriate in light of the anomalies revealed by Sergeant Marchant's initial enquiries, which suggested there was evidence that the claimant may not have told the truth in his exemption form (something that could have amounted to the offence of attempting to pervert the course of justice), and bearing in mind that it was DC Moore's job to investigate misconduct and potential criminal offences by police officers and she was already investigating whether the claimant had attempted to pervert the course of justice on an earlier occasion, and the fact that the existing grievance brought by the claimant could lead to questions being raised as to Sgt Marchant's impartiality if he were to investigate further. The claimant has not shown there are facts from which we could conclude that CI Pitt giving this advice constituted detrimental treatment of the claimant done because the claimant had done any of the protected acts relied on or because of a belief that the claimant may do a protected act in the future.

371. Complaint 18 is not well founded.

Complaints 19 and 20: complaints made by virtue of the claimant's application to amend made on 25 March 2022 and EJ Loy's direction of 22 April 2022

Complaint 19 – complaint about reg 17 notice served in March 2022

372. The parties agree that in March 2022 the respondent served on the claimant a Regulation 17 notice for alleged dishonesty in relation to an alleged speeding offence (Allegation 4) and pursued that allegation as a misconduct matter. The alleged dishonesty by the claimant was him telling DC Moore, on 11 January 2022, that he had not seen the camera footage of his speeding previously. This was at odds with what Mr Hudspith told DC Moore.

373. The claimant complains that the service of the notice and pursuing the allegation as a misconduct matter was:
   373.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27; and
   373.2. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

374. In so far as the complaint concerns the pursuit of the allegation as a misconduct matter, it must be about doing so before the amendment was made. That necessarily follows from the fact that the application to amend was made on 25 March 2022 and was granted on 22 April 2022. It follows that the complaint is not about the lawfulness of the continuing pursuit of the allegation as a misconduct matter beyond 22 April 2022.

375. It is for the claimant to show there are facts from which we could conclude, in the absence of any other explanation, that the respondent pursued the allegation as a misconduct matter (and, related to that, served the Reg 17 notice):

   375.1. (in respect of the harassment claim) for a reason related to race; and
   375.2. (in respect of the victimisation claim) because the claimant had brought proceedings under the Equality Act 2010 on 20 August 2021, provided further and better particulars of those claims on 14 September 2021, provided updated further particulars of those claims on 17 November 2021 and/or raised a grievance on 20 September 2021 alleging PS Marchant was victimising him.

376. It is the claimant's case that this misconduct investigation was instigated in order to discredit the claimant so as to undermine his claims in these proceedings. Ms Hogben submits that the following things are evidence of this:
   376.1. That the allegation concerned a 'relatively minor issue as to whether C had viewed the speeding footage or not' which had been 'escalated' into an allegation that 'the claimant had breached the standards of professional behaviour in respect of honesty and integrity which, if proven, would have been career-ending on its own.'
   376.2. That the claimant had himself asked DC Moore to check the 'system' to see if the footage had been viewed as he was adamant that he had not seen it until the interview. Subsequently an independent expert had provided evidence that the footage had not been viewed on the day the claimant and Mr Hudspith had been together in the room.
   376.3. That a group of individuals within the Executive team had regular meetings at which the investigations against the claimant and his grievances were discussed. Amongst others, Ms Clynch and Mr McLoughlin were involved in some of these discussions. Ms Hogben also refers to CI Bell being involved in the misconduct/criminal investigations and refers to evidence of other investigations into or monitoring of the claimant in more recent times. She suggests that this 'suggests DC Moore is acting in concert with others in an attempt to discredit C'.

377. We refer below to research carried out by National Police Chiefs Council (NPCC) in 2019 which found that Black, Asian, & Minority Ethnic (BAME) police officers were more likely to face misconduct investigations for low level conduct allegations (which, consequently, were more likely to result in 'low level or no sanction outcomes, than their white colleagues'). We do not consider this was a

'low level conduct allegation' of the sort described in that report or that the matter under investigation could be appropriately categorised as a 'minor matter'. When DC Moore served the misconduct notice on the claimant she clearly had grounds for believing the claimant had not been honest given that what the claimant had said to her about not having seen the camera footage was directly contradicted by Mr Hudspith. Given that the claimant was already being investigated for alleged dishonesty in relation to the same speeding event, and made the impugned comment during an interview as part of a criminal investigation into that matter, and given the high standards expected of police officers, it was entirely appropriate and understandable that there would be an investigation into this new matter. Indeed, Ms Hogben herself submitted that if the allegation was proved it 'would have been career-ending on its own', which undermines her submission that it was a minor matter.

378. As for the expert evidence of what an analysis of data on the respondent's systems showed, there was no suggestion in the hearing or in closing submissions that the respondent was in possession of that evidence before the decision to pursue this as a conduct investigation was made or before the application to amend was made or, for that matter, before the application to amend was granted on 22 April 2022.

379. Furthermore, we find nothing at all untoward or suspicious about the fact that an Executive team met on a number of occasions to discuss the various investigations and other proceedings involving the claimant given the overlapping issues that they gave rise to. Those matters included: the criminal and misconduct investigations concerning the claimant (re Allegations 1-4); the criminal proceedings for speeding, which had a bearing on those investigations; these employment tribunal proceedings; the claimant's various grievances raised on 7 May 2021; the misconduct investigation against retired Sgt Harker; the claimant's grievance against Sgt Marchant. In addition, the claimant had taken sickness absence, which needed to be managed from a welfare perspective.

380. We also find nothing suspicious about CI Bell's involvement in the investigations concerning Allegations 1-4 against the claimant given the need for input from someone with knowledge of road traffic policing.

381. We conclude that there claimant has not shown there are facts from which we could conclude, in the absence of any other explanation, that it is more likely than not that the respondent's pursuit of a misconduct investigation in respect of Allegation 4 prior to 23 April 2022 (and service of a regulation 17 notice in respect of that allegation) was influenced at all by any of the protected acts relied on or was for any reason related to race.

382. Complaint 19 is not made out.

Complaint 20 – complaint about failing to investigate whether allegations made against the claimant were made because of race or related to race or made because he did a protected act

383. The claimant alleges that the respondent's DSE failed to investigate whether or not allegations made against him were made because of race or related to race or made because he did a protected act. The claimant complains that this omission was:

383.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27; and

383.2. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

384. The ‘allegations’ in question are those described as Allegations 1, 2 and 3. When the claimant applied to amend his claim on 25 March 2022 to make this complaint, he did not identify when this omission is said to have occurred. He must, however, have been alleging it occurred before that date and in any event the complaint cannot extend to any omission that occurred after the amendment was made on 22 April 2022.

385. In respect of harassment, the claimant’s case is not simply that this omission had the effect of violating his dignity, or creating an intimidating hostile, degrading, humiliating or offensive environment for him, but also that that was its purpose.

386. The necessary components of harassment within EqA section 26 are that:

386.1. the harasser has engaged in some form of conduct;

386.2. that conduct was unwanted;

386.3. the conduct itself was related to race;

386.4. the conduct had the proscribed purpose or effect. In this regard, conduct cannot have had the proscribed effect unless the claimant actually felt or perceived that their dignity was violated or an intimidating, hostile, degrading, humiliating or offensive environment was created for them: Dhaliwal.

387. It is far from clear how the claimant contends any of these components existed in his case.

388. As for victimisation, the necessary components are that the respondent subjected the claimant to some detriment and did that because the claimant had done a protected act (or because the person subjecting the claimant to detriment believed they may do so in the future).

389. In respect of the ‘conduct’ and ‘detrimental treatment’ said to have been engaged in, the claimant’s case is based on an omission. The complaint is about what was not done rather than what was done.

390. In her closing submissions Ms Hogben referred us to the National Police Chiefs’ Council report on Understanding Disproportionality in Police Complaint & Misconduct Cases for BAME Police Officers & Staff 2019. That report describes the results of research carried out by National Police Chiefs Council (NPCC) in 2019 in order to improve understanding of the reasons for ‘disproportionality for Black, Asian, & Minority Ethnic (BAME) police officers in complaints and misconduct investigations.’ One of the findings set out in that report was that BAME officers were more likely to be ‘referred to Professional Standards Department (PSD) by their supervisor for low level conduct allegations, with that supervisor failing to deal with the conduct allegation proportionately and at the earliest opportunity. This is either out of fear of being called racist or not having the knowledge to deal with the matters raised appropriately. As a result, BAME officers were often only made aware that their performance or conduct was in question when their supervisor informed them they had been reported to PSD.’ The report went on to find ‘Once the conduct allegation against the BAME officer

is put through to PSD for a case to answer and/or severity assessment to be conducted, … several PSD's rarely consider the wider context other than that officers discipline/conduct history, particularly failing to explore if there is a 'trigger incident' e.g. whistleblowing or complaints of racism…'

391. Ms Hogben submits that DC Moore admitted in cross-examination that she was unaware of that report and what it says about 'trigger incidents'. Ms Hogben also makes the point in her submissions that DC Moore said when questioned that her understanding of victimisation involved 'targeting someone' for any reason rather than targeting someone specifically because they had raised a complaint of discrimination. Ms Hogben's point appears to be that if DC Moore did not understand that the word 'victimisation' has a particular meaning in the Equality Act, she cannot have considered whether the making of the allegations constituted victimisation that contravened that Act.

392. It seems to us that those submissions undermine, rather than advance, the claimant's case that the omission relied on constituted conduct of any sort. If anything, those submissions suggest that any omission by DC Moore to investigate the motivations of those who made the allegations was not a deliberate or conscious act and therefore did not constitute anything that can properly described as 'conduct'. Similarly, Ms Hogben's submissions undermine, rather than advance, the claimant's case that the omission relied on constituted detrimental treatment of the claimant.

393. Ms Hogben submits that DC Moore failed to 'consider' whether the allegations 1 and 2 were motivated by race or the claimant's recent tribunal proceedings or grievance against Sergeant Marchant when drafting the severity assessment into those allegations on 29 October 2021. However, the purpose of a severity assessment is prescribed by the Police Conduct Regulations, which do not provide for the motivations of the person making the allegations to be taken into account at this stage. The Appropriate Authority was required by Reg 14 to carry out that assessment because an allegation had come to his attention which 'indicates that the conduct of a police officer may amount to misconduct, gross misconduct or practice requiring improvement.' The purpose of a severity assessment is, as set out in Reg 14 of the Conduct Regulations to 'assess whether the conduct which is the subject matter of the allegation, **if proved**, would amount to misconduct or gross misconduct or neither….' Regulation 14 then makes it clear that the matter must be investigated 'where the appropriate authority assesses that the conduct, **if proved**, would amount to misconduct or gross misconduct.'

394. DC Moore was appointed as the investigator pursuant to the Regulations. Her statutory duty in that capacity was as set out in Reg 16 ie to (a) gather evidence to establish the facts and circumstances of the alleged misconduct or gross misconduct **by the claimant**, and (b) assist the appropriate authority to establish whether there was a case for the claimant to answer in respect of misconduct or gross misconduct or whether there was no case to answer. Whilst we do not doubt that, as part of an investigation into an officer's conduct, it might be relevant to consider the motivations of those making allegations, that is clearly not the purpose of the investigation. In any event, the complaint made by the claimant in these proceedings is not merely that the motivations of the person making the

allegations should have been 'considered' but that they should have been 'investigated.' That, it seems to us, would have required DC Moore to depart even further from her appointed role, in which she was responsible for investigating the claimant's conduct.

395. In any event, however, we have found as a fact that DC Moore embarked on the investigation into Allegations 1 and 2 with an open mind as to the motivations of XYZ. She is an experienced investigator and was well aware of the potential for the Break the Silence system to be used for improper motives. We are satisfied that she did consider what might have motivated XYZ to make allegations 1 and 2 and satisfied herself during her investigation that there was nothing untoward about the motives of XYZ in raising allegations through the Break the Silence system. Ms Hogben refers us to the fact that the claimant said in his interview on 11 January 2022 that he believed he was being victimised or targeted because of his race. However, he was clearly pointing the finger at Sgt Marchant in that interview and DC Moore knew that neither XYZ nor the person who had given information to XYZ was Sergeant Marchant.

396. As for Allegation 3, which was based on a concern raised by Sergeant Marchant, he clearly set out the reason for his concerns to DC Moore and she investigated the matter diligently. Given that DC Moore knew the claimant had been wrong to suggest Sgt Marchant had made allegations 1 and 2 were made by Sgt Marchant in retaliation for the grievance the claimant had made, it is difficult to see what warrant there would have been (at any time before 22 April 2021) for conducting an investigation into Sgt Marchant's motivations, rather than simply doing what DC Moore actually did, which was to investigate whether there was any substance to the allegations themselves.

397. For those reasons, we are not satisfied that the respondent engaged in unwanted conduct or subjected the claimant to a detriment by failing to investigate whether or not allegations made against him were made because of race or related to race or made because he did a protected act.

398. Complaint 20 is not well founded.

Complaints 21 and 22: complaints made by virtue of the claimant's application to amend made on 9 May 2023 and EJ Smith's Order made on 14 June 2023

Complaint 21 – complaint about DSE failing to deal promptly with grievance raised about Sgt Harker on 7 May 2021

399. The claimant has not proved that DC McLoughlin or DI Agar or anyone else in the DSE deliberately failed to promptly deal with his grievances about Sgt Harker. Therefore, Complaint 21 is not well founded.

Complaint 22 – complaint about the decision of the Appropriate Authority to assess the alleged breaches by Sgt Harker as misconduct rather than gross misconduct

400. The parties agree that on or around 2 May 2023 DI Agar, as Appropriate Authority, assessed the alleged breaches by Sgt Harker as misconduct rather than gross misconduct.

401. The claimant complains that this was:
   401.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27; and
   401.2. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

402. The complaint concerns the allegations described as Breach 1 and Breach 6 in the conduct investigation concerning Sgt Harker. DI Agar concluded that there was a case to answer in relation to these two breaches but that they constituted alleged misconduct rather than gross misconduct. As such, that meant there could be further action against retired Sgt Harker because misconduct proceedings can only be pursued against a former officer if the allegation is one of gross misconduct.

403. We do not accept that DI Agar's conclusion to assess these alleged breaches as misconduct rather than gross misconduct constituted subjecting the claimant to a detriment or that it was unwanted conduct that had the purpose or effect of violating the claimant's dignity or creating a proscribed environment for him. We say that for the following reasons.

   403.1. The decision was not directed at the claimant and had no direct consequences for the claimant.
   403.2. Ms Hogben submitted that it 'denied him a fair and impartial consideration of his complaint'. We disagree. The complaint had already been considered by this point and, in so far as it related to Breach 1 (and 6 although this was not part of the claimant's complaint) had been found to have merit.
   403.3. Ms Hogben implied that the decision to assess the severity of Breaches 1 and 6 as misconduct rather than gross misconduct avoided misconduct proceedings that could have undermined the respondent's defence to the ET proceedings. If it is suggested that this, in turn, undermined the claimant's claims about Sgt Harker's actions, we reject that submission. The role of the Tribunal is to make its own findings on the evidence before the Tribunal. The findings of a misconduct panel (which could equally have decided the allegations were not well founded) would have little if any bearing on the likelihood of success. In any event, the submission overlooks the fact that DC McLoughlin and DI Agar both decided the allegations in Breaches 1 and 6 were well founded.

404. In any event, even if the decision that Breaches 1 and 6 constituted misconduct rather than gross misconduct did constitute detrimental treatment of the claimant, in respect of the victimisation claim it is for the claimant to prove facts from which we could conclude that DI Agar reached that decision because the claimant had brought these proceedings, or particularised these proceedings or because of the grievance he made against Sergeant Marchant. And in respect of the harassment claim it is for the claimant to prove facts from which we could conclude that DI Agar's unwanted conduct was related to race.

405. The claimant's case is that Breach 1 and Breach 6 'must, on any reasonable analysis, suggest that there is a case to answer in respect of gross misconduct.'

However, even if the allegations could have been assessed as gross misconduct, that alone would not be enough for us to infer that DI Agar's assessment of them as simple misconduct was likely to have been influenced (consciously or subconsciously) by the claimant's tribunal proceedings or race.

406. Furthermore, an important factor is that in assessing the severity of alleged misconduct, the Police Conduct regulations contain a modified definition of the term 'gross misconduct' that must be applied when dealing with former officers. DI Agar well understood this and it was clearly this modified definition that he had in mind in assessing the severity of the conduct referred to in Breaches 1 and 6. That modified definition makes it clear that conduct will only be gross misconduct if it would have result in dismissal if the officer if they were still in service. That being the case, the decision to classify the conduct as misconduct rather than serious misconduct was entirely reasonable in our view.

407. We are not persuaded that there are facts from which we could conclude that DI Agar's decision in this regard was in any way influenced by any protected act or by race. In particular:

407.1. As already explained, we have rejected the submission that DI Agar's decision as to the severity of Breaches 1 and 6 was likely to have any impact on the success of the claimant's claims in this Tribunal.

407.2. Ms Hogben refers to the fact that the initial assessments of conduct and regulation 17 notices and the final reports did not refer to the standard of conduct that specifically addresses Equality and Diversity. The suggestion appears to be that this shows the DSE wished to downplay the discriminatory aspects of the complaints. We reject that submission. It is clear from the fact that the DSE involved the force's Diversity specialists in the investigation and from the final reports of both DC McLoughlin and DI Agar that they had the issue of discrimination at the forefront of their minds. Their consideration of the matter as set out in their reports was nuanced and balanced.

407.3. Other submissions made by Ms Hogben are directed at the fact that DI Agar found there was no case to answer in respect of Breaches 2 to 5. Those submissions are misdirected. The complaint before the Tribunal is not whether the respondent harassed the claimant or victimised him by concluding that there was no case to answer in respect of those alleged breaches. The amendment applied for and in respect of which permission was granted concerned only the decision to assess Breaches 1 and 6 as instances of misconduct rather than gross misconduct.

407.4. We reject the submission that DI Agar's involvement early on in respect of the misconduct investigation into the claimant, and the fact that DC Moore contacted him on other occasions demonstrates bias on his part.

408. For those reasons, Complaint 22 is not well founded.

<u>Complaints 1-12: complaints made by virtue of the claimant's claim form presented in August 2021</u>

409. The claimant concedes that all of Complaints 1-12 were brought outside the primary three month limitation period in EqA 2010 s123(a) if those complaints are considered in isolation from later acts said to have contravened the Equality Act 2010. The claimant's position, however, is that those acts were part of conduct extending over a period together with the acts to which complaints 14 to 22 relate.

410. We have not upheld any of Complaints 14 to 22 as contraventions of the Equality Act 2010. Therefore, those matters do not form part of a continuing course of unlawful conduct. It follows from that conclusion and the claimant's concession that none of the acts or omissions to which Complaints 1 to 12 relate were done or occurred, or are to be treated (by virtue of s123(3)) as having been done or occurred, on or after 20 May 2021. Therefore, even if all of Complaints 1 to 12 were to be upheld as contraventions of the Equality Act 2010 and found to be conduct extending over a period, the complaints have been made outside the primary three-month limitation period in section 123(1)(a).

411. We must therefore decide whether the claim was brought within 'such other period as the employment tribunal thinks just and equitable': s123(1)(b). In other words, we must decide whether it is just and equitable to extend the time for bringing these claims.

412. With regard to the reason for the delay in bringing these claims, this is not a case involving someone who was unfamiliar with their employment rights or employment tribunal procedures and time limits. The claimant has brought two previous employment tribunal claims. We are satisfied from the answers the claimant gave on cross examination that, even before the alleged events forming the basis of these complaints, he was aware of his rights to bring claims of race related harassment, discrimination and victimisation, the time limit for bringing such claims, and how to go about bringing a claim.

413. In his witness statement the claimant referred to the stress of his previous employment tribunal claims and feeling 'scarred' by his experiences of discrimination. We were referred, by the claimant in his witness statement and by Ms Hogben in closing submissions, to various medical reports which were said to support what the claimant was saying. However, those reports contain limited evidence of relevance.

413.1. A report from the force medical examiner (FMA) dating from March 2018 (ie about the time the claimant began his second tribunal claim) confirms the claimant had had a recent 10 day absence from work but suggested that the claimant was maintaining good psychological health, declared that the claimant was fit for work and said no further intervention from Occupational Health was required.

413.2. We were referred to subsequent reports addressing allergies, which are immaterial in so far as the time point is concerned. One of the reports to which we were referred suggested the claimant was experiencing symptoms of PTSD, which was said not to affect the claimant's fitness for work.

413.3. We were also referred to reports addressing dyslexia and dyspraxia, neither of which the claimant said in evidence affected his ability to bring a tribunal claim.

413.4. The most relevant of the reports to which we were referred was dated 26 July 2021, the month before these proceedings were instituted. That report referred to the claimant explaining to the FMA that he suffered from psychological symptoms as a result of 'events that have happened in his employment.' The report said the claimant was 'diagnosed with work-related stress'. The FMA said the claimant 'exhibited high levels of anxiety and some symptoms consistent with depression. However, there was no evidence I could identify to suggest that he was significantly impaired functionally. The main issues are perceived work-related barriers.'

413.5. We were referred to subsequent reports from the FMA that post-dated the claim being made, including one from December 2021, when the claimant was facing a misconduct/criminal investigation. This referred to the claimant struggling psychologically, with the FMA being of the opinion that the claimant was not fit for work. In addition we were referred to a report from Alliance Psychological Services dated 11 April 2022 ie several months after the primary time limit for these claims expired.

414. The claimant did not say in his witness statement nor in answer to cross examination questions that he was not well enough to bring a claim sooner than he did or that his ability to bring a claim was in some way impaired by a psychological impairment. On cross examination the reasons the claimant gave for not bringing a claim sooner all concerned a reluctance to go through tribunal proceedings again, including the stress that would entail.

415. We find that the claimant decided not to bring a tribunal claim sooner because he considered it in his best interests at the time not bring a tribunal claim. We do not doubt that he found his previous experiences of bringing tribunal proceedings stressful and he wished to avoid exposing himself again to such stress. The claimant subsequently changed his mind. The claimant did not give clear evidence as to when he changed his mind. However, we note that he contacted ACAS for the purposes of early conciliation on 22 April 2021 and was issued with an early conciliation certificate the following day. We infer that the claimant was at least seriously considering bringing employment tribunal proceedings at that date.

416. The claimant said in evidence that tribunal proceedings felt like a 'last resort' and that, instead, he was trying to resolve matters using the grievance procedure.

417. It is correct to say that the claimant raised a grievance about his March 2021 interview (to which Complaints 8 and 9 relate) very promptly with Ms Clynch and then subsequently, in early May 2021, with ACC Theaker. When raising his 7 May grievance the claimant was also critical of Ms Clynch's handling of his March grievance (to which Complaint 11 relates). So far as Complaints 8, 9 and 11 are concerned, we accept that the claimant invoked the grievance procedure in the hope of achieving an internal resolution to his concerns.

418. The claimant's own evidence was that: 'by April/May 2021, it was becoming clear to me that the Respondent were not going to do anything about my complaints and that is why I contacted ACAS before going on to present my claim.' This evidence is consistent with the claimant's concession that his complaints about those grievances within Complaints 11 and 12 have been brought outside the

three month time limit. Complaints 11 and 12 concern alleged failures. The claimant's position is that both of those failures is to be treated as having occurred before 20 May 2023, taking into account Equality Act 2010 s123(3)(b) and (4). Our own view is that, given the extremely wide ranging nature of the grievance the claimant made on 7 May 2021, he cannot reasonably have expected those grievances to be resolved quickly. Whether or not he did, we find it more likely than not that that the claimant decided to bring a tribunal claim some time in June or early July 2021. To the extent that the claimant had hoped to achieve an internal resolution to his concerns underpinning complaints 8, 9 and 11 without invoking the tribunal process, by early July at the latest he no longer believed that would be achieved.

419. As for the other complaints, we do not find that the delay in bringing these claims was caused by the claimant invoking the internal grievance procedure prior to commencing proceedings, in light of the following:

419.1. Complaints 1 to 4 concern the alleged conduct of retired Sergeant Harker (with one element of complaint 4 also concerning alleged conduct by Mr Moir and Insp Pitt). Although the claimant referred in his 7 May grievance document Sgt Harker accessing his locker in 2018 and decisions Sgt Harker had made with regard to the allocation of dogs (amongst other things), these events, or alleged events, all occurred between the second half of 2018 and December 2020. The claimant did not invoke the internal grievance procedure until early May 2021, after Sgt Harker had retired.

419.2. In so far as complaint 4 concerns the conduct of Mr Moir and Insp Pitt, the claimant did not refer to this in his grievance.

419.3. Complaints 5 and 7 concern events from January 2021, some months before the claimant invoked the grievance procedure.

419.4. Complaint 6 (being excluded from a What'sApp group) was not referred to in the grievance document of 7 May 2021.

419.5. The claimant did not suggest in his grievances that the interview process should be (or should have been) rerun and that a failure to do so was or would be discriminatory, harassment or victimisation (as he suggests in Complaint 10).

419.6. As noted above, given the extremely wide ranging nature of the grievance the claimant made on 7 May 2021, he cannot reasonably have expected those grievances that he did raise to be resolved quickly.

420. In light of the above, whilst there is a public interest in encouraging the internal resolution of disputes without the need to issue a tribunal claim, the fact that the claimant invoked the internal grievance procedure prior to commencing proceedings is a factor of limited weight in our decision as to whether the grant of an extension of time is justified.

421. As for the length of delay, and the impact of delay, the complaints span a wide period. We address this further in the paragraphs that follow.

Complaints 1 to 4

422. Complaints 1 to 4 all concern the alleged conduct of retired Sergeant Harker (with one element of complaint 4 also concerning alleged conduct by Mr Moir and Insp Pitt). The earliest of these alleged acts occurred in November 2018, nearly three

years before proceedings were brought. Although it is not in dispute that the claimant spoke with line managers at the time about his locker being searched, he did not raise this issue as a formal grievance at that time. It is inevitable that memories will have degraded in the interim. That is also the case in respect of Complaint 2, which the claimant originally said concerned an event that happened in 2018 but on cross examination appeared to accept that, if this incident happened at all, it happened in 2019. Similarly, the variations in accounts given by those who were present when the incident referred to in complaint 4 arose amply shows that the evidence of that event was likely to be less good than if a claim about it had been brought nearer the time. With regard to complaint 3, this concerns a series of decisions by Sergeant Harker over a lengthy period.

423. The respondent's ability to defend itself against these claims is prejudiced by the fact that they were not brought forward to an employment tribunal sooner. That the claimant referred to some of these matters in his grievance in May 2021 does not mitigate that prejudice. By then, a very significant time had already passed since even the most recent events with which complaints 1 to 4 are concerned. By the time the claimant invoked the grievance procedure matters were no longer fresh in the minds of potential witnesses. In any event, Sergeant Harker had retired before the claimant raised his grievance, which affected the respondent's ability to investigate and defend itself against these allegations. Furthermore, that grievance did not mention the allegations made against Mr Moir and Mr Pitt within complaint 4.

424. If we allow these claims to be heard, there will also be prejudice to retired Sergeant Harker. We acknowledge that the fact that he is not a party means that he does not have to go to the time and expense of defending the case on its merits and is not exposed to the risk of having a judgment made against him personally. Nevertheless, if we were to determine these claims we would be reaching conclusions about the lawfulness of his conduct, in a public forum and in a public judgment. Deciding those matters on evidence that has likely degraded would be prejudicial to him. In respect of Complaint 4, that prejudice extends to Mr Moir and Mr Pitt. Although Mr Pitt was able to give evidence, it remains the case that evidence of the events of February 2020 will inevitably have degraded in the long period before the claimant brought his claim.

425. All of those factors above weigh against granting an extension of time for Complaints 1 to 4 as does the public interest in the enforcement of time limits.

426. We recognise that there will be prejudice to the claimant if we do not exercise our discretion to extend time in that the claimant will not have these matters determined and, if we were to decide the claims are well founded, would not have a remedy for unlawful acts. However, that was a risk the claimant took when he decided against pursuing these complaints in the tribunal in a timely manner.

427. Weighing the relevant factors, the claimant has not persuaded us that it is just and equitable to exercise our discretion to extend time and allow complaints 1, 2, 3 and 4 to be determined.

Complaints 5 to 12

428. These complaints all concern acts alleged to have been done in 2021.

429. Although the claimant brought his claim on 20 August 2021, as we have noted above the claim form contained no detail at all of the alleged acts of victimisation, harassment or race discrimination the claimant was making complaints about. The claimant did not provide particulars of his claims until 14 September 2021.

430. Although the respondent was able to lead evidence on these matters at the hearing, we consider that the delay caused some prejudice to its ability to defend the claims. The issues at the centre of these claims were the motivations of various individuals for doing the acts (or omissions) said to be unlawful and, in some cases, whether the alleged act or omission occurred at all, or happened in the way alleged. Whilst some facts that may have a bearing on those issues could be established by reference to documents, others were dependent on the recollections of individuals. Evidence of various factual issues was less good than if a claim about it had been brought nearer the time and even where witnesses believed their evidence to be accurate, the passage of time left their evidence more vulnerable to being considered unreliable.

431. The fact that the claimant invoked the grievance procedure in March (in relation to his interview for promotion) and in May (in relation to that matter and various other matters) only goes a limited way towards mitigating that prejudice. We say that for the following reasons in particular:

431.1. Complaints 5 and 7 concern events from January 2021, some months before the claimant invoked the grievance procedure. It is likely that evidence had already degraded by then.

431.2. Complaint 6 (being excluded from a What'sApp group) was not referred to in the grievance document of 7 May 2021. Nor did the claimant suggest in his grievances that the interview process should be (or should have been) rerun and that a failure to do so was or would be discriminatory, harassment or victimisation (as he suggests in Complaint 10).

431.3. Given the extremely wide ranging nature of the grievance the claimant made on 7 May 2021, and the fact that it included complaints about retired officers and an officer from another force, it was inevitably going to take a considerable time to look into the matters raised by the claimant.

431.4. In any event, although the claimant referred to victimisation and harassment at the start of his grievance document, it was not clear from the document which of the bullet pointed complaints referred to in that list were said to be acts of victimisation or harassment. By way of example, it was not clear from that document that the claimant was suggesting that Ms Clynch had delayed dealing with his March grievance for reasons related to his race or because of his previous tribunal claims. Furthermore, the claimant did not expressly allege in this document that T/Insp Dack had deliberately chosen not to recuse herself so that she could influence the panel against him. In his 8 March email to Ms Clynch, the claimant had implied that he believed the 'force' had intentionally included T/Insp Dack on the panel in order to do him some harm. He did not repeat that allegation in his 7 May document, however.

432. Deciding the claims on evidence that is less good than it would have been if a claim was brought sooner would also be prejudicial to the individuals who are said to have committed the unlawful acts. None of those individuals are

respondents and therefore they do not face the risk of having a judgment made against them personally and being liable to pay any compensation. Nevertheless, if we were to determine these claims we would be reaching conclusions about the lawfulness of their conduct, in a public forum and in a public judgment, with potential implications for their professional reputations. In this regard, we note that a point pressed by Ms Hogben when cross-examining Ms Dack was that the allegations made against her in the claimant's earlier tribunal proceedings could have been career-ending if proved. Even if there were no forensic prejudice, as the alleged perpetrators of the unlawful acts they are still, to borrow the words of His Honour Judge Auerbach in the case of Souter 'on the receiving end' of this litigation and there is a public policy in them, not just the respondent, 'benefitting, so far as possible, from the certainty and finality that the enforcement of time limits potentially gives them.'

433. Once again, we recognise that if we do not extend time for these claims, the claimant will experience prejudice in that he will not have these matters determined and, if we were to decide the claims are well founded, would not have a remedy for unlawful acts. However, that was a risk the claimant took when he decided against pursuing these complaints in the tribunal in a timely manner.

434. Furthermore, in weighing that prejudice to the claimant we have regard to the merits of the claims. In this regard we have concluded that, if we were to extend time, only one element of one of the complaints would have any prospect of success (ie the victimisation element of complaint 9), for the reasons that follow.

434.1. Complaint 5: This is about Sergeant Marchant's decision to move the claimant to C relief in January 2021 and the failure to consult the claimant before making that decision. The complaints of victimisation and race related harassment and race discrimination would not succeed if time were extended, for the following reasons. We have found that Sergeant Marchant did not, at this time, know about either of the claimant's previous Tribunal claims or that the claimant had given evidence in Mr Saddique's claim. Therefore, neither the decision to move the claimant nor the decision not to consult him before the move can have been because of the relevant protected acts. As for the race related harassment and direct race discrimination claims, there are not facts from which we could conclude, in the absence of an alternative explanation, that the reason for the shift change or failure to consult about it was in any way related to race given our findings that that Sergeant Marchant:

434.1.1. did not know that Mr Sutcliffe had previously moved out of C relief to A relief or that Mr Sutcliffe may have been subjected to race related comments on a social trip before that move;

434.1.2. had no reason to think that putting the claimant on C relief might create any problems for the claimant or that the claimant might be unhappy being placed on C relief; and

434.1.3. did not consult with any of the officers in the DSU about the move other than the trainers; in other words, the claimant was treated the same in this respect as everyone else who was in a comparable situation.

434.2. Complaint 6: The claimant's complaint that he was victimised and harassed or directly discriminated against by being excluded from C Relief's

What's App group would not succeed if time were extended because the claimant has not proved that anyone did exclude him from a What's App group.

434.3. Complaint 7: We have found that (in late 2020 rather than January 2021) Insp Bell told the claimant that he would not be able to apply for the sergeant's position that was shortly to become available in the RPU as the position was going to be open to substantive sergeants only. The complaints of victimisation and race related harassment and race discrimination would not succeed if time were extended because what Inspector Bell told the claimant simply reflected his genuine understanding at the time as to who would be permitted to apply. In any event, at the time Inspector Bell knew nothing of the claimant's previous Employment Tribunal claims or the fact that the claimant had given evidence in Mr Saddique's Tribunal claim.

434.4. Complaint 8: The claimant's complaint that he was victimised and harassed or directly discriminated against by being told to attend an hour early for interview on 5 March 2021 would not succeed if time were extended because we have found that the claimant was not told to attend early; he was merely asked if he would.

434.5. Complaint 9: The claimant has not proved facts from which we could conclude, in the absence of any other explanation, that Insp Dack's failure to recuse herself was in any way related to race. Therefore, the complaints of race related harassment and direct race discrimination would fail if we were to exercise our discretion to extend time. We do not suggest that the victimisation claim would necessarily fail. However, we do consider that the witness evidence relevant to this claim was less reliable than it would have been had the claim been presented sooner than it was.

434.6. Complaint 10: The claimant alleges that the respondent victimised him and harassed or directly discriminated against him by failing to rerun the Sergeant's interview. At no time before the claimant started these proceedings did he or Mr Teeley on his behalf ask for the interviews to be rerun. There is no evidence that it is the usual practice of the respondent to rerun interviews where an unsuccessful candidate makes a complaint about the interview process and there would have been only a narrow window within which it would have been feasible to rerun interviews, given the potential impact on other candidates. We have found there was no conscious decision by anyone not to rerun the interviews. If we were to extend time for the claim we would conclude that by not rerunning interviews the respondent had not engaged in any 'conduct' (still less conduct that was unwanted) for the purpose of a harassment claim. In any event if the omission could be said to constitute conduct there are no facts from which we could conclude, in the absence of any other explanation, that it was conduct related to race. We would also conclude that not re-running interviews did not constitute subjecting the claimant to detriment and that, in any event, there are no facts from which we could conclude that the omission was because of the claimant's race or protected acts. Therefore the race discrimination and victimisation claims would fail if time were extended.

434.7. Complaint 11: The claimant alleges that between 9 March 2021 and the date the claim was made (in August 2021) Ms Clynch failed to provide any

meaningful response to the claimant's grievance about Acting Inspector Dack's failure to recuse herself from the interview panel. We have found that, between the claimant raising his grievance on 8 March 2021 and Ms Clynch becoming aware in early May that T/ACC Theaker was speaking to the claimant about the grievance, Ms Clynch dealt with the grievance about Insp Dack in a manner that was both appropriate and reasonably timely. Thereafter, Ms Clynch believed the grievance had been dealt with by T/ACC Theaker and that there was nothing more for her to do about it. That remained her understanding up to the date the claimant brought his claim. We are in no doubt that that was the reason for Ms Clynch's failure to do anything about the grievance after 7 May 2021 and that it was in no sense whatsoever because of any of the protected acts relied on or for a reason related to race. The claimant's complaint that he was victimised and harassed or directly discriminated against by Ms Clynch would not succeed if time were extended.

434.8. Complaint 12: This complaint would not succeed if time were extended because we have found as a fact that the respondent did not, as alleged, fail to take adequate and prompt action to resolve the complaint the claimant made on 7 May to ACC Theaker.

435. Weighing all of the relevant factors the claimant has not persuaded us that it is just and equitable to extend time for any of complaints numbered 1 to 12.

436. It follows that the Tribunal does not have jurisdiction to determine Complaints 1 to 12.

437. Therefore, none of the claimant's complaints is made out.

Schedule of complaints and issues

Complaints 1-16: complaints made by virtue of the claimant's claim form presented in August 2021 (albeit not clarified until later)

Time issues

1.1. Does the Tribunal lack jurisdiction to deal with any of complaints 1- 12 below on the ground that the claim is out of time?

Complaint 1 – complaint about locker search/lock change

2. The claimant alleges that in November 2018 Sgt Harker conducted a search of the Claimant's locker and changed the locks.

3. The claimant complains that this was:

3.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27;

3.2. direct race discrimination contrary to s39 of the Equality Act 2010 read with section 13;

3.3. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

4. The respondent denies that Sgt Harker conducted a search of the Claimant's locker and changed the locks as alleged.

5. ***Issues for the tribunal to decide***

5.1. Did Sgt Harker conduct a search of the Claimant's locker and change the locks as alleged?

Whether harassment

5.2. Was this unwanted conduct?

5.3. Was the unwanted conduct related to race?

5.4. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Whether direct race discrimination

5.5. By doing this did the respondent subject the claimant to detriment?

5.6. By doing this, did the respondent treat the claimant less favourably, because of his colour and/or Pakistani national origins, than the respondent would have treated others in circumstances that were not materially different?

Whether victimisation

5.7. By doing this did the respondent subject the claimant to detriment?

5.8. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 11 November 2015 and/or 28 March 2018, and/or gave evidence in the Employment Tribunal on 15 May 2015 (all of which the respondent accepts were protected acts).

Complaint 2 – complaint about alleged offensive comment

6. The claimant alleges that on or around 26 August 2019 Sgt Harker used the term 'black bastard' in his presence.

NB In the particulars of his claim the claimant alleged this happened in August 2018. He changed his position in response to evidence from the respondent indicating that the incident, if it happened at all, must have happened on 26 August 2019.

7. The claimant complains that this was:

   7.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27;

   7.2. direct race discrimination contrary to s39 of the Equality Act 2010 read with section 13;

   7.3. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

8. The respondent denies that Sgt Harker used the term 'black bastard' in the claimant's presence as alleged.

9. The respondent accepts that, if the tribunal finds that the Respondent did do what is alleged:

   9.1. the respondent engaged in unwanted conduct;

   9.2. the unwanted conduct was related to race;

   9.3. the respondent subjected the claimant to detriment (subject to section 212(1)).

10. Issues for the tribunal to decide

   10.1. Did Sgt Harker use the term 'black bastard' in the claimant's presence as alleged?

   Whether harassment

   10.2. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

   Whether direct race discrimination

   10.3. By doing this did the respondent subject the claimant to detriment?

   10.4. By doing this, did the respondent treat the claimant less favourably, because of his colour and/or Pakistani national origins, than the respondent would have treated others in circumstances that were not materially different?

   Whether victimisation

   10.5. By doing this did the respondent subject the claimant to detriment?

   10.6. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 11 November 2015 and/or 28 March 2018, and/or gave evidence in the Employment Tribunal on 15 May 2015.

Complaint 3 – complaint about police dogs

11. The claimant alleges that, between April 2019 and December 2020, Sgt Harker repeatedly passed the Claimant over when allocating police dogs, often giving the dogs to less experienced handlers.

12. The claimant complains that this was:

12.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27;

12.2. direct race discrimination contrary to s39 of the Equality Act 2010 read with section 13;

12.3. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

13. The respondent denies that Sgt Harker repeatedly passed the Claimant over when allocating police dogs, often giving the dogs to less experienced handlers.

14. Issues for the tribunal to decide

14.1. Between April 2019 and December 2020, did Sgt Harker repeatedly pass the Claimant over when allocating police dogs, often giving the dogs to less experienced handlers as alleged?

Whether harassment

14.2. Was this unwanted conduct?

14.3. Was the unwanted conduct related to race?

14.4. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Whether direct race discrimination

14.5. By doing this did the respondent subject the claimant to detriment?

14.6. By doing this, did the respondent treat the claimant less favourably, because of his colour and/or Pakistani national origins, than the respondent would have treated others in circumstances that were not materially different?

Whether victimisation

14.7. By doing this did the respondent subject the claimant to detriment?

14.8. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 11 November 2015 and/or 28 March 2018, and/or gave evidence in the Employment Tribunal on 15 May 2015.

Complaint 4 – complaint about Asian restaurant

15. The claimant alleges that in February 2020 at an Asian restaurant:

15.1. Sgt Harker asked the claimant if he got a family discount; and

15.2. Mr Moir and Insp Pitt laughed in response to that comment.

16. The claimant complains that Sgt Harker making the comment and Mr Moir and Insp Pitt laughing were:

16.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27;

16.2. direct race discrimination contrary to s39 of the Equality Act 2010 read with section 13;

16.3. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

17. Issues for the tribunal to decide

17.1. Did Sgt Harker ask the claimant if he got a family discount?

17.2. Did Mr Moir and Insp Pitt laugh in response to that comment?

Whether harassment

17.3. By (a) Sgt Harker making that comment and (b) Mr Moir and Insp Pitt laughing in response, did the respondent engage in unwanted conduct related to race?

17.4. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Whether direct race discrimination

17.5. By (a) Sgt Harker making that comment and (b) Mr Moir and Insp Pitt laughing in response, did the respondent subject the claimant to detriment?

17.6. By doing this, did the respondent treat the claimant less favourably, because of his colour and/or Pakistani national origins, than the respondent would have treated others in circumstances that were not materially different?

Whether victimisation

17.7. By (a) Sgt Harker making that comment and (b) Mr Moir and Insp Pitt laughing in response, did the respondent subject the claimant to detriment?

17.8. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 11 November 2015 and/or 28 March 2018, and/or gave evidence in the Employment Tribunal on 15 May 2015.

Complaint 5 – complaint about move to C Relief

18. The claimant alleges that in January 2021 the respondent:

18.1. moved him to C Relief; and

18.2. failed to consult him before deciding to move him.

19. The claimant complains that this was:

19.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27;

19.2. direct race discrimination contrary to s39 of the Equality Act 2010 read with section 13;

19.3. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

20. The respondent admits that the respondent moved the claimant to C Relief. The respondent denies they failed to consult him before deciding to move him.

21. Issues for the tribunal to decide

21.1. Did the respondent fail to consult the claimant before deciding to move him to C relief?

Whether moving claimant to C relief was harassment

21.2. Was moving the claimant to C relief unwanted conduct?

21.3. Was the unwanted conduct related to race?

21.4. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Whether moving claimant to C relief was direct race discrimination

21.5. By moving the claimant to C relief did the respondent subject the claimant to detriment?

21.6. By doing this, did the respondent treat the claimant less favourably, because of his colour and/or Pakistani national origins, than the respondent would have treated others in circumstances that were not materially different?

Whether moving claimant to C relief was victimisation

21.7. By moving the claimant to C relief did the respondent subject the claimant to detriment?

21.8. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 11 November 2015 and/or 28 March 2018, and/or gave evidence in the Employment Tribunal on 15 May 2015.

Whether failing to consult the claimant was harassment

21.9. Was failing to consult the claimant unwanted conduct?

21.10. Was the unwanted conduct related to race?

21.11. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Whether failing to consult the claimant was direct race discrimination

21.12. By failing to consult the claimant did the respondent subject the claimant to detriment?

21.13. By doing this, did the respondent treat the claimant less favourably, because of his colour and/or Pakistani national origins, than the respondent would have treated others in circumstances that were not materially different?

Whether failing to consult the claimant was victimisation

21.14. By failing to consult the claimant did the respondent subject the claimant to detriment?

21.15. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 11 November 2015 and/or 28 March 2018, and/or gave evidence in the Employment Tribunal on 15 May 2015.

Complaint 6 – complaint about exclusion from What's App group

22. The claimant alleges that between January 2021 and the date the claim was made (20 August 2021) the respondent excluded the claimant from C Relief's What's App group.

23. The claimant complains that this was:

23.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27;

23.2. direct race discrimination contrary to s39 of the Equality Act 2010 read with section 13;

23.3. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

24. The respondent denies that the respondent excluded the claimant from C shift's What's App group.

25. The respondent accepts that, if the tribunal finds that the Respondent did do what is alleged:

25.1. the respondent engaged in unwanted conduct;

25.2. the respondent subjected the claimant to detriment.

26. Issues for the tribunal to decide

26.1. Did the respondent exclude the claimant from C shift's What's App group?

Whether harassment

26.2. Was this unwanted conduct related to race?

26.3. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Whether direct race discrimination

26.4. By doing this, did the respondent treat the claimant less favourably, because of his colour and/or Pakistani national origins, than the respondent would have treated others in circumstances that were not materially different?

Whether victimisation

26.5. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 11 November 2015 and/or 28 March 2018, and/or gave evidence in the Employment Tribunal on 15 May 2015.

Complaint 7 – complaint about being told could not apply for substantive post in RPU

27. The claimant alleges that in January 2021 the CDSOU Management team initially said the claimant could not apply for a vacancy within the Road Policing Unit.

28. The claimant complains that this was:

28.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27;

28.2. direct race discrimination contrary to s39 of the Equality Act 2010 read with section 13;

28.3. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

29. The respondent does not admit that the CDSOU Management team said the claimant could not apply for a vacancy within the Road Policing Unit.

30. Issues for the tribunal to decide

30.1. Did the CDSOU Management team say the claimant could not apply for a vacancy within the Road Policing Unit?

Whether harassment

30.2. Was this unwanted conduct?

30.3. Was the unwanted conduct related to race?

30.4. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Whether direct race discrimination

30.5. By doing this did the respondent subject the claimant to detriment?

30.6. By doing this, did the respondent treat the claimant less favourably, because of his colour and/or Pakistani national origins, than the respondent would have treated others in circumstances that were not materially different?

Whether victimisation

30.7. By doing this did the respondent subject the claimant to detriment?

30.8. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 11 November 2015 and/or 28 March 2018, and/or gave evidence in the Employment Tribunal on 15 May 2015.

Complaint 8 – complaint about being told to attend an hour early for an interview

31. The claimant alleges that on 5 March 2021 he was told to attend an hour early for an interview for a vacancy within the Road Policing Unit.

32. The claimant complains that this was:

32.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27;

32.2. direct race discrimination contrary to s39 of the Equality Act 2010 read with section 13;

32.3. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

33. The respondent denies that the claimant was told to attend an hour early for an interview for a vacancy within the Road Policing Unit.

34. Issues for the tribunal to decide

34.1. Did the respondent tell the claimant to attend an hour early for an interview for a vacancy within the Road Policing Unit?

Whether harassment

34.2. Was this unwanted conduct?

34.3. Was the unwanted conduct related to race?

34.4. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Whether direct race discrimination

34.5. By doing this did the respondent subject the claimant to detriment?

34.6. By doing this, did the respondent treat the claimant less favourably, because of his colour and/or Pakistani national origins, than the respondent would have treated others in circumstances that were not materially different?

Whether victimisation

34.7. By doing this did the respondent subject the claimant to detriment?

34.8. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 11 November 2015 and/or 28 March 2018, and/or gave evidence in the Employment Tribunal on 15 May 2015.

Complaint 9 – complaint about Acting Inspector Dack failing to recuse herself from interview panel

35. The claimant alleges parties agree that on 5 March 2021 Acting Inspector Dack did not recuse herself from the panel interviewing the claimant for a vacancy within the Road Policing Unit.

36. The claimant complains that Acting Inspector Dack's failure to recuse herself was:

36.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27;

36.2. direct race discrimination contrary to s39 of the Equality Act 2010 read with section 13;

36.3. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

37. Issues for the tribunal to decide

Whether harassment

37.1. Was Acting Inspector Dack's failure to recuse herself from the panel unwanted conduct?

37.2. Was the unwanted conduct related to race?

37.3. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Whether direct race discrimination

37.4. By Acting Inspector Dack failing to recuse herself from the panel did the respondent subject the claimant to detriment?

37.5. By doing this, did the respondent treat the claimant less favourably, because of his colour and/or Pakistani national origins, than the respondent would have treated others in circumstances that were not materially different?

Whether victimisation

37.6. By Acting Inspector Dack failing to recuse herself from the panel did the respondent subject the claimant to detriment?

37.7. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 11 November 2015 and/or 28 March 2018, and/or gave evidence in the Employment Tribunal on 15 May 2015.

Complaint 10 – complaint about failing to rerun interview to address Acting Inspector Dack's failure to recuse herself

38. The claimant alleges that the respondent failed to rerun the interview to address Acting Inspector Dack's failure to recuse herself from the panel interviewing him for a vacancy within the Road Policing Unit.

39. The claimant complains that this was:

    39.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27;

    39.2. direct race discrimination contrary to s39 of the Equality Act 2010 read with section 13;

    39.3. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

40. The respondent admits that the interview was not rerun.

41. Issues for the tribunal to decide

<u>Whether harassment</u>

41.1. By not rerunning the interview, did the respondent engage in unwanted conduct?

41.2. Was the unwanted conduct related to race?

41.3. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

<u>Whether direct race discrimination</u>

41.4. By not rerunning the interview, did the respondent subject the claimant to detriment?

41.5. By doing this, did the respondent treat the claimant less favourably, because of his colour and/or Pakistani national origins, than the respondent would have treated others in circumstances that were not materially different?

<u>Whether victimisation</u>

41.6. By not rerunning the interview did the respondent subject the claimant to detriment?

41.7. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 11 November 2015 and/or 28 March 2018, and/or gave evidence in the Employment Tribunal on 15 May 2015.

Complaint 11 – complaint about failing to provide a meaningful response to the claimant's complaint about Acting Inspector Dack's failure to recuse herself

42. The claimant alleges that, between 9 March 2021 and the date the claim was made (in August 2021) Ms Clynch failed to provide any meaningful response to the claimant's grievance about Acting Inspector Dack's failure to recuse herself from the interview panel. When we asked Ms Hogben what was meant by a 'meaningful response' she said a 'substantive' response.

43. The claimant complains that this was:

    43.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27;

43.2. direct race discrimination contrary to s39 of the Equality Act 2010 read with section 13;

43.3. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

44. The respondent denies that that Ms Clynch failed to provide any meaningful response to the claimant's grievance about Acting Inspector Dack's failure to recuse herself from the interview panel.

45. Issues for the tribunal to decide

45.1. Did Ms Clynch fail to provide any meaningful response to the claimant's grievance about Acting Inspector Dack's failure to recuse herself from the interview panel?

Whether harassment

45.2. Was this unwanted conduct?

45.3. Was the unwanted conduct related to race?

45.4. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Whether direct race discrimination

45.5. By doing this did the respondent subject the claimant to detriment?

45.6. By doing this, did the respondent treat the claimant less favourably, because of his colour and/or Pakistani national origins, than the respondent would have treated others in circumstances that were not materially different?

Whether victimisation

45.7. By doing this did the respondent subject the claimant to detriment?

45.8. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 11 November 2015 and/or 28 March 2018, and/or gave evidence in the Employment Tribunal on 15 May 2015.

Complaint 12 – complaint about failing to take adequate and prompt action to resolve a complaint made by the claimant on 7 May 2021

46. The claimant alleges that, between 7 May 2021 and the date the claim was made (in August 2021) the respondent failed to take adequate and prompt action to resolve a complaint he made on 7 May to ACC Theaker.

47. The claimant complains that this was:

47.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27;

47.2. direct race discrimination contrary to s39 of the Equality Act 2010 read with section 13;

47.3. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

48. The respondent denies that that the respondent failed to take adequate and prompt action to resolve his complaint.

49. Issues for the tribunal to decide

49.1. Did the respondent fail to take adequate and prompt action to resolve the claimant's complaint?

Whether harassment

49.2. Was this unwanted conduct?

49.3. Was the unwanted conduct related to race?

49.4. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Whether direct race discrimination

49.5. By doing this did the respondent subject the claimant to detriment?

49.6. By doing this, did the respondent treat the claimant less favourably, because of his colour and/or Pakistani national origins, than the respondent would have treated others in circumstances that were not materially different?

Whether victimisation

49.7. By doing this did the respondent subject the claimant to detriment?

49.8. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 11 November 2015 and/or 28 March 2018, and/or gave evidence in the Employment Tribunal on 15 May 2015.

Complaint 14 – complaint about language used by police dispatcher in or around June 2021

50. The claimant alleges that in or around early June 2021 a police dispatcher described the perpetrators of an assault as 'pakis'.

51. The claimant complains that this was:

51.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27;

51.2. direct race discrimination contrary to s39 of the Equality Act 2010 read with section 13;

51.3. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

52. The respondent admits that a police dispatcher used the word 'pakis' in relation to the alleged perpetrators of an assault.

53. Issues for the tribunal to decide

53.1. What did the despatcher say?

Whether harassment

53.2. Was this unwanted conduct?

53.3. Was the unwanted conduct related to race?

53.4. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Whether direct race discrimination

53.5. By doing this did the respondent subject the claimant to detriment?

53.6. By doing this, did the respondent treat the claimant less favourably, because of his colour and/or Pakistani national origins, than the respondent would have treated others in circumstances that were not materially different?

Whether victimisation

53.7. By doing this did the respondent subject the claimant to detriment?

53.8. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 11 November 2015 and/or 28 March 2018, and/or gave evidence in the Employment Tribunal on 15 May 2015.

Complaint 15 – complaint about CI Bainbridge's handling of complaint about call dispatcher

54. The claimant alleges that on 8 June 2021 CI Bainbridge concluded that the dispatcher had not done anything wrong in relation to the above incident.

55. The claimant complains that this was:

55.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27;

55.2. direct race discrimination contrary to s39 of the Equality Act 2010 read with section 13;

55.3. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

56. The respondent does not admit that CI Bainbridge concluded that the dispatcher had not done anything wrong.

57. Issues for the tribunal to decide

57.1. Did CI Bainbridge conclude that the dispatcher had not done anything wrong?

Whether harassment

57.2. Was this unwanted conduct?

57.3. Was the unwanted conduct related to race?

57.4. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Whether direct race discrimination

57.5. By doing this did the respondent subject the claimant to detriment?

57.6. By doing this, did the respondent treat the claimant less favourably, because of his colour and/or Pakistani national origins, than the respondent would have treated others in circumstances that were not materially different?

Whether victimisation

57.7. By doing this did the respondent subject the claimant to detriment?

57.8. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 11 November 2015 and/or 28 March 2018, and/or gave evidence in the Employment Tribunal on 15 May 2015.

Complaint 16 – complaint about failing to require CI Bainbridge to undertake equality and diversity training

58. The claimant alleges that, between 11 June 2021 (when he made a complaint) and August 2021 (the date of his claim), the respondent failed to require CI Bainbridge to undertake equality and diversity training.

59. The claimant complains that this was:

59.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27;

59.2. direct race discrimination contrary to s39 of the Equality Act 2010 read with section 13;

59.3. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

60. The respondent does not admit that the respondent did not require CI Bainbridge to undertake equality and diversity training.

Issues for the tribunal to decide

60.1. Did the respondent fail to require CI Bainbridge to undertake equality and diversity training?

Whether harassment

60.2. Was this unwanted conduct?

60.3. Was the unwanted conduct related to race?

60.4. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Whether direct race discrimination

60.5. By doing this did the respondent subject the claimant to detriment?

60.6. By doing this, did the respondent treat the claimant less favourably, because of his colour and/or Pakistani national origins, than the respondent would have treated others in circumstances that were not materially different?

Whether victimisation

60.7. By doing this did the respondent subject the claimant to detriment?

60.8. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 11 November 2015 and/or 28 March 2018, and/or gave evidence in the Employment Tribunal on 15 May 2015.

Complaints 17 and 18: complaints made by virtue of the claimant's application to amend made on 7 February 2022 and EJ Loy's Order made on 11 March 2022, as amended by EJ Smith's Order of 14 June 2023. A further amendment permitted to be made at this hearing is shown in square brackets.

Complaint 17 – complaint about anonymous allegations made in September 2021

61. The claimant alleges that between 24 and 29 September 2021 PS Marchant, CI Pitt, Dave Moir, DCI Bonner and/or one or more of the respondent's other

employees or agents made anonymous allegations to the respondent's Counter Corruption Unit stating that:

61.1. on 14 March 2018 the claimant had made a falsehood to a fellow officer to avoid being prosecuted for an offence of driving without insurance; and

61.2. on 24 September 2021 the claimant had driven a car on a public road when not covered by a policy of insurance.

62. The claimant further contends that CI Pitt, Dave Moir, DCI Bonner [and/or PS Marchant] coordinated the making of those allegations against him.

63. The claimant complains that these acts were victimisation contrary to s39 of the Equality Act 2010 read with section 27.

64. The respondent:

64.1. admits that an employee made the complaints as alleged;

64.2. denies that the respondent coordinated the making of the allegations as alleged.

65. Issues for the tribunal to decide

65.1. By an employee making allegations to the respondent's Counter Corruption Unit as alleged did the respondent subject the claimant to detriment?

65.2. Did the respondent (through the acts of [PS Marchant] CI Pitt, Dave Moir and/or DCI Bonner) coordinate allegations to the respondent's Counter Corruption Unit as alleged?

65.3. By doing that did the respondent subject the claimant to detriment?

65.4. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 20 August 2021, provided further and better particulars of those claims on 14 September 2021 and/or raised a grievance on 20 September 2021 alleging PS Marchant was victimising him?

65.5. Did the respondent treat the claimant in this way because they believed the claimant may bring proceedings under the Equality Act 2010?

Complaint 18 – complaint about allegation made in November 2021

66. The claimant alleges that, between 29 September 2021 and 19 November 2021 PS Marchant made an allegation that the claimant had lied to avoid prosecution following an alleged speeding offence on 29 September 2021.

67. The claimant further contends that CI Pitt coordinated the making of that allegation against him.

68. The claimant complains that these acts were victimisation contrary to s39 of the Equality Act 2010 read with section 27.

69. The respondent:

69.1. does not admit that PS Marchant made an allegation as alleged:

69.2. denies CI Pitt coordinated the making of the allegation as alleged.

70. Issues for the tribunal to decide

70.1. Did the respondent make an allegation as alleged?

70.2. Did the respondent (through the acts of CI Pitt) coordinate the making of the allegation as alleged?

70.3. By doing either of those things did the respondent subject the claimant to detriment?

70.4. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 20 August 2021, provided further and better particulars of those claims on 14 September 2021, provided updated further particulars of those claims on 17 November 2021 and/or raised a grievance on 20 September 2021 alleging PS Marchant was victimising him.

70.5. Did the respondent treat the claimant in this way because they believed the claimant may bring proceedings under the Equality Act 2010?

<u>Complaints 19 and 20: complaints made by virtue of the claimant's application to amend made on 25 March 2022 and EJ Loy's direction of 22 April 2022 'accepting' the amendment</u>

Complaint 19 – complaint about reg 17 notice served in March 2022

71. The parties agree that in March 2022 the respondent served on the claimant a Regulation 17 notice for alleged dishonesty in relation to the speeding matter and pursued that allegation as a misconduct matter.

72. The claimant complains that this was:

72.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27; and

72.2. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

73. Issues for the tribunal to decide

<u>Whether harassment</u>

73.1. Was this unwanted conduct?

73.2. Was the unwanted conduct related to race?

73.3. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

<u>Whether victimisation</u>

73.4. By doing this did the respondent subject the claimant to detriment?

73.5. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 20 August 2021, provided further and better particulars of those claims on 14 September 2021, provided updated further particulars of those claims on 17 November 2021 and/or raised a grievance on 20 September 2021 alleging PS Marchant was victimising him.

Complaint 20 – complaint about failing to investigate whether allegations made against the claimant were made because of race or related to race or made because he did a protected act

74. The claimant alleges that the respondent failed to investigate whether allegations made against the claimant were made because of race or related to race or made because he did a protected act.

75. The claimant complains that this was:

    75.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27; and

    75.2. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

76. Issues for the tribunal to decide

76.1. Did the respondent fail to investigate whether allegations made against the claimant were made because of race or related to race or made because he did a protected act as alleged?

Whether harassment

76.2. Was this unwanted conduct?

76.3. Was the unwanted conduct related to race?

76.4. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Whether victimisation

76.5. By doing this did the respondent subject the claimant to detriment?

76.6. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 20 August 2021, provided further and better particulars of those claims on 14 September 2021, provided updated further particulars of those claims on 17 November 2021 and/or raised a grievance on 20 September 2021 alleging PS Marchant was victimising him.

Complaints 21 and 22: complaints made by virtue of the claimant's application to amend made on 9 May 2023 and EJ Smith's Order made on 14 June 2023

Complaint 21 – complaint about DSE failing to deal promptly with grievance raised about Sgt Harker on 7 May 2021

77. The claimant alleges that the respondent's DSE deliberately failed to promptly deal with the claimant's grievances about Sgt Harker raised initially on 7 May 2021.

78. The claimant complains that this was:

    78.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27; and

    78.2. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

79. The respondent denies that the respondent deliberately failed to promptly deal with the claimant's grievances about Sgt Harker raised initially on 7 May 2021.

80. Issues for the tribunal to decide

80.1. Did the respondent deliberately fail to promptly deal with the claimant's grievances about Sgt Harker raised initially on 7 May 2021 as alleged?

Whether harassment

80.2. Was this unwanted conduct?

80.3. Was the unwanted conduct related to race?

80.4. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Whether victimisation

80.5. By doing this did the respondent subject the claimant to detriment?

80.6. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 20 August 2021, provided further and better particulars of those claims on 14 September 2021, provided updated further particulars of those claims on 17 November 2021 and/or raised a grievance on 20 September 2021 alleging PS Marchant was victimising him.

Complaint 22 – complaint about the decision of the Appropriate Authority to assess the alleged breaches by Sgt Harker as misconduct rather than gross misconduct

81. The parties agree that on or around 2 May 2023 DI Agar, as Appropriate Authority, assessed the alleged breaches by Sgt Harker as misconduct rather than gross misconduct.

82. The claimant complains that this was:

82.1. harassment related to race contrary to s40 of the Equality Act 2010 read with section 27; and

82.2. victimisation contrary to s39 of the Equality Act 2010 read with section 27.

83. Issues for the tribunal to decide

Whether harassment

83.1. Was this unwanted conduct?

83.2. Was the unwanted conduct related to race?

83.3. Did the unwanted conduct related to race have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Whether victimisation

83.4. By doing this did the respondent subject the claimant to detriment?

83.5. Did the respondent treat the claimant in this way because the claimant brought proceedings under the Equality Act 2010 on 20 August 2021, provided further and better particulars of those claims on 14 September 2021, provided updated further particulars of those claims on 17 November 2021 and/or raised a grievance on 20 September 2021 alleging PS Marchant was victimising him.

Employment Judge Aspden

Date: 31 May 2024

Public access to employment tribunal decisions

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