EMPLOYMENT TRIBUNALS

Claimant:	Mr T Jeynes
Respondent:	The Chief Constable of Gloucestershire Constabulary
Heard at:	Bristol
On:	7 June (reading), 9, 10, 11, 14, 15, 16 June 2021 (hearing), and 17 June 2021 (Chambers) 18 and 22 June, and 28 July 2021 (Writing)
Before:	Employment Judge Midgley Mrs S Maidment Mr H Launder
Representation	
Claimant:	Mr D Leach, Counsel
Respondent:	Mr R Oulton, Counsel

RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is that:

1. The claimant's claims that he was discriminated against contrary to sections 15, 20 and 27 of the EQA 2010 are not well founded. The claims are dismissed.

REASONS

Claims and Parties

1. By a claim presented on 12 July 2020, the claimant, who is a serving Police Officer in the Gloucestershire Police, brought claims of victimisation, failure to make reasonable adjustments, and discrimination arising from disability against the respondent.

Procedure, Hearing and Evidence

2. The case was originally listed for a 10 hearing, however, at a preliminary hearing on 4 May 2021, EJ Christensen saw fit to increase the bundle limit from 500 to 1000 pages and increased the permitted word count for statements to 27,000. Simultaneously she reduced the hearing's listing from 10 to 8 days.

3. Regrettably, despite the parties' assurances that the reduced listing would be sufficient, circumstances proved that belief to be wrong. Firstly, the Tribunal were unable to access the bundle until lunch time on the first day of the hearing, 7 June 2021, which was reserved for reading, due to issues with passwords which expired 30 minutes after being sent to the Tribunal. Secondly, despite some reduction in the issues following the Tribunal's enquiries detailed below, the Tribunal were still required to determine 37 factual and legal issues, which in all cases save two involved disputed facts and required findings to be made. Thirdly, even at the time that evidence commenced the precise details of the issues were not clear. Lastly, the claimant's arguments were in some instances not clearly set out in the closing submissions, notwithstanding that this was a case where the claimant relied heavily upon inferences which he said should be drawn from the evidence.

4. Counsel cooperated to assist the Tribunal as best they could through the production of an agreed list of issues, a schedule of agreed facts (which was 27 pages long)

and, latterly, written submissions, but in the event such efforts were insufficient. In consequence, one and a half days were necessary for deliberations, and it has taken a further three full days for the Judge to produce the Reserved Judgment. Nevertheless, we apologise for the delay and any anxiety caused.

The Hearing

5. Prior to the first day of the hearing, the Tribunal raised a written query with the parties in relation to certain PCPs and allegations of detriment pursuant to section 27 EQA 2010. As a consequence, the claimant reduced the PCPs relied upon from 3 to 1 and reduced a number of the allegations of detriment. During submissions, the respondent conceded all the protected acts relied upon.

The bundle and issues

6. On the 7 June 2021, the parties produced an agreed electronic bundle of approximately 1000 pages and relied upon witness statements running to 27,000 words in total as detailed below. On the second day of the hearing, 10 June 2021, the Tribunal queried with the parties whether the s.20 claim was being pursued under s.20(3) (PCP) or s.20(5) (auxiliary aid) EQA 2010, pursuant to the decision of the EAT in Mallon v Aecom Ltd UKEAT/0175/20/LA.

Witness evidence

7. The claimant produced a statement and called Ex-Superintendent Priddy who had also prepared a statement. In addition, the parties produced further documents which were added to the bundle by consent during the course of the hearing.

8. The respondent called the following witnesses, each of whom had produced a detailed statement:
   8.1. Inspector Paul Cruise
   8.2. Ex- Superintendent Julia Mackay
   8.3. Inspector Paul Davey
   8.4. Inspector Neil Drakeley
   8.5. Charlotte Eckford, an HR Consultant
   8.6. Inspector Simon Ellson
   8.7. Inspector Alistair Hammett
   8.8. Detective Chief Inspector Paula Hannaford
   8.9. Sergeant Andrew Miller
   8.10. Sergeant Louise Stubley

9. All of the witnesses gave evidence by oath or affirmation, were cross examined, and answered questions from the Tribunal. The evidence concluded on 15 June 2021.

10. Counsel expanded upon their written submissions in their closing arguments which concluded at approximately lunchtime on 16 June 2021. The Tribunal deliberated for the remainder of that day and all of the next.

The Issues

11. The parties had agreed a list of issues which is annexed to this Judgment at Annex 1. The issues were refined as a result of the concessions made by the claimant on the morning of the first day of the hearing (which are reflected in the List of Issues) and by the provision of dates for the various detriments relied upon (which are attached as Annex 2), and by the respondent's concession during its submissions that it conceded all of the protected acts.

Factual Background

12. The claimant commenced service with the respondent on 30 March 2008 as a Police

Constable. In December 2011 the claimant was posted to the Criminal Justice Investigation Unit ("CJIU"). The inspector in charge of the CJIU was Inspector Paula Hannaford.

13. The claimant had aspirations to become a sergeant and had undertaken and passed the necessary exams. However, in October 2011 the claimant was involved in an arrest during which he suffered a significant injury to his right hip, the consequences which meant that he was no longer able to be deployed to incidents involving members of the public, and therefore had to be transferred to a department which was non-deployable where he could work restricted duties.

The claimant's disabilities

14. The claimant relies on five conditions which the respondent concedes are disabilities for the purposes of the current proceedings: dyslexia; a knee and hip injury; lymphoedema in his right leg; arthritis sero negative; and mechanical back pain due to a prolapsed lumbar disc.

15. The claimant suffered (and continues to suffer) from residual pain, swelling and stiffness in his right hip and leg as a consequence of scar tissues from operations to resolve his knee and hip injury.

16. In addition, in approximately August or September 2013, the claimant developed lymphoedema in his right leg, particularly in his right hip, which caused him significant pain. The condition was initially managed with medication, but the claimant eventually became unable to take analgesics as a consequence of liver problems. He therefore manages the condition with drainage and manual techniques as detailed below.

17. In or around July 2016 the claimant was diagnosed with sero negative inflammatory arthritis in his hip, knee, ankle and wrist. It is a condition that causes him pain, swelling and stiffness in his joints. The condition is managed with medication.

18. In November 2015, the claimant suffered a further injury when his chair collapsed whilst he was at work. As a consequence, he suffered a prolapsed disc located on the L5/S1 disc in his spine, which exacerbated and intensified his back pain. The condition was initially treated with two steroid injections, but the claimant now relies upon pain management techniques to manage the pain (as detailed below).

19. The consequence of those conditions on the claimant's day-to-day activities is that he struggles to walk any significant distance, and at times, the pain from his hip, back, and lymphoedema can mean that he struggles to walk at all. He is unable to sit in the same position for prolonged periods of time without suffering significant pain. To reduce the symptoms of those conditions the claimant uses a flat seated chair which allows him to adopt a more comfortable position, avoiding his hip being pushed upwards, or a perching stool, and an adaptable electric desk which can be raised or lowered as required. In addition, the claimant performs physiotherapy exercises and massage techniques to drain the fluid from his hip and legs. In order to do so he requires a raised, flat, bed on which he can lie, and a private room with a lockable door, because it is necessary for him to remove his outer garments in order to perform the exercises.

The First Tribunal Claim and the ETDP

20. On 1 April 2016 the claimant was signed off duty on long-term sick leave, whilst working in the CJIU. On 21 April 2016 the claimant issued proceedings against the respondent in case number 1400635/2016 in which he made allegations of disability discrimination against his managers in the Criminal Justice Investigation Unit ("CJIU" or "CIU"), including claims of failure to make reasonable adjustments (particularly in relation to his adapted chair and desk) and complaints about the rejection of his

application for Sergeant, dating back to February 2013 ("the First Claim"). The respondent accepts that the First Claim was a protected act for the purposes of section 27 EQA 2010. The claimant stated that at the time of the issuing proceedings he knew that the time limit which applied to claims in the Tribunal was 3 months and a day.

21. The claimant did not make any allegations against any of the witnesses in these proceedings, but Inspector Paula Hannaford ("PH") was the line manager of the four sergeants in the CJIU against whom the claimant pursued allegations of disability discrimination. An allegation in the First Claim was that officers had deliberately damaged the claimant's adjustable chair causing the prolapsed disc referred to above.

22. Although we heard very little evidence in relation to the matter, it is nevertheless clear from the witnesses' evidence that in the period 2013 to 2016 there were significant difficulties in the management of the claimant, when viewed both from the perspective of the four sergeants and from the claimant himself. All four sergeants who at one stage or another had responsibility for the claimant's management took significant periods of sick leave due to work-related stress relating to the period for which they managed the claimant, and PH was responsible for welfare visits for each of them. She described how the process of managing the claimant had "broken" the sergeants, each of whom she had described as formerly being strong, able and experienced officers, to the extent that one openly wept when she visited him in his home during a welfare visit. The claimant himself was absent for work for more than seven months.

23. The process of observing the decline of the sergeants had a profound, distressing, and long-lasting effect on PH. When giving evidence about those matters during the hearing, some five years after the events in question, she became very emotional and openly distressed. She was supportive of the sergeants involved in the sense that she sought to be someone to whom they could turn for guidance and support; a significant reason for her distress about the events was that she had been unable to prevent the deterioration that she observed in them.

24. She was very wary of the claimant because she feared that the claimant might have a preconceived view of her as she managed the sergeants against whom he had made complaints, and because she feared that he might make similar allegations against her, and of the potential consequence of both of those matters upon her health.

25. The claimant returned to work on phased duties of 9 January 2017 in the Incident Assessment Unit ("IAU"). The IAU was a non-deployable department which was responsible for the 'criming' of incidents by entering them onto the respondent's systems, and then allocating them to frontline officers. The work largely consisted of the entry of the crimes and details onto the STORM system.

26. The IAU was then located in the same building as the Force Control Room ("FCR"). The claimant was supervised by Sgt Adrian Smith, Temporary Chief Inspector Morford ("T/CI Morford") and Superintendent Priddy ("Supt Priddy"), who was then the serving head of the FCR. We are satisfied that the claimant was transferred to the IAU because the respondent reasonably took the view that he would be better able to perform his duties in a department that was familiar with the management of restricted officers.

27. The First Claim was settled on 16 May 2017 on the first day of the listed hearing. The claimant proposed to the respondent that he would withdraw his claims and agree to their dismissal if the respondent prepared a development plan to assist his future application for promotion to sergeant. In addition, the reasonable adjustments that were then in place for the claimant were formalised and listed in the agreement. Those adjustments included the following:

27.1. Specialist chair and footstool.
27.2. Adapted varied height desk.
27.3. Use of tens machine while at work.
27.4. To have the ability to lie down at lunch times to do his physiotherapy exercises.
27.5. To be able to continue to use his perching stool in the workplace.

28. The respondent agreed to those terms. (The contract which was drawn up to record it is hereinafter referred to as the ETDP ("The Employment Tribunal Development Plan")). PH was present at the Tribunal when the agreement was reached.

29. The ETDP contained four objectives (1) to demonstrate a level of stability surrounding attendance in accordance with the Attendance Management policy; (2) to gain operational fitness by passing the JRFT ('job-related fitness test'); (3) to show operational competency in his current rank; and (4) to develop leadership skills "where the opportunity arises, and depending on the operational circumstances applicable at the material time, to demonstrate competency to perform at the next rank." That was a reference to acting up opportunities for the purpose of evidencing the competencies necessary to secure promotion to police sergeant ("PS").

30. It was never any part of the ETDP that the claimant would be guaranteed acting up opportunities, or that he would be guaranteed a minimum number of such opportunities. Rather, as paragraph 14 of the ETDP confirmed, the opportunities were subject to his line manager's discretion as to whether they were deemed to be suitable and appropriate and operationally reasonable.

31. The ETDP was to be reviewed after 12 months.

<u>Reasonable adjustments and the claimant's performance within the IAU</u>

32. The IAU consisted of one inspector, Stephen Norris, one sergeant, Adrian Smith, and 15 police constables, although during the period in question, the number of constables reduced to 12. The claimant worked in the IAU 5 days a week from 9am to 5pm (but not on a shift pattern) and performed well under the stewardship of Supt Priddy. He did not require any days of absence to manage his disabilities.

33. When the claimant was in the CJIU and was not using his chair, it had been locked away in a shed which was kept within the department. Supt Priddy formed the view that that was unnecessary and instead the chair was marked with a sign saying it was for his sole use and was kept in the Inspectors' office (when not in use).

34. The claimant also used a perching stool and an electric adjustable desk. His practice was to use his adjustable chair in the early morning and then move to the perching stool and desk. The claimant was permitted use of the Force Medical Room ("FMR") which contained an elevated bed on which he performed his lymphatic drainage and other physiotherapy exercises. The door to the FMR could be locked.

35. The claimant was promoted to the role of an acting PS ("A/PS") in the IAU between July and August 2017 during PS Smith's absence. On 15 November 2017 T/CI Morford requested that the claimant should continue to act as an operational lead within IAU to ensure the smooth transition from the IAU to the IIT, given that the claimant had operational knowledge from the IAU which would be of benefit to the transition.

36. The claimant advised PS Smith that he had taken the respondent to an employment tribunal and reached a settlement, but as that was a confidential matter, he could neither confirm nor deny whether he had won the tribunal and received a financial settlement. That was disingenuous because the claimant had withdrawn his claim, there was no confidentiality agreement, and the manner in which the claimant was ambivalent was clearly intended to imply to PS Smith that he had received a financial

settlement but could not discuss it.

The transformation of the IAU to the IIT

37. The respondent had taken a strategic decision to transfer the activities of the IAU to a new department with a new structure, namely the Initial Investigation Team ("IIT"). The IIT was to commence activity on 8 January 2018, and 2017 was therefore a year of transition from the AIU to the IIT. In contrast to the IAU, the IIT was intended to both crime incidents which did not require immediate police attendance or attendance within 24 hours, and to investigate incidents remotely and close crimes where possible, so as to remove pressure from the frontline officers. It was intended that the IIT would deal with up to 40% of the demand process through the FCR. If an officer in the IIT were unable to resolve the crime or if further investigation were required which could not be conducted remotely then the crime would be referred to a frontline officer to continue the investigation. Consequently, the role of the PSs within the IIT was necessarily to be a supervisory one, requiring them to triage incidents as they were logged within the IIT.

38. The IIT was to be run alongside the Crime Management Unit, but as the nature of the work in IIT did not require officers to perform frontline policing work, the Department was to be staffed by officers who had physical or mental impairments, were therefore on restricted duties and were not deployable to frontline roles. Of the 40 constables and sergeants in IIT 17 required reasonable adjustments of one sort or another; 27 of those officers had Bradford Factors over 300, and one was as high as 1800, two of the PSs were disabled.

39. Superintendent Julia Mackay ("JM") led the change management process. She liaised with Supt Priddy and A/TCI Morford. Supt Priddy was resistant to the change, possibly because he perceived that the creation of the IIT was an encroachment upon the domain for which he was responsible. It is accepted by the parties that the two superintendents (JM and Priddy) had a difficult and, at times, a frosty working relationship. Inspectors Neil Drakeley ("ND") and Marc Flannery were appointed on a temporary basis to assist PH with the transition process until the IIT was operational.

40. The IIT was designed to consist of 36 constables, including the claimant, four sergeants (Simon Davey ("SD"), Simon Ellson ("SE"), Paul Cruise ("PC") and Kate Croudace ("KC")), one inspector (Paula Hannaford ("PH")), one chief inspector (Guila Morogna ("GM")) and one Superintendent, who had IIT as part of a much wider Crime Command portfolio (JM).

41. The officers were to be arranged into 4 teams of 10 PCs, each lead by an experienced PS, who would report to PH. Each team was to operate a specific shift pattern. The teams were to be arranged with shift patterns of earlies, days and lates, working a rotation of 5-6 days of approximately 7am – 3pm or 8am – 4pm, with a late shift of 4pm-11pm. Two teams would work days, one team lates, one team was on rest days and the final team on data enquiry. Officers could work at their own speed as the incidents only had to be crimed within 72 hours (this time limit would later be reduced).

42. Upon the creation of IIT, JM had responsibility for IIT and all of CID, and the Local Investigation Teams ("LITs"). She was therefore responsible for the management of approximately 300 police staff and officers, together with other projects. To compound matters, GM was unwell and required a significant level of sickness absence, but in the absence of another Chief Inspector, GM was required to double up as acting Chief Inspector and Superintendent.

43. Regrettably, KC was absent on sick leave, and it was unclear whether she would be able to take up the role with IIT because she had complex medical conditions. In consequence, on 30 November 2017 Inspector Norris asked the claimant if he would

want to continue to act up as a PS in team 4 in the IIT. The claimant was at that time working 9am to 5pm, Monday to Friday with weekends off. His hours of work therefore corresponded with the shift pattern of one of the four teams. PH agreed to the claimant continuing to act up during the transitional period before IIT became active. On 11 December 2017 the claimant confirmed in an email to PH and Inspector Norris that he was happy to continue to perform acting duties as a sergeant for the IIT.

44. In the early period of the transition consultations, there were working groups which consistent of JM, GM, T/CI Morford, PH and ND, amongst others. At times the claimant attended given his operational knowledge of IAU, in particular when David Webb (who was responsible for training within the respondent) attended to discuss the training that would be necessary on the new software that was to be used in the IIT, on which occasions the claimant's operational knowledge from IAU was of particularly relevance.

The commencement of Inspector Hannaford's lead of the IIT

45. At the point of PH's appointment as the inspector for IIT on 4 December 2017, replacing Inspector Norris, the transformation project had somewhat stalled and had, in her words, become "stagnant". PH, ND and JM were therefore under considerable pressure from the senior management within the respondent to expedite the transformation and to make a success of it. Each of the officers was incredibly busy, as was the Department, but the focus was on delivering the transformation and establishing a successful operation within IIT. Whilst PH was very wary of the claimant, knowing that he was to be transferred to IIT, we accept her evidence that she had no time to dwell on the past or to be bogged down by "petty" concerns connected to the past (as she described them), as she "just needed to get on with the job". PH had been told by JM that she could use ND as an intermediary, if necessary, but her primary focus should be on the job in hand of implementing the IIT.

46. When PH met ND and they discussed the various officers who were to be transferred to the newly formed IIT, PH informed ND that the claimant had brought a tribunal case against respondent, but she did not advise him of the details. She stated to ND that she was very anxious that she wanted to be perceived to be acting impartially and fairly, and asked him to tell her if, at any stage, he perceived that she was not.

The removal of the claimant from Acting Police Sergeant Duties for Team 4 IIT

47. On 11 December 2017 PH met informally with the claimant (it was not a scheduled meeting, but the two bumped into each other) and had a discussion. PH was guarded, for the reasons detailed above. PH made an offhand remark that it appeared that the claimant had changed since they had last met (referring to their time in the CJIU). There is a dispute as to whether PH agreed to meet him later in the day; the claimant alleges that the meeting was to discuss the transition of the IAU to the IIT on the grounds that "I was managing the… Transition". We prefer the respondent's evidence, first because the claimant was not managing the transition as he suggests, but rather was providing operational knowledge during the transitional discussions. There were specific meetings during which such transitional arrangements were discussed, indeed the claimant complains in these proceedings that he was excluded from them, there would therefore be no need for the claimant to meet with PH alone in the absence of the other interested parties. Secondly, as indicated above, PH was incredibly wary of the claimant. It is therefore most unlikely that PH would have agreed to meet with the claimant in the absence of any third party.

48. Shortly before PH's commencement in her role, it had become apparent that KC was unable to take up the substantive PS position within IIT. On 12 December 2017 following a Senior Leadership Team meeting during which KC's absence was

discussed, JM discussed the implications with PH and ND. JM suggested that PC Richard Puttock should be approached to see whether he would be willing to move to team 4, and for the claimant to be moved to PC's team. Richard Puttock was an officer with the Hampshire Constabulary who had set up their IIT department, and who had been seconded to the respondent to assist with the establishment of its IIT department. In consequence PH asked PC Richard Puttock, whether he wished to act up as the PS for Team 4. He did not want to do so as he was acting in a consultancy role, and had family in Hampshire, and therefore was not looking for a substantive position within Gloucestershire, although he agreed to act up on occasion to assist.

49. The reason for the proposed change to PC as the claimant's PS was that PC was qualified as an inspector, and was a highly trained and skilled mentor and a very experienced and supportive PS. It was felt that he would be best placed to assist the claimant to develop his career in accordance with the ETDP and more generally. In addition, given there was uncertainty as to whether KC would be capable of fulfilling the substantive PS post with responsibility for the claimant, it was felt that the certainty of a permanent PS would assist the claimant.

50. On 4 January 2018 the Senior Leadership Team (JM, GM, PH and ND) met to conclude the structure of the IIT teams. At that stage it was identified that KC would be absent until approximately March 2018 and in consequence it was decided that PS Simon Costello Byrne ("SCB") would be appointed as the PS for Team 4, notwithstanding that he could not begin until 26 January 2018. That decision was taken by JM.

51. On 8 January 2018 IIT formally became operational. PH met the new officers and PS, and the new officers began their training. The claimant was to assist with their training given his operational experience in IAU. At or about that time PC met the claimant to discuss his role and, during their discussions, the claimant informed him of the ETDP and made brief reference to the First Claim. Just as with his discussion with PS Smith, the claimant disingenuously implied that his claim had been successful and he had received a financial settlement, saying words the effect of "due to confidentiality, I can neither confirm nor deny that." We suspect that the claimant made that comment, with its obvious inferences, so as to bolster his position in relation to acting up and secondment opportunities.

52. Whilst the claimant worked in the IIT, his adaptable chair was placed behind the supervisor's desk to avoid it being used and adjusted by other members of staff. PC also arranged for a note to be put on the chair stating it was for the claimant's use and advised the IIT staff to the same effect. Despite those measures, on occasions (as detailed below) the claimant's chair was used by members of the FCR, whose offices adjoined the IIT.

53. On 18 January 2018 PH approached PS Smith to discuss how he believed the claimant would react to the decision to transfer him to Team 1 and to the appointment of SCB. PS Smith agreed with the proposal for the claimant to be moved to PCs team because of his considerable experience and supportive approach. PS Smith provided PH with the ETDP and the details of the reasonable adjustments that had been in place. He told PH of the claimant's suggestion that he had won the tribunal, and that the claimant had expressed concerns, in the sense of general anxiety, about being managed by PH given that she was the inspector in charge of the CJIU at the time of the events that were the subject of the First Claim. PH was alarmed that the claimant had misdescribed the outcome of the case and therefore was even more wary of him.

IIT sergeants' meetings

54. During the early period of the transition from IAU to IIT, there were sergeants' meetings to discuss the proposed working practices, the allocation of roles, and the

restrictions that apply to the various officers under each of the sergeants. During the discussions in relation to that latter issue, it was necessary for the sergeants to discuss confidential medical information relating to the officers. As it was known that the claimant was not going to be acting as a PS within IIT, given the appointment of the four substantive sergeants, the respondent formed the view that it was neither necessary nor appropriate for the claimant to attend them, so as to avoid confidential information being shared with him in respect of those officers with whom he would be working but not directly managing.

The meeting of 19 January 2018

55. PH felt it was her responsibility as the IIT inspector to communicate the decision that the claimant would be moved to Team 1 and that he would cease to perform acting PS duties. She was incredibly nervous about meeting the claimant, given the First Claim and her recent discussion with PS Smith. She raised those concerns with ND, who offered to convey the decision to claimant, but PH felt that it was her responsibility. However, ND accompanied PH to the meeting to support her.

56. PH therefore came into work on a non-duty day to meet with the claimant to advise him of the decision. Matters were slightly derailed because a member of the public had raised a complaint in relation to the respondent's failure to record his motorbike as having been stolen. At the time that the theft was reported the claimant had been the officer responsible for Action Fraud within the IAU, and the motorbike had not been logged as stolen with the consequence that it had been sold, bona fides, on two further occasions. ND was frustrated and annoyed with the claimant because he had opted simply to pass the complaint to him, rather than to investigate the circumstances before providing ND with a briefing note about it.

57. PH explained the move of teams and the rationale for it to the claimant. She advised the claimant that he would be given acting opportunities, but she needed to ensure that all PSs who wished to act up were given a fair and equal opportunity to do so and that she would have to ensure that any secondments for acting up opportunities were operationally viable given the primary need for the IIT to be resourced. She made a passing comment to such matters being in the public interest, but she did not as the claimant alleges say that his promotion would not be in the public interest nor did she say, as the claimant suggested at one stage during his fairness at work interview, that it would not be in the public interest because of his disabilities. It is contrary to common sense that PH would have commented as the claimant alleges, given that she is herself restricted officer and ND was present throughout. She explained that another PC, Pete Escombe, could become eligible for acting up roles if he passed his sergeant's exams that year. She therefore proposed that she would maintain a spreadsheet detailing the acting up opportunities that each had been offered. However, she said that the claimant could continue to act up until SCB began in post on 26 January 2018.

58. PH told the claimant that she was aware of their prior involvement in the CJIU but she did not want him to think that that would have any influence on her decisions. That was, we find, a genuine expression of the concern which she had previously discussed with ND that she wanted to be transparent and did not want that history to influence her decision making, albeit (in PH's words) it was "clumsily expressed." Notwithstanding that matter, the meeting was constructive and convivial, and we accept ND's evidence to that effect. The claimant did not express any concerns either as to the decisions that were made or the motivation for them.

59. On 23 January 2018, there is a dispute between the parties as to whether the claimant had entered a meeting in PH's diary, which she failed to attend. We resolve that dispute in our conclusions below.

60. On 29 January 2018 the claimant met with Supt Priddy, who was acting as an unofficial mentor, and raised concerns about the manner in which he perceived he

was being treated by PH, in particular, that he was no longer required to act up and that he was not invited to IIT sergeants' meetings. It is accepted that this was a protected act the purposes of section 27 (2) EQA 2010.

61. Supt Priddy referred the matter to GM. GM made a note of the complaints as they were reported to her, recording firstly that the claimant was excluded from sergeant's meetings, secondly that the claimant had not met with PH for five weeks, and lastly that he had been instructed that he had to cease acting up. On 1 February GM arranged to meet with the claimant to discuss his concerns.

62. On 30 January 2018 PH sent PC a copy of the claimant's ETDP. PC therefore became aware of the claimant's aspirations for promotion and the contractual agreement with the respondent relating to the support that would be given to him, although the claimant had told PC of the First Claim previously. On 4 February 2018 PC therefore sent the claimant details of the online material for leadership courses known as STAR. He advised claimant that he was seeking a mentor to support him in relation to his applications for promotion.

63. The claimant, GM and ND met on the 9 February 2018 to discuss the claimant's concerns which had been conveyed to GM. At the meeting ND explained to the claimant that PH had raised their history because PS Smith had reported to her that the claimant was concerned about PH becoming his inspector given their history. ND said that PH had wanted to reassure the claimant that a line had been drawn in the sand and that she was aware of all of the good work that have been reported about him from the IAU. ND set out the reason for the decision to stop the claimant acting up and the basis of future decisions on acting up (as described above). The claimant said he understood, which concerned ND, given that the claimant had said the same at the meeting on 19 January but had subsequently raised concerns about victimisation following the meeting. It was agreed that a meeting would be arranged which was to be attended by the claimant, PH and ND to clear the air. It was scheduled for 12 February 2018.

64. Unfortunately, the claimant had overlooked the fact that he had booked a ½ days annual leave on 12 February when agreeing to that date; the meeting was therefore cancelled. On 16 February 2018 ND emailed the claimant asking him for his dates of availability in the next few weeks so that it could be rescheduled. Regrettably the claimant did not reply or provide his dates. In consequence and due to the demands of PH's and ND's roles, and the fact that ND had been moved from IIT to LIT, the proposed meeting did not take place.

65. The claimant alleges that he verbally informed ND that he was available for the meeting on 22 February 2018, and that ND agreed that the meeting would be scheduled for that date, but in the event neither PH nor ND attended. We resolve that dispute in our conclusions below.

66. On 23 February 2018 PC and the claimant met for a monthly job chat. The ETDP was discussed, and the claimant advised that he was still working towards the successful completion of his JRFT and OST (Officer Safety Training), despite a recent flareup of arthritis, and that he hoped to be able to take the tests in March or April. PC made the claimant aware that he was awaiting the selection of a mentor for the claimant. The JRFT is a fitness test (the claimant was to undertake the Chester Treadmill test) which is the necessary precursor to undertaking the OST, which is essentially a self-defence course for officers. There was a discussion in relation to acting up opportunities and PC reiterated that PC Escombe would be considered equally with the claimant for acting up opportunities if he passed his sergeants exams, and that any acting up opportunities would need to be balanced against the operational needs of the IIT.

67. In the event, PS Alistair Hammett ("AH") was appointed as the claimant's mentor in or about late February 2018. The claimant met AH on a handful of occasions, when

the claimant and AH discussed the claimant's desire to secure promotion, and the claimant made reference to the fact of his previous tribunal claim. AH advised the claimant to prepare his evidence for the promotion application straightaway, so that it would be ready at the time of the next promotion round. He suggested that the claimant should show it to him in advance so that he could review it and identify any shortcomings with it, in the hope that they could be remedied before the application was submitted. In the event the claimant never provided AH with a copy of his application or any of the evidence that he relied upon to support it. The claimant did inform AH of his dyslexia, his back condition, and his hip issues, and made him aware that he believed there were ongoing issues with his line management regarding acting up opportunities.

68. Later, on 23 February 2018, the claimant advised PC that he had some backache and discussed his need for an adjustable desk. There were three officers within the IIT for whom such a desk was a reasonable adjustment, but only one desk. PC therefore sought advice from the respondent's health and safety officer, Claire Arnold regarding that issue. The issue had in fact been raised by one of the affected officers the day before and PH had emailed Claire Arnold to enquire whether a further desk could be purchased. She advised that due to financial constraints, an Ergotron sit-stand (which could be placed on an existing desk) might be a viable solution.

69. On 1 March 2018, PC provided the claimant with a list of dates on which he would be able to act up in PCs absence, either because of annual leave or because PC would be acting up himself. In the event the claimant acted up as PS between 10th and 23rd March 2018. PC referred the claimant to the Force Medical Adviser ("FMA") to understand whether he would be fit to take the Chester Treadmill test.

70. Whilst the claimant was acting up between 10 and 23 March, he took it upon himself remotely to review the work of the officers on the IIT who had passed their training courses. He sent several emails to four female officers involved and spoke to them directly in a forceful and aggressive manner, criticising their working practices and the volume of work that they had completed. In so doing he adopted what PC described as a punitive (rather than a supportive) managerial mindset and demonstrated a lack of emotional intelligence. That caused considerable upset to the officers involved, one of whom had a specific mental vulnerability which had previously led her line managers to devote considerable energies to establish the workplace as a safe environment for her. The claimant's interactions with her had left her in tears on several occasions. PC spoke to him about it at the time and instructed him to stop. However, the behaviour was repeated and, in consequence, the officer in question was moved to a shift where she would not work with the claimant. However, he continued to monitor her work remotely. Therefore, the PS who was in charge of her shift, SCB spoke to the claimant on 21 March (as detailed below) and instructed him to stop.

71. There is a dispute between the parties as to whether or not the claimant approached PH on the 12th and 13th of March requesting an informal mediation meeting with her following the abortive meeting on 12 February. We resolve that dispute in our conclusions below.

72. On 13 March 2018 the claimant emailed PH advising that his adjustable chair had been used "four times in recent months," which had led to it being kept behind the sergeants' desk in the IIT. He pointed out that if the chair was adjusted it could "cause my hip considerable problems." The difficulty was that the chair was being used by officers from the FCR at times outside the shifts of the IIT inspectors, and in consequence the IIT officers were powerless to prevent its use, absent a report from the FMA prohibiting it. The stance taken by the FCR inspectors, in particular Inspector Pitman, was that chairs were provided to assist individual employees, but were force property, and could and should be used by other officers when they were not used by those to whom they had been provided.

73. On 14 March 2018 the FMA advised that the flareup of the claimant's arthritis should not prevent him carrying out the JRFT or the OST. On the same day PH directed SD that the claimant's chair should be kept in the IIT inspectors' office to prevent it being used, rather than the FCR inspectors' office.

74. On 21 March 2018, PH and SCB met with the claimant in relation to his spot checking of PCs on the IIT. He was advised that it not appropriate for him to conduct spot checks as he was not in a supervisory role, and that the responsibility for reviewing the PCs work was to be performed by SCB, but that the claimant's skills would be used to train the new officers who had recently completed their training in the practices of the IIT.

75. On 22 March 2018 the claimant met with PC regarding his Performance Development Review ("PDR"). The claimant asked whether, as PC had not been present for the majority of the events referred to in the claimant's evidence portfolio, it would be appropriate for PS Smith to endorse the evidence. PC confirmed that was appropriate.

76. On 29 March 2018, PC reviewed the claimant's PDR and found it to have been endorsed and created by PS Smith. On the form the claimant had removed PC as his line manager and replaced him with PS Smith. Similarly, the claimant had replaced PH with Inspector Curnock where the form required him to identify his second line manager. That was both a deliberate and a disingenuous act. It was not authorised by either PS or PH and was in part taken because of the claimant's negative views of PH and also because of the claimant's concerns as to the effect of the public complaints relating to his failure to record the theft of a motorcycle on the Police National Computer, a matter which had been referred to PH by ND, and which had subsequently been referred to the Police Standards Department. To compound matters, AS had awarded the claimant a grade of "one" in every category, which is the highest reading. Given the concerns that had been expressed in relation to some of the claimant's actions, such scores were not consistent with the claimant's performance as they had been observed by PC, SCB and PH.

77. On 5 April 2018 PC arranged for the claimant to take part in the STAR interviewee training which was only intended for supervisors who were seeking promotion to higher leadership roles and would not normally be made available to PCs.

78. On 7 April 2018 the claimant informed PC that his adjustable chair had been used again, during a period of annual leave, but that it had been provided for his sole use, and that that fact was recorded in the Court Contract which had led to the ETDP. PC checked the document and noted that it did not expressly record it was for the claimant's sole use. He therefore notified the claimant of that matter and, on 11 April 2018, emailed Claire Arnold seeking clarification in relation to the allocation of electric desks and the chair. On 16 April PC met with Claire Arnold who advised that a workplace assessment should be conducted to determine whether an electric desk was required as a reasonable adjustment for an officer, and that a desk should not be purchased without such a recommendation.

79. On 17 April 2018 the claimant emailed Supt Priddy, providing him with two documents, one entitled "notes" and the other "chat". The document entitled notes was produced from a record of events that the claimant had maintained on his computer. The "notes" document contains a number of inaccuracies:
    79.1. First, it suggests that the First Claim related to the discriminatory behaviour of PH which related to the claimant's disability. The claimant made no allegations against PH in the First Claim.
    79.2. Secondly, it suggests that the claimant asked PH on each occasion of the weekly IIT Sergeants' meetings whether he could attend and on each occasion she told him that he was not required. Those requests are not reflected in the claimant's event log, and we note that the claimant did not meet with PH on a weekly basis, rather the claimant alleges that PH failed to attend meetings as

one of his complaints in these proceedings.

79.3. Thirdly, it suggests that the claimant was excluded and undermined in his role as a sergeant within the IIT. The claimant was not at any stage one of the four substantive sergeants within IIT, a matter which he knew full well.

79.4. Fourthly, it suggests that the meeting with GM, ND and PH did not take place because of PH's sickness absence. The reality was, as described above, that the claimant had overlooked a ½ day's annual leave on 12 February 2018.

80. On either the 17 or 18 April PC met with the claimant and advised him that he should not be spot checking the work of other officers. He emailed the claimant on 19 April and clarified PH's concerns that the claimant had been conducting spot checks on the new officers' work, noting that once they had been signed off as having completed the necessary training for IIT, it was the sergeants' responsibility to review their work, not the claimant's. However, he accepted that it might be appropriate for the claimant to provide ongoing peer-to-peer support of the new officers, which was more akin to post training support, to ensure that they were implementing the skills they had learnt on the training course effectively.

81. PC had previously conveyed that message to the claimant in person on several occasions, however the claimant had continued to review the work of officers who had completed their training after the event. In consequence, on 19 April PC sent a further email to the claimant, SCB, SE, and SD specifying that the sergeants should undertake the assessments on work completed by the new officers prior to the case being closed.

PH's absence in April 2018

82. In April 2018 PH was due to attend a three-week leadership course. She therefore directed PC that he should act up in her absence, and that it would be unnecessary for anyone to act up as PS. That arrangement had been adopted previously and PC had fulfilled both roles. At a Job Chat attended by the claimant and PC on 26 April, the claimant argued that the respondent was failing to comply with the terms of the ETDP because it had not permitted him to act up during PH's absence. PC advised the claimant that he had agreed with PH that PC would be able to cover both roles and acting up could only be permitted where the department's resources allowed it.

83. The claimant alleges that PH expressly instructed PC that he should not permitted the claimant to act up and that he conveyed that to the claimant during the meeting. We reject that evidence both because we prefer PC's evidence that he did not make that remark and because it is inherently unlikely that PH, who was so wary of the claimant and had been so worried that he felt that she was singling him out only weeks earlier that she had been supported by ND in a meeting to address that concern with thew claimant, would openly refer to the claimant in the way he suggests. Rather, we find that the claimant inferred that PH had made that remark because there was no other officer who could act up, in the same way as he had previously inferred (without basis) that her reference to the public interest was a reference to his status as a disabled officer not being in the public interest. There was not an iota of credible evidence to support either inference, yet the claimant adopted them as biblical truths and was unwilling or unable to see PH's actions in any other context. His belief that he was being persecuted by PH thus became a prism through which he viewed and interpreted all subsequent events.

84. In the event, however, following her leadership course PH began a period of sickness absence and therefore the claimant began to act up on 28 April 2018. On 16 May PC emailed the claimant to advise him that he would continue to act up until PH returned from her sickness absence.

The claimant's adaptable chair

85. In addition, during the job chat on 26 April, the two men discussed the claimant's

chair and, PC explained that in the absence of either a clear reference in a document or advice from the FMA that the adaptable chair was for the claimant sole use, whilst the claimant would have priority when he was in work, other officers might be permitted to use chair in his absence. He therefore suggested that he should make a referral to occupational health to determine the issue.

86. On 27 April 2018, in an email to PC the claimant raised his concerns of the risk to his health if other officers were permitted to use his chair and reiterated his need for an electric desk given that his perching stool had broken and was awaiting repair. On 29 April 2018 PC emailed Claire Arnold seeking confirmation of whether or not the claimant was entitled to have sole use of his chair, noting "Tim has made veiled threats that [an Employment Tribunal] is a direction he would pursue if he is asked to allow others to use his chair or if suitable steps are not taken to prevent others from using [it]".

87. On 30 April 2018 PC emailed a number of officers, who were Physical Education Officers for the respondent, to ask them to assist the claimant with his preparation for the JRFT.

88. On 4 May the claimant emailed PC advising him that a member of the Federation had been present during the meeting with Kim Carter where the agreement that the chair was for his sole use was reached. Consequently, on the same day PC made a referral to occupational health seeking clarification of that issue and emailed the Chair of the Police Federation, Michael Harrison, enquiring whether he had any record of the agreement.

89. On 14 May 2018 Claire Arnold emailed PC and others reiterating the respondent's policy that, absent specific medical advice, adaptable chairs were the force's property, and therefore "can and should be used across the shifts in order to benefit other colleagues". On the same day PC contacted the respondent's People Services Centre asking if they had any record of the agreement that the adaptable chair should be for the claimant sole use. It is clear to us that PC was taking every reasonable step to clarify the position, so as to resolve the ongoing issue, rather than, as the claimant argues, seeking to create every possible hurdle to prevent the claimant having sole use of the chair. In reaching that conclusion we bear in mind that PC was a PS and was addressing matters which involved operational decisions made at a far senior level to him, whilst carefully navigating the stance taken by a senior officer in a different department, Inspector Pitman.

90. On 15 May 2018 PC received the FMA's advice which recorded that it was the FMA's view that "arrangements were made for [the claimant's] chair not to be used by others in the past" and recommending that it would be "helpful if that adjustment could continue." The FMA also noted that the claimant was not then fit for the JRFT or the OST. The matter was therefore resolved in so far as the tension with the FCR was concerned.

91. PC's concerns about the claimant's inappropriate review of the work of officers within the IT continued, and in consequence during a monthly PDR meeting with the claimant, he referred the claimant to a leadership guide called the Seven Domains of Supported Leadership (later sending him a copy by email on 1 June) and invited him to reflect upon it and suggested he could use that reflection positively in his evidence for his application for promotion.

92. On 11 June 2018 the claimant emailed Supt Priddy and complained that PH had continued to victimise and bully him; the email reiterated the claimant's complaints concerning PH's decision not to permit the claimant to continue to act up following the implementation of the transfer from IAU to IIT. The respondent accepts that this is a protected act for the purposes of section 27 (2) EQA 2010.

93. On 21 June the claimant emailed PC complaining that the arms of his chair had been

altered.

94. On 3 July 2018 a workstation assessment was carried out for the claimant which noted that it was his responsibility to familiarise himself with his chair's adjustments and to readjust it if it appeared it had been used by somebody else.

95. On 30 July 2018, the claimant again emailed PC complaining that his chair had been used and he had to readjust it.

Support for the claimant's application for promotion

96. On 27 July 2018 PC and the claimant met for a monthly job chat. The claimant accepted that the terms of the ETDP required him to complete the OST before he could be considered for promotion. The claimant expressed an interest in undertaking a period of temporary promotion, possibly with the LIT, in the near future. PC advised him that in order to be considered for such a temporary promotion he would first have to pass his JRFT and OST because the operational demands upon LIT at that time were likely to require him to engage in the public arena. That was because in the summer the respondent experienced the highest demand for its services at a time when it had the lowest resource available to it, due to officers' annual leave. PC extended the ETDP for a further period of six months.

97. PC advised the claimant that JM had indicated to him that in order to be considered for promotion, officers should carry out a period of acting up or a temporary promotion within another department. Consequently, he advised the claimant that he should continue to work towards passing his JRFT and OST to facilitate such secondments. He further suggested that the claimant should undertake 360° feedback as a means of obtaining evidence to support any application for promotion, and he would enquire as to how that process could be conducted. PC noted that in his absence the claimant would act as acting sergeant, but he should pay particular attention to the well-being of staff, using the Seven Strands of Supportive Leadership document that had been sent to him previously. This was, we find, a lightly veiled reminder to the claimant of the need for him to be supportive of officers under his responsibility, rather than aggressively to manage them.

98. PC emailed the claimant confirming those matters on 2 August 2018.

99. The claimant was unhappy with the suggestion that he needed to complete his JRFT and OST in order to be considered for promotion, perceiving that to be either PCs or JM's attempt to create further hurdles to his aspirations for promotion, and therefore he challenged the need for them with HR in early August 2018. The reality was that PC had merely conveyed JM's preference for officers who sought promotion to have gained experience in other departments; he was not creating hurdles but was in fact very supportive of the claimant as we detail in our conclusions below.

100. On 3 August 2018, HR confirmed that promotions were open to all officers whether they were restricted or not. On the same day the claimant met with a female PC ("PC A") to discuss her performance. By 7 August 2018, PC A was so disturbed by the manner in which the claimant was seeking to manage her, that she was actively seeking a transfer to another department.

101. On 7 August 2018 HR confirmed that if an officer who had not passed the OST were promoted, the respondent would seek to deploy them to a post where reasonable adjustments would enable them to take up the role at the promoted rank. This merely served to reinforce the claimant's highly negative view of JM and PC. He therefore raised his concerns with Supt Priddy, who in turn raised them with JM. JM had been in the office on 7 August, but the claimant chose not to approach her directly to seek clarification or support in relation to the issues that were a cause of concern for him. JM emailed the claimant on 7 August making that point and inviting him to meet with her to resolve any outstanding concerns that he had.

102. On 8 August 2018 the claimant was sent a training programme by the Force Physical Education Officer to assist him in passing the JRFT which had been rebooked for August 2018. Again, PC's intent in referring the claimant to the PE Officer was not to create a hurdle for him, but rather to assist him.

The meeting between JM and C on 8 August 2018

103. On 8 August 2018, the claimant met with JM to discuss the concerns that he had raised with Supt Priddy and the claimant's route to promotion. The respondent accepts that the discussion is a protected act for the purposes of section 27 (2) EQA 2010.

104. Entirely regrettably, JM did not take sufficient steps to ensure that she was in possession of the relevant facts before her meeting with the claimant. In particular, she had not reviewed a copy of the ETDP before the meeting, nor had she spoken to PH or PC to understand what it contained. JM knew the claimant was a restricted officer but had not clarified with HR or the claimant himself whether he was categorised as disabled. In consequence she believed that the ETDP was in fact a development plan which had been imposed under the Unsatisfactory Performance Procedure ("UPP") which the claimant had been managed under prior to the First Claim. JM was aware as a consequence of her discussions with PC that the claimant was working towards the completion of the ETDP as part of that development plan. In consequence, she informed the claimant that she would not support him in any application promotion until such time as he had completed the plan, including the JRFT and OST that formed part of it. She did not waiver in her stance despite the claimant telling her that the ETDP was not produced under a UPP.

105. Secondly, she advised the claimant that officers could not be promoted to sergeant until they had completed a temporary acting role outside of the department in which they were currently working. That did not reflect the respondent's policy of the time but did reflect JM's personal view that only officers who had obtained such experience should be supported by her in their applications for promotion.

106. The meeting was a difficult one because of a level of mutual distrust between JM and the claimant. JM was concerned by the claimant's actions in bypassing his first and second-line managers during the production of his personal development review, and in his failure to follow process in raising any concerns with her, but rather raising them with Supt Priddy. The claimant was distrustful of JM because he viewed her as being supportive of PH, particularly in relation to her stance that acting up opportunities should be shared equally amongst all officers who sought them and further she was pressing him indirectly to complete the JRFT and subsequently the OST before he could be consider for promotion.

107. JM asked the claimant about his five-year plan for promotion and career development and offered him a quickfire 20 minutes coaching session using the 'red, amber, and green' process to identify areas of strength and areas for development in his evidence portfolio. JM did not explain precisely how the process worked but did identify areas where the claimant's evidence portfolio was lacking, in particular work in another area of the organisation. That was a genuine process intended to assist claimant. JM requested that the claimant should seek confirmation from his GP as to whether he was able to complete the OST and, on 8 August, the claimant was booked in to undertake the OST on 16 October 2018. The claimant allowed JM to believe that he was both content in and intent on passing the JRFT and OST.

108. On 9 August 2018 the claimant emailed JM stating that it was not appropriate to require him to complete the OST because of his disability, and that it would be a reasonable adjustment and in line with the existing HR policy to ignore the requirement to pass OST. The respondent accepts that this is a protected act for the purposes of s.27 EQA 2010.

109. JM replied on 11 August indicating that she believed that OST was required within the ETDP, but she would seek confirmation from the HR Department and the Legal office as to whether it was appropriate to require the claimant to complete the OST. Again, we are satisfied that she took that stance not because she wished to create an improper or unfair hurdle for the claimant's aspirations for promotion, but rather because having misunderstood the nature of the ETDP and its effect, she wanted to be certain of the correct legal position before advising the claimant of her stance on the issue.

110. Between the 10th and 13 August 2018, the claimant continued to liaise with the respondent's HR team by email to clarify that point.

111. On 20 August 2018 PC emailed the claimant to reassure him that the reason that a date had been set for the OST was not to pressurize the claimant, but rather because the force PE officer, Sarah Freckleton, had advised PC that it was beneficial for those seeking to improve their fitness to have a date and a goal to work towards. PC reiterated that the date was only provisional and could be postponed if necessary. On the same day PC referred the claimant to occupational health seeking clarification of the claimant's ability to undertake the JRFT and the OST. In particular PC asked for clarification as to whether the claimant should continue to train to pass the JRFT.

112. The claimant, by this stage, had become increasingly paranoid that both PC and JM were seeking to place hurdles in front of him to prevent him securing promotion. Consequently, he asked HR whether a consequence of the referral might be that his existing reasonable adjustments were removed. It was self-evident from the content of the referral form that this was not the purpose or the subject of the enquiry; all of the reasonable adjustments currently in place were listed and the only request for clarification was in relation to the claimant's fitness to train for and to undertake the necessary fitness tests. Further, the position was put beyond doubt by JM's email of 21 August that clarified that the purpose of the referral was to understand whether the claimant could undertake the fitness tests or not, and that in the event that he could not, the respondent would need to consider the effect of that upon the existing ETDP.

113. The claimant sought advice from his solicitors in August 2018 in relation to the ETDP and the need to complete the OST.

114. On 28 August 2018, PC A emailed PC and PH complaining about the claimant's management. PC emailed the claimant and all of the sergeants in IIT, PH and AH advising them of PC A's move from Team 1 to Team 4, stating that SCB would be responsible for monitoring her work, and that any future concerns about her work should be raised with SCB and not PC A. He intended thereby to make it expressly clear to the claimant, should he not have understood it from their prior conversations or his prior email, that it was not for the claimant to undertake that task. PC sent the email so that there was an audit trail that would permit him to take disciplinary action against claimant if he again failed to comply with PC's instruction, so frustrated had PC become with the claimant's conduct in that regard.

115. On 3 September AH was transferred to IIT; he agreed with the claimant that he would continue to act as his mentor. AH once again advised the claimant that it would be in his interests to start to prepare his evidence for his application so that AH could review it before the promotional ground was opened. PC handed over the fact of the complaints to AH.

116. On 5 September 2018 the claimant emailed JM enquiring as to whether she had clarified with HR and/or the legal departments whether he was required to pass the OST in order to be supported for promotion. JM replied by email on that day, indicating that the claimant should try to pass the OST and that a date had been booked for him to take the necessary tests, but if he were unable to take the test or

unable to pass it, the position would be reviewed. The claimant replied, clarifying that his understanding was that, as a consequence of the respondent's recognition that he was a person with disability, the requirement to undertake the OST should be waived as a reasonable adjustment. The claimant reminded JM that in May 2018 the FMA had found that he was unfit to undertake the Chester Treadmill Test. In addition, he raised the issue of approaching the FMA to seek clarification as to which roles he might suitably be deployed to. Lastly, he complained that he felt that the respondent was seeking to deny him promotion by requiring him to undertake acting duties in another department, whilst denying him the chance to do so. He compared his treatment to that of PCs Escombe and Stubley. (In the event, his criticism was misplaced and unfounded: the claimant had been permitted to act up on many occasions, and PC Escombe was also afforded equal opportunities, as PH and ND had explained to the claimant that he would). The respondent accepts that this email was a protected act for the purposes of s.27 EQA 2010.[1]

117. JM referred the matter to HR and the respondent's legal department that day, seeking clarification of the requirement for the OST to be completed as part of the ETDP.

118. On 5 September, after that exchange, the FMA advised that the claimant was unable to pass the Chester Treadmill test at that stage, due in part to a flare up of his osteoarthritis, but he had no concern about the claimant continuing to train for it, and that further weight loss would assist in reducing the pain caused by activity, although unless the claimant was able to reduce his weight, or the symptoms of his arthritis improved, he did not expect the claimant to pass.

119. On 7 September[2], the claimant's solicitors wrote to the respondent seeking confirmation that the claimant would be afforded a dispensation avoiding the need to undertake the JRFT/OST to complete the ETDP as a reasonable adjustment, and so would be eligible for promotion. The respondent accepts this was a protected act for the purposes of section 27 EQ 2010.

120. On 20 September JM wrote to the claimant confirming that after receipt of further advice only officers who were deployable were required to complete the OST, and that the ETDP should be amended to reflect that, and in consequence she would support the claimant in any application for promotion.

The claimant's application for promotion

On 21 September 2018 PS Mike Harrison, the Chair of the Police Federation, requested a meeting with AH and PH during which he informed them that four female officers in the IIT had complained to him that the claimant had bullied and harassed them, but they were too frightened to make a formal complaint and wished to remain anonymous. One of those complainants was PC A. The other three members had previously raised concerns with PC but had been unwilling to become involved in a formal process because of concerns about the claimant's conduct towards them. In general terms, the three made similar complaints of overbearing, oppressive and bullying management by the claimant to those of PC A. PC had advised the three complainants to raise their concerns with the Trade Union if they were unwilling to raise them formally with their first-line managers to enable them to take action and investigate, but he had been unable to report this to PH or AH given the

[1] The claimant's pleadings and list of issues in relation to this point are a paradigm of unhelpful pleading. The allegation as crystalised in the list of issues reads "making allegations to D/Supt Mackay on 8 August 2018 and ***subsequently*** that R was discriminating against him contrary to EqA 2010" (our emphasis). No effort was made in cross-examination or closing submissions to identify the relevant dates; the tribunal therefore has inferred them as being between 8.8.18 and 13.9.18. The respondent merely conceded the issue.

[2] The claimant alleges that the letter was sent on 13 September in the list of issues, but the parties' Statement of Agreed Facts records it as having occurred on 7 September 2018.

complainants' desire to remain anonymous.

121. On 26 September 2018, AH met with the claimant for a mentor's meeting. AH asked the claimant if he had prepared his evidence for the promotional process, so that he could review it. The claimant did not provide it to him at that stage. During the meeting the respondent accepts that AH did not inform the claimant that it was proposed that the officer complaints should be referred to if he were to make an application for promotion in the upcoming round. AH argued that he had raised the fact of the complaints with the claimant during the meeting on 26 September. The claimant disputes that. On balance we find that AH did not raise the complaints at that stage because there is no reference to them in his note detailing 26 September meeting, and when the claimant met with JM on 17 October (see below), his note records "Tim Jeynes - FT- values plus behaviour issues - not addressed with TJ."

122. Given that the claimant was on annual leave between 27 September and 18 October (although he came into IIT during his period of leave because he was keen to understand whether and to what extent reasonable adjustments could be made in respect of the interview and application process), and AH was himself an annual leave from 20 October to 30 October, the logical conclusion is that the meeting occurred at a later point. The parties agree that when the matter was discussed the claimant suggested that he knew the identities of the complainants, and that the complaints were vindictive having been orchestrated by one of the individuals, whom the claimant said he had had a previous dispute with, regarding damage to a vehicle in the respondent's car park. AH encouraged the claimant to reflect upon the fact that four officers for whom he had responsibility as a sergeant had felt it appropriate and necessary to raise a complaint with the Police Federation in respect of him. We are persuaded on balance that this conversation occurred sometime between the 18th and 20 October when the claimant came into IIT to discuss reasonable adjustments for his interview; we accept AH's evidence in that regard.

123. On 8 October 2018 the sergeant's promotion process was advertised by the respondent. The claimant had not, at that stage, either prepared his evidence or given it to AH to review and discuss with him. On the same day line management responsibility of the claimant passed from PC to LS.

124. On 15 October JM met with the claimant. She confirmed that he would no longer be required to undertake the JRFT or OST and therefore she proposed that those elements would be removed from the ETDP. She offered further advice in relation to the red, amber and green self-assessment and the use of a 360-degree feedback review to identify areas of weakness which the claimant could address to strengthen his application. She stated that a further referral to the FMA would be made to identify departments to which the clamant could be deployed to support him in gaining experience for his application. Later that day JM emailed AH and instructed him to make an OH referral to the FMA to identify which roles the claimant could perform within the respondent's organisation, given that the previous report only focused upon his ability to complete the JFRT and OST. JM was particularly keen that the report should address whether the claimant was fit to be deployed to CHRT and NHP, CJD, FIP and other departments. Again, the claimant argues that the referral was solely intended to create a further hurdle to delay rather than support his application for promotion. We reject that argument: it was the claimant who had first suggested the course in his email on 5 September, and JM was genuinely seeking to ensure through that process that any secondment was appropriate given that the claimant would not have undertaken the OST.

125. On 17 October 2018 JM met with AH, in the presence of CE, to review the IIT staff generally. During the meeting the four complaints were discussed. JM expressed the view that as the complaints consisted of allegations which, if established, would constitute a breach of the respondent's Values and Behaviours, which was an integral part of any application for promotion, the claimant's application should not be supported, and a Development Programme should be put in place

instead.

126. On 18 October 2018 the claimant applied for promotion to the position of Police Sergeant, the day before the process closed on 19 October. AH received the application on 19 October, at which stage he had not had previous sight of the claimant's application or the evidence that he relied upon in support of it, despite his many offers to review it with the claimant to assist him. The application was in a new form in October 2018 in that it contained six competencies, in respect of each of which there were a number of behavioural indicators against which the applicants had to record their evidence. Whilst AH had previously conducted numerous promotional assessments, he had not conducted any using the new system. His evidence on the point, which was unchallenged, was that in consequence he telephoned HR on 19 October 2018 to understand what was required in respect of each of the competencies, in particular whether it was necessary to demonstrate evidence in respect of some of the indicators or all of them in order to pass the necessary competency. He was advised that applicants needed to demonstrate some evidence in respect of all of the indicators. (As the claimant and his witnesses pointed out, were that right it would require applicants for the position of Police Sergeant to demonstrate competencies at a level that was required of Police Inspectors.)

127. Consequently, on 19 October AH carefully reviewed the applications of both the claimant and LS. Both applications and AH's comments in respect of them were provided to the Tribunal. They demonstrate that AH approached the task in an identical fashion in respect of both LS and the claimant and AH indicated where each applicant had adduced evidence to demonstrate the necessary indicator (and where they had not), analysing each piece of evidence in a systematic way. We are satisfied that that assessment was carried out in a genuine and reasonable fashion. In the event he found that neither of the applicants had demonstrated that they had reached each of the indicators and therefore concluded that neither application could be supported. AH concluded that the claimant had not demonstrated the necessary competence in relation to four of the six competencies.

128. When marking the claimant's form, AH referenced the complaints under the heading "further concerns with regard to leadership and management style". AH detailed the nature of the complaints and observed,

> *"the common theme is that his manner in dealing with staff is abrupt and overly intrusive, even when he had been asked to step back he did not. This could be perceived as verging on bullying. His interpersonal skills appear to be in question, advising staff using words the effect of "I'm not here to make friends". It is accepted supervisors have to monitor work, but there is a line between monitoring and over monitoring."*

129. The record of the complaints was entirely factual, and consistent with the chronology as detailed above, particularly in relation to PC A.

130. AH included reference to the complaints because he was unable to attend the Standardisation Panel, and felt that it was a matter that the panel should be aware of when reviewing AH's decision not to support the claimant's application. It was a matter of personal choice; it was not prescribed or permitted in any applicable procedure or policy. His evidence, which we accept, was that had there been one complaint he would not have included any reference, if there were two it was most unlikely that he would have done, if there were three, he would have given it careful thought, but because there were four complaints, he felt it relevant and appropriate to include them.

131. AH met with PH (on 19 October), and PC (on 26 October) to review the claimant's application, given that they were his able to comment upon the evidence that the claimant relied upon, as they had previously been respectively his first and

second line managers during the period in question. However, AH had already made the decision not to recommend that the claimant be promoted.

132. On 30 October 2018, AH met with the claimant to advise him why his application had not been supported. During the discussion AH again made reference to the complaints. AH subsequently sent his assessment of the application to the claimant. It was at that point that the claimant first learned that the complaints had been referred to in the first line manager's recommendation. AH told the claimant that his application contained spelling and grammatical mistakes and was in part poorly written, but the reason that he had not supported his application for promotion was the poor evidence that it contained. AH told the claimant that he was frustrated that despite his repeated offers the claimant had never availed himself of the opportunity for AH to review his application, or to discuss it with him. AH's view was that if the claimant had taken up the opportunity, the spelling, grammatical and language errors could have been rectified, and the gaps in his evidence could have been identified. AH suggested to the claimant that he should carefully consider the areas that he needed to develop in order to pass the application on the next occasion.

The meeting of 1 November 2018

133. The claimant was most unhappy that AH had referenced the complaints in his assessment and met again with AH on 1 November 2018. During the meeting the claimant insisted that the reference to the complaints should be removed as he did not want them on his personal file. The claimant makes several allegations in respect of the discussions at the meeting.

134. First, he alleges that during the meeting AH informed him that AH, PH and PC all knew that the complaints against the claimant were groundless and should not have been included within his application. We reject that evidence. We are satisfied that AH, PH and PC each believed that the complaints were of some substance. PC had been directly involved in the matters relating to PC A, as had PH, because PC had copied her into relevant emails. Furthermore, both AH and PH had attended the meeting with MH at which he had raised the complaints. It is therefore most improbable that they would have said that the complaints were groundless. Critically, however, in the claimant's email the following day he makes no reference to the suggested concession by AH. It is utterly implausible that if AH had said that all three of the superior officers believed that the complaints were groundless and should not been recorded in his application, that he would not reference to it in this email. It was the claimant who argued that they were groundless. AH never accepted that position.

135. Secondly, he alleges that AH agreed that they would be removed from the application as the claimant did not want them to be recorded on his personnel record. Again, we reject that evidence. We prefer AH's evidence that he informed the claimant that he would enquire with HR whether the application would be recorded on his personnel file. AH made that enquiry and was informed that the application would not be held on the claimant's personal record but would be destroyed after six months. That is consistent with the email that the claimant sent AH on 2 November (see below), in which he did not suggest that AH had agreed to have them removed, but only wrote "have you had them removed as discussed?"

136. Lastly, the claimant argues that AH told him that he should get rid of his development plan as it was "dragging him down", that senior managers viewed it as a constant reminder of his ET claim, and the respondent might not have an issue with an application for promotion if he got rid of it. AH accepts that told the claimant that in his opinion, as his mentor, he did not think the ETDP was assisting him, that it was holding him back and he would be better served by a Development Plan which contain specific objectives, and which was forward facing. In particular his view was that the ETDP did not contain any timelines or objectives. In addition, he said that each time the claimant moved department, whether as a secondment to support his application for promotion or otherwise, he would have to make senior management

aware of the ETDP, and would therefore have to explain some of the history that led to its production, and that it would be to his advantage not to have to focus on the past, but rather to have a development plan that focused on the future. On balance we find that AH's account is correct, it was a credible and coherent account, and further, we are not persuaded that the claimant's recollection of the meeting is accurate, given the inaccuracies in his account of the two other matters.

137. On 2 November the claimant emailed AH reiterating the points that he raised at the meeting.

138. On the same day, 2 November, LS met with the claimant in her role as his A/PS; the claimant advised her that he had not had any difficulties with people altering his chair since July and that HR had contracted an external company to review the settings on each adjustable chair provided to officers as a reasonable adjustment, to ensure they were correct for them. In addition, the claimant did not raise any issue with his supervisors despite being asked. He also advised that he had been referred to occupational health to understand which areas he could work in so as to assist his application for promotion, and that once that advice had been received a development plan could be created to assist him. He raised no issue in relation to any of his supervisors or the referral to the FMA.

139. The standardisation panel met on 5 and 6 of November 2018. Chief Inspector Tim Wood chaired the panel. The panel concluded that the claimant would be ready for promotion in 12 months; it reached the same conclusion in respect of LS.

140. On 9 November 2018 AH referred the claimant to the FMA requesting clarification of the departments within the respondent within which the claimant's conditions would permit him to work as a PC or APS.

141. On 16 November 2018 the claimant discovered his chair had been adjusted during his annual leave and he emailed LS to inform her.

Deployments and medical advice

142. On 26 November 2018 the FMA provided the respondent with an updated report on the claimant. It opined that the claimant was unfit for duties where there was any realistic likelihood of physical confrontation, subject to a personal risk assessment, and further was not fit for any JRFT (including the Chester Treadmill Test) or the OST. He recommended the adjustments identified in the ETDP he should be continued. The report did not therefore address the question of specific departments within which the claimant could work, as AH had requested.

143. The claimant argued that the respondent had instructed the FMA that he could not make specific recommendations in relation to the roles to which the claimant could be deployed, presumably so as to frustrate the claimant's ability to secure such deployments and hence frustrate any future application for promotion. We reject that evidence; first, the claimant was unable to identify whom he said gave the instruction, believing it must have been JM. Secondly, that account is inconsistent with the email sent by JM to AH requiring him to refer the claimant, and lastly it is inconsistent with the position which the claimant adopted at the hearing which was that the respondent knew that the FMA could not make recommendations in relation to roles but could only advise as to whether a particular role might or might nor be suitable with adjustments for an officer. That, we conclude was the true issue here. That is consistent with the email that the FMA sent to the claimant on 14 December in which he noted "Hopefully, however, my fairly generic report of 26 November has answered her question… essentially you should be medically fit for almost any *non*-confrontational role."

144. The claimant pursued the removal of the reference to the complaint from his application and his personnel file. On 7 December he emailed Charlie Eckford

("CE"), an HR advisor, to enquire whether there had been any progress in removing the reference from his application, noting that AH had suggested that she was dealing with it. He did not copy that email to AH; but in the event CE forwarded it to him with an enquiry as to what it related to as she was unaware. AH confirmed that he had agreed to remove the reference from the application on the basis that the claimant was concerned that the application would be added to his personal file.

145. On 10 December 2018, Emma Brand (another member of the respondent's HR department) confirmed that the application was not put on his personal file, but would be destroyed after 7 months and, in consequence, there was no need to remove the references to the complaints. AH forwarded the email to the claimant that day.

Ongoing issues with the claimant's adjustable chair, and changes to the medical room

146. In January 2019 there were several significant changes to the staffing and facilities at the IIT which impacted upon the claimant. Firstly, AH was redeployed from the IIT on 6 January 2019. Secondly, on 13 January 2019 LS left work prematurely to begin maternity leave and PS Simon Ellson ("SE") became responsible for first line manager responsibilities in the claimant's team. SD was promoted to Inspector in IIT to cover AH's departure on 4 February 2019. Thirdly, the respondent determined that the Force Medical Room ("FMR"), which the claimant had used for undertaking the exercises prescribed by his physiotherapist and lymphatic drainage, was to be repurposed as a relaxation suite to benefit all officers.

147. On 11 January 2019, effectively a day prior to LS commencing maternity leave, the claimant emailed LS to complain that his chair had been altered whilst he was off work. LS informed her line manager, noting that it would appear that the only time the chair could have been altered was when it was in the inspectors' office.

148. The claimant became aware of the changes to the medical room on 14 January 2019, when he discovered boxes in the room and was informed by Inspector Pitman of the proposed change. The claimant emailed SE advising him of the fact he used the room to perform his exercises, that that was a reasonable adjustment which the respondent had agreed and which was recorded in a 'court contract' as part of an out of court settlement, which he did not wish to be made general knowledge. The claimant was right in so far as he reported that he should be able to perform his exercise as a reasonable adjustment but overstated the agreement in the ETDP which did not guarantee the use of the medical room, but only that the claimant should "have the ability to lie down at lunch times to do his physiotherapy exercises." The claimant asked SE to find out why he had not been informed of the change and an alternative location in advance.

149. SE replied on 16 January, having consulted with the respondent's HR and legal departments, and proposed that the claimant could use the gym in HQ. The claimant, reasonably, did not regard that as a suitable alternative as the gym was not lockable, an issue which he raised with SE in an email on 21 January 2019. SD took up the issue for the claimant, emailing Emma Brand with details of the frequency and duration of the exercises that the claimant needed to undertake. The claimant himself sent a further email on 24 January expressing concerns about the proposal for him to use a room in the FCR, the primary elements of which were the difficulty in walking to the FCR when the pain caused by claimant's condition was particularly acute, and the lack of a lockable door.

150. PS Andrew Miller ("AM") was appointed as a sergeant to the IIT with the fact from 28 January 2019. On 3 February the claimant provided him with a copy of the ETDP for his reference. On 8 March AM sought clarity from the respondent's HR team as to the extent to which the adjustments were then in force.

151. On 28 March 2019 SD emailed the claimant advising him that he would be able

to continue to use the medical room within the FCR to undertake his exercises, but he might need to be flexible as to when precisely he used it given that others were also using the room. However, it appeared that the bed had been removed from the room as part of the renovations, and therefore it was not appropriate, a concern which the claimant raised with CE on 10 April 2019. Consequently, AM looked for other solutions, emailing occupational health to see whether it be possible for the claimant to use a room in their building for his exercises.

152. On 10 June SD agreed that the claimant would be able to work reduced hours during the period where he might suffer flareups and/or side effects as a result of the change in medication. On the same day occupational health confirmed that it wouldn't be appropriate for the claimant to use a room within the Department for his exercises.

153. On 20 June 2019 CE emailed the claimant providing a summary of her enquiries with occupational health and HR as to a suitable alternative room of the claimant to undertake his exercises within. Four possible solutions were identified:
    153.1. the Gym at Headquarters;
    153.2. The Quiet Room at Headquarters;
    153.3. the FCR reflection room, proposing that the claimant might use a sofa to lie on to perform his exercises; or
    153.4. permitting the claimant to return home (an approximate 10 minute journey) during lunch to enable him to undertake his exercises and have his rest break.

154. On 21 June AM met with the claimant to discuss the options proposed and replied to CE setting out the claimant's critiques. AM's approach to the issue was a sensitive, thoughtful and careful one, setting out the positives and negatives of each of the proposals. The essential points were that the claimant believed that the FCR reflection and contemplation room was the most viable option, if a sofa bed could be installed. Alternatively the quiet room in Headquarters could be used, albeit an appropriate bed would need to be purchased, possibly through access to work, and adjustments made to provide a lock and frosted windows the room, and in the event that the claimant's pain were too acute to enable him to walk to the Headquarters building, the claimant could be permitted to work remotely from home on those days.

155. By 28 August the necessary adjustments to the contemplation room had been made and the FMA advised that all necessary workplace adjustments were then in place. In the interim the claimant was permitted to return home as and when he required to perform his exercises.

<u>Blocking the claimant's promotional prospects</u>

156. On 4 February 2019, SD emailed AH seeking an explanation as to why the claimant had not been supported in his last promotion application. AH replied that day attaching the claimant's application form, his evidence, and AH's assessment comments.

157. On 7 February 2019 the claimant received his 360-degree feedback report. In general, the report showed that the claimant's personal views of his abilities exceeded that of his reports and peers and particularly that of his line managers, the claimant rating himself as 4 (very effective) or 5 (outstanding), the claimant's peers 3 (effective) and the line managers 2 (development needed).

158. On 18 February 2019 the claimant raised a grievance in which he complained of bullying, victimisation and discrimination by PH, AH, PC and JM. He presented a large dossier of emails and other documents, the majority (if not the entirety) of which were included in the bundle and are referenced above. The claimant does not rely upon this as a protected act, notwithstanding the fact that it clearly is. The grievance contains a number of errors, amongst which the following are prominent:

158.1. The claimant describes himself as being a sergeant within IIT. The claimant was not a sergeant and was in fact only an acting sergeant within IAU, not IIT;

158.2. The claimant no longer had the original document he provided to Supt Priddy; he did, it was produced in the Tribunal bundle;

158.3. The meeting with GM did not occur because of sickness on the part of PH; it did not occur because the claimant had overlooked a period of annual leave and did not respond to a request for a new date;

158.4. PC did not inform the claimant that there were not any performance issues concerning him; he did, repeatedly raising concern in relation to the manner in which the claimant was managing PC A. That is reflected in the emails to which we have referred.

159. On 19 February 2019, SD emailed JM seeking guidance in relation to positions in which the claimant could act; the claimant had not told him that he had been referred to the FMA in relation to that issue nor did he share a copy of the FMA's report addressing it. JM replied that day, stating "there is a small challenge regarding the areas that Tim can be deployed to and we have had discussions with Mr Dixon [the FMA] regarding this.." JM then detailed her concerns in relation to each of the potential departments to which the claimant could be deployed; of the six departments listed, JM's view was that the claimant could be deployed to 3 of them, provided the need for his adjustments was capable of being that within them. The claimant complains that JM was thereby preventing him from securing promotion. Accordingly, we address JM's views as to the claimant suitability for the roles, and the claimant's critique of them, in our conclusions below.

160. On 24 February 2019 SD emailed the claimant requesting him to provide some options for department in which he believed he could undertake acting up duties, addressing the concerns in JM's email of 19 February 2019. The claimant was also asked to liaise with AH regarding a new development plan.

161. On 27 February 2019 AM proposed claimant that he should be put forward as an IIT trainer by AM, but that he would need to undertake the necessary training in order to take up the post. That position was confirmed on 11 March, the training was to take place in May.

162. On 13 March the claimant proposed that it would be sensible to approach the HR Operations Manager to ask for a list of vacant sergeant posts in Gloucestershire police, to facilitate the identification of a role in which he could act up. AM agreed to that approach. The claimant was told how he could access the list of roles on 21 March.

163. On 12 March AH suggested to SD that he should meet with claimant to agree a revised DP to replace the ETDP but did not believe it was appropriate for him to be directly involved in its production given that he had not seen the most recent report from the FMA. SD subsequently emailed the claimant and AM proposing that they should meet to review and amend the development plan. That process was eventually concluded in June 2019, a final draft having been prepared by May.

164. On 27 March 2019 SD referred the claimant to the FMA. The reason for the referral was that the claimant had changed his medication and had informed SD that he may suffer from withdrawal like symptoms. SD wanted to know whether there were any adjustments that could assist the claimant in relation to that change. In addition, SD identified that the claimant wished to discuss roles to which he could be deployed with adjustments, for the purposes of assisting his application for promotion. The claimant alleges that that referral was unnecessary and was intended to delay rather than to accelerate the process of identifying and securing acting up opportunities for him. We reject that argument. All of the email correspondence prior to the occupational health referral demonstrates that SD was a proactive and supportive first line manager for the claimant. In our view both SD

and AM were at pains to assist the claimant insofar as they were able. An example is that in the period March to April SD spoke to Supt Priddy regarding the claimant attending the Leadership and Wellbeing course, a course which was normally reserved for PS and was not customarily offered to PCs. That request was approved on 9 April in respect of the next available session which was in approximately September 2019.

165. On 8 April 2019 the respondent received the FMA's report on the claimant. Whilst providing helpful clarity in relation to the prognosis relating to the change in the claimant's medication, the FMA made no recommendation in relation to any of the roles to which the claimant could be deployed save that he provided generic advice that the claimant would require a role in which there was a low perceived rest of physical confrontation, subject to a personal risk assessment, and that the claimant could not work night shifts and should not drive. The respondents understanding was that the claimant was to have discussed the roles with the FMA during the OH appointment, in particular addressing the roles that had been referred to by JM in her email of 19 February 2019. It appears that the claimant did not do so.

166. On 14 May 2019 the claimant commenced early conciliation through ACAS.

167. On 22 May the claimant emailed Inspector Blandford regarding a possible secondment opportunity within the Schools Team. Inspector Blandford replied on the 23rd indicating that she was delighted to have received contact from him and that he should contact PC who was the inspector on the 'School Beat' who had indicated that he would be delighted to arrange a secondment for him.

168. On 12 June the claimant met with SD and AM to discuss and approve the new development plan. Amongst the matters discussed were the fact that the claimant had completed a request for a further 360° feedback report, to which AM and SD could contribute. SD set out the feedback that AM and SD would provide in the event of an application for a promotion, in particular the need for the claimant to proactively solve problems, such as identifying areas where he could act up. Secondly, and in that context, SD addressed the claimant's proposals for temporary acting up deployments to Harm Reduction, FIB and IIT. SD indicated that it would be difficult to secure temporary sergeant opportunities in those departments because there were no vacancies as the positions were currently filled with acting sergeants, and therefore the claimant should proactively identify where vacancies might appear (whether by liaising directly with the departments or with HR), and then put himself forward for potential vacancies, alternatively, the claimant could seek out secondments to departments or shadowing opportunities for the purpose of developing his evidential portfolio for the next promotion round. The claimant asked whether his adjustable desk would be transferred if he were to secure a temporary position, SD advised that the best course was to secure the temporary role and then approach support services to ascertain whether the claimant's desk and chair could be transported.

169. We are satisfied that the meeting was supportive and reasonable one, in which SD and AM reasonably identified the need for the claimant to be proactive in terms of identifying opportunities for secondments and/or acting up, but equally sought to manage the claimant's expectations in relation to temporary roles, given the limited vacancies that were available. Regrettably the claimant did not view matters in that way but felt that once again the respondent was seeking to block opportunities or to deny them to him.

170. Consequently, on 12 June the claimant emailed SD to express his disappointment, complaining that once again he was being treated differently because of his disability. The respondent concedes that that was a protected act for

the purposes of section 27 EQA 2010.[3]

171. SD responded by email, in a measured form, amongst other matters expressing genuine upset the claimant would feel that he was being treated differently on the basis of his disability given that SD also had disability and was very supportive of the claimant in his efforts. In addition, he reiterated to the claimant that he had no power to create temporary positions, but he had permitted the claimant to act up on numerous occasions.

172. On 13 June 2019, ACAS conciliation ended and issued a certificate.

173. On 14 June, nevertheless, SD emailed the forces HR department asking for information in relation to any vacant temporary sergeant roles within the force.

174. On 20 June 2019, DCI Nutland responded to SD's enquiry as to whether the claimant would be permitted to undertake a two- or three-month secondment for the purposes of obtaining evidence to support his application for promotion. The response received was that due to absences caused by annual leave the DCI could only support secondments for 2 to 3 days not 2 to 3 months.

175. On 12 July 2019 the claimant issued proceedings in the Tribunal.

176. On 1 August 2019 the claimant began a three-month posting as a temporary sergeant in the CID team, working from the IIT premises.

177. On 4 September 2019 the claimant filed amended grounds of complaint from which the issues were derived.

The Relevant Law

178. The claimant brings three claims under the Equality Act 2010. The first that the respondent treated him unfavourably because of something arising from his disability (s.15 EQA), the second that the respondent failed to make reasonable adjustments (contrary to s.20 EQA 2010), and lastly that he was victimised (contrary to section 27 EQA 2010).

179. The relevant law is contained in sections 39, and 15, 20, 27 and 136 EQA 2010 which provide respectively (in so far as is relevant) as follows:

39 – Employees and applicants

(2) An employer (A) must not discriminate against an employee of A's (B)—
(a) as to B's terms of employment;
(d) by subjecting B to any other detriment.

s.15 Discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if-
(a) A treats B unfavourably because of something arising in consequence of B's disability, and
(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

s. 20 Duty to make adjustments

[3] The claimant appears to have abandoned this given it is not referred to in the closing argument of his counsel, Mr Leach; this may be because there are no allegations of detriment that post-date it.

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
(2) The duty comprises the following three requirements.
(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

27. Victimisation

(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.

The reverse burden of proof

180. The statutory tests are subject to the reverse burden of proof in section 136 EQA 2010 which provides:

(2) If there are facts on 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.

181. The correct approach to the reverse burden of proof provisions in discrimination claims has been the subject of extensive judicial consideration. In every case the Tribunal has to determine the "reason why" the claimant was treated as he was (per Lord Nicholls in Nagarajan v London Regional Transport [1999] IRLR 572 HL). This is "the crucial question."

182. It is for the claimant to prove the facts from which the Tribunal could conclude that there has been an unlawful act of discrimination (Igen Ltd and Ors v Wong [2005] IRLR 258 CA), i.e., that the alleged discriminator has treated the claimant less favourably or unfavourably and that the reason why it did so was on the grounds of (or related to if the claim is under s.26) the protected characteristic. That requires the Tribunal to consider the mental processes of the alleged discriminator (Advance Security UK Ltd v Musa [2008] UKEAT/0611/07).

183. In Igen the court proposed a two-stage approach to the burden of proof provisions. The first stage requires the claimant to prove primary facts from which a Tribunal properly directing itself could reasonably conclude that the reason for the treatment

complained of was the protected characteristic. The claimant may do so both by their own evidence and by reliance on the evidence of the respondent.

184. If the claimant does so, the second stage requires the respondent to demonstrate that the protected characteristic was in no sense whatsoever connected to the treatment in question. That requires the Tribunal to assess not merely whether the respondent has proven an explanation, but that it is adequate to discharge the burden of proof on the balance of probabilities that the protected characteristic was not a ground for the treatment in question. If it cannot do so, then the claim succeeds. However, if the respondent shows that the unfavourable or less favourable treatment did not occur or that the reason for the treatment was not the protected characteristic the claim will fail.

185. The explanation for the less favourable treatment advanced by the respondent does not have to be a 'reasonable' one; it may be that the employer has treated the claimant unreasonably. The mere fact that the claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy stage one (London Borough of Islington v Ladele [2009] IRLR 154).

186. Furthermore, it is not sufficient for the claimant simply to prove that there was a difference in status i.e. that the comparator did not share the protected characteristic relied upon by the claimant) and a difference in treatment. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an act of discrimination (see Madarassy v Nomura International Plc [2007] ICR 867 CA; Hewage v Grampian Health Board [2012] IRLR 870 SC and Royal Mail Group Ltd v Efobi [2019] EWCA Civ 18.)

187. The Tribunal does not have slavishly to follow the two-stage process in every case - in Laing v Manchester City Council and anor [2006] ICR 1519, EAT, Mr Justice Elias identified that 'it might be sensible for a tribunal to go straight to the second stage… where the employee is seeking to compare his treatment with a hypothetical employee. In such cases the question whether there is such a comparator — whether there is a prima facie case — is in practice often inextricably linked to the issue of what is the explanation for the treatment." That approach was endorsed by the Court of Appeal in Stockton on Tees Borough Council v Aylott [2010] ICR 1278.

188. It is for the claimant to show that the hypothetical comparator in the same situation as the claimant would have been treated more favourably. It is still a matter for the claimant to ensure that the Tribunal is given the primary evidence from which the necessary inferences may be drawn (Balamoody v UK Central Council for Nursing Midwifery and Health Visiting [2002] IRLR 288).

Detriment and unfavourable treatment (s.15)

189. The test of a detriment within the meaning of section 39 EQA 2010 is whether the treatment is "of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment?" (per Lord Hope in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11; [2003] ICR 337, para 35).

190. The Equality and Human Rights Commission's Code of Practice (2011) observes at 5.7

> "For discrimination arising from disability to occur, a disabled person must have been treated 'unfavourably'. This means that he or she must have been put at a disadvantage "

And at 4.9

> "'Disadvantage' is not defined by the Act. It could include denial of an opportunity or choice, deterrence, rejection, or exclusion. The courts have found that 'detriment', a similar concept, is something that a reasonable person would complain about - so an unjustified sense of grievance would not qualify. A disadvantage does not have to be quantifiable, and the worker does not have to experience actual loss (economic or otherwise). It is enough that the worker can reasonably say that they would have preferred to be treated differently."

191. The same approach must be adopted in relation to unfavourable treatment within the meaning of section 15 (see Williams v Trustees of Swansea University Pension & Assurance Scheme and anor per Langstaff J in CA (paras 28-29) of the word "unfavourably", which formulation was approved in the Supreme Court (at para 27):

> "… it has the sense of placing a hurdle in front of, or creating a particular difficulty for, or disadvantaging a person … The determination of that which is unfavourable involves an assessment in which a broad view is to be taken and which is to be judged by broad experience of life."

192. In City of York Council v Grosset [2018] EWCA Civ 1105, the Court of Appeal (per Sales LJ) held (at paragraphs 36 and 37) that s.15(1)(a) of the Equality Act 2010 should be interpreted as setting the following two-part test for courts and tribunals to apply:

    192.1. did the alleged discriminator treat the claimant unfavourably because of an identified "something"?

    192.2. if so, did that "something" arise in consequence of the claimant's disability? This is an objective test, and it is therefore irrelevant whether the alleged discriminator did not know that the "something" arose in consequence of the claimant's disability. Also, there does not have to be an immediate causative link between the "something" and the claimant's disability; a relatively wide approach should be taken to the issue of causation.

193. In Pnaiser v NHS England and anor [2016] IRLR 170, EAT, Simler P summarised the proper approach to establishing causation under s.15, as follows:
    193.1. first, the tribunal has to identify whether the claimant was treated unfavourably and by whom;
    193.2. it then has to determine what caused that treatment, focussing on the reason in the mind of the alleged discriminator. An examination of the conscious or subconscious thought processes of the alleged discriminator is likely to be required. The 'something arising in consequence of disability' need not be the main or sole reason for the unfavourable treatment, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it (see also Charlesworth v Dransfields Engineering Services Ltd EAT 0197/16, EAT per Simler P);
    193.3. the tribunal must then determine whether the reason was 'something arising in consequence of the claimant's disability', which could describe a range of causal links. This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator. It will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability, and "the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact" (para. 31(e)).

Time limits

Conduct extending over a period

194. Section 123(3)(a) EqA 2010 provides that "conduct extending over a period is to be treated as done at the end of the period."

195. An 'act extending over a period' (also known as a 'continuing act') may arise not solely from a policy, rule, scheme, regime or practice but also from 'an ongoing situation or continuing state of affairs' (Hendricks v The Commissioner of Police for the Metropolis [2003] IRLR 96, CA, paras 51-52 per Mummery LJ, approved by the Court of Appeal in Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548, CA).

196. In Coutts & Co plc v Cure [2005] ICR 1098, EAT, the Employment Appeal Tribunal (HHJ McMullen QC presiding), setting out categories into which the factual circumstances of alleged discrimination may fall, found (albeit obiter) that there are two types of situation in which alleged discrimination may constitute an 'act extending over a period':

196.1. where there is a discriminatory rule or policy, by reference to which decisions are made from time to time; and

196.2. where there have been a series of discriminatory acts, whether or not set against a background of a discriminatory policy.

197. In the former case, an act will be regarded as extending over a period, and so treated as done at the end of that period, if an employer maintains and keeps in force a discriminatory regime, rule, practice or principle which has had a clear and adverse effect on the complainant (Barclays Bank plc v Kapur [1989] IRLR 387).

198. In the latter case, the main issue for the Tribunal tends to be whether it is possible to identify some fact or feature linking the series of acts such that they may properly be regarded as amounting to a single continuing state of affairs rather than a series of unconnected or isolated acts (Hendricks). A single person being responsible for discriminatory acts is a relevant factor in deciding whether an act has extended over a period: Aziz v FDA [2010] EWCA Civ 304, CA.

199. Therefore, whether the acts complained of are linked so as to amount to a "continuing act" is essentially a question of fact for the tribunal to determine.

200. In cases where the act complained of by the claimant is not the mere existence of a policy but rather the application of that policy to the claimant, the Tribunal must consider the following question in relation to when that policy ceased to be applied to the claimant: "when did the continuing discriminatory state of affairs, to which the policy gave rise, come to an end?" (Fairlead Maritime Ltd v Parsoya UKEAT/0275/15/DA, HHJ Eady QC).

The just and equitable discretion

201. While employment tribunals have a wide discretion to allow an extension of time under the 'just and equitable' test in S.123, it does not necessarily follow that exercise of the discretion is a foregone conclusion in a discrimination case. Indeed, the Court of Appeal made it clear in Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434, CA at para 25, that when employment tribunals consider exercising the discretion under what is now S.123(1)(b) EqA, 'there is no presumption that they should do so unless they can justify a failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time, so the exercise of the discretion is the exception rather than the rule.' The onus is therefore on the claimant to convince the tribunal that it is just and equitable to extend the time limit.

202. These comments were endorsed in Department of Constitutional Affairs v Jones [2008] IRLR 128 EAT and Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327 CA. However, As Sedley LJ stated in Chief Constable of Lincolnshire Police v Caston at paragraphs 31 and 32: "In particular, there is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised. In certain fields (the lodging of notices of appeal at the EAT is a well-known example), policy has led to a consistently sparing use of the power. This has not happened, and ought not to happen, in relation to the power to enlarge the time for bringing ET proceedings, and Auld LJ is not to be read as having said in Robertson that it either had or should. He was drawing attention to the fact that the limitation is not at large: there are statutory time limits which will shut out an otherwise valid claim unless the claimant can displace them. Whether a claimant has succeeded in doing so in any one case is not a question of either policy or law: it is a question of fact sound judgement, to be answered case-by-case by the tribunal of first instance which is empowered to answer it."

203. Before the Employment Tribunal will extend time under section 123(1)(b) it will expect a claimant to be able to explain firstly why the initial time period was not met and secondly why, after that initial time period expired, the claim was not brought earlier than it was (Per Langstaff J in Abertawe Bro Morgannwg University Local Health Board v Morgan).

204. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law does not require exceptional circumstances: it requires that an extension of time should be just and equitable - Pathan v South London Islamic Centre EAT 0312/13.

205. In exercising their discretion to allow out-of-time claims to proceed, tribunals may also have regard to the checklist contained in S.33 of the Limitation Act 1980 (as modified by the EAT in British Coal Corporation v Keeble and ors *1997 IRLR 336, EAT*, at para 8). S.33 deals with the exercise of discretion in civil courts in personal injury cases and requires the court to consider the prejudice that each party would suffer as a result of the decision reached, and to have regard to all the circumstances of the case, in particular: (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued had co-operated with any requests for information; (d) the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and (e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

206. However, although, in the context of the 'just and equitable' formula, these factors will frequently serve as a useful checklist, there is no legal requirement on a tribunal to go through such a list in every case, 'provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion' (Southwark London Borough v Afolabi [2003] EWCA Civ 15, [2003] IRLR 220 at para 33, per Peter Gibson LJ).

207. In Department of Constitutional Affairs v Jones 2008 IRLR 128, CA, the Court of Appeal emphasised that these factors are a 'valuable reminder' of what may be taken into account, but their relevance depends on the facts of the individual cases, and tribunals do not need to consider all the factors in each and every case. No one factor is determinative of the question as to how the Tribunal ought to exercise its wide discretion in deciding whether or not to extend time. However, a claimant's failure to put forward any explanation for delay does not obviate the need to go on to consider the balance of prejudice.

208. A tribunal considering whether it is just and equitable to extend time is liable to err if it focuses solely on whether the claimant ought to have submitted his or her

claim in time. Tribunals must weigh up the relative prejudice that extending time would cause to the respondent on the one hand and to the claimant on the other: Pathan v South London Islamic Centre EAT 0312/13 and also Szmidt v AC Produce Imports Ltd UKEAT 0291/14.

209. It is always necessary for tribunals, when exercising their discretion, to identify the cause of the claimant's failure to bring the claim in time (Accurist Watches Ltd v Wadher UKEAT/0102/09, [2009] All ER (D) 189 (Apr)). In Wadher Underhill J stated that, whilst it is always good practice, in any case where findings of fact need to be made for the purpose of a discretionary decision, for the parties to adduce evidence in the form of a witness statement, with the possibility of cross-examination where appropriate, it was not an absolute requirement of the rules that evidence should be adduced in this form.

210. A tribunal is entitled to have regard to any material before it which enables it to form a proper conclusion on the fact in question, including an explanation for the failure to present a claim in time, and such material may include statements in pleadings or correspondence, medical reports or certificates, or the inferences to be drawn from undisputed facts or contemporary documents.

211. A delay caused by a claimant invoking an internal grievance or disciplinary appeal procedure prior to commencing proceedings is just one factor to be taken into account by a tribunal when considering whether to extend time: Robinson v Post Office [2000] IRLR 804, EAT, approved by the Court of Appeal in Apelogun-Gabriels v London Borough of Lambeth [2002] ICR 713. As the EAT said in Robinson (para. 25, per Lindsay P): "as the law stands an employee who awaits the outcome of an internal appeal and delays the launching of an [ET1] must realise that he is running a real danger."

Discussion and Conclusions

s.27 EQA 2010 Victimisation

212. The respondent has conceded that the claimant did the following protected acts:
    212.1. issuing the First Claim on the 21 April 2016;
    212.2. making allegations to Supt Priddy on 29 January 2018;[4]
    212.3. making allegations to JM on 8 August 2018 [and 9 August and 5 September 2018][5];
    212.4. causing his solicitor to write a letter to the respondent on 13 September 2018; and
    212.5. making allegations to SD on 12 June 2019.

213. We address each of the alleged detriments relied upon by the claimant in turn. Firstly, we address the allegations that PH acted vindictively towards the claimant between December 2017 and January 2018 in the following ways:

6.4.1 PH's comment to the claimant on 11 December 2017 "it seems like you might have changed a lot since last time we've known each other."

214. We found that remark was made, although there is a dispute between the parties as to whether or not PH simultaneously made a direct or implicit reference to the First Claim as claimant alleges in paragraph 14 of his statement. We are not persuaded on balance that the conversation occurred as the claimant alleges. Firstly, there is no record of the discussion in his contemporaneous note; had the remark been made, we are certain the claimant would have recorded it in his note. Secondly given PH's wariness and general unease in relation to the claimant, we do not accept that she

[4] The precise date is not specified in the list of issues, but is detailed in the Statement of Agreed Facts
[5] The precise dates are not specified in the list of issues, but are detailed in the Statement of Agreed Facts

would have raised the subject of the First Claim, given her extensive vulnerability in relation to the events of the claim and its effects both on the sergeants who were the subject of the allegations, and the effects upon her of witnessing those events.

215. Therefore, we ask ourselves whether the limited comment above, made in the context of a random encounter between the claimant and PH can reasonably regarded as a detriment applying the definition in Shamoon. In our judgement there is nothing detrimental about the comment itself; there is no obvious criticism or disparagement expressed or implied within the remark, particularly in the circumstances where the only thing that had changed was the improvement in the levels of claimant's sickness absence and attendance at work. The comment did not disadvantage the claimant or create a hurdle for him; he may have felt awkward and self-conscious, as did PH, but the test of detriment is higher than awkwardness or self-consciousness.

216. Even if we are wrong in that conclusion, we are not persuaded that the First Claim (which is the only protected act which predates the comment) had more than a trivial influence, whether consciously or unconsciously, on PH when she made the remark. As we recorded in our findings, PH's sense of wariness of the claimant derived from her direct observation of the effect the stress of managing the claimant and the subsequent Tribunal proceedings upon his first-line managers, and her fear that the claimant might believe that PH sought to pursue an agenda against him.

6.4.ii(a) PH excluded the claimant from sergeants' meetings within the IIT from 11 December 2017

217. The respondent accepts that the claimant was informed on 19 January 2018 that he was no longer required to attend sergeants' meetings. Given the claimant's prior attendance at such meetings, that instruction could reasonably be regarded as a detriment. The issue for us is whether the First Claim had more than a trivial influence on that decision. For the reasons detailed above in our findings, we are not persuaded that it did. Rather we find that the reason was that the claimant was still deployed within the AIU when the IIT became operative. Whilst AN had indicated that the claimant would continue to act up as operational lead within the AIU, that was not determinative of the structure of the IIT, nor could it be given the later appointment of PH. When PH and ND were appointed and the proposed structure of the IIT was reviewed, they identified the need for 4 teams of 10 officers with four substantive and experienced sergeants, given the multiple needs of the officers with restrictions and the need for the department to be operationally effective from the outset given the demands that were to be placed upon the IIT from other areas of the service. In that context the claimant was not a suitable candidate as he was not a substantive sergeant, and, once it was identified that KC would be unable to take up one of the PS posts, and that PC Richard Puttock was unwilling to fill the vacancy on an acting basis, SCB was appointed. Once the IIT became active, both PH and PC were careful to ensure that the confidentiality of the medical conditions and health matters of the officers was maintained, which precluded the possibility of the claimant attending meetings where those very conditions were discussed, given that he would be working as a PC shoulder to shoulder with them. That was the reason why the claimant was excluded from the IIT sergeants' meetings. We are satisfied that the First Claim was not in any way a material influence on that decision, which was solely an operational one.

218. The claimant argues that we should draw an inference from the comparative situation that applied in LS's case, on the grounds that LS was also acting up as a PS yet attended meetings (at which officers' health issues were discussed) and she asked the claimant whether he would be willing to provide her with a copy of the OH report which detailed his reasonable adjustments. We are not persuaded that there is a fair or reasonable comparison between LS' case and the claimant's, and therefore that it is appropriate to draw an inference from those facts. That is because it was known that LS would only be acting up on a short-term basis, prior to beginning

maternity leave, and would not be returning to the IIT in her substantive role as a PC. She was parachuted into the IIT to resolve a staffing issue and had no prior relationship with the officers in the department, whereas the claimant was very much an integral part of the IIT team. In addition, the claimant provided the FMA's report voluntarily.

6.4.ii(b) Preventing the claimant from attending the IIT work group from 11 December 2017.

219. The respondent accepts that the claimant attended some form of working group which related to the transition from AIU to the IIT. GM and others also attended. The exclusion from a working group of which you were formally a part could clearly be a detriment.

220. However, the respondent argues that that the working group to which the claimant was initially invited was an entirely distinct group to the Strategic Business Change group which was instigated once the transition from AIU to IIT was complete. There was, it argues (relying on the evidence of ND) no need for the claimant to be present at those meetings, and the respondent made a conscious decision that the claimant should be deployed in a way that made best use of his operational experience in AIU, namely in an operational role rather than in strategic meetings. Given that the claimant was not party to those strategic decisions, it is difficult for him to challenge. We found the evidence of ND to be both credible and coherent and we accept the reasons the action as he describes.

6.4.ii(c) PH referred to the First Claim whenever the claimant requested a meeting with PH on 11, 12, 14 December 2017 and 8, 11 and 17 January 2018.

6.4.ii(e) PH failed to attend prearranged meetings with the claimant on 12 and 14 December 2017 and 8, 11, 17 and 23 January 2018.

221. We address the two allegations together, given that they are alleged to have occurred on the same dates.

222. We do not accept that there were any formal or prearranged meetings on any of the dates alleged by the claimant, but rather, at its highest, the claimant asked PH if he could meet to discuss matters with her. That is because the claimant accepted in cross examination that there were no formal scheduled meetings on those dates, and it is consistent with the claimant's contemporaneous note in which records "requested a meeting,… Asked for a meeting." The claimant made no reference at all to any form of meeting or discussion on 14 December in the contemporaneous note. Even in the revised note which he produced in readiness for his complaints to Supt Priddy (194) he merely records that he "requested a meeting." It is surprising, therefore, that the claim the claimant makes in respect of those dates is that PH failed to attend meetings. Such an allegation is entirely baseless.

223. Moreover, we are entirely satisfied that the reason that PH was unable to agree to meetings, when approached without warning by the claimant on the dates in question, was because of the operational demands that she faced in ensuring that the IIT was ready when the transition occurred in January 2018. The fact that the claimant had brought the First Claim had no influence whatsoever on her decision.

224. We reject the claimant's evidence that on each occasion that he made the request, PH made reference to the First Claim. Firstly, there is no reference to such remarks in the claimant's original contemporaneous note. Secondly, we found PH's evidence very credible, and as indicated above accepted that she was very concerned about making any reference to the First Claim and the surrounding circumstances. In our judgement, the claimant knowingly and deliberately added the reference to the First Claim in the document he presented to Supt Priddy in circumstances where he knew that the comment had not been made, and as time

progressed and he repeated his complaints, he unconsciously adopted the lie as reality.

225. The claimant alleges that he put an entry in PH's electronic diary for a meeting with him on 23 January 2018, and she subsequently failed to attend. In his answers to cross examination the claimant suggested that the meeting was scheduled at 10 AM. There was, however, no evidence before us of such an entry, and the contemporaneous note that the claimant produced (201) makes no reference to the claimant having scheduled the meeting in that way, but merely records "failed to turn up". The claimant's subsequent note that he provided to Supt Priddy records that 40 minutes after the meeting PH approached claimant and spoke to him. PH's PNB note from that day shows that she spoke to the claimant at 3 PM. The claimant argued that he had no recollection of such a discussion and believed that he would have been swimming, but we find that the notebook entry is credible and, in any event, when the claimant spoke to PH, he did not raise the fact that she had failed to attend a meeting at 10 o'clock with him. Similarly, he did not raise it with PH or anyone else at a later point. Given that the claimant stated that the purpose of the meeting was to raise his concerns that PH was victimising him because of her negative perceptions of his involvement in the CJIU and try to clear the air, we do not accept the claimant's evidence that he did not raise the issue because he did not want to jeopardise his career. At this point, he had already complained to Supt Priddy (and on the claimant's account AS Smith), about bullying by PH. The very purpose of the meeting, as the claimant suggested, was to address that behaviour. There is therefore no sensible reason why the claimant would not have referred to the meeting when speaking to PH if one had indeed been scheduled as the claimant alleges. The claimant was not therefore subjected to a detriment by the act of which he complains.

6.4.ii(d) PH prevented the claimant from undertaking the project work.

226. During the course of the hearing the claimant clarified that the project work related to four specific projects in different periods, namely:
   226.1. Road Traffic Collisions from 11 December 2017,
   226.2. Victim support from January 2018,
   226.3. Action Fraud January 2018, and
   226.4. Validations on 23 March 2018. [6]

227. The respondent accepts that the claimant was no longer required to undertake work in road traffic collisions or action fraud but argues that he continued in his role in validations and Victim Support. The removal of the claimant's role from the project work could clearly be a detriment.

228. We therefore address the reasons for which the claimant's involvement was ceased.

229. Road Traffic Collisions ("RTC"). We accept the evidence of PH and PC that that there was a need for an online portal to streamline the RTC work. In particular that there was a MED paper which identified that RTCs formed 11% of the demand on the AIU's resources, and one of the tasks when the AIU transition to the IIT was to ensure that RTC 's did not occupy the same percentage of the IIT's resource. It was therefore proposed that a platform, such as an online portal, should be used to enable parties to provide the necessary details, without officers having to speak to them. The claimant was initially involved in the work of identifying a suitable platform in or around August 2017. Subsequently, SD became involved, although the claimant continued to update the figures. Whilst therefore the claimant had contributed (together with others) to the report that was produced, advising as to the appropriate and best course, there was no need for further input from him once the report was being progressed to the strategic level for review and a decision. The reason

[6] It will be noted that this is not in the period December 2017 and January 2018

therefore that the claimant's involvement in the RTC work stopped was not because of the First Claim, but rather for the reasons we have given.

230. Victim Support: we accept PH's evidence that the claimant continued to lead on consultation meetings with Victim Support, but whereas IIT had initially been required to risk assess the houses of those to whom Victim Support would provide support, following the transition from AIU to IIT Victim Support wanted to extend the degree and extent of IIT's involvement and guidance. Given that those decisions were strategic and budgetary, and above PH's level of authority, PH told the claimant that until the decisions had been made, he should attend the meetings with victim support but not commit to any specific action and merely record the requests and report back.

231. Consequently, we find that the claimant's allegation is unfounded the sense that the work was not removed from him. Secondly we find that the restriction on his authority within such meetings was not a detriment when viewed reasonably within the business context, and finally we conclude that the reason for the restriction was entirely unrelated to the First Claim, or, insofar as the instruction was given after the claimant's complaint to Supt Priddy on 29 January 2018 and that PH was not made aware of those complaints until early February 2018, it follows as a matter of fact and logic that neither protected act had any influence whatsoever upon the decision.

232. Action Fraud: The claimant initially had responsibility for action fraud when the area was within the purview of the AIU. It was removed from him with effect from approximately the 22 January 2018. However, we accept the evidence of PH and SE that when the function transferred to IIT it was not appropriate for a PC to fulfil it, because the role involved a degree of triaging, in the sense that it required an officer to identify whether the complaint could be investigated on paper or should be allocated to a frontline officer to conduct further investigations. PH and ND therefore made the decision that the work should be allocated to a substantive sergeant, and SE was appointed to the role. The claimant was informed and raised no objection at the time, and we note that the claimant made no complaint about that decision either in his contemporaneous notes or in the fuller notes that were given to Supt Priddy. Whilst the removal of action fraud could constitute a detriment, the reason that the function was removed from the claimant had nothing whatsoever to do with the First Claim, nor, as the decision that the claimant should cease to act up (and therefore cease to continue this function) was made and 19 January 2018, did it have anything to do with the claimant's disclosure to Supt Priddy.

233. Validation: the claimant was not prevented from undertaking crime validation work, but rather continued to be involved in training newly appointed officers in the process of validating crimes. The claimant was instructed that he should stop spot checking officers once they had completed their training (which was to form the subject of the anonymous complaints). The allegation is therefore factually unfounded. Furthermore, the reason that the claimant was instructed that he should stop spot checking officers was because it was utterly inappropriate given that it was the substantive sergeants' responsibility to supervise PCs once they had qualified and not the claimant's, and secondly because the manner in which the claimant was conducting such spot-checks was perceived by some of the officers as harassment.

6.4.ii(f) On 19 January 2018 PH decided that the claimant should be demoted from acting Sergeant and said she had to consider "what was in the public interest."

234. The claimant was not in fact demoted, rather he was informed that he would cease to act up upon the appointment and commencement of the four substantive PSs. Insofar as the true nature of the allegation is that the claimant was told that he could no longer act up, whilst that is capable of being a detriment, the reason for the decision was the transition from the AIU to the IIT and the need for the appointment of four substantive sergeants. That decision was one made at a senior level by JM and PH in consultation with ND. The First claim had no influence whatsoever upon

the decision.

235. Secondly, insofar as PH made reference to the public interest during her discussion with the claimant and 19 January, that was in the context of the need for PH to balance the public interest in ensuring that the IIT was able to meet its service demands, by ensuring that the claimant was deployed operationally, with the claimant's desire to act up. The claimant now accepts the meeting occurred on 19 January. In his grievance he was unable to identify when it had occurred, by the time he submitted his ET1 he suggested that it had occurred at the end of January. During cross-examination the claimant accepted both that the meeting had occurred on 19 January and that PH made no reference whatsoever to his disability during the discussion. He further accepted that he had inferred that she was saying that permitting someone with a disability to act up was not in the public interest. That inference was as inaccurate and unfounded as it is astonishing, given the many disabled and restricted officers in IIT. It points to the degree of the claimant's paranoia and the extent to which he viewed events through a distorting prism of suspicion and distrust. That the claimant alleged in his grievance in 2019 that "I was regularly told I'm not in the public interest because I'm disabled and what other people think if they knew they were promoting me?" is indicative of the extent of that distortion and the manner in which he came to adopt it as his reality.

6.4.ii(g) PH actively tried to remove the claimant's reasonable adjustments and/or permitted other officers to use the claimant's chair between 13 March and 14 May 2018. [7]

236. The respondent did not actively try to remove the claimant's reasonable adjustments in the period alleged. 13 March 2018 is the first date on which the claimant alleged, following his transfer to the IIT, that someone had used his chair. There is a world of difference between an officer using a chair, even an adaptable chair allocated as a reasonable adjustment, and 'actively seeking to remove' an adjustment. Furthermore, in his evidence the claimant alleged that PH was the person whom he asserted was primarily driving that state of affairs. PH was absent from work from approximately later April due to a leadership course and subsequently sick leave. To suggest that she was somehow inciting, encouraging or instructing officers to use the claimant's chair in her absent, like a Machiavellian puppet master, is ludicrous, was not put to PH and is entirely lacking in any evidential support.

237. Rather, the claimant's chair was used on occasions in March by officers, predominantly, if not entirely, from the FCR, not IIT. That was a serious matter given its consequences for the claimant and the resulting pain, which could be utterly debilitating. Both PC and PH took that matter seriously, PC in particular seeking to identify a document which he could present to Inspector Pitman to demonstrate that the chair was for the claimant's sole use. The claimant's argument that he took that approach with the intent of permitting others to use the chair until it was established that it was for the claimant's sole use is inaccurate, unfair and again only indicative of the extent to which the claimant's perception has become distorted by his distrust of the respondent and his willingness only to view the respondent's actions in the worst possible light.

238. It is unclear whether the claimant relies upon the events relating to the need for other officers to share his desk as part of this allegation; it he does, it was not put in cross-examination and Mr Leach's closing submissions make no reference to it. It is therefore rejected.

[7] The issue as initially identified in the list of issues was in the period December 2017 to January 2018. When asked to identify the dates on which the various conduct occurred alleged that the period relied upon was 13th of March to 14 May 2018, which falls outside the period identified in the pleadings.

239. The reason that the claimant's chair was used in the period March to May 2018 had nothing whatsoever to do with the protected acts, but rather the desire of officers in the FCU to use comfortable chairs. There was not a shred of evidence put before us that the officers in the FCU knew of the First Claim or the claimant's complaints to Supt Priddy.

6.4.iii PH deliberately avoided having meetings with the claimant on 22 February, 12, 13 and 21 March 2018.

240. The claimant alleges that following the necessary cancellation of the informal mediation meeting with GM, PH and ND, he spoke with ND, and it was agreed to reschedule the meeting for 22 February. ND disputed that account and argued that if such a meeting had been scheduled, and he were unable to attend, he would have emailed to apologise and to rearrange. We reject the claimant's evidence, he did not contact ND, or GM, alerting them to the failure to attend the meeting or seeking to reschedule it and the claimant offered no reason why he was unable to do so. Given the claimant's willingness to challenge the views of senior managers in emails (as he did with JM as detailed in relation to the need for the OST), we conclude that if the claimant had agreed a meeting with ND, he would have emailed to complain that no one attended. We do not accept the claimant's evidence on this point. Neither ND nor GM would have had any reason to have avoided the meeting; it was in their interests to resolve the claimant's complaint. On balance therefore the claimant has not proved that the meeting was scheduled.

241. Insofar as the claimant complains that on the 12, 13 and 21 March 2018 PH sought to avoid meetings with him, the claimant similarly fails, on balance, to prove the allegation. The claimant's contemporaneous note records that on 12 March he tried to speak with PH and was told that she did not have time at that particular point to speak to him. The entry for 13 March merely records that PH "has not spoken to me about complaint"; it makes no reference to the claimant requesting a meeting. The entry for 21 March makes reference to PH speaking with the claimant, but no reference to the claimant requesting a meeting which PH sought to avoid. In relation to the event of 12 March 2018 the claimant has failed to produce even primary facts from which we could conclude that the reason that PH said she was unable to speak to the claimant at that point was because of the First Claim or the protected act in January 2019. Rather we find that the reason was that PH was incredibly busy with duties, as she told the claimant at the time, and so could not speak to him, and that subsequently she was unable to or forgot due to pressures of work.

6.4.iv PH informing PC that she did not want the claimant in the role of Acting Sgt during her extended period of absence from work from 26 April 2018.

242. The respondent accepts that PH informed PC that during the period of her leadership course which commenced on 26 April 2018, he was to act up as Inspector of the IIT but she did not require anyone to act up in his place. The issue is therefore whether the reason for that instruction was because the claimant had issued the First Claim or had made a complaint in January 2018 to Supt Priddy.

243. We find that the reason was, as described by both PH and PC (whose evidence on the point we found entirely credible), that when PH had previously had periods of short leave PC had acted up as Inspector but had remained on his shift pattern as a sergeant and so was able to continue to fulfil his Sergeant's duties. That was the agreed and understood intent in relation to the three-week period of PH's leadership course from 26 April. However, when it became apparent that as a consequence of sickness PH was not returning and PC was required to cover the inspectors' shifts, and so could not continue on his own sergeant's shifts, it was agreed that the claimant would act up as sergeant. PH could not have known at the time that she gave the instruction that she would require sickness absence after the course. Neither of the alleged protected acts had even a trivial influence on her initial decision, it was purely an operational one and adopted a method that had previously

been employed before the protected acts had occurred.

6.4.v The actions of JM during the meeting on 8 August 2018.

244. The respondent accepts that JM informed the claimant that:
   244.1. she would not support an application for promotion by him whilst his sickness absence was managed under a UPP and/or the ETDP,
   244.2. that she would refer the claimant to the FMA to ascertain the extent of his condition, and
   244.3. that it was necessary for the claimant past the OST in order for him to be promoted because the OST form part of the ETDP.

245. The claimant argues that the reason that JM expressed those views was because she was critical of the claimant because he had brought the First Claim and/or had been made aware of the claimant complaints to Supt Priddy. The respondent argues that the reason for JM's stance in relation to the need for the claimant to complete the ETDP (and thereby the OST), and hence her referral to the FMA to clarify the claimant's condition, was because she mistakenly believed that the claimant was still being managed under the respondent's UPP policy. It is accepted between the parties that an officer who was working under a development plan formed through the UPP would be required to complete it before they could be supported in any application for promotion.

246. The claimant has not demonstrated facts from which we could properly conclude that the reason for the stance taken by JM was the protected acts. There was little or nothing that the claimant could point to by way of support for the mindset he alleged that JM had adopted. Conversely, we found JM's evidence that she was operating under a mistaken belief that the claimant was still managed under a UPP to be credible. The primary reason for that is that the claimant had first come to JM's attention as a consequence of the First Claim. A substantive part of the argument in it related to the UPP process that had been applied to the claimant and the adjustments that had been put in place or should been put in place. Secondly, JM had not seen the ETDP. As indicated in our findings, that was a significant oversight which compounded the difficulties that occurred during the meeting.

247. The respondent disputes that JM said that it was her policy that officers should not be promoted to sergeant until they had completed a temporary acting role outside of the current department. JM disputed that she would have expressed that view, and argued that the discussion of temporary work or acting up in a different department arose in the context of identifying methods by which the claimant's application could be improved. PC confirmed in an email sent to the claimant on 2 August 2018 (which was the source of his complaint to Supt Priddy) that JM had expressed a view to him that was entirely consistent with the claimant's allegation. On balance we are persuaded that JM did say that her view was that officers should not be promoted to sergeant unless they had worked or acted up outside their current department.

248. However, we are not persuaded that the reason that JM expressed that view was because of either of the first two protected acts. The claimant has not produced any evidence from which we could properly or safely infer that that was the reason, indeed the available evidence demonstrates that JM was supportive of the claimant in that she had made time to see a PC and to provide him with training and advice in relation to an application for promotion. Her actions after the meeting in requiring the claimant to be referred to the FMA, from which it appears that the claimant argues we should draw an inference[8], are just as consistent (if not more so) with JM

[8] It is frustrating that the evidence which the claimant relied upon for the purposes of s.136 EQA 2010 was not identified in the claimant's closing submissions. Rather, the tribunal were invited by Mr Leach to identify

seeking clarity as to which opportunities outside the department the claimant could be put forward for. Further, her actions in clarifying the status of the requirement to complete the OST within the context of the ETDP are more indicative of the mistrust caused by the claimant's failure to follow the chain of command and JM's concerns about the claimant's decision to raise concerns with Supt Priddy rather than directly with her or his line managers, than with a desire to persecute the claimant because of the first two protected acts.

249. In summary, none of those facts are consistent with the claimant's allegations. Rather we conclude that the reason that JM expressed the view was because it reflected her belief that officers who had experience from other departments were more desirable and therefore more worthy of support in their applications for promotion.

6.4.vi AH's recommendation that the claimant's application for promotion should not be supported on either the 21 September, 19 October or 26 October 2018.

250. AH did not recommend that the claimant's application for promotion should not be supported until 26 October 2018. However, a recommendation not to support an application for promotion is clearly capable of being a detriment.

251. The relevant facts relating to the dates identified in the issue are: on 21 September AH attended a meeting with Mike Harris with PH and was made aware of the anonymous complaints. On 17 October 2018 JM expressed the view that the claimant's application should not be supported because of the complaints. AH received the claimant's application on 19 October 2018. On the same day he called the respondent's HR department to seek advice as to the appropriate approach to the marking of the applications. He then marked the applications and sent them to PH and PC to review.

252. In Mr Leach's closing submissions, it is argued that AH's call to HR was prompted by PH raising historical issues with him and that he was persuaded "to mark the form… in a certain way." There was simply no evidence to support that allegation and nothing from which we could properly draw an inference to support it. Secondly Mr Leach argues that because PH reviewed AH's recommendation and approved it, and she was influenced by the First Claim, the "marking of the form was also influenced by the protected act." That is misconceived, the allegation is not that the marking of the form was so influenced, but that AH recommended that the claimant's application could not be supported. That recommendation was made and recorded before the form was sent to PH.

253. The reason that AH concluded that neither the claimant's nor LS's applications could be supported was because neither of them had provided evidence in respect of all of the sub-criteria of the four competencies, and he believed that that was required as a consequence of the advice he received from HR. Whilst AH was aware of the First Claim, the claimant did not adduce any evidence or suggest to him in cross-examination that he was aware of any of the other protected acts. The First Claim had no influence whatsoever on AH's recommendation.

<u>6.4.vii AH's statements at a meeting on 1 November 2018 that</u>

(a) the line managers who signed the claimant's application recommendations knew that the complaints made against him were groundless and should not have been included on the application; and

(b) HR had not removed the complaints from the claimant's application, and

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them from the 'thrust' of his cross-examination, which in the context of an 8-day case and 10 witnesses was not helpful.

(c) the claimant should abandon the ETDP as it was "dragging him down", that senior managers viewed it as a constant reminder of the First Claim, and that he might not have an issue with promotion if he got rid of it.

254. The matters complained about could clearly amount to detriments in the context of the claimant's application for promotion. However, we found that the allegations did not occur as the claimant alleges (see our findings at paragraphs X to Y above). The allegations therefore fail on that basis.

255. We are not persuaded on balance that the remarks that we found were made by AH (rather than the allegations at (c) above) amounted to a detriment in the context of an open and frank discussion during a mentor meeting. They did not create a hurdle for the claimant or put him at a disadvantage, but in any event the reason for which AH made them was to assist the claimant by suggesting ways in which such possible hurdles might be removed and the claimant's aspiration for promotions might be advanced. The remarks were not made because the claimant had issued the First Claim, but rather because of the consequence of the ETDP which had been agreed following it.

6.4.(x) The respondent failed to provide the claimant with acting up opportunities on the 19 February 2019.

256. The allegations are made in respect of the email sent by JM dated 19 February 2019. The email was sent in reply to JM from ST an email in which enquired whether it be possible to consider the claimant for an attachment to another department, whether as part of his development plan or otherwise, so as to support his application for promotion. JM replied as follows:

> *"Yes of course, there is a small challenge regarding the areas that Tim can be deployed to and we have had discussions with Dr Dickson regarding this.*
> *1. FRU not appropriate as unable to be deployed operationally*
> *2. LIT not appropriate as cannot be deployed operationally*
> *3. CIU not appropriate because of previous ET and the breakdown of relationships in there.*
> *4. Intelligence, likely to be appropriate with the reasonable adjustments Tim presently has*
> *5. NHP I would need further consultation but I think given the operational deployments there may either be some challenges or the adjustments to be considered.*
> *6.Mental Health & missing, again needs further exploration but may be appropriate with reasonable adjustments.*
>
> *Can you consider any other roles that we should include in our consideration, can you also ensure Tim obtains his development plan from Ali Hammett (he has some personal responsibility)*
>
> *At the present time as vacancies arise they are being filled from the last promotion process so little gapping going on, this may change after the Insp process which is likely to be run in April to help manage expectations."*

257. The claimant complains that JM was thereby unreasonably denying him secondment opportunities in the departments listed in her email. The claimant accepts that he was not operationally deployable as a consequence of his disabilities, but argues that the respondent closed its mind to deploying the claimant to those departments with reasonable adjustments because of his protected acts. The claimant accepts that he would be unable to fulfil any response element in the FRU, but would be able to have worked in the missing persons section of it, and argues that he could have worked in the IT with adjustments or the CIU.

258. JM took issue with those arguments on the following grounds. First, the claimant

was not fit to be deployed to the FRU because of its requirement for officers to be operationally deployable, but the respondent was considering deployments either within the freestanding Mental Health and Missing Persons Department "(MHMP"), or, where other departments contained a MHMP section, to those sections within the departments. Thus, the claimant had simply misunderstood the purpose and effect the email in that respect.

259. Secondly, it was not appropriate to deploy the claimant to the LIT (the Local Investigation Team) because in the summer months, as detailed in our findings, the respondent was faced with a perfect storm of the highest demand on the respondent's services at a time of the highest levels of officers' annual leave, and in consequence there was a particularly high probability that officers within the LIT would be required to perform frontline services and therefore be deployable. Additionally, LIT required shift work which would make it more difficult to deploy the claimant to it. It was not therefore operationally reasonable to deploy the claimant to an LIT.

260. Thirdly, whilst it was theoretically possible to deploy the claimant back to the CJIU, the Department was exceptionally busy as all detainees are processed through it, but critically there were four substantive sergeants in post who had informed JM that they could not and would not work with the claimant given the manner in which he had previously acted when in the Department. Consequently, whilst possible, it was not practical or reasonable in the context of the extremely busy summer months to deploy the claimant to the CJIU given the operational difficulties that were likely to result, more so where the claimant had already worked in that department and therefore was not likely to gain any valuable experience for his evidence portfolio by returning there, when there were other departments to which he could usefully and meaningfully be deployed without such difficulties, namely intelligence and NHP.

261. In addition, the respondent relies upon the fact that roles were identified for the claimant in the Schools Team.

262. The claimant has not adduced evidence from which we could reasonably conclude that the reason that for JM's views about deploying the claimant to the departments were influenced in any way by the protected acts. He argues that the FMA had recommended that the claimant was deployable to departments if a personal risk assessment was undertaken, and that in the absence of such a risk assessment there was no reasonable basis for the respondent to object to his deployment, and therefore that the reason for JM's views must be the protected acts. Secondly, the claimant argues that the decision to exclude the claimant from a deployment to the CJIU was necessarily influenced by the First Claim given the concerns as to the manner in which officers would react to the claimant's return.

263. We address those arguments in turn. Firstly, JM was expressing an initial view as to the departments to which the claimant might be deployed. She was not expressing a concluded view. Crucially, JM regarded the claimant as having personal responsibility for assisting in identifying potential departments, and (just as AH had done) had suggested that the claimant should approach the inspectors in the department to sound them out as to whether the were gaps or vacancies to which he could be deployed as a precursor to making any application to the Department in question. Absent a gap or a vacancy, it was unlikely that a department would accept the claimant on a supernumerary basis in circumstances where the claimant sought to fill an acting or temporary role. That might change, as JM indicated, once the promotional round had concluded. Once a department had been identified as potentially willing to accept the claimant, then a personalised risk assessment could be conducted in relation to the available role. The claimant's argument is therefore misplaced.

264. Turning to the claimant's second argument, a breakdown in relationships caused by the events that were the subject of the First Claim, is a separate and distinct matter to the act of issuing the First Claim itself. There was no evidence before us of animosity to the claimant from the four sergeants because he had issued proceedings, but rather the

evidence was that their relation had deteriorated because the manner in which his conduct had led to a breakdown of relationships whilst he was in post. It was that breakdown in working relations which concerned JM when considering whether it was appropriate for the claimant to return to the CJIU.

265. In any event, we accept the respondent's reason for JM's actions in writing the email, namely that JM was expressing her genuine views as to the suitability of various departments, and that those views were based upon a rational and objective analysis of the needs of the Department, the needs of the force and the claimant's restrictions. Furthermore, in the case of the CJIU, an additional factor was the historical breakdown in relationships between the claimant's and the sergeants he was still in post as we describe above.

266. In addition, insofar as it is alleged that the claimant should have been deployed to the Schools team, (although, again, the precise nature of the allegation and the evidence or inferences relied upon to support it was not entirely clear from the claimant's submissions) we find that the reason that that deployment was not advanced was (as the claimant described in cross-examination) because he was told by his union representative that it was not appropriate to deploy him to that team, where he would report to PC, given that his fairness at work complaints against PC were yet to be resolved.

267. Generally, the chronology relating to efforts to locate opportunities for the deployments for the claimant is instructive: on 19th February 2019 the claimant was asked by JM to identify roles for which he could be considered. Her evidence, which we accept, was that the only role he identified was in Barton Street, Gloucester, which was a deployable unit. On the 24 February 2019 SD was asked to liaise with the claimant to identify potential options which the claimant was to discuss with AH in the context of a further DP. On 27 April 2019 SD suggested to the claimant that he should undertake training course to become a trainer and on 2 March AM emailed the claimant with proposals for development opportunities suggesting that they should get the ball rolling. The training cause did not take place because of difficulties with the claimant's attendance, not because of any protected act. Opportunities with the school teams were identified on approximately the 22 or 23 May, the claimant raised his TU representative's concerns with such a deployment (above) on 1 June. The only other potential role identified was an opportunity with the CMU which was identified on 25 May, but it was confirmed that there were no vacancies on 28 May.

268. It follows that not only do we conclude that the protected acts did not have more than a trivial influence on the decisions reflected in JM's email or upon the respondent's decisions as to acting up or temporary opportunities for the claimant but also that the respondent did in fact make reasonable efforts to find such opportunities for the claimant, through the efforts of JM, SD and AM and others as detailed above, and therefore the allegation is misconceived in that fundamental aspect.

269. In conclusion, the claims pursuant to section 27 EQA 2010 are not well founded and are dismissed.

Section 15 discrimination arising from disability

270. The claimant argues that the unfavourable treatment was the failure to provide the claimant with acting up opportunities, particularly outside of the IIT. It therefore covers the same ground in terms of unfavourable treatment as the final allegation of detriment above. We have found that the respondent did not fail to provide the claimant with acting up opportunities, but rather made reasonable efforts to identify them and place claimant into them. The allegation therefore fails on that basis.

271. In the event that we have erred in that conclusion we consider whether, if there were unfavourable treatment in respect of deployment opportunities, it occurred because of something arising from the claimant's disability and/or if so whether it was justified.

272. The claimant accepts that his disabilities prevented him from being placed in a deployable role but argues that the thing that arose from his disability was a "perception or opinion on the part of the respondent that the claimant was not operationally deployable." The respondent accepts that it believed that the claimant was not deployable to departments where operational deployment was required but denies that it had a similar perception where either the role or the Department itself had no such requirement, or where an adjustment could reasonably be made to that requirement. In light of JM's evidence, which is reflected in her email of the 19 February 2019, we accept the respondent's case in this regard. The respondent was prepared to consider the claimant for roles which did not have the requirement for an officer to be operationally deployed, or where there was such a requirement, but it could be removed as a reasonable adjustment. The respondent did not therefore have the perception which the claimant argues.

273. Finally, we consider the issue of justification. The claimant accepts that the respondent had a legitimate aim in performing its statutory functions, and a business need connected to that aim to ensure that officers were deployed to roles in a manner that enabled those functions to be fulfilled in the most efficient and effective manner. The issue therefore is whether the decision not to deploy the claimant to the departments identified in JM's email was a proportionate means of achieving that legitimate aim.

274. Firstly, we reiterate our finding that JM's views were not concluded but only provisional. Secondly, we conclude that the respondent's views were objectively based on reasonable and relevant factors as we have detailed above, and struck a reasonable, fair, and appropriate balance between the needs of the service and the discriminatory effect upon the claimant. They were therefore proportionate. In reaching that conclusion we bear in mind the considerable, genuine, and meaningful support that the claimant had received from his senior officers since his deployment to IIT. In particular he had had extensive opportunities to act up within IIT, he had been put within a team led by a very supportive PS, namely PC, he had received leadership training which was normally reserved for PSs (STAR), he had been permitted to train officers within the IIT, he had been provided with a mentor who had offered to review his application and evidence in advance and to assist in remedying shortcomings in it, he had been permitted to take part in the development group that was led by Supt Priddy, he had had a one-to-one session with JM, he had been encouraged and supported to undertake 360° feedback sessions on two occasions, and he had been put forward for a further leadership training course which again was reserved for PSs as a matter of usual course. Thus, whilst the respondent did not deploy the claimant to roles which he believed he could fulfil, and which might support his application for a promotion, its actions were justified and were taken in the context of extensive steps to assist him in securing promotion notwithstanding the decisions that were made in respect of certain potential deployments.

275. It is striking that even at the time of the hearing the claimant appears unable to appreciate or accept the additional support which he received above others, and/or where he accepts that he received the support, to he continues to argue that it was disingenuous and no more than window dressing to conceal the respondent's true desire to punish him by denying him fair opportunities, particularly where PC and JM were involved. There is, we find significant truth in the respondent's witnesses' view that the claimant was so consumed by his perception of himself as a victim and his belief that the ETDP obligated the respondent to provide him with such opportunities, at the expense of others, that he failed to take personal responsibility for his development by actively seeking opportunities himself or to appreciate and recognise the assistance that he was given. That mindset was a wholly unhelpful one, which only perpetuated the claimant's ever-increasing paranoia and sense of victimhood during the events which are the subject of these proceedings.

276. We therefore conclude, that to the extent the claimant was subject to unfavourable treatment, if any, in respect of the respondent's alleged failure to provide acting up for secondment opportunities, and that those failures arose from the claimant's

disabilities, the respondent's actions were justified. The claim pursuant to section 15 EQA 2010 is therefore not well founded and is dismissed.

Section 20 failure to make reasonable adjustments

277. The claimant reduced his complaint under section 20 to a single PCP, namely that the respondent provided officers with "standard equipment and facilities for the performance of their duties." The respondent denied that it had such PCP on the grounds that it would make reasonable adjustments by providing specialist office equipment such as adaptable chairs and electric desks were an occupational health report identified that they were required.

278. At the second day of the hearing, and again during submissions, the Tribunal raised with the parties whether the claim was really one under s.20(5) that the respondent had failed to provide auxiliary aids in the form of an adaptable chair and a bed in a private room on which the claimant could perform lymphatic drainage.

279. Mr Leach did not apply to amend the claim to include such an allegation, even after Mr Oulton, for the respondent, had identified that such an amendment would be required. Had such an application been made, we would have granted it given that the issue had been raised at the outset of the hearing and both parties had cross-examined witnesses and developed their submissions in a manner which would cover a standard failure to make reasonable adjustments claim and an auxiliary aids claim. There would therefore have been no prejudice to the respondent in permitting an amendment. Mr Leach merely said that the claim could be categorised under either heading, that is not an application to amend.

280. It is not for the tribunal to run the parties' cases for them, rather we must determine the case that has been placed before us (see McNicol v Balfour Beatty Rail Maintenance Ltd [2002] EWCA Civ 1074 at paragraph 26). In this case the claimant had been represented both at preliminary hearings and at the final hearing by a very experienced and able specialist employment counsel, Mr Leach. In consequence the only claim that is before the tribunal is a claim under section 20(3) EQA 2010.

281. We queried with Mr Oulton whether, following Griffiths v The Secretary of State for Work and Pensions [2015] EWCA Civ 1265 particularly paragraph 46 where the Court of Appeal noted "The first is that the relevant PCP was the general policy itself. If that is indeed the correct formulation of the PCP, then the conclusion that the disabled are not disadvantaged by the policy itself is inevitable given the fact that special allowances can be made for them," the respondent could argue that it did not apply a PCP of providing standard equipment because it operated a policy of providing specific equipment which was suitable to an officer's needs where that requirement was identified in an OH report from the FMA. If it were right, that argument, it seemed to us, would defeat the purpose of the legislation, by permitting an employer to dispute the existence of a PCP on the grounds that it was prepared to vary it where required. Rather, it appeared that the respondent's case was in fact that it applied the PCP, and that it had taken the steps necessary to remove any disadvantage caused by it by providing an adaptable chair etc. Mr Oulton accepted that was an acceptable analysis and conceded that the provision of a standard desk and chair placed the claimant at a substantial disadvantage because of his disabilities due to the pain he would experience in his hips, back and joints.

282. We are satisfied that the respondent did operate a PCP of providing standard equipment, namely standard office desks and chairs and that the PCP placed the claimant at a substantial disadvantage because a standard chair caused pain and discomfort as described at paragraph 19 above.

An adaptable chair

283. The respondent accepts that the provision of an adaptable chair would remove

the disadvantage provided; it argues that it took the step necessary by providing the chair. The claimant accepts that the chair was provided, but argues the claim is well founded because other officers were able to use the claimant's chair and that formed a policy or practice which put the claimant at a disadvantage because when his chair was adjusted it caused him pain. The difficulty for the claimant is that that argument did not form part of his pleaded cause and was raised for the first time in his oral closing submissions, and Mr Leach did not apply to amend his case to identify this refined PCP. Whilst Mr Leach cross-examined witnesses on the occasions where the chair was used, the case put to PC in cross-examination was that he was permitting other officers to use the chair because the claimant had done protected act, not because the respondent operated such a policy, indeed, the claimant challenged PC's evidence that such a policy was the reason why he sought further clarification from the FMA and other sources. We do not therefore accept that the claim was before us or put to the respondent's witnesses. The Tribunal alerted the claimant to the potential difficulties with the case as it was pleaded on the first day of the hearing. The claimant was therefore put on notice of the need to amend if he wished. The claim fails on that basis.

284. If we have erred in that analysis, the PCP ceased to apply after 15 May 2018 when the FMA's advice was received. In so far as, the chair's use by another officer constituted a breach of the duty and triggered the time limits as being an act inconsistent with the duty[9], the chair was adjusted on 20 July 2018, and the claim was not issued until 12 July 2019. It is nearly 9 months out of time. Given that that claimant knew of his rights and the time limits applicable to his rights it would not be just an equitable to extend time.

Use of the Force Medical Room

285. There was very little evidence before us to demonstrate that the provision of standard office equipment and facilities put the claimant at a disadvantage because of his disabilities. The claimant's need to perform lymphatic drainage arose from the condition of lymphodema itself, and there was no evidence before us to demonstrated that it caused or contributed to by the use of standard chairs or desks. It may be that the requirement to fulfil his contractual hours and duties exacerbated the condition, but, again, that was not the claimant's pleaded case. There was no claim under s.20(5) EQA 2010 before us.

286. Can it be said that standard facilities do not include a room with a lockable door and a bed of sufficient height to enable someone to perform lymphatic drainage exercises (which is what the claimant argues he needed here)? Again, the claimant barely addressed this argument at all – in his closing submissions Mr Leach simply stated "standard… facilities will not by definition include special measures such as … private rooms for the conduct of physiotherapy exercises." Putting to one side the fact that the use of the room is arguably a separate matter to its characteristics, which are a matter of size, access and facility, can it be said that it is not standard for a Police Headquarters to have a Force Medical Room which has a lockable door and a raised bed? There was no evidence led or addressed in cross-examination on this point whatsoever. Such issues seem to us to be precisely why the duty to make reasonable adjustments includes duties under s.20(4) (physical features) and 20(5) (auxiliary aids) and why the Court of Appeal has repeatedly re-iterated the need for a claimant to identify the basis of the claim and particularly the PCP with care.

287. In our view, therefore, the claimant has failed to discharge the burden of

[9] Mr Leach sought to argue that given the respondent intended to make the adjustment, that time should not begin to run until the last occasion on which the chair was adjusted by another officer. We cannot accept that analysis, which is to seek to have one's cake and eat it. If use of the chair by another officer is the act said to be a breach of the s.20 duty, on the grounds that the respondent is vicariously liable for his/her act, it necessarily follows that the same acts falls to be considered (under the same principle of vicarious liability) when the assessment of whether the respondent did an act which was inconsistent with the duty for the purposes of time limits under s.123 EQA 2010.

establishing the PCP in question in relation to facilities.

288. If we have erred in that analysis and standard facilities do not include a room with a lockable door and a bed, the parties agree that permitting the claimant to use the Force Medical Room ("FNR") was a reasonable adjustment and was made. On or about January 2019 the respondent determined that FMR would be repurposed as a reflection and welfare room. The claimant was not therefore able to access the adjustment. In the context of the respondent's decision to re-purpose a room for the benefit of all officers, we are satisfied that it was not reasonable in the circumstances of the case for the respondent to continue to make the adjustment permitting the claimant to use the FMR. It was reasonable for the respondent to engage contractors to perform the necessary alterations to the room and, given its status as a publicly funded body, to tender to obtain contractors to undertake the work.

289. Were there therefore adjustments that the respondent could reasonably make to other rooms to enable the claimant to perform his lymphatic drainage? During the discussions with the respondent once the repurposing of the FMR had been decided upon, the claimant did not identify the essential elements of the adjustments that he required. That failing inevitably prolonged the process of identifying whether suggested rooms were appropriate to the claimant's needs or not. There was nothing about the alternative proposals that were made to suggest that they were obviously not workable or were not made in good faith. It was only when the claimant raised the specific concerns that he had that the difficulties were identified (such as the difficulty in walking long distances, and the need for the room to be private because the claimant partly undressed to perform lymphatic drainage), and further alternatives proposed. In the event, the only workable alternative was to permit the claimant to return home to perform his exercises during a break. Allowing him to do so was, we find, a reasonable adjustment.

290. We do not accept the claimant's argument that he could not always return home because of time pressure. The respondent's evidence (that was unchallenged) was that there was no significant time pressure in the IIT that would preclude the claimant from taking as long as he required for his break and exercises. The claimant's argument was that traffic made the journey longer than it might otherwise have been. That does not mean that he could not return home to perform the exercises all that he did not have sufficient time to do so. We note that the claimant undertook a week-long leadership course during which she accepted he did not perform his lymphatic drainage exercises, and whilst the days on the course was shorter days, it does suggest that the need to perform the exercises varied from time to time. In any event, it was incumbent upon the claimant to raise any concern with his line manager if he was struggling to find the time to return home or to perform his exercises once there. He did not do so.

291. The claimant argues that the respondent deliberately delayed the redevelopment of the force medical room. That argument was unsupported by any evidence and far-fetched. Whilst there was a delay in the conclusion of the building works in the room, that delay was consistent with the respondent's evidence of its need to tender for the various differing works and its reliance upon the selected contractors to deliver in a timely fashion. It was certainly beyond the control of the claimant's sergeants to influence the speed of the works. They did what they could by escalating concerns on the claimant's behalf to line managers. Once the work was complete, the respondent provided a sofa bed which the claimant could use for his exercises.

292. In those circumstances we are satisfied that the respondent took reasonable steps in the circumstances of the case to make the adjustments.

293. The claim is not therefore well founded and is dismissed.

Conclusion

294. The consequence is that the claims in their entirety are not well founded on their

merits and are dismissed. It is therefore unnecessary to consider whether the claims are in time.

Employment Judge Midgley
Date: 28 July 2021

Sent to the Parties: 02 August 2021

FOR THE TRIBUNAL OFFICE