EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondents**
Detective Constable D Quarm		The Commissioner of Police of the Metropolis

Heard at: London Central Employment Tribunal

On: 21, 22, 23 February 2023
(24 February 2023, 21 April 2023 in chambers)

Before: Employment Judge Adkin
Ms N Sandler
Mr N Brockmann

Representations

For the Claimant: Claimant in person
For the Respondent: Mr N De Silva KC, Counsel

JUDGMENT

The following claims are not well founded and are dismissed:

(1) Protected disclosure detriment claim brought pursuant to section 47B of the Employment Rights Act 1996.

(2) Claim of victimisation brought pursuant to section 27 of the Equality Act 2010.

(3) Claim of direct race discrimination brought pursuant to section 13 of the Equality Act 2010.

REASONS

Procedural matters

1. The parties attended in person on the first three days of the hearing physically in Victory House.

2. Mr De Silva provided us with both an opening and closing written submission. We received oral submissions at the close of the evidence, with an option to provide written submissions on the fourth day of the hearing. The Claimant provided the Tribunal with three new documents on the fourth morning, but with no further submissions at that stage.

3. The Tribunal invited the parties to make any further written submissions that they wish to following the publication of the final Casey report in March 2023, which was after the conclusion of the evidence but before we had made our decision in this case. The Claimant made some written submissions. We did not hear any response on the Casey report from the Respondent.

The Claim

4. The Claimant presented his claim on **17 September 2021**.

5. An agreed list of issues is attached as an appendix to this claim.

Evidence

6. The Tribunal received an agreed bundle of 2071 pages, to which a further 16 pages were added in hard copy only on the first morning of the hearing. The Claimant provided us with some additional documents after the conclusion of live evidence as mentioned above.

7. Page references to the agreed bundle appear thus: [123].

8. We received witness statements from:

   8.1. The Claimant;

   8.2. Acting Inspector Stephen Chalmers, called by the Respondent.

9. Both witnesses were subjected to cross examination by the other party and questions from the Tribunal.

Findings of Fact

Summary of the claim

10. The substance of the current claim, the Claimant's 18th claim to the Employment Tribunal concerns the DPS-CST which is the Customer Support Team ("CST") within the Directorate of Professional Standards ("DPS")

Respondent Metropolitan Police and a complaint made by the Claimant and submitted to the Independent Office for Police Conduct ("IOPC") by email on 12 June 2021.

11. The Claimant provided us with an amended version of a chronology provided by the Respondent, which was helpful to the Tribunal in helping us understand the history of claims.

The parties

12. The Claimant commenced employment on 27 January 1997. At the time of the Tribunal hearing he was a Detective Constable attached to a Sexual Offences Investigation Unit for part of North-East London. He has over 26 years' experience working for the Police. He describes himself as a Black Man of Ghanaian West African descent.

13. The DPS is the Directorate within the Metropolitan Police responsible for assessing and investigating alleged breaches of the Standards of Professional Behaviour, as laid down in the Police (Conduct) Regulations, investigating crime and corruption by police officers on duty or in connection with their office and investigating cases of death and serious injury. It also has responsibility for ensuring that officers maintain the professional standards required of them as police officers.

14. The DPS normally deals with public complaints and conduct matters investigation which are at the gross misconduct level. Local Professional Standard Units investigate misconduct that is not gross misconduct and complaints that are handled otherwise than by investigation.

15. The role of the CST is to act as a single point of entry and assessment for all 'public complaints' and 'conduct matters' raised against MPS Officers.

16. The CST was created to act as a "triage" to provide recommendations to the Appropriate Authority regarding whether matters should be considered to be 'Public Complaints', 'Conduct Matters', (including more serious matters which are formally referred to as 'Recordable Conduct Matters' in IOPC Guidance at section 8.15 [page 1092]) or none of the above. Whilst those working in the CST makes recommendations, ultimately decisions on these issues lie with the Appropriate Authority.

17. "*Appropriate Authority*", is a term used that refers to a person who has decision making responsibility in relation to police discipline under the Police Reform Act 2002 and the Police (Conduct) Regulations 2020. The Regulations came into force on 1 February 2020, and under these the Commissioner can delegate this function to officers down to the rank of Inspector (including Acting Inspectors). The Appropriate Authorities within the DPS deal with conduct matters across the MPS, including misconduct alleged against DPS officers. There are Appropriate Authorities within the Borough Command Units that deal with misconduct matters raised against officers within that Unit.

18. The Respondent draws a distinction between public complaints and conduct matters, both of which have statutory definitions. In 2021 the Respondent received approximately 6,900 public complaints and approximately 1,260 matters were recorded as conduct matters.

Distinction between public complaints and conduct matters

19. A “complaint” is defined in section 12(1) of the Police Reform Act 2002 as “any expression of dissatisfaction with a police force which is expressed (whether in writing or otherwise) by or on behalf of a member of the public”.

20. A ‘conduct matter’ is defined in section 12(1) of the Police Reform Act 2002 as a matter which is not a public complaint “in which there is an indication (whether from the circumstances or otherwise) that a person serving with the police may have— (a) committed a criminal offence; or (b) behaved in a manner which would justify the bringing of disciplinary proceedings.

Recording a public complaint

21. Recording a public complaint gives it formal status under the Police Reform Act. This means that it has to be handled in accordance with the Schedule 3 of the Police Reform Act 2002, which provides for Handling of Complaints and Conduct Matters etc.

HISTORY

First two claims

22. In September 2007 the Claimant lodged claims 231925/2007 (claim 1) and later 2312632/2008 (claim 2) arising from his applications for detective training.

23. On 9 February 2009 an Employment Tribunal gave judgment in Claims 1 to 2 concerning the Claimant's application to be trained a Detective Constable (231925/2007 and 2312632/2008).

Third and Fourth claims

24. In June 2011 the Claimant lodged ET 2350749/2011 (claim 3) and later 2371127/2011 (claim 4).

25. A Tribunal gave judgment in Claim 3 to 4 in February 2012 concerning the Claimant's then line management (2350749/2011 and 2371127/2011).

Claimant’s report “The Ridiculous”

26. On 18 Apr 2013 the Claimant supplied Det Sgt Nicholas a draft copy of a report produced by the Claimant entitled "The Ridiculous", extracts of which were in the agreed bundle. A copy of this document was supplied to the MPS Commissioner on 29 April 2013.

27. On 11 May 2013 the Claimant lodged claim ET 2346093/2013 (protected disclosure detriment). Subsequently he brought claims 2359867/2013, 236241/2013, 3200866/2014 (victimisation).

28. On 1 July 2015 an Employment Tribunal resided over by Employment Judge Baron in London South Employment Tribunal gave judgment dismissing all claims in Claims 6-9 concerning the Claimant's then line management (claim numbers 2346093/2013, 2359867/2013, 236241/2103, 3200866/2014).

29. Arising from those claims a costs order in the sum of £18,000 was made against the Claimant in favour of the Respondent. The Claimant failed to pay that costs order leading to a charging order being made on a property owned by him which was registered on 26 October 2018.

Claim 10

30. Returning to the chronology of the claims, on 27 Jul 2016 Claim 10 (3200244/2016) about Inspector Damian O'Connell was struck out.

"The Complete Ridiculous"

31. On 1 July 2017 the Claimant produced a report entitled "The Complete Ridiculous" describing what he alleged were Police Criminal Networks.

32. The Tribunal has not been supplied with the whole document, which appears to be a report with in excess of 220 pages in close type produced by the Claimant alleging criminal offences and racial discrimination committed by police officers.

Comparator: DI Veeren

33. For the purposes of his claim of race discrimination the Claimant compares his circumstances in particular complaints made by him about DPS-CST to complaints made by Detective Inspector Jaysen Veeren. Det Insp Veeren is Mauritian, described by the Claimant as of Asian appearance and in the Claimant's witness statement as a "brown skinned man".

34. In September 2017 Det Insp Veeren reported to the IPCC (the forerunner of the IOPC) alleged offences by DPS-CST staff and others. IPCC sent concerns to DPS which lead to misconduct investigations raised against various DPS staff including Ch Insp Stephen Tate and Ch Insp Tracey Stephenson. Specifically it was alleged that eight officers and one member of staff had abused their position to affect ongoing internal misconduct investigations.

35. These allegations were reported to BBC news. In a contemporaneous report on the BBC News website the allegations from Det Insp Veeren, himself an former internal investigation officer from DPS were that police officers facing allegations of assault and harassment (including sexual harassment) were allowed on patrol because of staff shortages. It was alleged that lack of staff meant that restrictions were lifted, including restrictions on officers who had harassed women and had sexual relations with victims of rape or sexual assault met through work.

36. With the benefit of hindsight of course, although not relevant to our deliberations, following the events surrounding Sarah Everard's murder and subsequent investigation, it seems that DI Veeren's concerns about a lax approach to officers facing allegations of sexual harassment were almost certainly well-founded.

Claim 11

37. On 7 September 2017 an Employment Tribunal presided over by Employment Judge Tayler dismissed the Claimant's eleventh claim (2207623/2016) following a four-day hearing. This claim, of victimisation, relied upon claim 10 as the protected act. It concerned Ms Brownrigg not conducting a severity assessment of Claim 10 in June 2016.

Claim 12

38. In October 2017 the Claimant presented ET 3201225/2017 (Claim number 12) of protected disclosure detriment, direct race discrimination and victimisation. This claim was not decided until 2021.

Change in regulator: IPCC becomes IOPC

39. On 8 January 2018, the Independent Police Complaints Commission (IPCC) became the Independent Office for Police Conduct (IOPC). This change was provided for by the Policing and Crime Act 2017.

Steven Chalmers

40. We heard from a single witness from the Respondent, Steven Chalmers.

41. During the course of 2018 Sergeant Steven Chalmers, and since November 2019 Acting Inspector Chalmers, joined the Complaints Support Team (CST) of the Directorate of Professional Standards (DPS). In these reasons we have generally referred to him as Insp Chalmers purely in the interests of brevity.

42. In June 2018 the Claimant reported alleged criminal offences by Det Sgt Sue Murphy to IOPC.

Claim 13

43. In July 2018 the Claimant presented ET 3201420/2018 (claim 13), a claim of protected disclosure detriment and racial discrimination. This claim related to the decision of a Sgt Keating within the CST on 27 June 2018 not to make an official record of a complaint made by the Claimant to the IOPC on 22 June 2018.

Historic whistleblowing disclosure

44. On 23 April 2019 the Claimant submitted to the IOPC what was described as "a new protected disclosure of information about corruption within the Metropolitan Police Directorate of Professional Standards". The substance of this allegation was that there had been a breach of confidential data, which the

Claimant alleged had been disclosed to "random" members of the public, resulting in confidential private information being made available to active criminals. The Claimant described this as the "Gangs Matrix data breach".

45. The Claimant further alleged that several members of the public had had their personal safety jeopardised. He alleged that he made what he described as a whistleblowing disclosure to the IOPC in June 2017 as a result. He says that when this was referred back to the Respondent the DPS failed to record discrimination, death serious injury or any of the criminal offences the Claimant had disclosed. He alleged that his rights under the Employment Rights Act 1996 and Equality Act 2010 had been breached.

46. Part of the Claimant's 23 April 2019 complaint was that in August 2018 a missing persons case led by the Claimant himself had resulted in the preventable death of a man in North London. The Claimant complains that the DPS leadership again blocked and suppressed that matter from being investigated. In other words, somewhat surprisingly, the Claimant was complaining about a failure on the part of the DPS to investigate himself.

47. On 25 April 2019 the IOPC forwarded the complaint above to the DPS.

Appeal (EAT)

48. On 22 May 2019 HHJ Auerbach handed down decisions in the Employment Appeal Tribunal arising from appeals against the decisions of Employment Judge Tayler and Employment Judge Jones.

49. The appeal against EJ Tayler was dismissed in claim 11.

50. The appeal against EJ Jones' strike out order in claim 12 suceeded on the basis that the Tribunal in that case had erred in its understanding of the underlying statutory regime concerning complaints of police misconduct, the finding that the case handler had no knowledge of the Claimant's race or prior complaints and in its approach to the legal test is to be applied in respect of the underlying claims.

Claims 14 & 15

51. In June 2019 the Claimant presented claims 3201471/2019 (claim 14) then later 3202056/2019 (claim 15) of protected disclosure detriment and race discrimination.

Police (Conduct) Regulations 2020

52. On 1 February 2020 the Police (Conduct) Regulations 2020 came into force, with the effect that decision-making responsibility in relation to police discipline could be delegated down to the rank of Inspector. This included Acting Inspectors such as Acting Inspector Chalmers.

Deed of Postponement

53. In April 2020 a Commander Bennet instructed Capsticks, a firm of solicitors, to try and recover the unpaid costs from claims 6-9 as part of the Claimant's ongoing re-mortgage application. Claimant subsequently alleged that those efforts were acts of victimisation for past and ongoing ET cases.

54. On 19-22 June 2020 there was an email exchange about the Mayor's Office for Policing and Crime (MOPAC) and authority to seal Deed of Postponement. The charging order arising from the costs order made in claims 6–9 in the sum of approximately £18,000 had by this stage apparently risen to approximately £20,000 with interest.

55. The Deed of Postponement related to the charging order and was being sought by the Claimant to allow him to remortgage his house. Contemporaneous correspondence shows that a delay was caused in trying to obtain a seal to apply to a hardcopy version of a deed, since this could not be done electronically. Bearing in mind that this was occurring at the tail end of the first UK Covid-19 pandemic lockdown in 2020, we do not find it particularly surprising that some delay occurred at this point. Indeed email exchange refers to hard copies being needed and the difficulties being caused by various people working from home, including the Chief Financial Officer in the Mayor's office.

56. The email exchange shows that it was Debbie Ralph, Head of Misconduct & Litigation of the Respondent who was chasing the authority and Judith Mullett of MOPAC who was concerned that the timescale being suggested was "very challenging".

Judgment claim 13

57. On 19 August 2020 an Employment Tribunal presided over by Employment Judge Gardiner dismissed claims of protected disclosure detriment and race victimisation 3201420/2018 (Claim 13). This claim concerned the alleged actions of PS Keating and Ch Insp Tate.

Claim 16

58. In September 2020 the Claimant presented ET 3202563/2020 (claim 16) of victimisation regarding alleged obstruction to the progression of his re-mortgage applications.

59. On or following a hearing on 8 February 2021 Employment Judge Burgher at East London Employment Tribunal struck out claim 16 (3202563/2020) concerning the first re-mortgage.

Conclusion of Operation Embley

60. On October 2020 the IOPC concluded Operation Embley arising out of the complaint of Det Insp Veeren. No misconduct or performance issues were found to be proven against any police officer. Individual "learning" was identified for two officers and "learning" was also identified around the DPS's

working practices at the time such as a lack of communication to the wider team, particularly about policy and police regulation changes.

RECENT BACKGROUND TO ALLEGED PROTECTED DISCLOSURE

Claim 17

61. In Feb 2021 Claimant lodged ET 3200639/2021, a claim of Victimisation and discrimination regarding alleged obstruction to his attempts to re-mortgage.

First Form 728

62. In an internal complaint dated 23 March 2021 ("the first Form 728") the Claimant alleged discrimination and criminal offences. Form 728 is a standard template document used within the Respondent.

Second Form 728

63. In 23 April 2021 the Claimant put in a complaint to Inspector Lisa Parker using the Form 728. That has been described to us as the "second Form 728". That complaint alleged criminal offences and breaches of procedure by DPS staff, in substantially similar terms to the alleged protected disclosure submitted externally on 12 June 2021 which is the basis for the protected disclosure detriment claim.

64. In response to the second Form 728 Inspector Parker emailed the Claimant on 18 May 2021 saying that a colleague Inspector Vikki Lewis at DPS

> "has confirmed that in relation to your 728 in late March no conduct matters have been found. In relation to your second one (late April), she has stated that this relates to historical matters and is repetitious"

65. Based on our view of Insp Parker's summary of Insp Lewis' reply we do not see that this is malicious or particularly slanted. To characterise the complaint of 23 March 2021 as relating to historical matters and repetitious in the circumstances and given the background would be fair comment open to Insp Lewis to make.

66. The word "repetitious" is of particular significance given the content of Regulation 7(2) of the Police (Complaints and Misconduct) Regulations 2020 (SI 2020/2). These regulations very broadly speaking disapply the requirement to be recorded where there is repetition particularly where there is no fresh substantive evidence. That is a loose summary of the exact provisions which are set out below.

Alleged protected disclosure – 12.6.21

67. On 12 June 2021 the Claimant sent the 10 page second Form 728 to IOPC with additional blue highlighting made by him. This is the "disclosure document" and contains the alleged qualifying protected disclosures which are

the basis for the protected disclosure (i.e. whistleblowing) detriment claim. We shall refer to this document below as the **disclosure document**.

68. This is a version of the Form 728 document dated 23 April 2021. The blue highlighting was added by the Claimant to denote "new information which provided facts, details and motives."

69. The Tribunal understands why the Respondent's position is that the matters highlighted in blue appeared to be substantially a repetition of allegations made historically and matters that had been the subject of earlier Employment Tribunal proceedings. There is a mass of detail. It relates to historic matters and indeed is difficult to understand without an understanding of those historic matters. The Tribunal has struggled to understand how the Claimant can maintain that the matters highlighted in blue are new.

70. In very summary terms the complaint is about the way that DPS, unspecified "Met Police managers" and the Met Police Federation had dealt with a series of concerns, said by him to be "whistleblowing" raised by the Claimant from July 2011 onward. The Claimant contends that his concerns had not been adequately dealt with according to the correct processes, there had been a failure to record serious allegations as potential criminal and/or disciplinary matters as required by regulation and further that individuals within DPS had misled regulatory bodies (IPCC and IOPC) and successive Employment Tribunals. In particular he contended that it had been represented externally that matters have been thoroughly investigated when they had not been. Inspector Chalmers identified four particular strands to the complaint in his outcome letter dated 27 February 2022 which is described below.

71. **We have set out extracts of the disclosure document below in our conclusions**, since it is convenient to do that, given that the list of issues in this case breaks the content of the disclosure down into separate elements by reference to various different failures, and also because the document itself is too long to conveniently quote as part of the factual narrative. Notwithstanding that breakdown and the resulting separate analysis below the Tribunal has not lost sight of the fact that in this case the disclosure made on 12 June 2021 was a single document which was subject to a single referral and investigation.

72. On 15 June 2021 the IOPC sent the blue highlighted version of Form 728 to the DPS (IOPC reference 2021/151239).

Daniel Morgan report

73. On 15 June 2021 a report was published by the Daniel Morgan Independent Panel. This has been highlighted by the Claimant, which aligns with his concern more broadly about corruption and discrimination within the Respondent organisation and failures to investigate this.

74. Following on from this, on 29 June 2021 the Respondent published a new Raising Concerns policy in relation to the findings of Daniel Morgan Independent Panel report. This is in reality no more than background to the Claimant's claim.

Triage of IOPC report

75. On 26 June 2021 PS Cheeseman of the CST dealt with the Claimant's disclosure to IOPC (ref. 2021/151239). He noted that he was personally named in the disclosure and asked that the matter be allocated to someone else. It is difficult for us to criticise that action which appears appropriate to avoid potential conflict.

Allocation of complaint to Insp Chalmers

76. Sometime shortly after 26 June 2021, the complaint was allocated to Acting Inspector Chalmers.

77. The evidence of Act Insp Chalmers was that he and another colleague Inspector Ryan Keating as "appropriate authorities" had to make decisions about whether conduct matters and complaints should be recorded. Act Insp Chalmers's unchallenged evidence was that he would make around 40 - 50 such decisions in a working week, suggesting a significant volume of decisions of an approximate average of 8-10 per day.

78. On 8 July 2021 Act Insp Chalmers first wrote to the Directorate of Legal Services seeking legal advice about the Claimant's complaint.

Insp Chalmers' prior awareness of the Claimant

79. At paragraph 14 of his witness statement Act Insp Chalmers said:

> 14. Before this, I had not met or had any dealings with DC Quarm. However, from my time in the CST, I was aware that DC Quarm had brought Employment Tribunal proceedings against the Commissioner and that members of the CST had been witnesses in those proceedings. However, I did not at that time know the details of those Employment Tribunal proceedings such as the types of claim or what he was alleging against whom.

80. Insp Chalmers was aware that officers had appeared as witnesses in claims brought by the Claimant. He said that he remembered the Claimant's name being mentioned but did not recall specific details. He could not remember exactly when this happened.

81. We accepted Insp Chalmers's oral evidence that he was aware of four colleagues who had been involved with the Claimant: DS Cheeseman, Insp Keating, Insp Lewis, Sgt Sue Murphy. Other names of colleagues in the CST put to him in cross-examination Insp Chalmers did not know or alternatively knew the individual but did not know that there was a connection with the Claimant.

82. The Claimant pointed out to Insp Chalmers during cross examination that Insp Lewis thought the Claimant vexatious. He asked Insp Chalmers whether this was something that she had discussed with him. He said that he did not recall her discussing that with him. We accept that evidence.

83. Our finding on the balance of probabilities is that the Claimant had a reputation within the department for making lengthy complaints and for bring Employment Tribunal claims. We find that before he was involved in the Claimant's case Insp Chalmers was aware that the Claimant had a reputation for bringing complaints and employment tribunal claims. We find that he was likely to have been somewhat wary in dealing with the Claimant's complaint, a conclusion we find is fortified by his decision to take legal advice.

84. The fact that Insp Chalmers did not retain a large amount of information about the Claimant's prior reputation or earlier claim we did not find particularly surprising or noteworthy. We take account of the context of the high volume of complaints being dealt with in this department and by Insp Chalmers personally.

85. We found Insp Chalmers' evidence on this to be consistent and plausible.

Claim 12 outcome

86. By a judgment dated 9 July 2021 an Employment Tribunal at East London Employment Tribunal presided over by Employment Judge Gardiner dismissed claim 12, that of protected disclosure detriment, direct race discrimination and victimisation (3201225/2017).

87. The Tribunal found at paragraph 157 that Sgt Murphy was "generally conscientious". They found that:

> "157. ….. The quantity of information contained in TCR [The Complete Ridiculous] and the failure to clearly identify protected disclosures, as well as the repetition of matters previously featured in earlier reports made it difficult for her to isolate the matters that were new and had not already been determined by an employment tribunal, or already considered by Inspector O'Connell, and isolate any allegations which had sufficient potential merit to require further investigation.
>
> 158. We find that she had failed to appreciate that there was a legitimate criticism of the investigation post death of E in relation to the disappearance of the Crimint report and then the suggestion that DS Nicholas had deliberately failed to investigate this. Had she spotted the point about the Crimint report then she would at least have considered whether to make a record of this aspect of potential misconduct. We note that the Claimant did not specifically question Ms Murphy about the Crimint report in cross examination. The same is true for the race data issue, and the failure to make a timely record that the Planet of the Apes comment was potentially a racist incident.
>
> …
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> 160. The most likely explanation for why the three matters which we have found amount to protected disclosures were not recorded by Ms Murphy is because she did not appreciate the significance of

what was being raised given the extent of the factual detail in TCR. Her decision was not influenced by the Claimant disclosing information in any of the three respects which amount to protected disclosures.

88. It is noteworthy that the Tribunal found that the sheer quantity of information provided by the Claimant was a barrier to Sgt Murphy understanding the particular allegations within it. This appears to this Tribunal to be a common theme. The Claimant appears to have an unrealistic expectation about the amount of information that investigators can reasonably digest and take account of, given the other pressures upon them.

89. We also note that the Tribunal remarked upon the Claimant not cross-examining on certain points. That is relevant to our consideration of the significance of his failure to put certain points of his case in the hearing before us.

Macpherson follow up report

90. On 21 July 2021 a report entitled "The Macpherson Report: Twenty Two Years on" was published. This is one of a number of reports and events which were considered significant by Claimant in relation to his genuine concerns about racism within the Respondent organisation and a broader concern about what he regards as corruption.

Legal advice

91. On 11 August 2021 Insp Chalmers chased the Directorate of Legal Services for legal advice that he had requested.

92. Again on 4 September 2021 Insp Chalmers chased the Directorate of Legal Services for legal advice for a second time.

93. The advice was provided to Inspector Chalmers on 11 September 2021. This is privileged, and the Tribunal would not expect to see it. The relevance of these developments is simply to the timeline of events.

Claim 18 (the present claim)

94. On 9 September 2021 the Claimant obtained a ACAS Early Conciliation Certificate in preparations to present Claim 18.

95. On 17 September 2021 the Claimant presented Claim 18 ET 2206321/2021 in the Employment Tribunal in relation to the CST's management of his complaint. At this stage he had not received any substantive response.

Claim 17

96. Claim 17 (3200639/2021) brought in the East London Employment Tribunal in relation to the Claimant's second re-mortgage was struck out on 8 October

2021. A costs order in the sum of £4,279.20 was made against the Claimant and in favour of the Respondent by Employment Judge Reid.

Inspector Chalmers informed about claim 18

97. In late November 2021 Insp Chalmers was informed by Ms Debbie Ralph, Head of Misconduct & Litigation that the Claimant had made an Employment Tribunal claim. He says at this stage he recalled he had not dealt with the Claimant's complaint.

98. When asked in cross-examination why he had forgotten the Claimant's complaint he initially said "I'm not sure I can answer". After giving it some thought he said "I simply forgot amongst a very busy workload. This was one number of things I had…."

99. When asked by a member of the Tribunal why he had not sent a holding response, he said that he wanted to provide a substantive response.

Outcome letter: substantive response to disclosure

100. On 27 February 2022 Inspector Chalmers' provided a substantive response to Claimant regarding his disclosure to IOPC of 12 June 2021. This document was five pages of close type and started with an apology for the delay in responding.

101. He concluded that this was not a public complaint, but rather a conduct matter.

102. He distilled four areas of conduct complained about:

102.1. The first complaint was "From 2016 to present, DPS CST staff have deliberately fed false information to the IPCC and IOPC about whistle blowing concerns that I have raised"

102.2. The second complaint was "To conceal the facts of their repeated acts to mislead the IPCC and IOPC, serving and retired DPS staff have committed perjury, to cover up their attempts to Pervert Justice";

102.3. The third complaint was "Senior leaders from the DPS and Met Police DPS-ETU were fully aware of the unlawful actions of DPS staff and others";

102.4. The fourth complaint was "To conceal the pattern of criminal offences, which should be exposed by my ongoing ET cases against the Commissioner, Senior leaders in the DPS and DPSETU have victimised me by sabotaging my attempts to re-mortgage".

103. He concluded that there was no indication of a criminal offence nor behaviour that would justify the bringing of disciplinary proceedings. He specifically referred himself to the definition of "indication" in paragraph 10.7 and 10.8 of the IOPC Statutory Guidance document, which are set out below.

104. He decided that no conduct matter would be recorded.

105. He went through each of the four areas of complaint in detail and his conclusions on each are set out in his letter. He noted that much of substance of the allegations had been dealt with in Employment Tribunal proceedings, which had either resulted in claims being struck out, dismissed, or dealt with on the merits in which the evidence of Respondent's witnesses have been dealt with. In respect of allegations against PS Cheeseman and DS Wagstaff he noted that there was an Employment Tribunal pending.

106. Finally he did not accept the Claimant's conclusion that Insp Keating and Ch Insp Tate had lied in 3201420/18 in relation to form officers being pursued for misconduct. He points out to the Claimant that legislation the Claimant referred to as demonstrating that the officers had lied was only enacted in 2020 and only applied to gross misconduct.

Claims 14 & 15 settle

107. On 20 September 2022 the parties settled claim 14 (concerning PS Cheeseman and Inspector Keating) and claim 15 (concerning PS Ben Smith) (3201471/2019 and 3202056/2019).

HMICFRS Inspection Report

108. On 1 November 2022 the His Majesty's Inspectorate of Constabulary and Fire & Rescue Services published a report entitled "Vetting, Misconduct and Misogyny in the Police Service". This report was precipitated by the kidnap and murder of Sarah Everard in March 2021 followed by the arrest and guilty plea of a serving police officer.

109. One of the conclusions of this report, which was produced after all of the material events of the present claim was as follows:

> "The right of dissatisfied police officer victims need to be strengthened
>
> Unlike members of the public, police officers who are victims of crime and dissatisfied with the service they received from colleagues in their own force do not have a right to make a complaint. They should have similar rights to members of the public in these circumstances."

110. The Claimant relies upon this.

111. This report does in a general way support the Claimant's contention that he has been hampered as a police officer in making complaints by comparison with members of the public. The Tribunal accepts that this report suggests a wider problem with internal complaints by police officers not being dealt with to their satisfaction.

112. We find however that this undermines the Claimant's contention that he received inadequate consideration of his complaints because of race or

because of earlier allegations of discrimination (i.e. victimisation). In essence if there was at the material time a general problem with the way that police officers' internal complaints were handled this somewhat undermines the Claimant's contention that this was due to his race or a protected act alleging discrimination. Similar considerations apply for the protected disclosure detriment claim.

Casey reports

113. The parties did not during the hearing make specific reference to the Casey report, but given the degree of national media coverage of the presentation of the Casey final report, it would be unrealistic to say that the Tribunal were not aware of the publication of it. We invited submissions following on from the conclusion of the hearing.

114. On 27 October 2022 Baroness Casey of Blackstock DBE CB produced an interim report on misconduct in the Police Force. This identified a large number of internal complaints and relatively slow pace at which these internal complaints are resolved. Most internal complaints are not upheld. According to the interim report, 55 – 60% of allegations made by Met officers, staff or their family received a no case to answer decision.

115. In March 2023 Baroness Casey of Blackstock DBE CB produced an independent review into the standards of behaviour and internal culture of the Metropolitan Police Service. One of her observations is that there appears to be a disproportionate number of Black, Asian and ethnic minority employees and women represented amongst those bringing claims in the Employment Tribunal. In the years that she analysed since 2017 Black, Asian and ethnic minority women, and Black men, were nearly three times more likely to have brought an employment tribunal claim. Criticisms of the DPS made by officers on an anonymous basis are recorded in the report.

116. We concluded that these reports were of a piece with other high-profile investigation reports into the Respondent and supported some elements of the Claimant's claim. The Casey reports reaffirm our conclusions that first, the question of police misconduct and investigations into the same are very much part of the national political discourse, in support of the Claimant's case that he believed that disclosures were being made in the public interest.

117. Second, that delay into investigation of police misconduct cases appears to be an endemic problem.

118. Third, that there are a fairly large number of claims brought by officers against the Respondent in Employment Tribunals, which non-white officers are more likely to bring as a proportion of numbers.

THE LAW

Guidance on detriment

119. The EHRC Employment Code (2011), drawing on the case law under the previous discrimination legislation, contains a useful summary of treatment that may amount to a 'detriment':

> "'Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage. This could include being rejected for promotion, denied an opportunity to represent the organisation at external events, excluded from opportunities to train, or overlooked in the allocation of discretionary bonuses or performance-related awards… A detriment might also include a threat made to the complainant which they take seriously and it is reasonable for them to take it seriously. There is no need to demonstrate physical or economic consequences. However, an unjustified sense of grievance alone would not be enough to establish detriment' — paras 9.8 and 9.9."

Perjury

120. The Perjury Act 1911 contains the following at section 1:

> "1 Perjury
>
> (1) If any person lawfully sworn as a witness … in a judicial proceeding wilfully makes a statement material in that proceeding, which he knows to be false or does not believe to be true, he shall be guilty of perjury"

LEGISLATION GOVERNING THE POLICE

Police Reform Act 2002

121. The Police Reform Act 2002 ("PRA") provides as follows

> 2002 CHAPTER 30
>
> PART 2
>
> COMPLAINTS AND MISCONDUCT
>
> Application of Part 2
>
> 12 Complaints, matters and persons to which Part 2 applies
>
> (2) In this Part "**conduct matter**" means (subject to the following provisions of this section, section 28A and any regulations made under it,... and any regulations made by virtue of section 23(2)(d)) any matter which is not and has not been the subject of a complaint

but in the case of which there is an **indication** (whether from the circumstances or otherwise) that a person serving with the police may have—

(a) committed a criminal offence; or

(b) behaved in a manner which would justify the bringing of disciplinary proceedings.

[emphasis added]

122. At section 29 of the PRA the interpretation section there is the following:

29 (3) Subject to subsection (4), references in this Part, in relation to any conduct or anything purporting to be a complaint about any **conduct**, to a member of the public include references to any person falling within any of the following paragraphs (whether at the time of the conduct or at any subsequent time)—

(a) a person serving with the police;

….

(4) In this Part references, in relation to any conduct or to anything purporting to be a complaint about any conduct, to a member of the public do not include references to—

(a) a person who, at the time when the conduct is supposed to have taken place, was under the direction and control of the same chief officer as the person whose conduct it was; or

(b) a person who—

(i) at the time when the conduct is supposed to have taken place, in relation to him, or

(ii) at the time when he is supposed to have been adversely affected by it, or to have witnessed it,was on duty in his capacity as a person falling within subsection (3)(a) to (d).

123. **Schedule 3** of the PRA provides:

Recording etc. of conduct matters in other cases

11(1) This paragraph applies where—]

(a) a conduct matter comes (otherwise than as mentioned in paragraph 10) [i.e. in civil litigation] to the attention of the local policing body or chief officer who is the appropriate authority in relation to that matter, and

(b) it appears to the appropriate authority that the conduct involved in that matter falls within sub-paragraph (2),

(2) Conduct falls within this sub-paragraph if (assuming it to have taken place)—

(a) it appears to have resulted in the death of any person or in serious injury to any person;

(b) a member of the public has been adversely affected by it; or

(c) it is of a description specified for the purposes of this sub-paragraph in regulations made by the Secretary of State.

[insertion added]

Police (Conduct) Regulations 2020

124. The Police (Conduct) Regulations 2020 (SI 2020/4) contains the following provisions:

12 Record of disciplinary proceedings

The appropriate authority must cause a **record** to be kept of disciplinary proceedings brought against every officer concerned, together with the finding and decision on disciplinary action and the decision in any appeal by the officer.

125. Schedule 2 to the Police (Conduct) Regulations 2020 contains guidance on Standards of Professional Behaviour including such matters as honesty and integrity, authority respect and courtesy, equality and diversity, use of force, orders and instructions, duties and responsibilities, etc

Police (Complaints and Misconduct) Regulations 2020

126. Regulation 7 of the Police (Complaints and Misconduct) Regulations 2020 (SI 2020/2) contains the following:

7 Recording and reference of conduct matters

(1) The descriptions of conduct specified for the purposes of paragraph 11(2)(c) of Schedule 3 [of the PRA above] (recording etc of conduct matters in other cases) are—

(a) a serious assault, as determined in guidance issued by the Director General;

(b) a serious sexual offence, as determined in guidance issued by the Director General;

(c) serious corruption, including abuse of position for a sexual purpose or the purpose of pursuing an improper emotional relationship, as determined in guidance issued by the Director General;

(d) a criminal offence or behaviour which is liable to lead to disciplinary proceedings and which, in either case, was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion or other status as determined in guidance issued by the Director General;

(e) a relevant offence;

(f) conduct whose gravity or other exceptional circumstances make it appropriate to record the matter in which the conduct is involved;

…

(h) conduct which is alleged to have taken place in the same incident as one in which conduct within sub-paragraphs (a) to (e) is alleged.

(2) The description of matter specified for the purposes of paragraphs 10(4A) and 11(3B) of Schedule 3 (**conduct matters not required to be recorded**) is any matter—

(a) which concerns substantially the same conduct as—

(i) a complaint made previously ("the previous complaint"), or

(ii) a conduct matter recorded previously ("the previous conduct matter");

(b) in respect of which there is no fresh indication that a person serving with the police may have committed a criminal offence or behaved in a way which would justify the bringing of disciplinary proceedings;

(c) in respect of which there is no fresh substantive evidence which was not reasonably available at the time the previous complaint was made or the previous conduct matter was recorded, and

(d) as respects the previous complaint or previous conduct matter, it has been or is being investigated or (in the case of a complaint) otherwise handled in accordance with Schedule 3.

(3) The description of matter specified for the purposes of paragraph 13(1)(b) of Schedule 3 (recordable conduct matters which must be referred to the Director General) is any matter which relates to conduct falling within paragraph (1), other than sub-paragraph (f).

(4) Any conduct matter which is required to be referred to the Director General must be referred in such manner as the Director General determines and—

> (a) if the matter falls within paragraph 13(1)(a) or (b) of Schedule 3, without delay and in any event not later than the end of the day following the day on which it becomes clear to the appropriate authority that the conduct matter is one to which paragraph 13(1)(a) or (b) of Schedule 3 applies;
>
> (b) if the matter falls within paragraph 13(1)(c) of Schedule 3, without delay and in any event not later than the end of the day following the day on which the Director General notifies the appropriate authority that the conduct matter is to be referred.
>
> [emphasis added]

Statutory Guidance (May 2015 version)

127. We were referred to the Employment Tribunal hearing claim 13 - presided over by Employment Judge Gardiner following a hearing in July 2020. The written reasons for the decision in that claim made reference to IPCC statutory guidance on the nature of an 'indication' in its decision sent to the parties on 13 November 2020, which contains the following guidance at paragraph 9.32:

> "There is an 'indication' where the investigator, having considered the circumstances and evidence available at that time, is of the view that the officer, or member of staff, may have committed a criminal offence or behaved in a manner justifying the bringing of disciplinary proceedings. **A bare assertion of misconduct or criminality, particularly if it is undermined by other material or inherently unlikely, may not be sufficient**. For example, a complaint that an officer is "harassing" someone without more is unlikely to be sufficient"
>
> [emphasis added]

128. That wording appeared in the version of the guidance amended in **May 2015**.

Statutory Guidance (March 2020 version)

129. The May 2015 version of the guidance referred to above appears to have been replaced by an amended version, issued in **March 2020**.

130. The IOPC guidance "Applying the IPCC guidance on dealing with allegations of discrimination two cases after 1 February 2020", dated March 2020 contained within the agreed Tribunal bundle for the instant proceedings does not contain the guidance given in May 2015 in paragraph 9.32 set out above.

131. The agreed bundle contains extracts of a document produced by the Independent Office for Police Conduct entitled "Statutory guidance on the police complaints system" (1049 - 1144). This is a document of some 162 or so pages. According to the index this dates from February 2020.

132. The March 2020 guidance contains the following:

> Recording conduct matters

> 8.11 When a conduct matter comes to the attention of the appropriate authority, it must then consider whether it is a conduct matter that must, or may, be **formally recorded** and handled under the Police Reform Act 2002. Recordable conduct matters should be recorded as soon as practicable after they have come to light. A conduct matter should still be recorded even if there is a lengthy period of time between the events occurring and the matter coming to light.
>
> 8.12 The process for considering whether a conduct matter should be recorded as a recordable conduct matter is outlined in the following flowchart, with key terms explained further in paragraphs 8.13 to 8.19.
>
> [FLOWCHART GRAPHIC]
>
> What is meant by 'recordable'?
>
> 8.13 Where the conduct matters has been recorded under Schedule 3 to the Police Reform Act 2002 but there is no requirement to refer it, the appropriate authority may deal with the matter in such manner (if any) as the appropriate authority determines. If the appropriate authority determines that it is necessary for the matter to be investigated, the appropriate authority must carry out a local investigation under the Police Reform Act 2002. If the appropriate authority determines the matter does not require investigation, it may handle the matter under the Police (Conduct) Regulations 2020 (including under the Reflective Practice Review Process), or the appropriate police staff disciplinary procedures.
>
> …
>
> 8.15 As shown in the flowchart above, where a conduct matter has not arisen from civil proceedings, the appropriate authority must first consider whether the matter is 'recordable'. A matter is recordable if it involves allegations of conduct that, assuming it to have taken place:
>
> [here the guidance sets out content of **regulation 7**, set out above]
>
> 8.16 If none of these criteria apply, then the matter cannot be recorded. Point vii [*identical to regulation 7(1)(f) above*] allows an element of discretion when the appropriate authority considers that a matter should be recorded, but it does not otherwise fall under these criteria.

133. Later on in the same document in chapter 10 there is a section entitled "Deciding how to handle a matter under Schedule 3 to the Police Reform Act 2002", which contains the following:

> 10.7 'Indication' is taken to have its plain English definition. In making the decision about whether there is 'an indication', the

appropriate authority should consider whether the circumstances, and the evidence readily available, show or reasonably imply that a person serving with the police may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings, or that there may have been an infringement of a person's rights under Article 2 or 3. This decision should take account of the facts being asserted by the complainant, alongside any readily available evidence, and not to focus solely on what the complainant says those facts amount to. Where a complainant alleges, for example, that an offence has been committed without explaining what has been done that they believe constitutes that offence, the appropriate authority should seek further information and clarification from the complainant before making the decision regarding whether there is an indication.

10.8 When making the decision about whether there is an 'indication' the appropriate authority can review evidence that is readily available, but it should not take preliminary investigative steps in order to make this decision. Therefore, the appropriate authority should not, for example, obtain accounts from officers or other witnesses, or instruct an expert. If what is alleged in a complaint is undermined by contemporaneous real objective evidence (i.e. evidence from things as distinct from persons, such as CCTV/body worn video), or is inherently unlikely, there is unlikely to be an indication.

PROTECTED DISCLOSURE LEGISLATION

Protected disclosure detriment ("whistleblowing")

134. The Employment Rights Act 1996 contains the following provisions:

43B Disclosures qualifying for protection.

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following-

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

…

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

43F Disclosure to prescribed person.

(1) A qualifying disclosure is made in accordance with this section if the worker—

(a) makes the disclosure to a person prescribed by an order made by the Secretary of State for the purposes of this section, and

(b) reasonably believes—

(i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and

(ii) that the information disclosed, and any allegation contained in it, are substantially true.

47B Protected disclosures.

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

48.— Complaints to employment tribunals

(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.

(2) On a complaint under subsection … (1A) … it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

135. The burden of proving each of the elements of a protected disclosure is on a claimant (*Western Union Payment Services UK Ltd v Anastasiou*, 13 February 2014 per HHJ Eady QC at [44]).

Disclosure

136. In *Kilraine v London Borough of Wandsworth* [2018] ICR 1850 the Court of Appeal held that a sharp distinction between “allegations” and “disclosures” which appeared to have been identified in earlier authorities was a false dichotomy, given than an allegation might also contain information tending to show, in the reasonable belief of the maker, a relevant failure. At [35], Sales LJ said:

> "In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a **sufficient factual content and specificity** such as is capable of tending to show one of the matters listed in subsection (1)."
>
> [emphasis added]

Reasonable belief in relevant failure

137. A belief may be wrong but nevertheless reasonable. In the case of *Babula v Waltham Forest College*, [2007] ICR 1026 CA, Wall LJ held as follows:

> 41. *Darnton's case* [2003] ICR 615 seems to me clear authority for the proposition that whilst an employee claiming the protection of section 43(1) of ERA 1996 must have a reasonable belief that the information he is disclosing tends to show one or more of the matters listed in section 43B(1)(a) to (f) , there is no requirement upon him to demonstrate that his belief is factually correct; or, to put the matter slightly differently, his belief may still be reasonable even though it turns out to be wrong. Furthermore, whether or not the employee's belief was reasonably held is a matter for the tribunal to determine.

138. Later on:

> 79. It is also, I think, significant that section 43B(1) uses the phrase "tends to show" not "shows". There is, in short, nothing in section 43B(1) which requires the whistleblower to be right. At its highest in relation to section 43B(1)(a) he must have a reasonable belief that the information in his possession "tends to show" that a criminal offence has been committed: at its lowest he must have a reasonable belief that the information in his possession tends to show that a criminal offence is likely to be committed. The fact that he may be wrong is not relevant, provided his belief is reasonable, and the disclosure to his employer made in good faith (section 43C(1)(a))
>
> …
>
> 82. In this context, in my judgment, the word "belief" in section 43B(1) is plainly subjective. It is the particular belief held by the particular worker. Equally, however, the "belief" must be "reasonable". That is an objective test. Furthermore, like the appeal tribunal in Darnton , I find it difficult to see how a worker can reasonably believe that an allegation tends to show that there has been a relevant failure if he knows or believes that the factual basis for the belief is false. In any event, these are all matters for the employment tribunal to determine on the facts.

139. Whether a belief is reasonable is to be assessed by reference to "what a person in their position would reasonably believe to be wrongdoing": *Korashi v*

Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4 per Judge McMullen QC at [62]. In that case Mr Korashi was a specialist medical consultant and an assessment of what was reasonable needed to be by reference to what someone in that position would reasonably believe.

Burden of proof

140. There is an initial burden of proof on a claimant to show (in effect) a *prima facie* case that she has been subject to a detriment on the grounds that she made a protected disclosure. If so, the burden passes to a respondent to prove that any alleged protected disclosure played no part whatever in the claimant's alleged treatment, but rather what was the reason for that alleged treatment. Simply because the respondent fails to prove the reason does not act as a default mechanism so that the claimant succeeds. The tribunal is concerned with the reason for the treatment and not a quasi-reversal of proof and deemed finding of discrimination i.e. there is no mandatory adverse inference mechanism (*Dahou v Serco Ltd* [2017] IRLR 81, CA).

Legal obligation (section 43B(1)(b))

141. In *Blackbay Ventures Ltd v Gahir* [2014] IRLR 416 in which HH Judge Serota QC, sitting with members, held at paragraph 98 that in considering whether there had been a protected disclosure:

> 'Save in obvious cases if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation. …'

Public interest

142. The Court of Appeal in *Chesterton Global Ltd & Anor v Nurmohamed & Anor* [2017] EWCA Civ 979 confirmed that public interest does not need to relate to the population at large, but might relate to a subset, in that case a category of managers whose bonus calculation was negatively affected. It seems that it cannot simply relate to the interest of the person making the disclosure. The following guidance was given on that case as to reasonable belief in the public interest:

> "27. First, and at the risk of stating the obvious, the words added by the 2013 Act fit into the structure of section 43B as expounded in Babula (see para. 8 above). The tribunal thus has to ask (a) whether the worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable.
>
> 28. Second, and hardly moving much further from the obvious, element (b) in that exercise requires the tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest; and that is perhaps particularly

so given that that question is of its nature so broad-textured. The parties in their oral submissions referred both to the "range of reasonable responses" approach applied in considering whether a dismissal is unfair under Part X of the 1996 Act and to "the Wednesbury approach" employed in (some) public law cases. Of course we are in essentially the same territory, but I do not believe that resort to tests formulated in different contexts is helpful. **All that matters is that the Tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the tribunal to form its own view on that question, as part of its thinking – that is indeed often difficult to avoid – but only that that view is not as such determinative**.

29. Third, the necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, **in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable**.

30. Fourth, while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it: otherwise, as pointed out at para. 17 above, the new sections 49 (6A) and 103 (6A) would have no role. I am inclined to think that the belief does not in fact have to form any part of the worker's motivation – the phrase "in the belief" is not the same as "motivated by the belief"; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it."

[emphasis added]

Causation

143. The causation test for *detriment* is whether the alleged protected disclosure played more than a trivial part in the Claimant's treatment (*Fecitt v NHS Manchester (Public Concern at Work intervening)* [2012] ICR 372, CA).

DISCRIMINATION – EQUALITY ACT

144. The Equality Act 2010 contains the following provisions:

> 13 Direct discrimination
>
> (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
>
> (2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.
>
> 136 Burden of proof
>
> (1) This section applies to any proceedings relating to a contravention of this Act.
>
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

145. We have considered the guidance set out in *Barton v Investec Henderson Crosthwaite Securities Ltd* [2003] ICR 1205, EAT, as approved and revised by the Court of Appeal in *Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases* [2005] ICR 931, CA as follows:

> (1) Pursuant to s.63A of the SDA, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s. 41 or s. 42 of the SDA is to be treated as having been committed against the claimant. These are referred to below as "such facts".
>
> (2) If the claimant does not prove such facts he or she will fail.
>
> (3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the

discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".

(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to note the word "could" in s.63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s.74(2)(b) of the SDA from an evasive or equivocal reply to a questionnaire or any other questions that fall within s.74(2) of the SDA.

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s.56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.

> (13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.

146. We have also considered *Nagarajan v London Regional Transport* [1999] IRLR 572, *Madarassy v Nomura International plc* [2007] IRLR 246 CA, *Ayodele v Citylink Ltd* [2017] EWCA Civ 1913. In *Hewage v Grampian Health Board* [2012] ICR 1054, SC in which Lord Hope endorsed the following guidance given by Underhill P in *Martin v Devonshires Solicitors* 2011 ICR 352, EAT:

> "'the burden of proof provisions in discrimination cases… are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination — generally, that is, facts about the respondent's motivation… they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or the other, and still less where there is no real dispute about the respondent's motivation and what is in issue is its correct characterisation in law'.

147. In *Madarassy v Nomura International plc* 2007 ICR 867 CA Lord Justice Mummery held as follows:

> "The court in Igen v. Wong expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. 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 unlawful act of discrimination." (para 56)

148. In *Glasgow City Council v Zafar* 1998 ICR 120, HL, Lord Browne-Wilkinson said that in the context of a discrimination claim 'the conduct of a hypothetical reasonable employer is irrelevant. The alleged discriminator may or may not be a reasonable employer. If he is not a reasonable employer he might well have treated another employee in just the same unsatisfactory way as he treated the complainant, in which case he would not have treated the complainant "less favourably".' He approved the words of Lord Morison, who delivered the judgment of the Court of Session, that 'it cannot be inferred, let alone presumed, only from the fact that an employer has acted unreasonably towards one employee, that he would have acted reasonably if he had been dealing with another in the same circumstances'. It follows that mere unreasonableness may not be enough to found an inference of discrimination.

CONCLUSIONS

PROTECTED DISCLOSURE DETRIMENT (i.e. "whistleblowing" detriment) s. 47B

The disclosure

149. The list of issues in this case frames the various alleged protected disclosures as a series of apparently separate disclosures. All of these alleged protected disclosures are contained within the same disclosure document submitted on 12 June 2021.

150. **In summary we found that the disclosure document dated 12 June 2021 was a qualifying protected disclosure by virtue of the disclosures at issues 1(b) and 1(d) discussed below**.

Approach to qualifying disclosures

151. We have considered whether the disclosure was a qualifying disclosure under section 43B of the ERA and also whether it is protected under section 43F as a disclosure to a prescribed person i.e. in this case the IOPC the regulator.

152. In the case of each alleged protected disclosure we have had to consider the following questions:

153. Section **43B** – was there a qualifying disclosure

153.1. Was there a disclosure of information?

153.2. Did Claimant believe that this tended to show a relevant failure? Specifically the Claimant alleges that the disclosures of information tended to show criminal activity (section **43B(1)(a))**, breach of legal obligation (section **43B(1)(b)**), attempt to conceal either of these (section **43B(1)(f)**)?

153.3. Was that belief reasonable?

153.4. Did Claimant believe that this was raised in the public interest?

153.5. Was that belief reasonable?

154. Section **43F** - if qualifying disclosure – was it protected when made to a prescribed person

154.1. It is not disputed that the relevant failures fell within the remit of the IOPC as a regulator.

154.2. Did Claimant believe that the information disclosed & any allegation in it are substantially true?

154.3. Was that belief reasonable?

ALLEGED QUALIFYING DISCLOSURES

Issue 1(b) "discrimination and dishonesty of Ex Det Sgt Murphy in detail, and explained her corrupt motives"

155. The content of the claim form makes plain that the Claimant's allegation was of discrimination and actual dishonesty not mere inadvertence or carelessness.

Content of the disclosure

156. The relevant passages of the disclosure are as follows:

> "[601] In August 2017, the IPCC sent the DPS-CST new Whistle blowing concerns that I had raised about discrimination and PCN's in a 230 page report called The Complete Ridiculous (TCR). Ex Det Sgt Susan Murphy read the information in the report and noted that DPS staff including Ch Insp Andy Dunn, Insp Campbell McKelvie, ex- Insp O'Connell, Ms Brownrigg and others, were named a being responsible for discrimination and criminal offences.
>
> Ex-Det Sgt Murphy should have read TCR and the other material (a lever arch folder of documents reports and legislation), then concluded that it was a Serious Corruption matter which included discrimination. She could then have referred it to the Met Police DPS Discrimination Investigation Unit (DPS-DIU) or the DPS Serious Misconduct Investigation Unit DPS- SMIU.
>
> Ex- Det Sgt Murphy chose not to follow either of those appropriate and correct pathways. [602]
>
> …
>
> Ex – Det Sgt Murphy did not notify ex-Ch Insp Stephenson that she had no read TCR nor any of the other documents that the IPCC had supplied the DPS-CST with. No DPS-CST staff member assessed TCR nor the associated material. DPS-CST staff breached their legal obligations under Police Reform Act 2003 Schedule 3, Police Conduct Regulations 2012 and Police Code of Ethics 2014.
>
> Ex Det Sgt Murphy committed the offence of Corrupt and Improper exercise of her Police powers and privileges, by re-cycling ex-Insp O'Connell's report of 11-01-2016, as an assessment of TCR, when TCR was a document written on 01-07-2017.

> Ex-Det Sgt Murphy was aware that ex-Insp O'Connell had acted unlawfully as an Appropriate Authority. She was also aware that retired Police officers named within TCR could be subject to Police Misconduct processes due to Sect 29 Police and Crime Act 2017. To conceal criminal offences by serving and retired Police, ex-Det Sgt Murphy provided the Appropriate Authority ex-Ch Insp Tracey Stephenson with false and inaccurate information about the contents of TCR.

157. Specifically in relation to his allegation of **perjury** the Claimant wrote as follows [607]:

> Under cross-examination, ex-Det Sgt Murphy admitted that she had not read TCR word for word. When taken to various pages in the 230 report, she stated that she could not recall the content on over 43 separate occasions.
>
> Ex-Det Sgt Murphy could not produce any evidence to show that she had assessed nor reviewed anything in TCR regarding Police Conduct matters nor discrimination.
>
> No records of assessments by ex-Det Sgt Murphy were retained on Tribune nor Centurion.
>
> There was nothing to confirm that ex-Det Sgt Murphy had reviewed or assessed the content of TCR.
>
> Ex-Det Sgt Murphy was not a credible witness. She had not read, reviewed nor assessed the Mis-Conduct nor discrimination disclosures contained within TCR. She had plagiarised ex-Insp O'Connell's report of 11-01-2016 to justify her actions and then mislead ex-Ch Insp Stephenson to pass false and inaccurate information to the IPCC. Those acts amounted to Corrupt and Improper behaviour and perverting Justice.
>
> Ex-Det Sgt Murphy had perjured herself to cover-up for her actions, in an effort to mislead ET Judges to find in the Commissioner's favour, thereby escaping any sanction for her dishonest actions.
>
> [610] To conceal the facts of the repeated acts to mislead the IPCC and IOPC, serving and retired DPS staff have committed perjury, to cover-up their attempts to Pervert Justice.

Allegation of discrimination

158. Beyond characterising the actions of DPS staff as "discriminatory", the disclosure document does not contain disclosures of information which could

reasonably be thought to articulate a cogent allegation of discrimination. This part we find cannot succeed.

Dishonesty/perjury

159. As to "dishonesty", this it seems is an allegation of perjury insofar as it relates to alleged dishonest evidence given an Employment Tribunal. Perjury is a criminal offence.

160. The information disclosed by the Claimant is that Sgt Murphy said on 43 separate occasions that she could not recall the content of The Complete Ridiculous report during her oral evidence.

161. We find that there was information relating to the evidence given by Sgt Murphy.

Belief in perjury

162. Was there a belief tending to show a failure?

163. We accept that the Claimant believed that this amounted to perjury. The inference drawn by him from that evidence is she had not read the report at all. His belief is that this showed that she had lied under oath, which was a criminal act.

Whether belief in perjury reasonable

164. Was that belief reasonable?

165. The Gardiner Tribunal took account of the quantity of information and the extent of the factual detail in The Complete Ridiculous ("TCR") as being reasons why she did not appreciate precisely what was being alleged that was different to what had gone before. By implication the Gardiner Tribunal found that Sgt Murphy had read TCR. That is a conclusion that seems to this Tribunal entirely reasonable and chimes with our own experience of the Claimant's documents being somewhat difficult to follow and matters confusingly being identified as "new" which appear on the face of it to be allusions to matters already complained about or investigated before.

166. Was the Claimant's belief reasonable?

167. We should not substitute our own views as to whether it would have been reasonable to believe that the circumstances tended to show perjury.

168. We have reminded ourselves that a reasonable belief may be wrong but nevertheless reasonable. We have also reminded ourselves that two different individuals might have different and conflicting reasonable beliefs based on the same information. In this case two different individuals might reasonably disagree about whether or not Sgt Murphy had lied.

169. It does not follow from the fact that the Claimant has come to a different view to the Tribunal in that case that his position is unreasonable *per se*. His

inference from the answers given is that the witness had simply not read the document at all, which was a conclusion that he might reasonably draw, albeit one that is contrary to the finding of the Gardiner Tribunal.

170. We have asked ourselves whether someone in the Claimant's situation, viewed objectively, could reasonably come to the belief that the answers given by Sgt Murphy tended to show perjury. Although this is somewhat finely balanced and the present Tribunal does not share Claimant's belief, we nevertheless find that there was some basis for him to come to that conclusion and ultimately we find it was reasonable for him believe that she was lying.

Belief in public interest

171. Did the Claimant believe that this disclosure of information was in the public interest?

172. We find that the Claimant did believe throughout that he was raising matters in the public interest. He plainly saw the treatment of his complaints as part of a broader pattern of what he perceived to be "corruption" or at least failures on the part of the Metropolitan police in investigating internal complaints about the actions of police officers.

Whether belief in public interest reasonable

173. Was that belief reasonable?

174. We acknowledge the argument made by the Respondent that the alleged protected disclosure was essentially repetitious and by this stage was simply about the Claimant himself and was so far removed from the wider public question of police misconduct as to mean that it was not reasonable for him to believe that it was in the public interest. We see the force in this argument. There was an element of repetition. The longer the Claimant's series of linked complaint go on, essentially repeating and referencing old concerns, the less reasonable it might be believed that this is in the public interest.

175. We have taken account however of the background of the public debate about internal investigations within the Respondent organisation. Given that background of the public debate about investigation of police officers and internal complaints about them, which seems to have been something in the Claimant's mind, although this point is somewhat finely balanced, we that the Claimant did *reasonably* believe that this matter was raised was in the public interest.

Belief that substantially true

176. We accept that the Claimant does believe that the information disclosed and allegations contained within it are substantially true.

Whether belief that substantially true reasonable

177. Was that belief reasonable? Focusing specifically on the belief in the *allegations* being substantially true, we do found that this belief was reasonable.

178. Again reminding ourselves that we must not substitute our own view as to what is reasonable and that individuals might reasonably disagree on the interpretation to be put on evidence, we find that it was reasonable of the Claimant to believe his allegation that Sgt Murphy had lied was substantially true, notwithstanding the Gardiner Tribunal's findings to the contrary.

179. It follows that the disclosure about dishonesty of Ex Det Sgt Murphy was a protected disclosure.

1(c) "the deliberate failures of Sgt Cheeseman and Det Supt Wagstaff to record Conduct Matters in the May 2019 concerns, I had raised about the Met Police Data Protection breaches about the Gangs Matrix database" (Second Form 728);

180. Page 604-605 contains the following:

> "APRIL 2019 NEW CONCERNS RAISED BY DC QUARM
>
> On 1 May 2019, the IOPC sent to the DPS-CST, new Whistle blowing concerns I had raised about discrimination, breaches of the Data Protection Act and, Health and Safety breaches. The DPS-CST staff were supposed to assess breaches. The DPS-CST staff were supposed to assess the information in compliance with their legal obligations under The Police Reform Act 2002 Schedule 3, the Police Conduct Regulations 2012 and IPCC Statutory Guidance 2015.
>
> Sgt Richard Cheeseman, was then line managed by Insp Ryan keating. Sgt Cheeseman handled the new information I had submitted. After looking at my records on he DPS Tribune database and speaking to Insp Keating, Sgt Cheeseman became aware of ex- Insp''Connell's report of 11-01-2016, ex-Det Sgt Murphy's DPS cse rort QU/01967/17 and Insp Keating / Ch Insp Tate's involvement in 2018.
>
> Sgt Cheeseman was aware of Operation Embley's progress and also, that several DPS officers within his area of work, were being accused of corruption. Sgt Cheesemen was aware that retired officers like ex- Ch Insp Stephenson and ex – Det Sgt Murphy could be held accountable for Police Misconduct breaches, if it was revealed that they had passed false information to the IPCC and IOPC. Then action was taken against them.
>
> To make the issue disappear, Sgt Cheeseman consulted with Det Supt Steve Wagstaff, a DPS Senior Leader who had formerly line managed ex-Det Sgt Murphy and Ch Insp Tate. He too was

> aware of the progress of Operation Embley. Det Supt Wagstaff knew that I had brought several Whistle blowing detriment and discrimination ET cases against the Commissioner of the Met Police. In 2013 he had been involved in a Police Misconduct investigation which had ensued from one of my previous disclosures to DPS.
>
> As DPS Appropriate Authority, Det Supt Wagstaff supported Sgt Cheeseman to pass onto the IOPC, false information that my concerns of April 2019 had been lawfully dealt with and assessed. Sgt Cheeseman had failed to discharge his duties under the Police Code of Ethics to challenge Wrong-doing and to no discriminate . I could not be a Police Whistle blower.

181. This extract contains conjecture and allegation. We have been unable to identify however specific factual content and specificity which would be capable of tending to showing a relevant failure.

182. We do not find that the Claimant has shown that he disclosed information tending to show the failure alleged at 1(c) of the list of issues.

1(d) "between July 2011 to November 2019, none of the Whistleblowing concerns about Police Conduct matters, [Police Criminal Networks] nor discrimination, that I raised via internal channels, the IOPC and/or the IPCC, were lawfully assessed or recorded by DPS staff" (Second Form 728);

183. The wording in quotes at issue 1(d) in the allegation in the title above appears verbatim at page 608 under the hearing "FACTS".

184. There are two parts to this alleged protected disclosure.

185. **First**, that the Claimant's whistleblowing concerns were **not lawfully assessed**. There are criticisms made of Inspector O'Connell, Geri Brownrigg and PS Keating, some of which is conjecture and allegation, but there are some specific factual disclosures contained within it, for example in respect of Ms Brownrigg the Claimant alleges:

> "In breach of her legal obligations under the Police Conduct Regulations 2012 and IPCC Statutory Guidance to Police 2015 and Police Code of Ethics 2014, Ms Brownrigg ignored the new information." [601]

186. It is clear from the content elsewhere on the same page that the new information being referred to is further information sent by the IPCC to DPS in May 2016, further to concerns raised earlier in October 2015.

187. The **second** part of the allegation relates to **lack of recording**. This allegation is simple. None of the allegations raised by the Claimant in a period of over 8

years between July 2011 and November 2019 were recorded within the meaning of the Police Reform Act 2002 ("PRA 2002") and the regulations.

188. The Claimant had number of serious matters including alleged criminal activity.

189. The scheme of the PRA 2002 read together with the relevant guidance appears to provide that certain matters should be recorded where a person *may have* committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings before investigation. Given this we find that the Claimant believed that this information tended to show that there had been breaches of legal obligation, specifically a failure to *record* conduct matters under the relevant statutory provisions.

Disclosure

190. We find that in respect of allegation 1(d) the Claimant did in the disclosure document among various allegations and conjecture disclose information about the actions or omissions of Inspector O'Connell, PS Keating and Geri Brownrigg and also the lack of recording.

Belief

191. We find that the Claimant did believe that the information disclosed tended to show breaches of the statutory provisions and guidance relating to investigation and recording conduct matters.

Whether belief reasonable?

192. We have again reminded ourselves that different interpretations may be placed on information leading to different conclusions which are each reasonable. Also, the Tribunal should not impose own view as to what is reasonable and we have reminded ourselves that a belief may be reasonable but wrong.

193. We find that the Claimant did reasonably believe that there had been breaches of the legal obligations to assess and record the conduct matters arising from his various complaints. While it might be open to the Respondent to say that there were various reasons for the actions taken or not taken, e.g. the threshold for recording, that is not the point. Viewed from the Claimant's perspective, we find the Claimant had a basis saying that matters being raised by him were not being adequately investigated. He was raising serious matters. These were not in an 8 year period recorded as giving rise to conduct matters.

Public interest

194. We find that the Claimant did believe it was in the public interest for similar reasons as those set out above, and similarly to our reasoning above in relation to 1(b), find that that belief was reasonable.

Substantially true

195. As to whether it was substantially true, we find that the Claimant did believe that the the information disclosed and the allegations contained within it were substantially true.

196. We find that it was reasonable for him based on what he understood to have this belief.

1(e) “DPS-CST staff deliberately passed false and misleading information to the IPCC/IOPC that my concerns about [Police Criminal Networks], discrimination, Health and Safety breaches and Police Conduct issues were linked to my previous and ongoing ET cases. When in fact this was inaccurate” (Second Form 728);

197. The heading of this allegations in quotes sets out verbatim the third bullet point on page 608 of the Disclosure Document. This allegation which appears at page 608 is a mere assertion. There is no information disclosed in that phrase.

198. Mr De Silva submits that this allegation should be read together with the following elements of the disclosure document:

198.1. Inspector O'Connell (in 2016): "Inspector O'Connell sent the outcome of his work to the IPCC. Thereby giving the IPCC the false information that my concerns about PCNs had been lawfully reviewed and assessed" .

198.2. Re Geri Brownrigg (in 2016): "The DPS-CST staff later send the IPCC false information that my concerns about discrimination and PCN's had been lawfully assessed and reviewed" ;

198.3. Chief Inspector Stephenson "agreed for the IPCC to be passed the false information that my concerns about discrimination and PCN's in TCT, had been lawfully assessed and reviewed" ;

198.4. Inspector Keating "passed the IOPC false information that my concerns about discrimination and PCN's in my disclosures of June 2018, had been lawfully assessed and reviewed";

198.5. Det Supt Wagstaff "supported Sgt Cheeseman to pass onto the IOPC, false information that my concerns of April 2019 had been lawfully dealt with" .

199. The allegation is dealt with by Inspector Chalmers in the third page of his outcome document [665].

Disclosure of information

200. If the Tribunal looks more widely at the additional information contained in the disclosure document, it is still the case that the matters set out by the Claimant are bare assertions of false information being provided, lacking specific information that would tend to show a relevant failure.

Reasonable belief

201. We accept that the Claimant believed that he was disclosuing information that tended to show a relevant failure and in the truth of the allegation.

202. The burden is on the Claimant to show that this belief was reasonable. In the absence of any supporting evidence that DPS-CST staff deliberately passed false and misleading information to the IPCC/IOPC, we are not satisfied that the Claimant has discharged the burden of showing us that a belief that he was tending to show a relevant failure was reasonable nor that it was reasonable to believe in the truth of it.

203. It follows that we do not find that this was a protected disclosure.

1(f) "to conceal the pattern of criminal offences, which would be exposed by my ongoing ET cases against the Commissioner, Senior leaders in DPS and DPS-ETU victimised me by sabotaging my attempts to Re-mortgage" (Second Form 728);

204. This headline sets out a verbatim quote from the final page of the Disclosure Document [610]. We consider this in the context of the following extracts from the Disclosure Document:

204.1. "To put pressure on me to [withdraw] my ongoing ET cases and hide the volume of DPS officers who had passed false information to the IPCC & IOPC, the Commissioner instructed Capsticks to put conditions on the issuing of a Deed of Postponement" [605]

204.2. "From April 2020, the Commissioner delayed issuing the [Deed of Postponement], causing me to lose my first Re-mortgage application in summer 2020 and later, my second Re-mortgage application in March 2021" [606]

Disclosure

205. Was there information? The Claimant was alluding to the Respondent instructing firm of solicitors to put conditions on his remortgage, following the Claimant's failure to pay off all of the costs order made against him by the Employment Tribunal.

Reasonable belief tended to show relevant failure

206. Was there belief that this tended to show a relevant failure? We find that the Claimant believed that his attempt to remortgage was being deliberately sabotaged, and this amounted to unlawful victimisation.

207. Was that belief reasonable? We do not accept that the Claimant's belief was reasonable. It is clear from the contemporaneous documentation that Debbie Ralph was chasing MOPAC for the necessary authority [507-509]. We accept the Respondent's submission that seek repayment of £16,000 was understandable. This was public money. It was appropriate to seek to recover

it. The Claimant appears to have lost sight of the fact that the costs order was made as a result of his own conduct in the litigation (in a forum where costs are the exception rather than the rule) and he had failed to pay it, in breach of a Tribunal order.

Public interest

208. Did the Claimant believe that this disclosure of information was in the public interest? We accept that the Claimant believed that this was in the public interest. His belief was that he was being victimised as a whistleblower and because of his race.

209. Was that belief reasonable? We do not find that this belief was reasonable and accept the Respondent's submission that the question of the Claimant's mortgage this was all about the Claimant's ongoing but personal battle with Respondent. His mortgage situation did not affect anyone else but the Claimant himself. Viewing the matter objectively, this matter had lost any meaningful connection to the wider public interest debate.

Substantially true

210. Did the Claimant believe that the information and any allegation contained within it were substantially true? We accept that the Claimant considered the information and allegations contained within it were substantially true.

211. Was that belief reasonable? For similar reasons to those given above, we do not find it was objectively reasonable for the Claimant to find that these matters were substantially true.

212. It follows that we do not find that this was a protected disclosure.

1(g) "as a result of the corrupt and discriminatory actions by DPS staff, DPS could not classify any information that I disclosed about Police Conduct matters nor discrimination, as Whistle blowing. That meant, I could not exercise the full range of my rights as a worker within the Metropolitan Police Service" (Second Form 728).

213. This headline sets out a verbatim quote from the final page of the Disclosure Document [610].

214. We find that this was a mere allegation which lacks sufficient content and specificity.

215. The phrase "I could not exercise the full range of my rights as a worker" makes clear that this is all about the Claimant rather than the public.

216. This does not amount to a protected disclosure.

(2) If so, whether any qualifying disclosure is a protected disclosure for the purposes of ERA **section 43F**: in particular whether the Claimant believed that the information

disclosed, and any allegation contained in it, were substantially true and if so whether this belief was reasonable.

217. We have considered this above as part of our conclusions on each alleged protected disclosure.

CONCLUSION ON PROTECTED DISCLOSURE

218. Our conclusion is that the disclosure document of 12 June 2021 **was a protected disclosure** due to the disclosures described in issue 1(b) (dishonesty of Sgt Murphy) and issue 1(d) (whistleblowing concerns not lawfully assessed nor recorded), but not the other elements.

DETRIMENTS

3(a) The DPS not reviewing, recording or finding any indication of a conduct matter in IOPC reference 2021/151239;

219. The allegation that DPS did not review the IOPC reference (i.e. the disclosure document) is clearly distinct from the allegation about recording/finding indication of conduct matter.

Reviewing

220. The key stages in the chronology of review are the "triage" by PS Cheeseman, ruling himself out of considering the complaint on 26 June 2021 and the decision of Inspector Chalmers to seek legal advice on 8 July 2021, which he followed up by chasing on 11 August 2021 and 4 September 2021.

221. The disclosure document had plainly been reviewed in the period late June to early July 2021. There was then a hiatus until late November 2021 when Inspector Chalmers was reminded of the complaint given that he had been notified about Employment Tribunal claim 18 (the present claim). He then provided an outcome by letter of 27 February 2022.

222. Although plainly the Claimant himself was unaware of steps that were being taken before the submission of his claim on 17 September 2021, in fact his complaint had been reviewed. It is a shame that no communication to the Claimant, which might have been good practice as a courtesy was made to let him know that the complaint was being looked at.

223. Nevertheless the allegation that there was no review fails given these findings of fact. There is no detriment in this respect.

Recording/finding indication of conduct

224. We have considered carefully the EHCR Employment Code on detriment. The guidance gives examples such as "rejected for promotion, denied an opportunity to represent the organisation at external events, excluded from opportunities to train, or overlooked in the allocation of discretionary bonuses".

These examples are very much focused on the individual and their personal employment circumstances rather than the circumstances of others.

225. We do not accept, as the Claimant appears to suggest that it is a right to have "conduct" placed on a colleague's record, nor do we accept that the failure to do this amounts to a detriment. The Tribunal considers that the Claimant would have a reasonable expectation to have his concerns considered and investigated if appropriate. We do not find it was a detriment to the Claimant for "conduct" not to be placed on a colleague's file on a provisional basis pending investigation or at the conclusion of the investigation.

226. In his letter dated 27 February 2022 [663-7] Inspector Chalmers deals with the question of conduct. He explained that he is making the assessment under the current regulations (i.e. the Police (Conduct) Regulations 2020) [665]. He also made reference to the IOPC Statutory Guidance on the Police Complaints System 2020), specifically to paragraphs 10.7 and 10.8 (set out above). This guidance suggests that there should be some consideration of any available evidence and the question of whether the circumstances show or reasonably implied a criminal offence. At this stage inherent likelihood may be considered.

227. Inspector Chalmers gave reasons why there was no indication of conduct. One of the allegations had already been considered previously for recording as a conduct matter, allegation about DS Sue Murphy [665]. That is a reason not to record that allegation, given the element of repetition, in line with guidance.

228. As to allegations made about PS Cheeseman and Det Supt Wagstaff, Inspector Chalmers' approach was to say that there were proceedings listed to be heard in September 2022 and stated that following the completion of those proceedings the Claimant could make a decision about whether to pursue the matter DPS at which point an assessment would be made as to whether a conduct matter should be recorded.

229. In relation to allegations of perjury made about Inspector Keating and Chief Inspector Tate, Inspector Chalmers came to the conclusion that officers not being aware of legislation was not an indication of a criminal offence or alternatively behaving in a manner that would justify the bringing of disciplinary proceedings. In any event he concluded that the Claimant was wrong about the legislation which Insp Chalmers explained was new, having only been enacted in 2020 and in any event any related to gross misconduct matters.

230. The Tribunal asked Insp Chalmers about what amounted to a "point to proof" which we understood to be synonymous with an indication. He gave a specific example but the essence of his evidence was that there would need to be evidence not merely an allegation.

231. In summary we find that Insp Chalmers followed guidance and made a decision about whether there was an indication, which had him to the conclusion that he should not record in these cases. To reiterate, the Claimant was entitled to have the matter considered but we do not find that he was entitled to any particular outcome in relation to conduct being placed on record.

232. We do not find that the Claimant suffered a detriment in respect of this allegation.

3(b) The DPS blanking all the new information about serious corruption that the Claimant had raised from March 2021 to September 2021 to unlawfully disconnect his legitimate concerns about 'Police Criminal Networks' and the 'No Discrimination Doctrine' from the public discourse about Police Corruption and the Misuse of Judicial Immunity;

233. We consider that the Claimant has not established the existence of "all the new information" between March 2021 – September 2021, which appear to be substantially repetitious and in very large part a reworking of old allegations and complaints.

234. In any event we do not find it fair to suggest that the DPS was "blanking" the Claimant during this period given that from late June 2021 onward steps were being taken to deal with his complaint, which was ultimately dealt with in an outcome letter dated 27 February 2022.

235. In any event we are satisfied that the substantial workload of Inspector Chalmers and his colleagues meant that some delay was understandable and excusable. As to Inspector Chalmers' evidence that he forgot about the case between the last time he chased the legal department on 4 September 2021 and November 2021 when he was reminded of it, we accept that evidence. We accept his explanation that workload was the reason why he forgot this case.

236. We do not find that the Claimant suffered a detriment in this respect.

3(c) DPS staff (supported by staff in the Directorate of Legal Services and the Respondent's ET Unit and senior leaders at the Metropolitan Police Federation) blocking his concerns in IOPC reference 2021/151239 from being recorded or investigated as serious corruption;

237. This appears to be substantially a repetition of allegation 3(a) above.

238. We accept Inspector Chalmers' evidence that it was he who took the decision that the content of the disclosure document was not "recorded". He did investigate it.

239. The Claimant has not proved that either the directorate of legal services or senior leaders at the Metropolitan Police Foundation "blocked" his concerns.

240. We do not find that the Claimant suffered a detriment in this respect.

3(d) DPS staff aiming to divert IOPC ref 2021/151239 into an Employment Tribunal process, thereby dishonestly manipulating innocent members of the judiciary and to apply judicial immunity to protect corrupt police officers.

241. Paragraph 137 of the Claimant's witness statement contains the following:

> 137) I reasonably and genuinely believed that the Met Police DPS failure to contact me about the Serious Corruption in my 728 report for IOPC ref 2021/151239 would lead to another Perversion of Justice by DPS officers.
>
> DPS staff were aiming to divert IOPC ref 2021/151239 into a Employment Tribunal process, thereby dishonestly manipulating innocent members of the Judiciary, to apply Judicial Immunity to protect corrupt Police officers.
>
> The feedback loop of the DPS actions would blowback against Police, When the DPS corruption was inevitably identified at a future date.
>
> Then as in the cases of Daniel Morgan and R V Liam Allan, public confidence in Police would be further undermined.

242. We do not accept the Claimant's characterisation of what has occurred. He has chosen to bring this employment tribunal claim, which is his eighteenth claim against the Respondent.

243. We do not accept that the Respondent or indeed any officer within it desires to be involved in defending claims brought by the Claimant in the Employment Tribunal. We accepted the heartfelt and honest evidence of Inspector Chalmers that he had no desire to be giving evidence in Employment Tribunal at all.

244. We do not find that there was any sense in which DPS staff were consciously or even unconsciously aiming to divert the IOPC complaint into an Employment Tribunal process.

245. We do not find that the Claimant suffered a detriment in this respect.

CAUSATION

246. We have not found any of the alleged detriments to be made out as detriments.

247. It is not necessary therefore to deal with causation.

5. Whether the Respondent is liable for the alleged acts of the Metropolitan Police Federation in relation to the alleged detriment stated at paragraph 3(c) above.

248. No basis has been advanced why Respondent should be liable for acts of the the Metropolitan Police Federation, which is a staff association representing "rank and file" officers and not the Claimant's employer.

249. The Claimant has not proven any link between the Police Federation and allegation 3(c) above.

DIRECT RACE DISCRIMINATION

6(a) The DPS failing to contact him about the contents of the Second Form 728s

250. In the Employment Tribunal hearing, the Claimant said that he was contacted once about a complaint in 2011 but never since.

251. In the decision of the Tribunal promulgated on 19 August 2020 (claim 11) the Tribunal found

> "We did not consider it was the role of either Mr Tate Mr Keating to revert to the Claimant to seek further information about his complaint before deciding whether or not to recorded as a complaint. This was not standard practice nor was it required by the applicable rules and regulations (Paragraph 95)."

252. The evidence of Inspector Chalmer was

> 31. Although a member of the public making a 'public complainant' is entitled to a copy of their complaint and to contact from the Metropolitan Police, an officer raising a conduct matter is not and I would not contact an officer in these circumstances.

253. We have not received any evidence which suggested that Inspector Chalmer's usual practice was to contact an officer.

254. We noted the content of the IOPC guidance in the final sentence of paragraph 10.7, i.e. that where an allegation has been made which does not explain what has been done consistituting an offence further information and clarification should be sought from the complainant. This provides a mechanism for contacting a complainant in those circumstances.

255. Ultimately however in this case Insp Chalmers appears to have been able to engage with the factual content of the Claimant's allegations, which are discussed in his outcome letter dated 27 February 2022. Much of the content had been complained about before and it seems that Insp Chalmers has access to some of this earlier material. This is not in our judgment the situation where he plainly needed further information or clarification, such as to require an explanation as to why he did not contact the Claimant as the complainant in this matter.

256. Given that the Claimant has failed to establish less favourable treatment, this allegation of race discrimination fails.

6(b) DPS staff ignoring the new information in IOPC reference 2021/151239.

257. We find that the factual premise of this allegation that staff ignored the disclosure document is flawed. The matter was triaged, referred to Inspector

Chalmers, advice taken on it and ultimately a conclusion communicated by letter on 27 February 2022.

258. The Claimant purportedly highlighted new allegations in blue. The second paragraph highlighted in blue [601] begins a narrative in January 2016, which was over five years earlier at the time that this text was written. On page 603 the Claimant refers to matters from 2014 onwards. On page 608 the Claimant begins narrative under the heading "facts" with the date July 2011 i.e nearly 10 years earlier. In conclusion on page 610 he refers to events from 2016 to present. The narrative highlighted blue makes reference to an earlier series of employment tribunal cases.

259. The Tribunal finds the disclosure document was in large part a repetition of old allegations. To the extent that there may have been some additional information, the thrust of the complaint was to refer back to earlier complaints and matters already litigated, and the blue highlighted allegedly identifying new matters was unhelpful and misleading.

Comparators

260. As to Det Insp Veeren, the Claimant's case is that Det Insp Veeren's allegations were taken seriously leading to an investigation by the IOPC (Operation Empley), whereas the Claimant's own allegations were not investigated in this way.

261. Under section 23 of the Equality Act 2010 there must be no material difference between the circumstances of the claimant and a comparator. We find that there are material differences. First, Operation Embley was the result of allegations by a number of DPS officers (of whom Det Insp Veeren was only one), a point referred to in paragraph 84(e) of the written reasons in Claim 13.

262. Second, the evidence before the Tribunal suggests that the allegations made by DI Veeren were specific in nature and were supported by evidence in the form of a recording (see BBC article [630]).

263. DI Veeren's allegations were serious and cogent allegations which we considered would be readily understood and raised a concern of clear and broader public importance i.e. interference in investigations, the case of an officer having relationships with multiple sexual assault victims and the case of an officer continuing to work despite facing allegations of sexual harassment. By contrast the Claimant's allegations contained within the disclosure document are convoluted and in the main appear to relate to matters arising from his own personal previous complaints and employment tribunal claims. Notwithstanding our finding that a couple of the elements of the disclosure document amounted to protected disclosures, the majority of the document is going over matters principally relevant to the Claimant personally rather than matters of wider public importance.

264. Considering the case of a hypothetical comparator, we have considered how a hypothetical non-Black officer might be treated should he or she present purportedly new allegations which in fact had been litigated before and

stretched back 10 years from the point which a complaint was put in. It seems to ask overwhelmingly likely that they would receive similar treatment.

265. It follows that we do not find that there was less favourable treatment which might be the basis of a claim of direct race discrimination.

Causation: was this treatment because of race?

(7) If so, whether this was less favourable treatment of the Claimant by the Respondent because of his race. The Claimant relies on the fact that he is a black African man (which is admitted by the Respondent) and alleges that had he been of a different race the complaints would not have been ignored.

266. Although we have not found that there was less favourable treatment, we have gone on to deal with causation of the matters above.

267. We have considered whether the content of public investigations into the Respondent, including the recently published Casey report, is sufficient in this case to satisfy the initial burden of proof on the Claimant such that a Tribunal could conclude, in the absence of an explanation that an act of race discrimination had occurred. Ultimately we find that the content of the Casey reports are pieces of the evidential background which might support a nonwhite claimant in satisfying the initial burden of proof on them in the context of a claim of discrimination brought against the Metropolitan Police. It is a factor which would weigh in the scales in favour of concluding that a reasonable Tribunal might (in the absence of an explanation) find that discrimination had occurred.

268. In a marginal case the content of the Casey reports might be enough to tip the balance in relation to the initial burden of proof. We do not however find that DC Quarm's present claim is such a case. There is an absence of evidence specific to this case suggests that race was a factor in the Claimant's treatment either directly or by reasonable inference.

269. We note that the Claimant did not put to Inspector Chalmers in cross examination that race was a factor in the treatment he received.

270. Mr de Silva rightly did not take a technical point that the case had not been put, precluding a conclusion that race discrimination had occurred, but relied upon this as an evidential point. We consider that fair, and similarly the Tribunal does consider it significant that the case has not been put in a technical sense, and cannot succeed given that the Claimant is a litigant in person. In circumstances in which the Claimant is no stranger to litigation in both the criminal and employment jurisdictions, however, and we consider reasonably understands that he must put his case, we do think there is some strength in the submission that this is a point of evidential significance, i.e the allegation of race discrimination was not put because the Claimant did not believe it.

271. Our conclusion on this point is strengthened by a comment of the Claimant made in evidence that he thought his treatment by the Respondent was

because he was a troublemaker. Being a troublemaker we see as supporting that the Claimant felt he had genuinely had suffered detrimental treatment as a whistleblower, but not the claim of race discrimination.

272. We have not found facts proved which would support directly or by reasonable inference that race is a factor in the way that the Claimant has been treated.

VICTIMISATION

Protected acts

273. The Respondent acknowledges that the Claimant's protected acts for the purposes of the victimisation complaint are his previous claims before the Employment Tribunal pursued in 2007, 2008, 2011, 2016, 2017, 2018 and 2019.

Detriment

(8) Whether the Respondent subjected the Claimant to the alleged detriment of not reviewing, recording or finding any indication of a conduct matter in the Second Form 728 forwarded on 15 June 2021.)

274. The Claimant's claim that there was no review is not made out in precisely those terms, since it was reviewed and dealt with. There was however a substantial delay. A delay may amount to a detriment. In the circumstances of this case we found that there was a degree of caution adopted by Insp Chalmers leading to legal advice being taken. There was a substantial history of internal complaints and claims. It was not inappropriate we find for Insp Chalmers to take advice, nor did we find that this was in itself a detriment.

275. Part of the delay was caused by Insp Chalmers simply forgetting about the Claimant's complaint because he was busy, until he was reminded by Debbie Ralph, Head of Misconduct and Litigation in late November 2021. Given the volume of complaints being dealt with by this department and Inspector Chalmers personally, we accept that evidence. The Claimant himself, in response to questions from Respondent's counsel realistically and fairly accepted Insp Chalmer's explanation on this point.

276. We have considered whether it could be said that the fact of taking legal advice was due to the history of the Claimant having made claims which are protected acts. We think that would be too simplistic a view. In the circumstances of this case taking legal advice was part of doing a thorough job in what must have struck Inspector Chalmers as a complex case. He thought that it was possible that some matters might already have been dealt with. It seems to us that this was a prudent and appropriate approach.

277. With the benefit of hindsight, we consider that Act Insp Chalmers might have sent a short email of acknowledgement of the delay as a courtesy. We do not find the absence of this to be a detriment. He made it clear that he wanted to provide a substantive response.

278. Even if we are wrong about the recording/indication of conduct question, and in fact that was a detriment, we do not find that this was because of protected acts.

279. Inspector Chalmers seemed to have limited understanding of what employment tribunal processes were ongoing. He did know however that the Claimant was a serial litigant.

280. We find that the Insp Chalmers made a genuine finding that these were historic and repetitive allegations being made or was to be subject to future proceedings and that it did not cross the appropriate threshold for recording at that stage. It is clear from his comments in his outcome letter dated 27 February 2022 [page 666] that he explained to the Claimant that once the allegations levelled at Cheeseman and Wagstaff have been considered in the Tribunal it is open to the Claimant to pursue the matter again. In other words the Claimant is not closed off from pursuing this.

Failure to record/lack of finding of indication of conduct

281. We find that the alleged failure to record matters and lack of finding of an indication of conduct are in reality facets of the same thing. Because Inspector Chalmers found that there was no indication of conduct, he did not record them. The details for this are given in his letter dated 27 February 2022. In very summary form he found that the allegations were historic and repetitious and had either been dealt with or in some cases were going to be the subject of upcoming Employment Tribunal proceedings.

282. We find that the Claimant was entitled to have his allegations considered fairly. We find that this is what happened. Not only was the scrutinised by Acting Inspector Chalmers but also the Directorate of Legal Services. It would only be if there is an indication that someone may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings. Careful judgment must be exercised in the application of this threshold since these are both serious matters with implications for the individual involved.

283. The fact that none of this led to a "recorded" offence or indication of conduct does not in itself we find amount to a detriment. It is simply the case that the Claimant disagrees with that outcome. He is not entitled to have a particular recording outcome simply because he wishes it.

284. We do not find that this amounted to a detriment.

If so, whether this was done to undermine the Claimant's chances of success in his ongoing Tribunal cases 3201471/2019 (Claim 15) and 3200639/21 (Claim 17) and to punish him for previous cases against the Respondent.

285. The way that this test of causation was framed in the list of issues does not correctly reflect the test of causation we should apply for a claim of victimisation. The Claimant does not need to show that the alleged detriment was to punish him. That would present an unnecessarily high hurdle for the

the Claimant. The question for the Tribunal is whether the alleged detrimental treatment was because of the protected acts.

286. While it is not necessary for us to determine this as part of a claim of victimisation, since it was contained within the list of issues, we have considered the suggestion that this was done to undermine the Claimant's chance of success in his Tribunal cases and to punish him for previous cases. We do not find that this is made out at all. We do not find that Act Insp Chalmers was acting in concert with colleagues who have been involved or were to be involved in previous Employment Tribunals. We do not find that he had been influenced by them in the way that he dealt with this case.

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Employment Judge Adkin

Date 14 June 2023

WRITTEN REASONS SENT TO THE PARTIES ON

14/06/2023

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

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

APPENDIX

AGREED LIST OF ISSUES

CLAIM FOR WHISTLEBLOWING DETRIMENT

1. Whether the alleged disclosures in subparagraphs 1(a)-(g) below are qualifying disclosures pursuant to section 43B of the Employment Rights Act 1996 (including whether they were disclosures of information, whether the Claimant believed that they were made in the public interest and tended to show one of the matters stated in ERA subsections 43B(1)(a)-f) of the Employment Rights Act 1996 and whether such belief was reasonable):

    a. ~~"*factually accurate new information about discrimination and criminal offences by the Respondent's ET and DPS*[1] *staff"* (the Form 728 dated 23 March 2021 (**"First Form 728"**))~~;

    b. *"discrimination and dishonesty of Ex Det Sgt Murphy in detail, and explained her corrupt motives"* (Form 728 dated 23 April 2021 (**"Second Form 728"**));

    c. *"the deliberate failures of Sgt Cheeseman and Det Supt Wagstaff to record Conduct Matters in the May 2019 concerns, I had raised about the Met Police Data Protection breaches about the Gangs Matrix database"* (Second Form 728);

    d. *"between July 2011 to November 2019, none of the Whistleblowing concerns about Police Conduct matters, [Police Criminal Networks] nor discrimination, that I raised via internal channels, the IOPC*[2] *and/or the*

[1] Directorate of Professional Standards
[2] Independent Office for Police Conduct

IPCC[3], were lawfully assessed or recorded by DPS staff" (Second Form 728);

e. *"DPS-CST[4] staff deliberately passed false and misleading information to the IPCC/IOPC that my concerns about [Police Criminal Networks], discrimination, Health and Safety breaches and Police Conduct issue's were linked to my previous and ongoing ET cases. When in fact this was inaccurate"* (Second Form 728);

f. *"to conceal the pattern of criminal offences, which would be exposed by my ongoing ET cases against the Commissioner, Senior leaders in DPS and DPS-ETU victimised me by sabotaging my attempts to Re-mortgage"* (Second Form 728);

g. *"as a result of the corrupt and discriminatory actions by DPS staff, DPS could not classify any information that I disclosed about Police Conduct matters nor discrimination, as Whistle blowing. That meant, I could not exercise the full range of my rights as a worker within the Metropolitan Police Service"* (Second Form 728).

2. If so, whether any qualifying disclosure is a protected disclosure.

3. If so, whether the Respondent subjected the Claimant to the following alleged detriments after the Second Form 728 was forwarded to the Respondent by the IOPC on 15 June 2021 (with the IOPC reference 2021/151239):

   a. The DPS not reviewing, recording or finding any indication of a conduct matter in IOPC reference 2021/151239;

   b. The DPS blanking all the new information about serious corruption that the Claimant had raised from March 2021 to September 2021 to unlawfully disconnect his legitimate concerns about 'Police Criminal

[3] Independent Police Complaints Commission
[4] Complaints Support Team

Networks' and the 'No Discrimination Doctrine' from the public discourse about Police Corruption and the Misuse of Judicial Immunity;

c. DPS staff (supported by staff in the Directorate of Legal Services and the Respondent's ET Unit and senior leaders at the Metropolitan Police Federation) blocking his concerns in IOPC reference 2021/151239 from being recorded or investigated as serious corruption;

d. DPS staff aiming to divert IOPC ref 2021/151239 into an Employment Tribunal process, thereby dishonest[l]y manipulating innocent members of the judiciary and to apply judicial immunity to protect corrupt police officers.

4. If so, whether the Respondent subjected the Claimant to any detriment on the ground of a protected disclosure.

5. Whether the Respondent is liable for the alleged acts of the Metropolitan Police Federation in relation to the alleged detriment stated at paragraph 3(c) above.

CLAIM FOR DIRECT RACE DISCRIMINATION

6. Whether the Respondent subjected the Claimant to the following alleged detriments after the Second Form 728 was forwarded to the Respondent on 15 June 2021:

a. The DPS failing to contact him about the contents of the First and Second Form 728s;

b. DPS staff ignoring the new information in IOPC reference 2021/151239.

7. If so, whether this was less favourable treatment of the Claimant by the Respondent because of his race (the Claimant relies on the fact that he is a black African man).

CLAIM FOR VICTIMISATION

8. Whether the Respondent subjected the Claimant to the alleged detriment of not reviewing, recording or finding any indication of a conduct matter in the Second Form 728 forwarded on 15 June 2021.

9. If so, whether this was done to undermine the Claimant's chances of success in his ongoing Tribunal cases 3201471/2019 (Claim 15) and 3200639/21 (Claim 17) and to punish him for previous cases against the Respondent.

10. The Respondent acknowledges that the Claimant's protected acts for the purposes of the victimisation complaint are his previous claims before the Employment Tribunal pursued in 2007, 2008, 2011, 2016, 2017, 2018 and 2019.

REMEDY

11. If the Respondent treated the Claimant unlawfully, what injury to feelings if any he has suffered and what compensation if any is he entitled to.

12. In relation to his claim for whistleblowing detriment, whether any compensation should be reduced by 25% on the basis that an alleged disclosure was not made in good faith.