EMPLOYMENT TRIBUNALS

Claimant: Mr S Kalar

Respondent: The Commissioner of Police of the Metropolis

Heard at: London Central Before: EJ Nicolle sitting with Non-Legal Members**:** Mr T Harrington-Roberts and Mr D Kendall

On: 5-18 June 2024 and 4-18 November 2024 and 19 November 2024, 2, 3, 16 January and 4, 10, 11 and 27 February 2025 in Chambers

Appearances:

For the Claimant: In person

For the Respondent: Ms M Murphy, of counsel.

JUDGMENT

Withdrawn allegations

1. The following allegations were withdrawn by the claimant during the hearing and are therefore dismissed.

   a) The 4 remaining allegations of direct sex discrimination against Superintendent King were withdrawn on 10 November 2024.

   b) The Claimant withdrew alleged protected act number 1 on 10 November 2024 and therefore alleged detriment (the move from PDS) as an act of victimisation fails as there is no prior protected act.

2. The claims for direct race and disability discrimination pursuant to section 13 of The Equality Act 2010 (the EQA), discrimination arising from disability pursuant to S 15 of the EQA, failure to make reasonable adjustments on account of disability pursuant to S 20, 21, 22 and 39 of the EQA, harassment on account of race and disability pursuant to S 26 of the EQA, victimisation pursuant to S 27 of the EQA, and detriment on account of making protected disclosures pursuant to S 47B of The Employment Rights Act 1996 (the ERA) fail and are dismissed.

REASONS

The Hearing

3. An application was made via the Respondent for the postponement of the hearing on day one as result of the non-availability of Inspector Baird. The Tribunal refused this application with oral reasons being given. The Respondent requested and has been provided with written reasons. The Tribunal decided that the most appropriate course, to balance the respective potential prejudice to the parties, was for the hearing to take place in two tranches with the evidence of Inspector Baird, subject to his recovery and return to work, together with the evidence of those witnesses whose evidence is interconnected with his, being deferred to the second tranche of the hearing. Further, it was agreed that the Claimant would be recalled for further cross examination on those matters referable to the evidence of the Respondent's witnesses to be called in the second tranche of the hearing.

4. The Tribunal was provided with an agreed bundle comprising of 2340 pages. A significant number of additional documents were added during the hearing with the consent of the parties.

The Issues

5. The Tribunal was referred to what constitutes an agreed list of issues (pages 322-338 in the bundle) to be read in conjunction with the most recent version of the table of allegations (December 2023) at pages 300-319 in the bundle. Ms Murphy provided the Tribunal and the Claimant with a single consolidated document setting out the issues to incorporate the original list of issues, the table of allegations and the revised schedule of protected disclosures as per sections 26-30 of the list of issues. This was agreed by the Claimant and formed the basis of the Tribunal's deliberations and conclusions. She also provided the Tribunal with a chronology of relevant events. The Tribunal was grateful for this assistance.

Witnesses

6. The Claimant gave evidence and for the Respondent the following individuals gave evidence in the first tranche of the hearing. They are referred to by their most recent status within the Metropolitan Police, which is not necessarily the status they held at the time of the relevant events, and where they have retired without their previous police status. They are set out in the order in which they appeared.

Mr Robin Scott Hall, Acting Inspector in the SO50 Border Counter Terrorism Command, (Acting Inspector Hall).

Mr James Stuart William Herring, Chief Inspector in the West Area Neighbourhoods, Ealing Borough, (CI Herring).

Ms Amanda Louise King, (Superintendent King)

Mr Desmond McHugh, (Mr McHugh)

Mr Derek Mark Andrew Fleeman, (Mr Fleeman)

Mr Paul Andrew Kerr – Detective Chief Inspector in SO15 Borders, (DCI Kerr)

Mr Ganesan Rajan – Superintendent, Head of Wandsworth Borough Neighbourhood Policing, SWBCU, (Superintendent Rajan).

5. In the second tranche of the hearing the Tribunal heard evidence from the following.

Ms Sarah Waller, HR Case Manager, Employed by Shared Services Connected Limited, (Ms Waller).

Mr Alexander Hylton Marshall, Acting Chief Inspector in the Counter Terrorism Border Operations Centre part of Counter Terrorism Policing Headquarters, (ACI Marshall).

Mr Michael James John Balcome, (Mr Balcome).

Mr Martin Baird, Inspector (Inspector Baird)

Ms Marlise Davies, Chief Inspector in the SO15 Borders Counter Terrorism Command, (CI Davies). She gave evidence remotely, appropriate permissions having been obtained from a cruise ship moored in Antigua.

Ms Sophia Lisa Venosi, Grievance Assessor in the Grievance Management, Team, (Ms Venosi).

Findings of Fact

7. The Claimant had been employed as a police officer by the Respondent since 2 June 1993 until his retirement in June 2023.

Policies and procedures

Grievance Policy and Procedure

8. Relevant provisions include:

- That a grievant should not be subject to less favourable treatment.
- That relocation or reassignment of duties for any reason during an ongoing grievance would not normally be appropriate.
- That the Grievance Management Team (the GMT) will carry out an initial review of the grievance on the basis of the information provided by the grievant.
- The formal grievance procedure should normally be completed within no more than 63 calendar days from the appointment of the Assessor but in exceptional circumstances it may take up to 136 calendar days for a case to be concluded.

Whistleblowing and reporting wrong doing policy

9. The policy provides that where the allegation involves the line manager or member of the same team or Operational Command Unit (OCU), consideration may be given to moving those subjects to the allegation, if appropriate and proportionate to the allegation.

The individual who has reported wrongdoing must never be moved unless they request to do so. The Respondent did not classify the Claimant as the reporter of wrongdoing.

Local Recovery Planning Meetings (LRPMs)

10. LRPMs are held to decide on who should move and when. Consideration is given as to the operational needs of where the individual is moving from against the needs for additional resource at their preferred location. The respective welfare needs of officers requesting a move are taken into account.

Sickness absence management: overview

11. Key action for managers includes that on becoming aware that a team member is off sick they should phone them as soon as possible, within 24 hours. The policy provides for a case conference at 40 days. The case conference will normally attended by the manager, the individual employee, HR case management (if required), and Police Federation or TU representative or any Met colleague or staff support association representative.

Recuperative duties process

12. The policy provides that typically recuperative duties would not exceed six months, but in exceptional circumstances the recuperation period can be extend up to 12 months. Recuperative duties can only be authorised by OH.

13. The policy provides that blended working advise should be time based for a limited period and designed to support a return to full on-site attendance and full duties.

14. The managers' guide to recuperative provides that it refers to a short term temporary period that is allocated to an individual that cannot complete the normal duties undertaken as part of their role or if they are falling short of full deployment following an injury, accident, illness or medical incident.

Case conferences

15. The Respondent says that case conferences are a standard practice of managing welfare issues. The Respondent denies that a case conference is equivalent to a potential disciplinary process.

Whippet packs

16. The Respondent maintains work force planning packs (referred to as whippet packs) which include ethnic data.

Posts and project work

17. The Respondent says that all officers need to be allocated to a post. Project work is not funded. Borders is separately funded from the MPS under the terrorism budget.

Career progression and retirement

18. The majority of police officers, at all levels of seniority, retire on achieving 30 years' service when they receive a pension equivalent to their final salary. It was noticeable that virtually all of the senior Borders/MPS witnesses who had reached 30 years' service had retired. This clearly represents a significant benchmark. Whilst the MPS has moved to a career average salary scheme it is apparent that there is a financial benefit to employees in reaching a hierarchical/remunerative high point prior to retirement and equally a disadvantage in suffering a performance/capability/sickness related dismissal prior to reaching this milestone. We therefore consider that this was a significant factor in the final years of the Claimant's employment. It is also apparent that the Claimant was exploring and preparing for life outside the MPS for some years before reaching his 30 year retirement milestone.

Disability

19. The Claimant relies upon four impairments (physical and mental) and says they commenced on or around the following dates:

- Anxiety – 2017
- Bronchiectasis – October 2017
- Knee injury – September 2020
- Sjogren's Syndrome – May 2021

20. It is therefore necessary to set out the relevant evidence relating to the conditions relied upon by the Claimant prior to 17 September 2020.

Disability Impact Statement dated 15 April 2023

Right knee

21. The Claimant says that the disability started in 1999. However, his condition was aggravated in the summer of 2020 whilst exercising in his garden. He wears a heavy duty knee brace. He says that he is unable to run, twist or turn as the pain is substantial.

Bronchiectasis

22. The Claimant says that he was officially diagnosed on 27 May 2021 but all of the daily symptoms were prevalent for many years before this. He had severe pneumonia in 2008, from which he says he nearly died, a further incidence of pneumonia in 2010, whooping cough in 2018 and the diagnosis of Bronchiectasis in 2021. He takes Carbocisteine to help with the condition.

Sjogren's syndrome

23. The Claimant says that the symptoms were present for months/years prior to his receiving formal diagnosis on 14 September 2021. He refers specifically to very bad short term memory loss, stiffness of joints, extremely dry eyes, excessive throat dryness every night and extreme fatigue. He takes Pilocarpine capsules to help with the condition.

Mental Health – severe anxiety

24. The Claimant says he has been suffering with severe anxiety on a daily basis since 2017. He relies on his visiting Flint House, a police rehabilitation home in Goring, for two weeks in 2017 and 2019. He has received EAP counselling, talking therapies and CBT counselling.

25. He refers to being extremely paranoid, having severe panic attacks, chronic insomnia and breakdowns in front of his family and friends on several occasions. The Claimant has not taken any medication for the condition. He referred to having a bad experience with anti-anxiety medication in 2000 and did not want to revisit this.

26. The Claimant says that he had Covid vulnerability status from March 2020 as a result of his severe respiratory history. This is not, however, relied on as a separate disability.

27. Superintendent King says that she first became aware that the Claimant was suffering from anxiety from an OH report dated 17 September 2020. She became aware of his history of bronchitis when she completed his Covid vulnerability assessment on 9 September 2020.

Other documents relevant to the Claimant's disabilities:

28. April 2019 – Stay at Flint House. The Claimant attended with a diagnosis of mild depression/anxiety. He was described as struggling with difficulty with sleeping, low motivation and being withdrawn.

29. For the boxes relating to the following the Claimant ticked one which meant that he had experienced them on several days in the two weeks prior to 8 April 2019:

- Feeling nervous, anxious or on edge
- Not being able to stop or control worrying
- Worrying too much about different things
- Trouble relaxing
- Being so restless that it is hard to sit still
- Becoming easily annoyed or irritable
- Little interest or pleasure in doing things
- Feeling down, depressed or hopeless
- Trouble falling or staying asleep or sleeping too much
- Feeling tired or having little energy
- Trouble concentrating on things, such as reading the newspaper or watching television.

30. He ticked box two (more than half the days) in respect of feeling afraid as if something awful might happen.

31. He ticked box zero (not at all) in respect of poor appetite or over eating, feeling bad about yourself, moving or speaking so slowly that other people could have noticed and thoughts that he would better off dead, or of hurting yourself in some way.

Summary of the Claimant's active and significant past medical conditions as provided by his GP, Dr Richard Hall, dated 1 December 2022

32. This only referred to mixed anxiety and depressive disorder as at 11 October 2022. However, the Claimant says that it is incomplete as it omits a number of significant conditions and therefore is not a reliable record.

OH referral dated 30 January 2018

33. This refers to the Claimant being of sick on 9 November 2017 as a result of Bronchitis.

OH review with Dami Olarinmoye on 5 February 2018

34. Mr Olarinmoye said that he considered that the Claimant was unlikely to be considered to have a disability under the Equality Act 2010 as he does not have a physical health condition or impairment which has lasted longer than 12 months. However, this represents a determination to be made by the Tribunal.

The Claimant's supervisors

35. The Tribunal was referred to a summary of the Claimant's supervisors (page 2260). With the exceptions of Mr Adrian David and Mr Shaju Bhaskaran the Claimant agreed with this list. His supervisors from 7 July 2013 were as follows:

- Jonathan Edwards — 7 July 2013 – 18 July 2016
- Ms Grace Blake-Turner — 19 July 2016 – 31 March 2017
- Michael Jonathan Belej — 1 April 2017 – 1 October 2017
- Superintendent Rajan — 22 March 2018 – 4 September 2018
- Nathan Crinyion — 5 September 2018 – 14 January 2019
- Mr Fleeman — 16 January 2019 – 27 October 2019
- Superintendent King — 28 October 2019 – 4 May 2020
- Superintendent Rajan — 5 May 2020 – 7 May 2020
- Superintendent King — 8 May 2020 – 13 June 2021
- ACI Marshall — 14 June 2021 – 29 August 2021
- Inspector Baird — 31 August 2021 – 22 June 2022
- Acting Chief Inspector Hall — 15 August 2022 – 7 June 2023

Chronology of relevant events by calendar year

2016

Performance development review dated 31 March 2016.

36. This was completed by Jonathan Edwards (Mr Edwards). The Claimant indicated that he was interested in promotion and lateral progression to specialist roles. The Claimant was graded as competent (number 3 on a scale of 1 for exceptional to 5 as not yet competent).

2017

37. The Claimant attended Flint House for two weeks in July 2017. His diagnosis was given as acute severe stress. He was referred to as hyperventilating.

38. On 24 August 2017 the Respondent informed the Claimant that he was to be posted to Terminal 2.

Email from the Claimant to Mr Belej of an unspecified date in late August 2017

39. The email was sent after the Claimant was informed that he was moving from Ports Duty Supervisor (PDS) to Terminal 2 at Heathrow but before the actual move. The Claimant says that he saw the move as a regressive step. He had been at Terminal 2 as an Acting Inspector in 2008. The Claimant stated that he was shocked and wished to stay at PDS. He questioned what development needs would be met by the move.

40. The Claimant refers to the breakdown of his working relationship with Inspector Blake-Turner. He says that she targeted him with a ferocity he had not previously seen and told him to shove any future complaints up his arse.

41. The Claimant's posting at Terminal 2 commenced on 2 October 2017.

42. He refers to his posting to Terminal 2 as a "punishment post" and that he later moved to Terminal 5 to escape from it. He says that Mr Fleeman immediately disliked him and started to gather evidence against him using "supervisor moles", and monitoring him on CCTV on numerous occasions to intimidate him.

43. In a text message to Superintendent Rajan of 14 November 2017 the Claimant referred to having had a really torrid week with his chest infection getting progressively worse and that he had not slept at all due to incessant violent coughing, vomiting, sore throat and breathing issues.

2018

44. In a text message to Superintendent Rajan in February or March 2018 the Claimant stated:

> "In all honesty mate our health issues are beginning to take its toll on my mental health …. and that is coming from someone who is a very strong guy!!"

Evidence of Mr McHugh

45. Mr McHugh says that the PDS role entailed managing calls and alerts which involve potential terrorism intelligence and to organise staff to undertake the work required in relation to the intelligence received.

46. He recalls the Claimant having a low level dispute/disagreement with Inspector Blake-Turner and there being tension between them.

47. He considers that the move from PDS to Terminal 2 would provide the Claimant with additional experience of managing people which he believes was lacking in the PDS role.

Evidence of Mr Fleeman

48. Mr Fleeman describes the Claimant as being fixated on the relationship he had with his previous Line Manager, Inspector Blake-Turner. However, he cannot recall the Claimant complaining that he had been removed from the PDS role.

Claimant's performance and development review 31 March 2018

49. The Claimant indicated that he was interested in promotion and lateral development. In respect of lateral development the Claimant referred to Terminal 5 and PDS on the basis that it would provide more "stretch".

Lost credit card incident

50. Chief Inspector Herring received a telephone call from the Claimant on 23 March 2018 to report that following the detention of a suspect a credit card belonging to them had been temporarily lost. It was subsequently retrieved.

51. In his witness statement Chief Inspector Herring refers to warning the Claimant that he would like to debrief him at a later date to assess any organisational learning from the incident to ensure that all parties could learn from what had happened. He makes reference to "informal reflective practice". The Claimant contends that this has an implication of disciplinary action.

52. The Claimant attended a meeting with Chief Inspector Herring and ACI Marshall on 13 July 2018 at Terminal 5. It was in one of the SO15 Officers near B Gates. Chief Inspector Herring refers to the meeting involving an informal chat by way of operational debrief for organisational learning. He denies that the meeting was hostile or that the venue was inappropriate. He denies that Chief Inspector Matt Cray (Chief Inspector Cray) had any knowledge of the meeting.

53. By 11 April 2018 the Claimant had requested a move to Terminal 5.

54. In approximately July 2018 the Claimant moved to Terminal 5.

Move to St Pancras International (SPI)

55. The Claimant says that Sergeant Steve Cash and PS Moreno Sidoli (PS Sidoli) were prioritised for a transfer to SPI.

56. Mr Fleeman denies that he delayed or blocked the Claimant's requested move to SPI. He says that the requested moves of PS Harpal Bains and were also under consideration. He denies that decisions on requested moves are determined on a first come first served basis.

December 2018 – September 2019 allegation by claimant of being spied on at the instigation of Mr Fleeman

57. As part of the grievance investigation Vivek Sharma was asked regarding the Claimant's allegation that he was being spied on at the instigation of Mr Fleeman. Mr Sharma referred to Paul Williams mentioning that Mr Fleeman had been watching the Claimant on CCTV. He referred to his having called the Claimant at Flint House.

58. Mr Fleeman denies the Claimant's allegation that he spied on him via CCTV at Terminal 5 for non-policing purposes. Mr Fleeman was working from the Respondent's Vauxhall office and casually mentioned to the Claimant that he could see them on CCTV. We find no evidence that he was spying on the Claimant as opposed to performing his operational duties.

2019

59. In April 2019 the Claimant attended Flint House.

Claimant's transfer to St Pancras International (SPI)

60. At a LRPM meeting on 15 July 2019 it was agreed that the Claimant would move to SPI Team 3 in October/November 2019.

61. On 21 October 2019 of the Claimant moved to SPI Team 3.

Officer Safety Training (OST)

62. In an email to Superintendent King of 26 October 2019 the Claimant said that he hoped to book his OST when he returned on 16 December 2019 which fell on a rest day.

63. She says that OST needs to be completed every six months. It would normally be completed on a working day and it would be rare for it to be taken on a rest day. She says the Claimant did not provide a reason why he initially wished to complete it on a rest day.

Claimant alleges that he informed Superintendent King that his move from PDS was discriminatory

64. In November/December 2019 the claimant alleges that he informed Superintendent King that his removal from PDS was discriminatory. Superintendent King denies that the Claimant told her that he was removed from the PDS role or that any move was discriminatory.

2020

Email exchange between the Claimant and Superintendent King in January 2020 regarding her team composition at SPI.

65. In an email from Superintendent King to Officer 1, copied to the Claimant, she referred to a number of members of Team Three believing that a lack of cohesiveness on the team created a difficult working relationship and had cited Officer 11 as being exclusionary. The Claimant was the Supervisor of Officer 1. Both are BAME. The Claimant had a personal friendship with Officer 11 outside of work.

Email sent to self by Officer 1 of 8 January 2020

66. Officer 1 recorded that he believed the issue raised was racially motivated as himself, the Claimant and Officer 11 are all of BAME group. He referred to unconscious bias towards BAME officers or questioned whether the complainants were "simply racist".

67. In an email from the Claimant to Superintendent King at 22.50 on 8 January 2020 he set out his detailed observations. He said that he unequivocally believed that Officer 11 was the subject of unfair criticism.

Email from Superintendent King to Officer 1 of 21:35 on 13 January 2020

68. Superintendent King responded to his allegation of racism. She denied that it was a case directed at the three BAME officers on the team. She said that the white and BAME Officers she had spoken to only made reference to Officer 11.

69. In an email to the Claimant of 21:58 on 13 January 2020 Superintendent King informed him that she would be away from the office for the next two weeks but to contact her should he wish to discuss the matter further in the meantime.

70. Supt King denies suggesting that she wanted to redeploy the BAME officers across different teams. She says the concerns raised related to one officer, not three BAME officers. The white and BAME officers that she spoke to only referenced Officer 11's behaviour.

71. She says that she did not have a one to one with the Claimant as there was no mention of him by any of the four officers who had raised concerns. The refence was solely to the relationship between Officers 1 and 11.

72. She denies mixing up or confusing the Claimant with anyone else.

Emails of March 2020 asking Police Officers to provide details of their self-identified ethnicity

73. In emails on or about 2 March 2020 from Jon Martin and Superintendent Rajan staff were asked to provide their self-defined ethnicity as this had been requested by Mr Balcombe. The Claimant believes that this request had arisen as a result of the issue which had arisen in January 2020 regarding "team dynamics" on Team Three. After some pushback from the Claimant it was agreed that officers should not be pressed to provide such details and that a response was entirely voluntary.

Text exchange between the Claimant and Officer 1 of 3 March 2020

74. The Claimant stated that the situation (the request for self-ethnicity identification) was "shocking". He referred to it as being "great fuel once again".

Claimant's performance review 31 March 2020

75. The Claimant stated that he was not interested in promotion and lateral development opportunities. Superintendent King stated that whilst the Claimant was professional he may occasionally benefit from making his emails less formal to improve team building and buy-in. She advised that he should reflect formal email structure/content and how they

may be misinterpreted by his team. The Claimant contends that the word "reflect" has adverse connotations within the police as it involves reflecting on conduct in a quasi-disciplinary context so whilst not a formal disciplinary sanction, nevertheless, has negative connotations. This is denied by the Respondent.

Email from the Claimant to Superintendent King of 17:25 on 14 May 2020

76. The Claimant was working from home as a result of his Covid vulnerable status. He said no worries re the project work and that anything admin based would be hugely beneficial. In reference to a project involving body worn cameras he referred to IT being his achilles heel and asked whether Officer 7 would be a good candidate.

Email from Claimant to Superintendent King of 15:15 on 12 May 2020

77. The Claimant said that he had no internal promotional aspirations at this time. He says that Superintendent King's actions made pursuing promotion futile. He refers to her as having unconscious bias.

Email from the Claimant to Mr Balcombe on 25 August 2020

78. The Claimant advised him that he had passed his master's degree (MSc in risk and crisis management) after three long years of arduous effort and that he was grateful for the support received from both ACI Rajan and Inspector Crinyion. The Claimant was given paid study leave.

Black Lives Matter (BLM) meeting on 28 August 2020

79. A meeting took place at which employees were given the opportunity to reflect on their own experiences following the brutal police murder of George Floyd.

Superintendent King appointed as Inclusion, Diversity and Equality Chair at Borders

80. The Claimant complains that Superintendent King was rewarded and promoted within weeks of the Black Lives Matter meeting to the role of Inclusion, Diversity and Equality Chair at Borders. Superintendent King says that this was not a promotion but was one of many roles she performed.

Email exchange between the Claimant and Adam Davies (Mr Davies)

81. In an email of 23 September 2020 the Claimant asked Mr Davies whether he had been inputting CRIS reports working from home. Mr Davies replied that he had not been as he was part of the Recovery & Renewal Project Team and had been heavily involved in developing the Borders Portal. We consider that this represented a transparent attempt by the Claimant to ascertain whether Mr Davies was undertaking project work.

Email from Superintendent King to the Claimant of 11:24 on 2 October 2020

82. She said that she had repeatedly reiterated that there was no meaningful Borders work for him to do. She referred to his having rejected other tasks and specifically to assessing applications/running interviews as requested by Acting Inspector Darby and the

work which PS Todd and ACI Marshall had requested more recently. She referred to the Claimant choosing to disengage by refusing to speak with her.

83. She set out four issues comprising:

- Return to work based on the current OH guidance. She refers specifically to a vacancy in the RCD as PDS which is a non-public facing role.
- Work from home doing CRIB imputing.
- Report sick if his physical and mental health made it untenable for him to undertake meaningful work from home.
- Possibility of seeking guidance regarding UPP which she said that she did not want to do and believed it could be avoided.

Email from Superintendent King to the Claimant of 09:52 on 2 October 2020

84. She referred to the CRIB work as being low level inputting work usually carried out by PCs. The risk involved is negligible. She said the work is non-negotiable as there is no other meaningful work available at this time.

85. The CRIB work involves inputting crime reports from members of the public. It would involve speaking to them on the telephone and entering data on the Metropolitan Police database. The Claimant says that he had not undertaken this work for 16 or 17 years. It is apparent that he regarded the task as demeaning. He also referred to potential risk and adverse effect on his mental health as a result of having to deal with members of the public. Further, he referred to potential complaints from members of the public. The Respondent says the risks of complaints was minimal and, in any event, potentially applicable to all aspects of police work.

Email from the Claimant to Mr Balcombe of 20:44 on 7 October 2020

86. The Claimant referred to being in the throes of a dispute with Superintendent King. He said that he wanted to foster a good working relationship with her moving forward.

87. In relation to CRIS imputing (CRIB and CRIS are referred to interchangeably) the Claimant referred to his perception that he was being targeted by Superintendent King as a result of a complaint he had raised 3 ½ months earlier as a result of his protected characteristic after Border Officers were encouraged to discuss how the Black Lives Matter (BLM) media coverage had directly affected them.

88. He stated that he wanted to remain at SPI.

89. He referred to the threat of an unsatisfactory performance process (UPP) and that he considered that he was being targeted and victimised for having the audacity to challenge bullying in the work place three and a half years ago.

90. He said he did not want to raise anything formally at that stage. He referred to the constant mental battle he was experiencing as a result of unnecessary targeting of him.

Email from Superintendent Rajan to the Claimant of 21:04 on 22 October 2020

91. Superintendent Rajan referred to the Claimant considering how he could get back to doing meaningful work.

One to one meeting between Superintendent King and the Claimant on 28 August 2020

92. Superintendent King referred to this in her email to Ms Venosi of 1 February 2023 as part of the grievance investigation. She referred to him stating that he did not have credibility at Borders and that it stemmed from an historic incident at Heathrow but he did not want to expand. He referred to there being a lack of inclusivity in his previous role as PDS at Heathrow.

93. She referred to him as stating that there was nothing for her to deal with. She provided reassurance that racism would not be tolerated at SBI/Borders/MPS. The Claimant interpreted this as being that he, as a complainant, would not be tolerated. We accept Superintendent King's version of events.

Referral to OH dated 30 October 2020

94. The Claimant was stated to be fit for recuperative duties with a projected end date of recuperative duties of 31 December 2020. The form stated that he was on recuperative non-front facing duties and is not to take part in OST, ELS (Emergency Life Support) and JRFT (Fitness Test) until he undertakes the functional assessment.

Email from Superintendent King to the Claimant of 21:58 on 24 November 2020

95. She referred to their having agreed to have monthly one to one meetings and to conduct a review of all future work whilst he continued to work from home or on recuperative duties. She stated that there was no pressure on him to return to work where it could exacerbate symptoms.

Email from Superintendent King to James Harman SO15 P Squad of 14:44 on 15 December 2020

96. This referred to a reported party involving officers at SPI where pizza and alcohol was consumed.

97. The Claimant contends that Superintendent King was aware of the party which took place on 11 December 2020.

Time engaged whilst working from home in 2020

98. The Claimant says that during 2020 whilst working from home he was engaged for 70% to 80% if his normal working time. Acting Inspector Hall puts the figure at 50% whilst Superintendent King says 10%.

99. Superintendent King says that there are limitations on the work which can be carried out from home given to it not being possible to access or undertake work classified as "Secret".

Form MM1 dated 21 December 2020 – Officer 11 the reporter of wrong doing

100. The Metropolitan Police use form MM1 to state which employee is deemed to be the reporter of wrongdoing. The Respondent's position is that it was Officer 11 and not the Claimant who was so designated.

2021

Claimant's witness statement of 19 January 2021

101. The Claimant said that he had been advised by Officer 11 that some team members had ordered pizza and consumed wine and beer on 11 December 2020 whilst at work.

Referral to Occupational Heath dated 17 March 2021

102. The Claimant was again stated to be fit for recuperative duties with a projected end date of 31 October 2021. The referral stated that he had reported heightened anxiety in relation to Covid-19 and that he was waiting to receive his Covid vaccine. As a matter of fact the Claimant remained unvaccinated for the duration of his employment with the Respondent.

Claimant's performance review on 31 March 2021

103. The Claimant stated that he was not interested in promotion or in lateral development. Superintendent King referred to the Claimant having minimal work to do from home. He retained his previous grading of two for good performance.

Email from Superintendent King to the Claimant of 15:54 on 1 May 2021

104. She referred to the likelihood that he would move from the vulnerable to the recuperative category specifically regarding his knee. She recorded that the Claimant had opted not to have the Covid vaccine due to his anxiety surrounding it. She referred to the possibility of a phased return to work from the beginning of May 2021.

Email from Superintendent King to Nathan Crinyion (Mr Crinyion), Mr Fleeman and Mr Scott Barden-Marshall of 5 May 2021

105. Superintendent King stated that the Claimant had now finished the work he was doing for Mr Balcombe. She stated that they had recently found work for PS Sidoli assisting John Noonan (Mr Noonan) on a project. She asked whether they had any work for the Claimant to do and said that he was on a phased return part WFH and part office based. She said that when in the office he undertook team supervision and anything else that is not public facing. She asked whether they had any Borders related work.

106. The Respondent says that work, to include non-operational/non-public facing project or administrative work was allocated on a case by case basis and that they could not find work for everyone.

Email from Superintendent King to the Claimant on 5 May 2021

107. Superintendent King sought to clarify the position regarding adjusted duties. She said that once the Respondent had the final diagnosis/plan at the end of May, it is likely that the Claimant would move into the recuperative duties category in relation to his knee only. Policy states that an employee should only be on recuperative duties for a maximum of six months. She said that after the 12 week review, further reviews are required every six weeks. She said that the aim for the Claimant at this time was to return to work and build up to full day/hours on recoup and then they could reassess in due course based on OH advice and guidance.

Email from Superintendent King to ACI Marshall on 30 May 2021

108. She said that the Claimant's recuperation was likely to be protracted so after six months she suspected he would be put on temporary adjusted duties.

ACI Marshall's role as the Claimant's line manager

109. He took responsibility for line management of the Claimant on 14 June 2021. He met with all officers and staff that he would now have line management responsibility for as he wanted to get to know each individual and prompt an empowering team to work in.

110. He advised the Claimant that unless the OH advise he had sought confirmed that a different plan needed to be considered he intended to continue with the previously advised plan of the six week phase return to office working.

111. He does not accept that the positions of PC Anear, who worked in the Duties Office, and PS Davies in the Hub, were the same as the Claimant's. He says their roles were not public facing and during Covid could be undertaken remotely.

Referral to OH dated 17 June 2021

112. This stated that the Claimant had a proposed work return in July 2021 which he was now concerned about due to his ongoing medical conditions. The referral detailed the Claimant's knee, lung and mental health conditions. A request was made that the Claimant's current risk category status (medium) should be reviewed regularly in the context of the proposal that he returned to full time office working in July 2021.

Email from ACI Marshall to the Claimant on 22 June 2021

113. This email related to the Claimant's role pertaining to performance packs/tableau course. ACI Marshall asked William Hunt (Mr Hunt) to not hold back on doing a "deep dive" with the Claimant. He stated: "he has my full support to be a Tableau Guru and my performance lead for Ports East". The Claimant considers that ACI Marshall's use of the word "Guru" is offensive as he says it was done in the context of his seeking to harass him on account of his Sikh religion which involves his praying to his Gurus.

114. The Claimant referred to an occasion in approximately 2018 when he had spent time with ACI Marshall at Heathrow and told him all about his religion to include his praying to his Gurus. ACI Marshall denies that any such conversation taking place.

Meeting between ACI Marshall and the Claimant on 22 June 2021

115. The Claimant produced a detailed note of this meeting dated 23 June 2021. The Claimant recorded that he was highly troubled by ACI Marshall's attitude, discrimination and clearly biased behaviour.

116. Under the heading career development the Claimant said that it was disconcerting for him that ACI Marshall kept telling him that due to his lockdown isolation, health issues and other matters that front line policing was not for him and that he should seriously consider moving to the Transformation Directorate. The Claimant recorded that he did not appreciate ACI Marshall telling him that he must go and have the vaccine. He said that ACI Marshall told him that it was a "cultural thing and that my people did not like having the vaccine".

117. ACI Marshall denies that the Claimant used the word discrimination during their meeting on 22 June 2021. He denies saying words to the effect of "it must be a cultural thing as your people don't believe in getting the jabs".

Email from ACI Marshall to the Claimant on 27 June 2021

118. He said that he would escalate the Claimant's OH referral.

Email from ACI Marshall to Ms Waller on 7 July 2021

119. ACI Marshall referred to wishing to accelerate the Claimant's return to full hours back in the work place. He said that he was mindful of his non-vaccinated status.

Email from ACI Marshall to DCI Kerr on 15 July 2021

120. He stated that the Claimant was "rather sensitive and wishes to remain in control". He recorded that the Claimant had threatened him with executive action if he tried to do anything different to what he wants and referenced the 15 page dossier he had against Superintendent King and that he would happily write a 20 page dossier against him. He said that the Claimant may well go off on sick/stress as already inferred to him if he presented him with any other working arrangements.

Email from DCI Kerr to ACI Marshall of 16:29 on 16 July 2021

121. DCI Kerr rejected the possibility of the Claimant being assigned to assist Mr Fleeman on the basis that he has issues and given that assistance was required given Mr Fleeman's own issues he did not consider that this was a viable option.

122. DCI Kerr denies that the Claimant was threatened with misconduct for not reporting wrongdoing. He says that he was encouraged to do so and advised that he would be supported.

Email from the Claimant to ACI Marshall on 23 July 2021

123. The Claimant said that he felt that he was being continually pressurised back to work full time without any coherent rationale. He said that he was being singled out and not very supported. He believed that the decision for him to return on full hours/full days at the start of August had already been made despite what transpired with OH.

Email from ACI Marshall to Ms Waller on 29 July 2021

124. In a very detailed three page email ACI Marshall recorded that the Claimant was proving to be "a complex case". He then set out a detailed update on his health conditions. He stated that the Claimant had self-declared his un-vaccinated and "anti-vac" status.

125. Under the heading mental health he stated, the Claimant "tops off" all his conditions with his mental health having never been worse. He referred to the Claimant's constant and unrelenting "apparent" anguish.

126. In the summary section at the end of the email he said that the Claimant had taken resentment to any inference he returns to full hours in the workplace. He anticipated a difficult case conference meeting with him and that he wished that DCI Kerr to attend if suitable. He said that he would prefer a joint approach.

127. He concluded by saying:

> "I appreciate this is a massive email with lots of questions but it is reaching a point where I think a difficult conversation will be had and date set for return. I anticipate putting all the options on the table, including going sick, stress risk assessment, flexible working application, further MH support".

Email from the Claimant to ACI Marshall on 9 August 2021

128. He referred to the OH appointment he had attended that morning. He advised that the OH had recommended that he was to continue working the exact same hybrid split of office/WFH duties and hours until he had been further assessed.

129. The Claimant said that he would be interested to be nominated for the three day COSII open source internet investigators course (the COSII Course).

Email from ACI Marshall to the Claimant, copied to Inspector Baird, on 10 August 2021

130. He stated that he would be happy to support the Claimant attending COSII Course and that he had passed the Claimant's details to DI Crinyion.

Email from ACI Marshall to the Claimant on 13 August 2021

131. He asked the Claimant to provide his written consent to sharing his OH report to avoid delaying the process. He said that he was seeking to avoid delay and wanted OH to be aware where to release the report.

Email from the Claimant to DI Crinyion on 22 August 2021

132. The Claimant advised that his wife and daughter had tested positive for Covid and requested compassionate leave for his four shifts that week. This was granted by DI Crinyion.

Inspector Baird's role,

133. He says that whilst at SPI he had line management responsibility for eight sergeants and between 27 and 30 PCs. A relatively small part of his time was spent on line management as he had a very broad portfolio.

The Case Conference Meeting on 9 September 2021

134. The Claimant agreed that the best option was to hold the case conference via Microsoft teams as original planned. He had expressed a preference for the meeting to be in person but Ms Waller would not have been able to attend. Those who attended were the Claimant, Ms Waller, DCI Kerr, Inspector Baird and the Claimant's Police Federation representative. The Claimant contends, but ACI Marshall denies, that he was in attendance.

Referral to OH dated 10 September 2021

135. This said that the Claimant was fit with adjusted duties. It stated that the Claimant fell into the high risk group of the population with regards to Covid. His current blended work pattern should be maintained in the short term.

OH referral form dated 10 September 2021

136. This included a question as to whether the OH required to see medical correspondence and their proposed treatment plan for the Claimant to be able to inform a change in the proposed return to work. The Claimant takes exception to this. The OH said that the Claimant had supplied a medical history and he did not see any value in seeking medical reports as he had a good understanding of the position.

137. In the section entitled restrictions required stated that the Claimant was not fit for any in-person public contact, telephone contact only, non-confrontational and office based duties only.

Telephone call from Inspector Baird to the Claimant on 14 September 2021

138. Inspector Baird says that he spoke with the Claimant on the phone on 14 September 2021 to discuss his conditions, his management of such conditions and how he could support his needs. The call lasted for nearly 28 minutes.

Email from the Claimant to Inspector Baird on 14 September 2021

139. The Claimant advised that he was currently working on Port East performance related work. He said that he was keen to take on any Borders related project work or work associated within the Duties Office, LDU, Renewal & Recovery team work or risk project work.

Email from ACI Marshall to Inspector Baird on 20 September 2021

140. ACI Marshal forwarded the OH report following the assessment on 10 September 2021 to Inspector Baird. He said that all he did was pass on the information to the Claimant's new line manager.

Email from Ms Waller to Inspector Baird on 21 September 2021

141. Ms Waller said that as the Claimant was unable to do duties potentially involving confrontation, OST etc his case should now be taken to the LRPM to be considered for another role within SO15, if that is not possible then he should raise a request for a voluntary transfer.

142. Inspector Baird advised the Claimant on 13 November 2021 that unfortunately there were no project posts, no duties post and only an occupied PS post in the LDU identified at the LRPM. He says that he encouraged the Claimant to apply for the LDU post but did not believe he had done so.

LPRM meeting on around 24 November 2021

143. Inspector Baird says that unfortunately, almost all the posts identified were front facing and therefore unsuitable for the Claimant. However, there was a PDS role available which was being performed by an Acting PS and he believed that it would be a good fit for the Claimant as it offered a secure environment meeting all of his adjusted needs, including no contact with the public and no confrontation. The role was also close to the Claimant's home, offered proximate parking and a lift up to the office.

Email from Inspector Baird to Ms Waller on 24 November 2021

144. Inspector Baird said that he had been asked by CI Davies to offer the Claimant a PS role in the Regional Control Desk (RCD). He said that it was a lot closer to his home address and he had done the role previously.

Email from Inspector Baird to CI Davies on 25 November 2021

145. Inspector Baird reported that the Claimant described the offer of the PDS role as "a red rag to a bull" because of what had previously happened to him when he was working there. He referenced previous incidents the Claimant had experienced to include an alleged assault. Inspector Baird stated that he had apologised to the Claimant for opening old wounds and that he had no knowledge of what had happened.

GDPR breach

146. Inspector Baird accepts that it was an unfortunate action to copy the whole chain of communication, to include the Claimant's medical records, to the SO15 Ports Duty Inbox. He had only intended to advise as to the changes to the Claimant's working arrangements. He apologised to the Claimant immediately on this accidental oversight became apparent.

He advised that the emails accidentally sent should be immediately deleted. There was no further GDPR "after care". The Claimant maintains that this was a deliberate rather than an accidental act. We reject this assertion. Of

The Claimant's request to attend a retirement seminar on a rest day

147. In December 2021 the Claimant made a request to attend a retirement seminar on a rest day. There were approximately 7 different days upon which the half day seminar were to be run. The Claimant provided no convincing reason as to why he could not attend on any of the other days but took exception to Inspector Baird's decision that it would be inappropriate for him to attend on a rest day given his view that the Claimant was not undertaking any meaningful work on his working days. The Respondent provides time off in lieu for officers working on a rest day and it was a point of dispute between the parties as to whether this would have given rise to any additional cost, but we consider it self-evident that it would, if Inspector Baird is correct that the Claimant's was not meaningfully engaged on his scheduled working days.

Email from the Claimant to Inspector Baid on 17 December 2021

148. The Claimant stated: "I do not understand why you as my line manager would want to override the decision making that has occurred within the CMO and in our private and confidential consultation has sent me to the office for a full 10 hours when this would exponentially and unnecessarily expose the Covid risk to me and have highly damaging and potentially dire consequences for me and my life".

2022

The Claimant's grievance

149. The Claimant invoked the grievance procedure on 24 January 2022.

Email from the Claimant to Inspector Baird on 9 February2022

150. The Claimant recorded that he had been told that he was unable to phone or facetime in to the meeting with Commander Smith that afternoon. Commander Smith was speaking to SO15 staff at SPI regarding discrimination and conduct issues in the Metropolitan Police following recent high profile adverse publicity. Commander Smith, for confidentiality reasons, had decreed that attendees should be in person and that there should be no virtual attendance.

151. The briefing was published on the MPS intranet and circulated to all MPS officers highlighting the key messages and takeaway points. Inspector Baird says that it would have been open to the Claimant to have asked Officer 11 or another colleague as to the key points from the meeting. He could have also requested that he provide him with a briefing. There is no evidence that he did either.

Email from Claire Horgan on 21 February 2022 regarding informal dispute resolution champion

152. She suggested to the Claimant not to pass on his details to ACAS at this stage. Ms Venosi said that this was not current practice and that GMT and Employment Tribunals can run currently. She said it was merely advice but nevertheless it was wrong advice.

Email from the Claimant to Inspector Baird on 25 February 2022

153. In this email entitled Borders Review – Team Builds Expression of Interest the Claimant expressed his interest to continue working at SPI and remain Officer 11's line manager. The Claimant's position being that following the reporting of the Covid breach pizza/drinks events in December 2020 that he and Officer 11 had provided each other with mutual support and he wished this to continue.

154. The teams build exercise involved a reorganisation pursuant to which three teams would be increased to four and comprised the reorganisation of approximately 160 PCs and 30 Sergeants. The review aims to take into account everyone's concerns but also operational and risk considerations.

Email from Inspector Baird to CI Davies and DCI Kerr on 14 March 2022

155. Inspector Baird stated that as the Claimant had turned down the PDS post and with the lack of any other suitable posts within Borders that this should not go to the next SO15 LRPM to see whether there is a role for him elsewhere within the Commands.

Email from Inspector Baird to the Claimant on 17 March 2022

156. He advised the Claimant that when he saw how the team builds had been published he immediately recognised it did not reflect what he had wanted because it appeared that the Claimant and PS Sidoli had been posted to London City Airport (LCY) from September 2022. He said that two police sergeants had been notionally nominated to LCY to align the two LCY teams which had no PS.

157. Inspector Baird said that David Williams had been responsible for producing the proposed revised team build structures. Inspector Baird described it as a paper exercise and that the Claimant's assignment to LCY was notional only. There was never ever any intention that he would physically relocate and in any event he was primarily working from home.

158. He said that there was nothing in the changes which would prevent the Claimant speaking with Officer 11 in the workplace as their shifts would regularly overlap.

159. He says that three out of eight police sergeants based at SPI were told that they were changing teams before a final shuffle made at the August 2022 LRPM meeting resolved his concerns by moving the Claimant from Team 2 at LCY to Team 1 at SPI, which was communicated to him on 15 August 2022.

160. He advised the Claimant that in terms of the historical reporting on wrongdoing and associated issues that by September 2022, almost two years will have passed, and it is time to move forward.

Email from the Claimant to Inspector Baird on 27 March 2022

161. The Claimant stated that he had a grievance against Inspector Baird and did not feel comfortable engaging with him for fear of further victimisation. He went on to say that he did not feel that he had been supported by Inspector Baird as his line manager considering his disabilities, high risk status, his complaints of being a reporter of wrong doing, his protected characteristics and constant claims of victimisation and harassment.

Claimant's performance review dated 31 March 2022

162. The Claimant stated that he was not interested in lateral development but was interested in promotion. In the section regarding promotion he detailed the constant detriments and discrimination he believed he had suffered. He felt that his promotional aspirations had been derailed and his ambition crushed.

163. Inspector Baird considered that the Claimant had raised some very historical issues unrelated to his period at Borders. He referred to some of them being 14 years earlier and that they should have been raised as grievances rather than in a performance review. He did not consider that the Claimant was asking him to take any action. Further, the Claimant was not requesting to do the Inspector examination.

2022 Easter Bank Holiday working

163, On 3 March 2022, an email was circulated for provisional postings for the Easter Bank Holiday weekend (15-18 April 2022). On 5 March 2022 the Claimant emailed PS Carl Peacock to ask whether he would be able to work the Bank Holiday on 18 April 2022. Inspector Baird responded on 6 March 2022 explaining that there would be a limited number of supervisors so the role must be filled by someone who was in the workplace and front facing. It was necessary for there to be minimum staffing levels on Bank Holidays and this required front line officers in cases of any emergencies or confrontations.

164. Inspector Baird says that comparators named by the Claimant namely PC Anear and PC Worcester were not comparable as PC Anear was not working front line duties as of 18 March 2022, and did not work this Bank Holiday, and that PC Worcester was on light duties at the time in an office based role which did not require him to be front line or operational.

The Claimant's knee surgery

165. The Claimant was signed off sick from 9 June 2022 to 1 September 2022.

Inspectors Baird's communication with the Claimant

166. The Claimant complains that Inspector Baird failed to make adequate contact with him. Inspectors Baird says that telephone was not his preferred mode of communication. He would rather send emails and maintain a record of communications.

167. Inspector Baird said that he did not meet the Claimant in person whilst he was his line manager. He referred to it as being a "coincidence" that the Claimant never appeared to be in the office when he was in attendance. He says that the Claimant did not request a one to one meeting with him and if he had it could have been arranged.

Letter from Inspector Baird to the Claimant dated 14 June 2022

168. He confirmed that the Claimant had been on adjusted duties for 9 months. As such there was a requirement for a formal review once 12 months had been reached and that included various possible outcomes to include, but not limited to, Unsatisfactory Police Performance Procedure (referred to as UPPP).

169. The Claimant considered that the timing of this letter was inappropriate given that he had undergone major knee surgery five days earlier. He could not understand the urgency of the letter. Inspector Baird said that he was just following procedure and it was a standard letter.

The Claimant's sickness absence whilst recuperating from knee surgery

170. The Claimant requested that it should be categorised as disability related. Inspector Baird said that he needed to seek HR advice. He said that any categorisation of sickness absence as being for a disability related reason needed to be done retrospectively at the conclusion of the absence and applied to the whole period of sickness.

171. Inspector Baird denies calling the Claimant a waste of tax payers' money.

Email from the Claimant to CI Davies on 23 July 2022

172. The Claimant referred to a telephone conversation of approximately one hour on 15 July 2022. He recorded that he took exception to her "living the dream" comment which he says was aimed at him and that it was not a dream but a nightmare due to suffering with his disabilities and health issues. CI Davies says that the comment was not made in relation to the Claimant but due to the condition of the building at SPI, with water running down the walls.

173. The Claimant then referred to her twice having called him "numpty". CI Davies accepts using the term, once not twice, but said that it was used as an affectionate term as in don't be so silly rather than in a disparaging manner. Nevertheless, she apologised to the Claimant.

PS Noonan

174. PS Noonan was a training PS. This meant he was in charge of learning and development for Borders and his role was to deliver training, both in this country and, if required, either in person or online to international partners. Mr Balcombe said that his role was entirely different to the Claimant's and therefore not comparable.

Acting Inspector Hall

175. Inspector Baird was appointed to a new posting on 19 July 2022, moving from the East Inspector to Central Inspector. Acting Inspector Hall was appointed as his replacement with effect from 15 August 2022. It was apparent from their exchanges before and after Acting Inspector Hall's evidence that the relationship between the Claimant and him was and remains extremely cordial.

General points arising from the Claimant's evidence

The Claimant's view of his line managers

176. The Claimant had widely conflicting views of his different line managers. He was either extremely complimentary regarding them as managers and individuals or scathing in his condemnation. He had particular vitriol towards ACI Marshall who he described as being a "deeply racist officer" and perhaps to a lower degree Superintendent King. It was also apparent that he had a very low opinion of Inspector Baird.

The Claimant's expectations of his line managers

177. The Claimant constantly referred to his line managers having a duty of care to him. We consider that in many respects the Claimant's expectations were unrealistic. For example, his expectation that Inspector Baird should have phoned him in the first three days from his taking up active responsibility as his line manager on 6 September 2021 prior to the case conference of 9 September 2021. Further, that he should have telephoned him, or visited him at home, in the days/weeks after his having pre planned knee surgery on 9 June 2022. We find this expectation particularly striking given that the Claimant had previously emailed Inspector Baird to request he desist from contact given his perception that he was suffering victimisation from him and by this stage had already named him as a significant subject of his grievance.

Level of work undertaken by the Claimant when working from home

178. We consider that the Claimant gave conflicting answers as to how much work he was undertaking at home. On the one hand he constantly argued that he was not being given any meaningful work and was being left under engaged but then on other occasions insisted that he was carrying out close to full level supervision of his team. We find itself evident that for large periods of the time the Claimant was working from home he would have been under engaged.

The Claimant's position regarding his Covid vulnerability and reasons for declining the vaccine

179. Whilst the Respondent accepted the Claimant's right of choice regarding vaccination it is nevertheless relevant in the context of his taking exception to ACI Marshall referring to his "anti-vac" status. The Claimant understandably considered himself to have a high level of vulnerability. However, we consider that some of his actions were inconsistent with his perception of his degree of risk. For example, his preference for the 9 September 2021 case management conference to be heard in person rather than on Teams. We also consider it inconsistent that someone with his high level of risk would be able to work on a

hybrid basis, attending the office for five hours a week, given that it is self-evident that the highest risk of infection occurs in the first hours of contact, and whilst additional time will increase the risk of infection, it does not increase on a straight line basis. Further, we consider that the Claimant appeared to give conflicting reasons for not having the Covid vaccine to include uncertainty regarding his underlying medical conditions and the reaction to the vaccine. However, he did not refer to any medical evidence regarding contraindications between his underlying conditions and the vaccine and there is no evidence that he consulted a doctor regarding the advisability or otherwise of being vaccinated given his risk status. Further, he referred to the BAME population having a lower take up rate of the vaccine, but still from the article quoted running at approximately 79%, and negative commentary on the efficacy of the vaccine heard on LBC.

The Claimant's interpretation of events

180. It is undoubtedly the case that the Claimant perceived that he had been subject to continuous discrimination, harassment and victimisation from at least 2018 and possibly much earlier. Nevertheless, for the purposes of this claim we focus on the time period within which the alleged acts and omissions relied on took place. The Claimant's position is that multiple managers, at different locations, adopted the same discriminatory conduct towards him. Whilst not necessarily going as far as to argue that there was a conspiracy between these managers the Claimant's version of events would almost certainly entail some degree of communication of pejorative views of the Claimant between his various line managers. All of the Respondent's witnesses deny that this took place.

181. We consider that a number of the Claimant's line managers became increasingly frustrated by what they considered to be the onerous nature of line management responsibility for him. This was particularly the case with ACI Marshall and Inspector Baird. Our view is that as time progressed the Claimant was raising an increasing number of new issues, some of which we consider to be relatively minor, for example, his request to attend the retirement seminar on a rest day or to work on Easter Bank Holiday 18 April 2022, but at the same time continuing to reiterate his full history of alleged discrimination, for example, at his 2022 performance development review (PDR) with Inspector Baird.

182. We also consider it to be the case that the Claimant would take grave exception, and suffer an alleged high degree of stress and trauma, regarding events which were not actually going to happen. For example, he spent substantial time cross examining Inspector Baird regarding his notional assignment to LCY, notwithstanding the evidence demonstrating that this was purely a paper exercise, and that the initial confusion from David Williams' duty rota was immediately assuaged by Inspector Baird. Nevertheless, it was apparent that the Claimant had lost all trust in his line managers and that every action taken, however minor, was seen by him as part of a catalogue of discriminatory, harassing and victimising conduct.

The Claimant's grievance process

183. Ms Venosi was appointed as the grievance assessor of the Claimant's grievance on 3 May 2022. The previous assessor had personal issues and her cases were reassigned. This caused some delay.

184. Ms Venosi says that she kept the Claimant updated as to the process and accepted that it took longer anticipated.

185. She first made contact with the Claimant to introduce herself on 20 May 2022. It was not until 20 September 2022 that she met with the Claimant at his home for a meeting which lasted approximately two hours.

186. As part of the grievance assessment process she interviewed Superintendent King, CI Herring, ACI Marshall and received written responses from Inspector Baird and DCI Kerr.

ACI Marshall's comments on the Claimant's grievance dated 23 September 2022

187. In a telephone conversation with Ms Venosi ACI Marshall gave his response to the Claimant's detailed grievance. This included him stating that he considered the Claimant to be a "talker/self-promoter/fantasist" – including gripes with management, future career aspirations outside the police and extracurricular activities. He said that the Claimant's perception of incidents mars them from their reality.

188. He is recorded as stating that medical conditions are presented by the Claimant but no actual diagnosis and there have been doubts raised by SLT and HR around credibility with the circumstances presented.

189. He stated that he had received emails from the Claimant's peers where things have been told differently about certain situations and that he was not trusted.

190. He reported that he had a number of PCs coming to him stating that they had issues with the Claimant.

191. He says that he was aware that the Claimant wanted compensation and to retire and this has been a narrative which he had strongly promoted since he met him in 2018.

2023

Stage I grievance outcome report dated 23 May 2023

192. Stage one of the grievance process was confirmed as complete on 23 May 2023 and Ms Venosi sent the Claimant and all subjects a copy of her report. She concluded that the evidence provided had not met the threshold to warrant a referral to the Discrimination Investigation Unit.

193. Ms Venosi draws a distinction between her role as a grievance assessor and carrying out an investigation She says that she does not undertake investigations and is reliant on information and documents provided to her. She says that it was open to the Claimant to send her documents by email but when he produced a folder of documents during the meeting at his home she did not specifically ask for a copy.

194. The Claimant retired in June 2023.

The Claimant's overarching contentions

195. He says that he has been continuously discriminated against from the time he was removed from PDS in 2017. He contends that there have been a series of directly connected and continuing acts as part of a lengthy campaign involving primarily Mr Fleeman, Superintendent King, ACI Marshall and Inspector Baird. He refers to a collective witch hunt.

196. The Claimant, in response to a question from the Judge, referred to an overarching culture of institutional racism, misogyny and disablism.

The Law

Time limit for discrimination claims

197. S123 of the EQA provides:

(1) Proceedings on a complaint within section 120 may not be brought after the end of—
(a) the period of 3 months starting with the date of the act to which the complaint relates, or
(b) such other period as the employment tribunal thinks just and equitable.

(3) (a) conduct extending over a period is to be treated as done at the end of the period;
(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
(a) when P does an act inconsistent with doing it, or
(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

198. For acts extending over a period, it is relevant to consider whether a discriminatory regime, rule, practice or principle, which had a clear and adverse effect on a complainant, existed. There is a distinction between a continuing state of affairs and a one-off act with ongoing consequences.

199. Guidance was provided in analysing what constitutes conduct extending over a period in Hendricks v. Metropolitan Police Commissioner [2003] IRLR 96 to include per Mummery LJ in the Court of Appeal at paragraph 48:

> "the numerous alleged incidents of discrimination are linked to one another and that they are evidence of a continuing discriminatory state of affairs, by the concept of an act extending over a period".

200. The appropriate test for a 'continuing act' is highlighted by Hendricks and demonstrates where the employer is responsible for an 'an ongoing situation or a continuing state of affairs' in Hendricks case of a period of some 11 years of police service and where the continuous acts of discrimination occurred, as opposed to a series of unconnected or isolated incidents.

201. Extension of time under s123 (3) is the exception rather than the rule Robertson v. Bexley Community Centre [2003] IRLR 434.

202. The checklist of factors in s.33 of the Limitation Act 1980 is a useful guide of factors likely to be relevant, but a tribunal will not make an error of law by failing to consider the matters listed in s.33 provided that no materially relevant consideration is left out of account: Neary v Governing Body of St Albans Girls' School [2010] ICR 473. Section 33 requires the court to take into account all the circumstances of the case, and in particular the factors set out at s.33(3). Those factors which are relevant to the claim are:

(a) the length of, and reasons for, the delay by the claimant;

(b) the extent to which the cogency of the evidence is likely to be affected by the delay;

(c) the promptness with which the claimant acted once she/he knew of the facts giving rise to the cause of action; and

(d) the steps taken by the claimant to obtain appropriate professional advice once she/he knew of the possibility of taking action.

203. The Court of Appeal in Southwark London Borough Council v Afolabi 2003 ICR 800, CA, confirmed that, while the checklist in s.33 provides a useful guide for Tribunal's, it need not be adhered to slavishly.

204. Discriminatory conduct occurring after a claimant has submitted a claim cannot be taken into account in considering whether there has been a continuing act of discrimination (although may be relevant to the second limb of the test (just and equitable)) Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA).

Race and disability discrimination and the burden of proof

205. Under s13 (1) of the EQA read with s.9, direct discrimination takes place where a person treats the claimant less favourably because of race/disability than that person treats or would treat others. Under s.23(1), when a comparison is made, there must be no material difference between the circumstances relating to each case.

206. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of sex/race. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the claimant was treated as she was.

207. Under s136, if there are facts from which a tribunal could decide, in the absence of any other explanation, that a person has contravened the provision concerned, the tribunal must hold that the contravention occurred, unless A can show that he or she did not contravene the provision.

208. Guidelines on the burden of proof were set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258. The tribunal can take into account the respondent's explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (Laing v Manchester City Council and others [2006] IRLR 748; Madarassy v Nomura International plc [2007] IRLR 246, CA). The Court of Appeal in Madarassy, a case brought under the then Sex Discrimination Act 1975, held that the burden of proof does not shift to the employer simply on the claimant establishing a difference in status (e.g., sex) and a difference in treatment. LJ Mummery stated at paragraph 56:

> "Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the respondent had committed an unlawful act of discrimination."

209. Further, it is important to recognise the limits of the burden of proof provisions. As Lord Hope stated in Hewage v Grampian Health Board [2012] IRLR870.

> "They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other."

Conscious or unconscious thoughts of the alleged discriminator

210. An act may be rendered discriminatory by the mental processes, conscious or nonconscious, of the alleged discriminator: Nagarajan v London Regional Transport [1999] ICR 877, HL. In such cases, the tribunal must ask itself what the reason was for the alleged discriminator's actions. If it is that the complainant possessed the protected characteristic, then direct discrimination is made out. If the reason is the protected characteristic, that answers the question of whether the claimant was treated less favourably than a hypothetical comparator; they are, in effect, two sides of the same coin. per Lord Nicholls: "In every case…it is necessary to enquire why the claimant received less favourable treatment. This is the crucial question. Was it on grounds of race? Or was it for some other reason, for instance because the claimant was not so well qualified for the job. Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which follows from a decision."

211. In Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, HL as set out by Lord Nicholls in at [11], and albeit assuming a difference of treatment (which the Claimant cannot do): "…employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. Was it on the proscribed ground which is the foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? If the latter, the application fails. If the former, there will usually be no difficulty in deciding whether the treatment, afforded to the claimant on the proscribed ground, was less favourable than was or would have been afforded to others." It is permissible for the tribunal to answer the hypothetical comparator question by having regard to how unidentical but not wholly dissimilar cases have been treated: Chief Constable of West Yorkshire v Vento (No.1)

[2001] IRLR 124, EAT, per Lindsay J at paragraph 7; approved in Shamoon, per Lord Hutton at paragraph 81.

212. A benign motive is irrelevant when considering direct discrimination: Nagarajan at 884G-885D, per Lord Nicholls. It is irrelevant whether the alleged discriminator thought the reason for the treatment was the protected characteristic, as there may be subconscious motivation: Nagarajan at 885E H:

> "I turn to the question of subconscious motivation. All human beings have preconceptions, beliefs, attitudes and prejudices on many subjects. It is part of our make-up. Moreover, we do not always recognise our own prejudices. Many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant's race. After careful and thorough investigation of a claim members of an employment tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not, race was the reason why he acted as he did. It goes without saying that in order to justify such an inference the tribunal must first make findings of primary fact from which the inference may properly be drawn. Conduct of this nature by an employer, when the inference is legitimately drawn, falls squarely within the language of s.1(1)(a). The employer treated the complainant less favourably on racial grounds."

Drawing of inferences

213. It is not sufficient for to draw an inference of discrimination based on an "intuitive hunch" without findings of primary fact to back it: Chapman and Anor v Simon [1994] IRLR 124.

214. The process of drawing inferences is a demanding task. If a tribunal is to make a finding of discrimination on the basis of inference, per Mummery J in Qureshi v Victoria University of Manchester [2001] ICR 863:

> "It is of the greatest importance that the primary facts from which such inference is drawn are set out with clarity by the tribunal in its fact-finding role, so that the validity of the inference can be examined. Either the facts justifying such inference exist or they do not, but only the tribunal can say what those facts are. An intuitive hunch, for example, that there has been unlawful discrimination is insufficient without facts being found to support that conclusion."

215. In determining whether a claimant has established a prima facie case, the tribunal must reach findings as to the primary facts and any circumstantial matters that it considers relevant: Anya v University of Oxford and Anor [2001] IRLR 377 (CA). Having established those facts, the tribunal must decide whether those facts are sufficient to justify an inference that discrimination has taken place.

216. Where there are multiple allegations, the tribunal should consider whether the burden of proof has shifted in relation to each one. It should not take an "across the board approach" when deciding if the burden of proof shifted in respect of all allegations: Essex County Council v Jarrett UKEAT/19/JOJ.

217. The tribunal may cast its net widely to look for facts that are consistent with discrimination and may therefore give rise to a prima facie case. The tribunal may take account of circumstantial evidence, including matters occurring before the alleged discrimination (even those outside the limitation period) and matters occurring afterwards if they are relevant. However, there must be "some nexus between the facts relied on and the discrimination complained of": Wheeler & Anor v Durham County Council [2001] EWCA Civ 844.

218. Din v Carrington Viyella Ltd [1982] ICR 256 is authority for a tribunal being able to take account of matters that took place prior to the discrimination complained of in order to assist it in drawing adverse inferences against a respondent.

219. The less favourable treatment must be because of a protected characteristic and that requires the tribunal to consider the reason why the claimant was treated less favourably in accordance with the guidance in Nagarajan. The tribunal needs to consider the conscious or subconscious mental processes which led the respondent to take a particular course of action in respect of the claimant and to consider whether her gender played a significant part in the treatment: CLFIS (UK) Ltd v Reynolds [2015] EWCA Civ 439.

Definition of disability under s.6 (2) of the EQA

220. A person has a disability if he or she has "a physical or mental impairment" which has a "substantial and long-term adverse effect on his or her ability to carry out normal day to day activities". The burden of proof is on the Claimant to show that she satisfies this definition.

221. Paragraph 2 to Schedule 1 of the EQA provides the definition of "long term" for these purposes:

The effect of an impairment is long-term if—

(a) it has lasted for at least 12 months,
(b) it is likely to last for at least 12 months, or
(c) it is likely to last for the rest of the life of the person affected.

222. The effect of an impairment is likely to last for at least 12 months under paragraph 2 (1) (b) if that "could well happen": Boyle v SCA Packaging Ltd [2009] UKHL 27. According to the House of Lords in Boyle, the relevant 12-month period should be counted from the date of the relevant impairment. The Tribunal has no jurisdiction to consider events after the date of the alleged discrimination to determine whether the effect did or did not last for 12 months: McDougall v Richmond Adult Community College [2008] EWCA Civ 4.

223. In Goodwin v Patent Office 1999 ICR 302, the EAT said that the words used to define disability in S.1(1) DDA (now S.6(1) EQA) require tribunals to look at the evidence by reference to four different questions (or 'conditions', as the EAT termed them):

a) did the claimant have a mental and/or physical impairment? (the 'impairment condition')

b) did the impairment affect the claimant's ability to carry out normal day-to-day activities? (the 'adverse effect condition')

c) was the adverse condition substantial? (the 'substantial condition'), and

d) was the adverse condition long term? (the 'long-term condition').

224. These four questions should be posed sequentially and not together — Wigginton v Cowie and ors t/a Baxter International (A Partnership) EAT 0322/09.

225. This 'step' approach has subsequently been approved in numerous cases. In J v DLA Piper UK LLP 2010 ICR 1052, EAT, the then President of the EAT, Mr Justice Underhill, observed that it was good practice for employment tribunals to state their conclusions separately on the questions of impairment and adverse effect and, in respect of the latter, their findings on substantiality and long-term effect. However, in reaching those conclusions, tribunals should not feel compelled to proceed by rigid consecutive stages. Specifically, in cases where the existence of an impairment is disputed it would make sense for a tribunal to start by making findings about whether the claimant's ability to carry out normal day-to-day activities is adversely affected on a long-term basis and then to consider the question of impairment in the light of those findings.

226. Schedule 1 to the 2010 Act at para 5A (2), as inserted by Equality Act 2010 (Amendment) Regulations 2023/1425 reg.6:

> References in the relevant provisions to a person's ability to carry out normal day-to-day activities are to be taken as including references to the person's ability to participate fully and effectively in working life on an equal basis with other workers.

227. The time at which to assess the disability (i.e. whether there is an impairment that has a substantial adverse effect on normal day-to-day activities) is the date of the alleged discriminatory act — Cruickshank v VAW Motorcast Ltd 2002 ICR 729, EAT.

Discrimination arising from disability under S 15 of the EQA

228. In relation to discrimination arising from disability we must consider whether under s.15 of the EQA the claimant has shown that the respondent treated him unfavourably, that the unfavourable treatment was because of something and that something arose in consequence of his disability.

229. S 15 of the EQA provides that a person (A) discriminates against a disabled person (B) if:

> A treats B unfavourably because of something arising in consequence of B's disability; and
> A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

230. In a disability discrimination claim under S.15, a tribunal must make findings on:

a) The contravention of section 39 of the EQA relied on

b) Whether the contravention relied on by the employee amounts to unfavourable treatment.

c) It must be "something arising in consequence of disability"; for example, disability related sickness absence.
d) If unfavourable treatment is shown to arise for that reason, the tribunal must consider whether the employer can show the treatment was "a proportionate means of achieving a legitimate aim".

231. There is no need for a comparator in order to show unfavourable treatment under S.15. It is possible to demonstrate 'unfavourable' treatment without needing to resort to a 'compare and contrast' exercise. A claimant bringing a claim of discrimination arising from disability under S.15 is entitled to point to treatment that he or she alleges is unfavourable in its own terms.

232. Unfavourably is not defined in the EQA. The Equality And Human Rights Commission Statutory Code of Practice on Employment (The Code) provides that it means a disabled person "must have been put at a disadvantage".

233. Basildon & Thurrock NHS Foundation Trust v Weerassinghe UKEAT/0397/14 provides the tribunal should identify two separate causative steps in s.15 claims (per Langstaff J, then the President of the EAT):

> "The current statue requires two steps. There are two links in the chain, both of which are causal, though the causative relationship is differently expressed in respect of each of them. The tribunal has first to focus upon the words "because of something", and therefore has to identify "something" – and second upon the fact that "something" must be something arising in consequence of a claimant's disability, which constitutes a second causative link. These are two separate stages.

234. In Pnaiser v NHS England and anor 2016 IRLR 170, EAT, Mrs Justice Simler summarised the proper approach to establishing causation under s.15. First, the tribunal has to identify whether the claimant was treated unfavourably and by whom. It then has to determine what caused that treatment focusing on the reason in the mind of the alleged discriminator, possibly requiring examination of the conscious or unconscious thought processes of that person, but keeping in mind that the actual motive of the alleged discriminator in acting as he or she did is irrelevant. The tribunal must then determine whether the reason was 'something arising in consequence of the claimant's disability', which could describe a range of causal links. This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

235. An employee who is treated unfavourably as a result of having to take a period of disability-related absence would have a claim under S.15 unless the employer can justify the unfavourable treatment on the basis that it is a proportionate means of achieving a legitimate aim.

236. Per the EAT's judgment in T-Systems Ltd v Lewis EAT 0042/15, unfavourable treatment is an act or omission by an alleged discriminator, in word or deed, that places the disabled person at a disadvantage.

237. The EHRC Code at paragraph 5.7 gives guidance on the meaning of disadvantage: Often, the disadvantage will be obvious and it will be clear that the treatment has been unfavourable; for example, a person may have been refused a job, denied a work opportunity or dismissed from their employment. But sometimes unfavourable treatment may be less obvious. Even if an employer thinks that they are acting in the best interests of a disabled person, they may still treat that person unfavourably.

238. Any allegation of discrimination arising from disability will only succeed if the employer is unable to show that the unfavourable treatment to which the claimant has been subjected is a proportionate means of achieving a legitimate aim.

239. The judgment given by Pill LJ In Hardy and Hansons Plc v Lax [2005] ICR1565 in which he stated:

> "The principle of proportionality requires the tribunal to take into account the reasonable needs of the business. But it has to make its own judgment, upon a fair and detailed analysis of the working practices and business considerations involved, as to whether the proposal is reasonably necessary. I reject [the employer's] submission … that when reaching its conclusion, the employment tribunal needs to consider only whether or not it is satisfied that the employer's views are within the range of views reasonable in the particular circumstances".

240. The decision of the EAT in Trustees of Swansea University Pension & Assurance Scheme and another v Williams [2015] IRLR 885 and specifically the judgment of Mr Justice Langstaff at paragraph 29 where he stated:

> "The determination of that which is unfavourable involves an assessment in which a broad view is to be taken and which is to be judged by broad experience of life. Persons may be said to have been treated unfavourably if they are not in as good a position as others generally would be".

Reasonable adjustments on account of disability

241. We reminded ourselves of the relevant provisions regarding reasonable adjustments to include the need for the existence of a provision, criterion or practice (PCP). We took account of the duty under s.39(5) of the EQA to make reasonable adjustments and referred to sections 20, 21 and 22 and Schedule 8 of the EQA. In particular we took account of s.22 (2) which provides that where a PCP of the employer puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled that the employer is under a duty to take such steps as it is reasonable to have to avoid the disadvantage.

242. We took account of guidance in cases such as Environmental Agency v Rowan [2008] IRLR 20 that a tribunal must identify the PCP, the identity of non-disabled comparators (where appropriate) and the nature and extent of the substantial disadvantage suffered by the claimant. There is a requirement to look at the overall picture.

243. We took account of the guidance regarding what a PCP constitutes in paragraph 6.10 of the Code and that the purpose of the comparison with people who are not disabled is to establish whether it is because of disability that a particular PCP disadvantages the disabled person in question. There is no requirement to actually identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person. Substantial disadvantage is something that is more than minor or trivial. We took into account paragraph 6.2.8 of the Code as to what reasonable steps may involve in terms of trying to alleviate the effect of the substantial disadvantage.

244. Section 212 of the EQA defines a substantial disadvantage as a disadvantage that is "more than minor or trivial". To succeed in his claim, the claimant must show that a relevant PCP, physical feature of lack of auxiliary aid caused him a particular disadvantage compared to non-disabled counterparts.

245. The scope of the employer's duty, where the employee is at that disadvantage, is to take such steps as it is reasonable to have to take to avoid the disadvantage.

Harassment

246. As a consequence of s212 (1) of the ERA it is necessary to consider allegations of harassment first (as if amounting to harassment they cannot amount to a detriment for direct discrimination).

247. Under s26, EQA, a person harasses the claimant if he or she engages in unwanted conduct related to a protected characteristic, and the conduct has the purpose or effect of (i) violating the claimant's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In deciding whether conduct has such an effect, each of the following must be taken into account: (a) the claimant's perception; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect.

248. The first step in the analysis is to determine whether the respondent engaged in "unwanted conduct". This means conduct that was unwelcome or uninvited from the subjective point of view of the claimant: Thomas Sanderson Blinds Ltd v English EAT 0316/10.

249. If the respondent is found to have engaged in unwanted conduct from the perspective of the claimant, the tribunal must consider whether such conduct was related to a relevant protected characteristic. This is a finding of fact for the tribunal: Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and anor 2020 IRLR 395, EAT.

250. The tribunal must consider all comments and conduct in the relevant context, rather than considering these in isolation: Warby v Wunda Group Plc [2012] 1 WLUK 610.

251. Should the tribunal find that the defendant has engaged in unwanted conduct related to a relevant protected characteristic, it must consider whether the conduct has had the purpose or effect of violating B's dignity or creating the proscribed environment. This is a disjunctive test, requiring only one limb to be met. Either limb will be met if the conduct is designed to, or does in fact, produce the relevant effect.

252. In Richmond Pharmacology Ltd v Dhaliwal [2009] IRLR 336, EAT, where Mr Justice Underhill (as he then was) gave this guidance:

> "An employer should not be held liable merely because his conduct has had the effect of producing a proscribed consequence. It should be reasonable that that consequence has occurred. The claimant must have felt, or perceived, her dignity to have been violated or an adverse environment to have been created, but the tribunal is required to consider whether, if the claimant has experienced those feelings or perceptions, it was reasonable for her to do so. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers and tribunals are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other discriminatory grounds) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.'

253. General Municipal and Boilermakers Union v Henderson [2015] IRLR 451 provides that a single incident is unlikely to be sufficient to create an environment sufficient to give rise to an offence of harassment.

254. In line with Betsi Cadwaladr University Health Board v Hughes and Ors EAT 0179/13, mere offence is not sufficient to amount to a violation of dignity. Violation of dignity is a strong term that requires a serious and marked effect or intended effect.

255. When determining whether conduct has had either of the effects listed at section 26 (1) (b), section 26 (4) requires the tribunal to take into account:

(a) the claimant's perception
(b) the other circumstances of the case, and
(c) whether it was reasonable for the conduct to have that effect.

256. This is a mixed subjective and objective test. Per Richmond Pharmacology a claimant must actually feel that their dignity has been violated or a proscribed environment has been created. Where that is the case, the tribunal should then consider whether it was reasonable for the claimant to feel that way.

257. If the claimant is not aware of the conduct complained of until after they contend that the proscribed environment was created, the conduct cannot be found to be harassment: Greasley-Adams v Royal Mail Group Ltd EAT 2023 86.

258. In cases where a series of incidents is alleged to amount to harassment, the tribunal should take a cumulative approach, bearing in mind the totality of the incidents: Reed and anor v Stedman 1999 IRLR 299 EAT.

Victimisation

259. Under s27 EQA, it is victimisation for a respondent to subject a claimant to a detriment because she had done a protected act. A 'protected act' includes making an allegation (whether or not express) that someone has contravened the EQA.

260. An act is only protected if it relates expressly to a contravention of the EQA; complaints about general unfairness are not protected. The protected act must take place earlier in time than the detrimental treatment complained of: Beneviste v Kingston University EAT 0393/05.

261. For the test that needs to be applied useful guidance is provided in Shamoon and that an unjustified sense of grievance cannot amount to a detriment. The test to be applied in determining whether a detriment exists is if a reasonable worker would, or might, take the view that the treatment was in the circumstances to his or her detriment. This must be applied by considering the issue from the point of view of the victim. While an unjustified sense of grievance about an alleged discriminatory decision cannot constitute detriment a justified and reasonable sense of grievance about the decision may do so.

262. A detriment cannot be held to be because of a protected act if the person allegedly inflicting the detriment was unaware of the protected act: Scott London Borough of Hillingdon 2001 EWCA Civ 2005,CA.

A qualifying protected disclosure

263. Section 43B (1) ERA defines a protected disclosure as a qualifying disclosure, being "any disclosure of information which, in the reasonable belief of the worker making the disclosure, is in the public interest and tends to show one or more" of a number of types of wrongdoing. This includes, (b) "that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject" and, (d) "that the health or safety of any individual has been, is being or is likely to be endangered".

264. A qualifying disclosure must be made in circumstances prescribed by other sections of the ERA, including, under Section 43C, to the worker's employer.

265. In Kilraine v Wandsworth LBC [2018] ICR 1850 the Court of Appeal clarified that "allegation" and "disclosure of information" are not mutually exclusive categories. What matters is the wording of the statute; some "information" must be "disclosed" and that requires that the communication have sufficient "specific factual contents".

266. Whether a particular disclosure of information, "tends to show" a breach of a legal obligation in the absence of any reference to a legal obligation will be a question of fact in each case.

267. What does matter is that the Claimant has a reasonable belief that the information disclosed tends to show one or more of the matters in S43B (1). In Kraus v Penna Plc [2004] IRLR 260 at para 24 the Employment Appeal Tribunal held that "likely" in this context means "more probable than not".

268. In the light of Babula v Waltham Forest College [2007] EWCA Civ 174, [2007] ICR 1026 what is necessary is that the Tribunal first ascertain what the Claimant subjectively believed. The tribunal must then consider whether that belief was objectively reasonable,

i.e. whether a reasonable person in the Claimant's position would have believed that all of the element of S43B (1) were satisfied i.e. that the disclosure was in the public interest, and that the information disclosed tended to show that someone had failed, was failing or was likely to fail with the relevant legal obligation. The Court of Appeal emphasised that it does not matter whether the Claimant is right or not, or even whether the legal obligation exists or not.

269. The reasonableness of the worker's belief is determined on the basis of information known to the worker at the time the disclosure is made: Darnton v University of Surrey [2003] ICR 615.

270. It is necessary that the disclosure was in the "public interest". The Court of Appeal in Chesterton Global and another v Nurmohamed [2017] EWCA Civ 979 [2018] ICR 731 set out relevant criteria against which to assess the existence of the public interest to include:

- the numbers in the group whose interest the disclosure served;
- the nature of the interest affected and the extent to which they are affected by the wrongdoing disclosed;
- the nature of the wrongdoing disclosed; and
- the identity of the alleged wrongdoer.

271. It is possible to aggregate separate incidents to amount to a composite disclosure: see Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 340 EAT.

272. Section 47B ERA provides that on such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done. Whilst the burden is on the employer, the Claimant must raise a prima facia case as to causation before the employer will be called upon to demonstrate that the protected disclosure was not the reason for the treatment; see Serco Ltd v Dahou [2017] IRLR 81 para 40. As such the section creates a shifting burden of proof that is similar to that which applies in discrimination claims under S136 of the EQA.

Detriments for making protected disclosures

273. Under S47B ERA, a worker has a right not to be subjected to a detriment by any act, or deliberate failure to act, on the part of his or her employer done on the ground that the worker has made a protected disclosure.

274. A detriment is something that a reasonable worker would consider to be their disadvantage in the circumstances in which they have to work. Something may be a detriment even if there are no physical or economic consequences for the worker, but an unjustified sense of grievance is not a detriment: see Shamoon v Chief Constable of the Royal Ulster Constabulary [2003[UK HL 11, ICR 337 at paras 34-35 per Lord Hope and at paras 104-105 per Lord Scott.

275. The EAT set out the requirements for a successful claim under s.47B(1) in London Borough of Harrow v Knight 2003 IRLR 140, EAT:

a) The claimant must have made a qualifying disclosure;

b) They must have suffered some identifiable detriment;
c) The employer must subject the claimant to that detriment by some act, or deliberate failure to act, and
d) The act or deliberate failure to act must have been done on the ground that the claimant made a protected disclosure.

Burden of proof

276. Should the claimant prove that he made a protected disclosure and that the employer subjected him to some detriment, the employer has the burden of proving that any such act or failure to act was not on the ground of a protected disclosure by the claimant: section 48(2) ERA 1996.

Time limits for detriment claims

277. Section 48 (3) ERA provides that a tribunal shall not consider a complaint of a worker suffering a detriment unless it is presented before the end of the period of 3 months beginning with the date of the act or failure to act to which the complaint relates, or where that act or failure is part of a series of similar acts or failures, the last of them, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.

278. Section 48(4), ERA states:

(a) where an act extends over a period, the "date of the act" means the last day of that period, and
(b) a deliberate failure to act shall be treated as done when it was decided on; and, in the absence of evidence establishing the contrary, an employer [, a temporary work agency or a hirer] shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

279. In Royal Mail Group Ltd v Jhuti EAT 0020/16, the EAT held that it was irrelevant for the purposes of extending time under S.48(3)(a) that the out-of-time proven acts may have had continuing consequences in terms of the detriment experienced by the C. S.48 (3) (a) was concerned with when the act or failure to act occurs, not with when the consequence of that act or failure to act is felt or suffered.

280. The House of Lords' decision in Barclays Bank plc v Kapur and Ors 1991 ICR 208, also distinguished between a continuing act and continuing consequences. Where an employer operates a discriminatory regime, rule, practice or principle, that amounts to a continuous act extending over a period of time. However, if there is no such regime, rule, practice or principle, then an act that affects an employee will not amount to a continuing act, even though the effect(s) of the act may be long-lasting.

Series of similar acts (s.48 (3) (a)

281. The concept of "a series of similar acts" for the purpose of S.48 (3) (a) is distinct from that of an act extending over a period of time in the context of s.48 (4) (a). In Arthur v London Eastern Railway Ltd (t/a One Stansted Express) 2007 ICR 193, CA, the Court of Appeal held that S.48(3)(a) could cover a situation where the complainant alleges a number of acts of detriment by different people where, on the facts, there is a connection between the acts or failures to act in that they form part of a 'series' and are 'similar' to one another. At paragraph 31 of the judgment LJ Mummery said (emphasis added):

> "The provision can therefore cover a case where, as here, the complainant alleges a number of acts of detriment, some inside the 3-month period and some outside it. The acts occurring in the 3-month period may not be isolated one-off acts but connected to earlier acts or failures outside the period. It may not be possible to characterise it as a case of an act extending over a period within section 48(4) by reference, for example, to a connecting rule, practice, scheme or policy but there may be some link between them which makes it just and reasonable for them to be treated as in time and for the complainant to be able to rely on them. Section 48(3) is designed to cover such a case. There must be some relevant connection between the acts in the 3-month period and those outside it. The necessary connections were correctly identified by HHJ Reid as (a) being part of a "series" and (b) being acts which are "similar" to one another".

282. At paragraph 45, LJ Lloyd stated that in deciding this question "it must be sensible to consider the evidence as to each act relied on before deciding (a) whether they are part of a series at all and (b) whether they are sufficiently linked factually to be "similar" acts".

Reasonably practicable extension

283. The onus of proving that presentation in time was not reasonably practicable rests on the C. "That imposes a duty upon him to show precisely why it was that he did not present his complaint" — Porter v Bandridge Ltd 1978 ICR 943, CA.

Meaning of 'reasonably practicable'

284. The relevant principles when determining whether a claim could not reasonably be presented before the end of the relevant three-month period are set out by Underhill LJ in Lowri Beck Services Ltd v Brophy 2019 EWCA Civ 2490:-

- The test is given a liberal interpretation in favour of the employee.
- The statutory language is not to be taken as referring only to physical impracticability and for that reason might be paraphrased as whether it was 'reasonably feasible' for the employee to present his or her claim in time.
- If an employee misses the time limit because he or she is ignorant about the existence of a time limit or mistaken about when it expires in his or her case, the question is whether the ignorance or mistake is reasonable (in assessing whether ignorance/mistake are reasonable, it is necessary to take into account any enquires the employee or adviser should have made). If it is

not, then it will have been reasonably practicable for the employee to bring the claim in time.

- This is a question of fact, not of law. It is for the tribunal to determine objectively in light of the evidence available.

285. Even if a claimant satisfies a tribunal that presentation in time was not reasonably practicable, that does not automatically decide the issue in his or her favour. The tribunal must then go on to decide whether the claim was presented "within such further period as the tribunal considers reasonable".

Reasonable further period

286. If the claimant does show that it was not reasonably practicable to issue the claim within the ordinary time limit, the tribunal's jurisdiction to hear his complaint is only triggered if the tribunal finds that the complaint was brought "within such further period as the tribunal considers reasonable".

287. Whether a claim that could not reasonably be brought within the ordinary time limit was brought within a reasonable further period is also a question of fact. It requires an objective consideration of the factors causing the delay and the period that should be reasonably allowed in consideration of this. The tribunal must also bear in mind the primary time limit and the strong public interest in ensuring that claims are brought promptly: Cullinane v Balfour Beatty Engineering Services Ltd and Anor EAT 0537/10.

Closing submissions

288. Whilst the evidence was completed on the morning of 13 November 2024 Ms Murphy requested that closing submissions be deferred until Monday 18 November 2024 as given the duration of the case, there being circa 80 individual allegations and her wanting to provide the Tribunal with a comprehensive written submission. The Tribunal agreed to this request and asked that her written reasons be provided to the Claimant and the Tribunal by 8 AM on 18 November 2024 with oral submissions being made from 2 PM that day.

289. Ms Murphy provided a detailed skeleton argument together with accompanying appendix setting out the individual allegations in chronological order with the cause of action pertaining to each stated. The Tribunal considered that this represented a helpful framework for its judgment. The Claimant replied to Ms Murphy's submissions by reading a prepared document. Whilst this had not been exchanged in advance he provided it to the Tribunal and the Respondent later that day. The Tribunal was satisfied that the Respondent was not disadvantaged by not having previous sight of the document as it was read in full by the Claimant.

290. It is not necessary to set out details of the parties' submissions. However, it is worth making the following points.

Respondent

291. Ms Murphy says that the claim is based on 66 allegations each involving between two and five separate causes of action. She estimates that this gives rise to a total of 281

separate allegations. She asserts that the Claimant has sought to argue that everything is covered by everything and referred to a word count of the Claimant's witness statement which showed he had used the word hostile 286 times, intimidating 169 times and conspiracy 64 times.

Claimant

292. The Claimant argues that there was a continuing course of conduct from the time of his removal from PDS. He says that the detriments he subsequently suffered were all linked as his line managers were all connected and passed on information on the transfer of line management responsibilities. He says that DCI Kerr, Superintendent Rajan, Mr Balcome, and CI Davies were all part of the SLT.

Discussion and conclusions

The approach taken by the Tribunal to its conclusions

293. We spent some time considering what would be the most effective order of addressing the multiple allegations. In a discussion with the parties it was agreed that it would be appropriate for the Tribunal to reach findings on all allegations notwithstanding the Respondent's contention that the Tribunal does not have jurisdiction to consider them on the various grounds that they were out of time, a disability did not exist at the material time, protected acts did not exist prior to alleged detriments and so on.

294. We considered that it would be most appropriate to address the issues in the following order in our deliberations and judgment:

a) Disability

b) Protected Acts

c) Protected Disclosures

d) The individual allegations in chronological order but addressing them based on the various causes of action identified; and

e) Jurisdiction on the grounds of time to include whether there was a continuing course of conduct and whether the Tribunal should exercise its discretion to extend time on the basis that it would be just and equitable to do so for those claims brought under the EQA and in respect of those claims under the ERA that it was not reasonably practicable for the claim to be issued within the requisite time period.

Disability

295. The Respondent accepts that the Claimant had a disability from 17 September 2020 but denies that he was disabled before that date. This is on the basis that the impairments had substantial adverse effect from on or about 17 September 2020, on the basis of the consolidated effect of anxiety and Bronchiectasis and from September 2021 on the basis of the combined effect of anxiety, Bronchiectasis, knee injury and Sjogren's Syndrome.

Depression/anxiety (collectively referred to as mental health)

Flint House July 2017

296. In form competed on 26 May 2017 the Claimant referred to anxiety when going to work relating to a problem with his line manager causing him anxiety. The form stated the diagnosis to be acute severe stress.

297. We do not consider that a diagnosis of mild depression/anxiety was sufficient to give rise to a disability under s.6 of the EQA. We reach this decision given that the condition was referred to as being "mild" but also we are not satisfied that the required long term effect i.e. lasting for a period of at least 12 months existed at that stage.

2018

298. The Respondent made a management referral of the Claimant to OH on 30 January 2018. This focussed on his physical health specifically that the Claimant had a violent cough and trouble breathing consequential on his having bronchitis in November 2017.

299. The Claimant attended an OH consultation on 5 February 2018 and again the focus was exclusively on physical health issues pertaining to his breathing, coughing and previous history of bronchitis and whooping cough. There was no mention of his mental health.

300. The Claimant was again referred to Flint House in a document dated 20 December 2018. This referred to a diagnosis of mild depression/anxiety and documented a history of workplace issues which had caused or contributed to his mental health issues. The Claimant attended Flint House in April 2019.

301. We consider that the Claimant fulfilled the definition of disability on the grounds of mental health with effect from 20 December 2018. By this stage it is apparent that over 12 months had elapsed with him suffering from mental health issues comprising anxiety and depression. We take account of the various effects on the Claimant's normal day to day activities as set out in the 20 December 2018 referral to Flint House to include the scoring given by the Claimant to the frequency of various indicators pertaining to depression and anxiety.

302. We also take account of the fact that the MPS initial assessment record dated 1 October 2020 referred to diagnosed depression and anxiety three years ago. Whilst it is important that we take account of evidence at the material time i.e. in this instance December 2018 it is nevertheless relevant that this form acknowledges that the mental health conditions were of relatively long term duration.

303. We find that the Respondent had actual knowledge of the Claimant's mental health issues from 20 December 2018. For example, the management referral to OH dated 20 September 2021 refers to the Claimant suffering increased anxiety since 2016 due to his ongoing perceived workplace discrimination and documents his two visits to Flint House and that he had recently reached out to take out more Met counselling.

Bronchitis

304. We have given careful consideration as to the date upon which the Claimant fulfilled the definition of disability on account of Bronchitis. We take account of his referral to OH on 5 February 2018 in which it is apparent from the current history that the Claimant was experiencing serious symptoms with a violent cough and trouble breathing. He had been prescribed steroids and a blue inhaler by his GP and therefore we take account of the deduced effect of what the condition would have been without this medication.

305. He had been seen in A&E and his GP had ordered blood results and x-rays which were satisfactory. The report referred to the Claimant having been diagnosed with Bronchitis in 2017. It did not, however, make any reference to his previous history of respiratory conditions which caused significant incapacity for him in 2010. We considered whether the Claimant's 2018 Bronchitis should be seen as co-joined with his previous history of respiratory issues. We find that it should not, given that there is no evidence that he had any significant incapacity in the intervening eight years. We take account of the letter from the Chief Medical Officer dated 5 May 2011 said that he was making a very satisfactory recovery. Further, we take account of the assessment by the OH on 5 February 2018 that the Claimant was unlikely to be covered by the definition of disability under the EQA given that his health condition had not lasted longer than 12 months. Whilst we are not bound by this view, we nevertheless take into account in assessing whether the Claimant satisfied the definition of disability, but more significantly in assessing whether the Respondent had actual or ostensible knowledge of any such condition amounting to a disability. We find that they did not.

306. Therefore we conclude that the Claimant's Bronchitis did not constitute a disability prior to the date upon which the Respondent acknowledges it doing so on 17 September 2020.

Sjogren's Syndrome.

307. The Claimant contends that Sjogren's Syndrome constituted a disability from May 2021. Given that the Respondent accepts that it, on an accumulative basis, constituted him having a disability from 17 September 2020 we do not need to go further save in so far as the claimant contends that he suffered disability discrimination specific to Sjogren's Syndrome before or after 17 September 2020.

308. It was not until 14 September 2021 that the Claimant was formally diagnosed. Whilst the Claimant has referred to experiencing symptoms pertaining to this condition from 2018 we consider that those are too vague and inadequately documented to either give rise to a finding of disability or perhaps more significantly that the Respondent had or ought to have knowledge of it.

309. we do not however consider that there is sufficient evidence that the adverse effects of Spurgeon syndrome were sufficient to constitute a disability in isolation as opposed to it being part of a conjunctive assessment of various conditions which the Respondent acknowledges constituted a disability with effect from September 2021.

Knee Injury

310. We considered whether the Claimant's knee injury constituted a disability prior to it being accepted by the Respondent as part of an accumulated series of medical conditions constituting disability with effect from 17 September 2021. We note that the Claimant had a history of issues with his right knee following an ACL reconstruction in 1999. Whilst the Claimant says that he had issues with the knee being aggravated following an incident whilst weight training in his garden in September 2020 we are not satisfied that there is evidence that this aggravation constituted disability, and perhaps more significantly that the Respondent had knowledge, actual or ostensible, of it prior to their acceptance of disability on 17 September 2020.

311. We refer to a letter from an orthopaedic consultant following an appointment with the Claimant on 16 April 2021. This refers to the Claimant playing squash and wearing a brace to support his knee during sport. Further, the Claimant is stated not to be taking any pain killers. The fact that the Claimant may have been inconvenienced, or to a certain degree immobilised as a result of the knee injury, falls substantially short of the required substantial adverse effect on normal day to day activities to give rise to a disability.

312. We accept that the Claimant had a disability on account solely of his knee injury with effect from 20 September 2021. We refer to the management referral to OH which included stating that he has right knee joint changes that will, in the course of time, require a joint replacement. Further, that he is listed for a higher tibial osteotomy and that his walking capacity is impaired. Reference is made to his mobility being a barrier to his resuming office based work along with other named factors. We further take account of the fact that the Claimant had major knee surgery on 9 June 2022 which necessitated a three month recovery period.

Conclusions on disability

313. We find that the Claimant's mental health i.e. anxiety and depression constituted a stand-alone disability from 20 December 2018.

314. We find that Bronchitis constituted stand-alone disability from 17 September 2020.

315. We find that the Claimant's knee injury in isolation constituted a stand-alone disability from 20 September 2021.

Protected Acts

PA2.1 end of August 2017 written complaint by email, and complaint to Mr Belej prior to leaving PDS role

316. We refer to the Claimant's email to Mr Belej of an unspecified date in late August 2017. The email was sent after the Claimant was informed that he was moving from Ports Duty Supervisor (PDS) to Terminal 2 at Heathrow but before the actual move. The Claimant says that he saw the move as a regressive step. He had been at Terminal 2 as an Acting Inspector in 2008. The Claimant stated that he was shocked and wished to stay at PDS. He questioned what development needs would be met by the move. He did not make any reference to alleged discrimination under the EQA.

317. We find that this did not constitute a protected act.

PA2.2 October 2017 after removal from PDS the Claimant made an oral and text complaint to Mr Rajan

318. The Claimant does not refer to acts of discrimination in his WhatsApp message to Mr Rajan dated 2 October 2017. It is significant that he concludes by saying that he was looking forward to a new challenge starting with T2 – either/or SPI or ESB (Empress State Building).

319. We find that this did not constitute a protected act.

PA3 January-August 2019 orally informed Mr Fleeman re-PDS complaint and move to Terminal 2

320. There is little, if any contemporaneous documentation of this. We take account of paragraphs 34 and 35 in Mr Fleeman's witness statement and specifically that whilst he had some discussions with the Claimant regarding his move from PDS to Terminal 2 that his focus was on his dissatisfaction with his previous line manager, Inspector Blake-Turner. There is no reference to the Claimant referring to acts of discrimination.

321. We find that this did not constitute a protected act.

PA4 November/December 2014 orally informed Superintendent King re-removal from PDS being discriminatory

322. There is no contemporaneous documentation of the Claimant reporting acts of discrimination pertaining to his move from PDS to T2 and specifically nothing to indicate that he informed Superintendent King of this. Further, at paragraph 21 in her witness statement she denies that the Claimant had told her that he had been removed from his PDS role or that the move was discriminatory. We find that this did not constitute a protected act.

PA5 early January 2020 PS email to Superintendent King

323. The Claimant appears to be relying on emails sent by Officer 1 on 8 January 2020 to Superintendent King. Given that these were not matters raised by the Claimant it would be impossible for him to have undertaken a protected act even on the assumption that the emails in question referred to matters capable of so doing. Whilst Superintendent King copied the Claimant on her response email to Officer 1 at 00:40 on 8 January 2020 he at no point sent an email to Superintendent King regarding the issues raised by Officer 1.

324. Officer 1's note to self of 8 January 2020 at 01:50 refers to his believe that the issued raised is racially motivated as both himself, the Claimant and Officer 11 are of the BAME group and he makes reference to unconscious bias towards BAME officers or are they simply racist. This if it had been made by the Claimant to his supervisor would have constituted a protected act, however it was not.

325. We go on to consider the Claimant's subsequently email to Superintendent King of 22:50 on 8 January 2020. He says it would be remiss not to share his observations as the other supervising officer on Team 3 at SPI. He referred to the situation saddening him as

it was wholly unnecessary and if PC Officer 10 had an issue with PC Officer 11 and PS Officer 1 having a relationship then Superintendent King could have spoken to him about it and it would not have ended up where it is now. However, we do not consider that there is sufficient material within this email for it to constitute a protected act as the Claimant himself was not specifically referring to discrimination.

326. In this email the Claimant refers to "as you may be aware" and then talks about his 12 years' experience of work at Borders. In cross examination the Claimant sought to argue that this referred to his having already told Superintendent King about discrimination. However, we do not accept the Claimant's' position in this respect given that his practice throughout the substantial documentation in the bundle is to repeat in writing references to previous discrimination he had allegedly experienced and his failure to do so in this particular context would be out of character and therefore supports our view that it had not been raised with Superintendent King.

327. We refer to the conclusions in the Claimant's observations regarding Officers 10 and 11 appended to his email to Superintendent King and specifically his unequivocal belief that PC Officer 11 is the subject of unfair criticism, scrutiny and dare I say it victimisation by PC Officer 10 for no other reason than him doing his job and doing it impeccably. There is, however, no suggestion made that this was on account of race or other protected characteristics and therefore is not capable of constituting a protected act.

328. We therefore find that did not constitute a protected act.

<u>PA6 late January 2020 to early March 2020 orally raised PDS removal and SPI race issues with Superintendent King</u>

329. As PA4 above.

<u>PA7 28 August 2020 conversations with Superintendent King</u>

330. Superintendent King had a one to one meeting with the Claimant on 28 August 2020 in the context of Black Lives Matter. In her witness statement (at paragraph 45) she refers to the claimant raising "historic" matters. The Claimant disputed that he used the word "historic".

331. We take account of the Claimant's message to self-dated 31 August 2020 in which he said, "the race discrimination has not stopped but has been relentless even to this day" and that he had reiterated that he wished to stay in his role at SPI.

332. We further take account of Superintendent King's response to Ms Venosi on 21 February 2023 as part of the grievance investigation. In respect of the 28 August 2020 one to one meeting she recorded the Claimant saying that he did not have credibility at Borders and that this stemmed from an historic incident at LHR but he did not wish to expand. She records that he stated there was a lack of inclusivity in his previous role as PDS at LHR. She says that she provided him with reassurance that racism would not be tolerated at SBI Borders/MPS. Whilst this is not the same as her saying that the Claimant had raised allegations of racism/discrimination the fact that she was providing reassurance that it would not be tolerated is indicative that she perceived that his reference to "historic"

incidents at LHR as being likely to have constituted, from his perspective, acts of discrimination.

333. We also took account of the contents of the Claimant's email to Mr Balcome of 7 October 2020 when he referred to his one to one meeting with Inspector King on 28 August 2020 and having raised a complaint 3 ½ years ago as a result of a protected characteristic after Border officers were encouraged to discuss how the BLM media coverage had directly impacted them.

334. We accept that the Claimant undertook a protected act.

PA8 1 October 2020 Superintendent King's referral of Claimant to counselling

335. We take account of what we understand to be the Claimant's self-referral to counselling in the MPS initial assessment record dated 1 October 2020. The Claimant refers to the main issues as including alleged bullying by management and feeling "singled out". We also take account of paragraph 60 of Superintendent King's witness statement where she says that she had signposted the Respondent's employee assistance programme offering six free counselling sessions on numerous occasions to the Claimant and infer that he took this up as at 1 October 2020. It is significant that the Claimant in his self-referral did not make any reference to discrimination whether on the grounds of race or otherwise.

336. We find that this did not constitute a protected act.

PA9 7 October 2020 Claimant's email to DSU Balcombe

337. Accepted by the Respondent.

PA10 30 October 2020 Superintendent King's referral of the Claimant to counselling

338. As PA8 above.

PA11 22 June and 27 July 2021 Claimant told Superintendent King about recent discrimination

339. We have given careful consideration to the diametrically opposed version of events given by the Claimant at paragraph 218 of his witness statement where he claims he spoke about discrimination and detriments he had suffered in recent times including the PDS, SPI, self-defined ethnicity threats and went on to say that ACI Marshall said: "that was then and this is now" and ACI Marshall at paragraph 58 of his witness statement where he denies that the Claimant alleged that he had told him about recent discrimination on 22 June 2021. Given the discrepancy between the respective versions of events we have to reach a decision on the balance of probabilities as to what was said by the Claimant at the meeting. We place reliance on the Claimant's note to self at 7:26 on 23 June 2021 where in a very detailed summary of the meeting he does not include a heading marked discrimination and nor does he make any direct reference to raising issues of previous discrimination on account of protected characteristics. Whilst in the final sentence of the section entitled "My Team" he refers to being highly troubled by ACI Marshall's "attitude, discrimination and clearly biased behaviour" this is in our view a reference to the Claimant's

perception of how he acted at the meeting rather than a reference to the Claimant having raised pre-existing issues of discrimination with him.

340. We find that this did not constitute a protected act.

PA12 June 2021 OH report

341. There is nothing in the OH referral dated 20 June 2021 which is capable of constituting a protected act.

PA13 7 September 2021 oral report to DCI Kerr

342. We take account of DCI Kerr (paragraph 48 of his witness statement) where he says that he cannot specifically recall the Claimant raising issues of discrimination but his note is ambivalent on this point. We therefore take account of the Claimant's message to self of 14:08 on 7 September 2021. Whilst he refers to having been discriminated against by his line managers that is in the specific contexts of sickness absence and his lack of sickness absences over the previous 18 months. He complains about not been supported with his various health issues and being targeted as being discriminatory but that has not been linked to a protected characteristic.

343. We find that this did not constitute a protected act.

PA14 9 September 2021 email re-race/disability discrimination

344. We have adopted a purposive approach of reading the Claimant's emails to Nikki, his Federation Representative and Marlon the RSN nurse of 9 September 2021 in conjunction with the case management conference which had taken place earlier that day. We consider this to be reflective of their content. We find that the email to Marlon did not constitute a protected act. There was insufficient particularity given by the Claimant as to discrimination on account of a protected characteristic.

345. We do, however, find that his email to Nikki did constituted a protected act. We note that under s.27 (2) (d) of the EQA that there is no requirement that the making of an allegation that a person has contravened the Act needs to be made to the employer and it would be possible for an employee to make an allegation of such a contravention to a trade union or federation representative.

346. We note that the Claimant in his detailed email referred to his having been discriminated against since 2016/2017. He refers to a series of well documented incidents and whilst the Claimant does not specifically refer to discrimination referable to any given protected characteristic we consider it appropriate to read this email in conjunction with previous communications and also our earlier finding that the Claimant had already fulfilled the definition of protected acts at PA7 and PA9.

347. We accept that the Claimant undertook a protected act in his email to his Federation Representative.

PA15 10 September 2021 OH report mentioning discrimination

348. The OH report dated 10 September 2021 refers in the background section to the Claimant having increased anxiety due to his ongoing perceived workplace discrimination since 2016. However, this is not a reference to a contemporaneous statement by the Claimant. We interpret this as deriving from Dr Ryan's assimilation of the materials provided to him rather than a comment made directly to him by the Claimant given the language used and the previous documented history.

349. We find that this did not constitute a protected act.

PA16 16 December 2021 Claimant's email to CI Davies re-discrimination

350. The Respondent accepts that the Claimant's email to CI Davies of 16 December 2021 constituted a protected act in relation to disability but not race. We accept this position given that whilst the Claimant, in the third paragraph of that email, referred to the approach of Inspector Baird and the line managers preceding him as being less than satisfactory and discriminatory that should be read conjunctively with the second paragraph which focusses on his health complications and the following paragraph the issue pertaining to GDPR following the disclosure of his medical records to an unintended wider group by Inspector Baird.

PA17 22 December 2021 OH report re-discrimination

351. We find this did not constitute a protected act for the same reasons as stated in PA15 and others above.

PA18 13 January 2022 grievance report referring to widespread discrimination over years

352. The Respondent accepts, correctly, that the Claimant's grievance dated 13 January 2022 constituted a protected act.

PA19 2520 22 Claimant's email to Inspector Baird re-discrimination

353. The Respondent has, correctly, accepted that the comments included in the Claimant's email to Inspector Baird of 13:33 on 25 February 2022 constituted a protected act.

PA20 10 March 2022 OH report disclosed to Inspector Baird

354. We find that this did not constitute a protected act for the reasons set out in PA15 above.

PA21 10 March 2022 Claimant's email to Inspector Baird re-discrimination

355. Accepted by the Respondent as constituting a protected act and we concur with this position.

PA22 17 March 2022 emails from Inspector Baird re-"perpetual historical issues"

356. We consider that this represented Inspector Baird referring to matters which the Claimant had raised and therefore it is not an allegation made by him of a contravention of

the Act. It is apparent that Inspector Baird's reference to "historical reporting of wrong doing and associated issues" relates to the Claimant's' previous emails and most recently that of 10 March 2022 but given that we have already found it constituted a protected act his response does not change the position.

357. We find that this did not constitute a protected act.

PA23 22 and 27 March 2022 Claimant's emails to Inspector Baird

358. It is accepted by the Respondent that the Claimant's emails to Inspector Baird of 22 and 27 March 2022 constitute protected acts and we agree with this position.

PA24 15-27 March 2022 Claimant's emails to Inspector Baird

359. It is accepted by the Respondent, correctly, that the Claimant's email to CI Davies constituted a protected act.

PA25 May-August 2022 PDR (Inspector Baird)

360. It is accepted by the Respondent, correctly, to constitute a protected act.

Summary regarding protected disclosures

361. We accept that PAs 7, 9, 14, 16, 18, 19, 21, 23, 24 and 25 constituted protected acts.

Whistleblowing

Protected disclosures

PD3

362. We accept that the Claimant's email to Superintendent King of 13:23 on 18 December 2020 contained a protected disclosure pursuant to s.43 (b) of the ERA in that it variously involved the disclosure of information tending to show that a criminal offence was likely to be committed, that there had been a failure to comply with any legal obligation to which the Respondent was subject and/or that the health or safety of any individual had been endangered. We find that the Claimant's belief was reasonable. This position is accepted by the Respondent.

PD4

363. The Respondent has, correctly, accepted that the Claimant's witness statement dated 19 January 2021 included a protected disclosure.

Comparators

364. As part of our deliberations we have carefully reread the Claimant's witness statement. We note that on multiple occasions he makes reference to named

comparators. Unfortunately the actual comparators relied on are not contained in the list of issues nor in the Respondent's table of allegations. The onus is on the Claimant to adduce evidence from which the Tribunal could potentially infer that it he was treated less favourably than named comparators. Whilst the Claimant has adduced evidence in relation to some comparators, for example, PS Sidoli and PS Noonan, there are many others where no direct evidence has been provided. For example, we undertook a word search against Steve Dabbinet and his name only appeared in the pleadings, other procedural documents and the Claimant's grievance and that is not sufficient for us to assess whether his material circumstances were the same as the Claimant's and therefore he, and others in a similar situation, can effectively be discounted as meaningful comparators.

365. For example in the section in the Claimant's witness statement, under the allegation of denied development opportunities from paragraph 161 onwards, he relies on Adam Davies, PS Noonan, Phil Williams, Elaine Anear, Jon Worcester, Hazel Lambert, Scott Baden-Marshall and Steve Collins as direct comparators. Whilst we heard evidence in relation to PS Noonan, and to some extent Ms Anear and Mr Davies, we did not hear any substantive evidence pertaining to the others. As such we are not in a position to make definitive findings as to where their material circumstances were the same as the Claimant's and if so whether he was treated less favourably than them.

366. Nevertheless, to the extent possible, we have endeavoured to consider what evidence exists in relation to those comparators to assess whether their material circumstances were equivalent to the Claimant's and if so whether he was treated less favourably on account of the protected characteristic relied on. Whilst we have spent considerable time assessing the evidence it is not incumbent upon us to carry out a forensic analysis of all the evidence to assess the position in relation to each comparator.

367. We take account of the Claimant's named comparators and the allocation of project work/roles by SLT to include Mr Davies, PS Noonan, Ms Lambert, Mr Newbury-Rank, Mr Scott Baden-Marshall, Mr Williams, Ms Anear and Mr Worcester as set out at paragraphs 172-177 of his witness statement.

368. In relation to PC Newbury-Rank, Mr Rajan says that he held a specialist estate role which required him to be on site. He therefore rejects the contention that this involved the allocation of work on a "project". He says that the role would not have been suitable for the Claimant as it required an on-site presence. Also in considering whether his material circumstances were the same as the Claimant's it is relevant that he was a PC and therefore in a much more junior capacity.

369. Mr Davies is also a Sergeant and therefore the same rank as the Claimant. DCI Kerr says that a case conference was held for him.

370. PC Anear, PC Worcester were at a more junior rank to the Claimant.

<u>Conclusions on the chronological sequence of allegations</u>

<u>Approach taken</u>

371. For the avoidance of repetition we will not continuously set out the test applicable to the various heads of claim and they should be regarded as having generic applicability. We will therefore focus primarily on our evidential findings and interpretation of them in the context of a claim being pursued.

372. In the interest of this judgment not becoming unwieldy we do not repeat in each and every allegation the legal basis and analysis for our findings and the application of the applicable legal framework should therefore be read as having generic applicability where the allegations are the same and the reasons for rejecting the Claimant's assertions apply equally across multiple allegations.

16.1: Removal from PDS post 28 April 2017

373. The allegation of this constituting discrimination arising from disability pursuant to s.15 of the EQA fails as we have found that the Claimant did not have a disability prior to 20 December 2018.

374. In accordance with s.212 of the EQA we consider whether the allegation constituted harassment pursuant to s.26 of EQA before going onto consider, if necessary, whether it constituted direct race discrimination pursuant to s.13 of the EQA. We apply this approach to all allegations involving both contentions of harassment and direct discrimination. We find that it did not. We are conscious of this judgment not becoming unnecessary long and unwieldy. Therefore, in respect of this allegation and those following we do not address those acts alleged to constitute both harassment and direct race/disability discrimination separately where we have found in respect of the s.26 claim that there was no evidence upon which we could infer that the Claimant's race/disability had anything to do with it and therefore the burden of proof did not shift to the Respondent. Nevertheless, for the avoidance of doubt we have taken this into account in respect of each allegation and our failure to repeat this in respect of the multiple allegations should not be interpreted as our failure to do so but rather as a measure to avoid unnecessary repetition.

375. We accept the Respondent's evidence that in accordance with its managerial discretion it had an entitlement to deploy the Claimant as needed to ports and locations including SPI, LHR and LCY. Further, we consider that the Respondent had genuine and legitimate grounds for requiring the Claimant to make the move given that he had been incumbent in his existing post since 2008, and that there were therefore grounds to consider that his development would be assisted by working in a different area, but nevertheless in a role commensurate with his prior experience and status.

17.1: Bringing the Claimant to a meeting with two managers 22-23 May 2018 (this relates to the meeting on 13 July 2018)

376. The claim of victimisation fails as we have found that there was no protected act at the time of this alleged incident.

377. The claim for harassment on account of disability fails as we have found that at this date the Claimant did not fulfil the definition of disability.

378. We find no evidence to infer that the treatment of the Claimant had anything to do with his race and therefore the burden of proof does not shift to the Respondent. We find

that there was nothing unusual or inappropriate regarding the location for this meeting. Further, whilst it may not have been normal practice for two senior officers i.e. CI Herring and ACI Marshall to be in attendance at the meeting on 13 July 2018 we find nothing from this to infer that it had anything to do with the Claimant's race. In any event we reject the contention, even if we had found evidence that the Claimant's protected characteristic was a contributory factor to two senior officers being in attendance, that this would have been capable of constituting harassment given the need to consider not just the Claimant's subjective perception of events but also whether that perception was objectively reasonable. In these circumstances we consider it incontrovertible that any such perception was not objectively reasonable given that it fell within the Respondent's managerial prerogative for two officers to attend such a meeting.

18.1 and 18.2: Spying by manager January-August 2019

379. As above the allegation of victimisation fails on account of there being no proceeding protected act.

380. The Claimant contends the something arising from a disability i.e. his mental health was that he was forced to spend time in the office to recover from anxiety. We discount bronchitis as we have found that it did not constitute a disability as at this date. We have interpreted this as the Claimant not being able to undertake his normal front line police duties as result of his anxiety and therefore undertaking office based work. We have further interpreted this claim as him saying there was an increased probability of being on CCTV whilst undertaking office work as opposed to front line police duties. We consider this to be misconceived. It is almost certainly the case that all public facing areas of Heathrow would be covered by CCTV so it is coincidental that the Claimant, whilst performing office based work, was caught on CCTV by Mr Fleeman and therefore it is not something arising from his disability and therefore this claim fails.

381. The allegation of harassment on account of race fails given that we have rejected the contention that Mr Fleeman was spying on the Claimant. We find no evidence to infer that his viewing of the Claimant on CCTV had anything to do with the Claimant's race and therefore the burden of proof does not shift to the Respondent. Whilst we accept that had Mr Fleeman been viewing the Claimant for non-operational reasons it may have been subjectively and objectively regarded as an act of harassment this does not arise given that we have found no evidence to infer that it had anything to do with the Claimant's race.

382. Whilst we have accepted that the claimant had a disability on account of his anxiety and depression with effect from 20 December 2018 we do not consider, for the reasons set out above, that the allegation of harassment on account of disability is made out and nor do we consider that the Claimant was treated unfavourably because of something arising in consequence of his disability.

19.1: Denied move to SPI December 2018 - September 2019

383. For the reason set out above the allegations of victimisation fails and is dismissed.

384. We accept the evidence of Mr Fleeman that there is no automatic chronological prioritisation of requested moves. Therefore whilst it is accepted that others moved quicker than the Claimant we accept that the Respondent was entitled to take into account the

individual circumstances of the other officers requesting a move, and in particular PS Sidoli who had registered caring responsibilities at home and for whom the move would involve him being nearer to home, and PS Cash who was transferred due to welfare reasons in relation to the distance of his commute and the timings of his shifts.

385. At this stage we do not consider that the Claimant's medical and other personal circumstances were so manifest that it would have been apparent to Mr Fleeman, and the Respondent more generally, that he had a particular requirement to move to SPI.

386. We therefore find that there is no evidence to infer that any delay in the progression of the Claimant's move to SPI had anything to do with his race or disability. Further, even if we had we do not consider that such a delay would be capable of constituting an act of harassment when considered objectively.

20.1: Refused permission to work OST on a rest day 26 October 2019, November/December 2019 and January 2020

387. As above the allegation of victimisation fails.

388. The allegation of harassment on account of race fails. We find no evidence to infer that the refusal of permission to work OST on a rest day had anything to do with the Claimant's race and therefore the burden of proof does not shift to the Respondent. We accept the evidence of Superintendent King that it was very unusual for an officer to be granted permission to undertake training/study leave on a rest day. In any event we fail to understand how the Claimant could, whether subjectively or more significantly objectively, consider that such a refusal constituted an act of harassment as opposed to the normal exercise of the Respondent's managerial responsibilities. We are unable to reach a finding as to whether PS Griffiths was given permission to undertake OST training on a rest day given that Superintendent King's evidence on this is inconclusive. In any event we reject the contention that any such acceptance of PS Griffiths' request, in circumstances where a similar request from the Claimant had been refused, was on account of his being a white officer.

21.1: Complaint by white colleague re-presence of BAME officers on the team early 2020

389. As above the allegation of victimisation fails.

390. We reject the Claimant's contention that a complaint by a white colleague re Officer 11 was based on a concern of the presence of BAME officers on the team but rather that it related to the conduct of Officer 11. We accept the evidence of Superintendent King that this was a concern regarding team dynamics because of the personal friendship between officers 11 and 1. We consider it to be significant that the officers who spoke to Superintendent King regarding Officer 11's alleged conduct identified as black, Asian and two as white. Therefore this is inconsistent with the Claimant's assertion that the complaints raised were on the basis of BAME officers working together as opposed to legitimate concerns regarding the alleged behaviour of Officer 11 in the context of team dynamics. In the circumstances there is no evidence on which we could infer that this had anything to do with the Claimant's race and therefore the burden of proof does not shift to the Respondent. In any event even had we found that there was such evidence we do not consider that this situation would have been capable of constituting harassment against

the Claimant, given that there was no complaint specific to him, but rather his concern pertained to a perception that other BAME officers were being discouraged from working together. In any event there was no immediate separation of Officers 11 and 1.

22.1: Email asking officers to state their ethnicity 28 February - 2 March 2020 and up to 17 March 2020

391. As above the allegation of victimisation fails and is dismissed.

392. The allegation of harassment on account of race fails. We reject the Claimant's inference that Superintendent Rajan's email of 29 February 2020 asking officers within Borders to state their ethnicity had anything to do with the previous allegation regarding BAME officers working on the same team. There is no evidence that Superintendent Rajan, Mr Martin and Mr Balcome had any knowledge of the previous incident and even if they had been so aware we find no evidence to infer that they were motivated by it in making this request. Further, we accept the Respondent's evidence that this constituted a legitimate measure to monitor diversity with a view to improving access to those from ethnic minorities to promote diversity. In any event the provision of this information was voluntary. As such there is no evidence to infer that the Claimant was treated less favourably on account of his race and therefore the burden of proof does not shift to the Respondent. In any event we reject the contention that such a request being made was capable of constituting harassment when considered objectively.

24.1: Allegedly hostile PDR comments 8 -12 May 2020

393. As above the claim for victimisation fails.

394. The claims for harassment on account of race and disability also fail. We find no evidence to infer that the treatment of the Claimant was on account of his race or disability and therefore the burden of proof does not shift to the Respondent. Whilst not directly relevant to our determination we accept the Respondent's position that there were occasions where the Claimant's emails were overly formal and therefore that Superintendent King had legitimate grounds to make the suggestion that they could benefit from being less formal with a view to improving team building and buy in. Further, it is significant that on 30 May 2020 she responded to the Claimant and agreed to soften the wording of her comments.

395. Even had we found that there was any evidence to infer that in her mild criticism of the Claimant's written style was in anyway attributable to his race/disability we do not consider it capable of constituting harassment. Whilst the Claimant may subjectively have perceived her feedback as amounting to harassment it could not possibly be construed as such when considered objectively.

396. The claim for discrimination arising from disability also fails. No evidence was given to the effect that the Claimant's written style was in any related to a disability.

25.1: Hosting a BLM race meeting; threatening to remove the Claimant after he reported discrimination 28 August 2020

397. We have found that the meeting gave rise to the first protected act given that we accept the Claimant raised allegations of discriminatory treatment on account of his race during this meeting. As such from a chronological perspective it would be possible that any adverse treatment suffered by the Claimant during the meeting was consequential upon that protected act and could therefore constitute a detriment.

398. However, we find that the Claimant's interpretation of Superintendent King's comment to the effect of: "We can't have anyone like that at the Met," was misconceived as we find that she was referring anyone who was discriminatory in their conduct rather than the Claimant who was complaining about being the victim of such alleged conduct. Therefore we find that there was no evidence to infer that any comments made by Superintendent King were on account of the Claimant's race and such the burden of proof does not shift to the Respondent. Further, we do not accept the Claimant's contention that he was threatened with being moved, as for the reasons set out above, that is inconsistent with our interpretation of the intention, and reasonable objective assessment, of Superintendent King's feedback to the Claimant following his raising his concerns of alleged discriminatory treatment.

399. The claim for discrimination arising from a disability fails. No argument was advanced by the Claimant as to the basis upon which he contends he was treated unfavourably because of something arising in consequence of his disability.

<u>26.1: Intimidating comments to return to office 26 August 2020 and 2 October 2020</u>

400. We reject the Claimant's contention that the communications of Superintendent King regarding his return to office based work were attributable to his protected act of raising allegations of discrimination on 28 August 2020.

401. There is some uncertainty as to the basis upon which the Claimant was predominately working from home during 2020. We attribute this to concern regarding his vulnerability to Covid. We consider that his reluctance to return to office based work was as a result of his perception of his vulnerability to Covid, given his underlying health conditions, and his belief that BAME people had significantly higher vulnerability to adverse, and potentially fatal, consequences from Covid.

402. We reject his assertion that any treatment of him by Superintendent King constituted discrimination arising from his disability pursuant to s.15 of the EQA. We have found that the Claimant had a disability on account of anxiety and depression from 20 December 2018 and bronchitis from 17 September 2020, but he has not asserted on what basis he contends he was treated unfavourably because of something arising in consequence of either of these disabilities and this claim therefore fails.

403. In relation to harassment on account of race or disability we have carefully considered the communications between Superintendent King and the Claimant in the period 28 August until 2 October 2020. We are mindful of the OH report dated 2 October 2020, and whilst this is at the end of the period, it no doubt reflected the views prevalent at that time and in particular the conclusion that the Claimant was fit for recuperative duties on full hours with his usual work pattern. Further, the restrictions required section stated non-confrontational office based duties only. This made no reference to a requirement for the Claimant to work from home. Arguably this is inconsistent with the earlier statement that

he fell within a vulnerable category and had been self-isolating at home for the duration of lockdown and no opinion was given as to whether his perceived level of vulnerability militated against office based duties.

404. We reject the assertion that Superintendent King's communications were intimidating. We consider that she had legitimate managerial objectives to maximise a return to office based working given the role of Border Officers and the genuinely held view that there was no meaningful work for the Claimant to undertake from home. This has to be considered in the context of what was known about the Claimant's health at that time or what the Respondent ought reasonably to have known had appropriate enquiries been made.

405. We find no evidence to infer that Superintendent King's objective of procuring the Claimant's return to the office had anything to do with his race and therefore the burden of proof does not shift to the Respondent. In any event whilst the Claimant may have perceived that any attempt to procure his return to work as being harassment we reject any contention that it could objectively have been seen as such.

27.1: OH referral for the Claimant only 9 September 2020

406. The allegations of victimisation, harassment on account of race/disability and discrimination arising from a disability fail. We consider that this referral, together with all other referrals of the Claimant to OH, were entirely appropriate and in accordance with reasonable managerial discretion particularly in circumstances where the Claimant was incapable of performing the overwhelming majority of his normal duties.

28.1: Hostile CRIS comments by email September-December 2020, 17-29 September 2020 and 2 October 2020

407. We reject the Claimant's assertion that the actions and comments of Superintendent King regarding the CRIS work had anything to do with the Claimant's protected act of raising concerns of alleged discrimination on 28 August 2020.

408. As previously stated the Claimant's assertion of discrimination arising from disability is not fully particularised as he has not specified the disability relied on and nor has he specified how he contends the Respondent had treated him unfavourably because of something arising in consequence of that disability. As previously indicated our understanding is that the Claimant was working from home as a result of his Covid vulnerability which does not in itself constitute a disability. We therefore reject his claim of discrimination arising from a disability. In this respect, and for completeness regarding the previous assertions of discrimination arising from a disability, we find that, in any event, the Respondent would have been able to show that its treatment of the Claimant was a proportionate means of achieving a legitimate aim of optimising the deployment of its available resources.

409. We reject the Claimant's assertion that the communications from Superintendent King regarding the CRIS work, and the options potentially available to him, and in particular that he could go off sick, were on account on his race. We find that any other employee, regardless of race, would have been treated in a similar way if there circumstances had been equivalent. As such we do not consider that the burden of proof shifted to the Respondent.

410. In any event we do not consider that looked at objectively the communications from Superintendent King could be construed as amounting to harassment. In respect of this allegation, as in many of the allegations relied on, we accept that the Claimant subjectively perceived the actions of Superintendent King, and other officers with managerial responsibility, to constitute harassment but that represents a subjective mental state based on what the Claimant described as his "lived experience" whilst we in assessing the allegations relied on need to also apply an objective standard as to how a reasonable person would have perceived the actions in question. We are consider that this allegation falls far short of objectively constituting harassment.

29.1: Threats to reallocate the Claimant to PDS roll, to put him on sick leave, UPP and non-negotiable CRIS threats 1 and 2 October 2020

411. We reject the Claimant's assertion that he suffered a detriment as a result of his protected act on 28 August 2020. We find no basis to infer that the actions of Superintendent King were in any way influenced by such protected act.

412. As above the Claimant has not particularised the basis of his discrimination arising from his disability claim and we find that this therefore fails.

413. We reject the Claimant's assertion that he was threatened with reallocation to a PDS role. We refer specifically to Superintendent King's email to him of 2 October 2020 when she set out the position in detail and in the context of her considering that he was not currently performing any meaningful Borders work. She set out options one of which involved a vacancy in the RCD at PDS. This did not constitute a threat to reallocate the Claimant but one of a number of options available to him. We consider that the Claimant's principal concern was her reference to seeking guidance regarding UPP but again we consider that this represented Superintendent King setting out the options available to him, and could not reasonably be interpreted as a threat, but a potential option available to him given the current impasse.

414. We find no evidence to infer that Superintendent King's communications to the Claimant, to include her summary of the options available, had anything to do with the Claimant's race and therefore the burden of proof does not shift to the Respondent. As previously stated we reject the assertion that this constituted harassment but in the interest of brevity do not repeat our previous conclusions regarding the threshold for harassment.

30.1: Threatening to report Claimant as being on sick leave to gather evidence for UPP September-October 2020

415. Whilst there were two protected acts prior to the date of this allegation we find no connection between them and the purported detriment. This claim therefore fails.

416. In the s.15 discrimination arising claim we take account of two potentially relevant disabilities namely the Claimant's mental health, and with effect from 17 September 2020, Bronchitis. Whilst the Claimant has not particularised what element of his disabilities he relies, on and what the unfavourable treatment because of something arising in consequence of those disabilities is, we take account of what was known by the Respondent of his conditions, and the extent to which Superintendent King perceived that they were precluding his full participation in his normal duties. In particular we refer to the

footnote to her email to the Claimant of 18 September 2020 in which she refers to the Claimant's wish not to return to work at this time due to anxieties about his health. We take this as an indication, that at least in part, the Claimant's mental health was a factor in his not fully performing his duties to include attending the work place.

417. We do not, however, consider that the Respondent treated the Claimant unfavourably because of something arising in consequence of his disability. This is on the basis that what the Claimant complains of was put to him as one of a number of options i.e. there was no actual threat to place him on sick leave it was merely given by Superintendent King as 1 of a number of scenarios which may arise. As such it was not treatment.

418. In any event we consider that the Respondent would be able to demonstrate that the treatment was a proportionate means of achieving a legitimate aim. That legitimate aim being the full utilisation of all available resources to perform front line policing duties.

419. We unequivocally reject the Claimant's contention that he was subject to harassment on account of his race. We find no evidence to infer his race had anything to do with the treatment. The burden of proof therefore does not shift to the Respondent.

420. In respect of his contention of disability related harassment the Claimant has a stronger case. We find that what he perceives as a threat to place him on sick leave was at least arguably attributable to his disabilities and specifically his mental health issues. However, we need to consider whether the purported treatment would be capable, from an objective perspective, of constituting harassment. We find that it would not. In particular as set out above we do not consider that it constituted treatment as it was not something which was implemented but was one of a number of proposals. We find that was entirely proper in the circumstances. The situation may have been different had the treatment been implemented.

<u>31.1: Accusing Claimant of rejecting work 2 October 2020</u>

421. We reject the contention that the act relied on constituted victimisation as we do not consider that any link exists between the two pre-existing protected acts and the detriment claimed.

422. As for the discrimination arising from disability claim we have carefully considered the chronology of the Claimant's mental health disability, being required to undertake CRIB work from home and then being accused of rejecting work. Whilst the something arising from his disability is not particularised by the Claimant , and is not obvious, there is looked at on an overarching basis a potential argument that had it not been for his mental health disability he would not have been working from home, and then provided with the CRIB work as a means to partially utilise his time, given his inability to perform his normal front line policing duties. Nevertheless, we have to consider whether the Respondent had a legitimate and proportionate rationale for providing the Claimant with the CRIB work and then suggesting that he was not fully undertaking it. We have carefully considered the contemporaneous documentation as to whether he was actually accused of rejecting work and we find nothing overt. Nevertheless in communications such as Superintendent King's email to the Claimant of 2 October 2020 there is reference to the CRIB work being non-negotiable as there is no other meaningful work available at this time. Therefore this could be construed as tantamount to accusing him of rejecting work. Nevertheless, given that

the Respondent had a legitimate and proportionate ground for making this suggestion we find that the defence would have been available to it and therefore this claim fails.

423. As for harassment on account of race there is no evidence upon which we can infer it had anything to do with the Claimant's race. The burden of proof does not shift and this claim fails.

424. As for harassment on account of disability we do find that there was at least arguably a link between accusing the Claimant of rejecting work and his mental health disability. Whilst convoluted there is at least an arguable sequential link between the Claimant's disability and Superintendent King's emails of 2 October 2020. However, we reject the Claimant's subjective perception of harassment as being objectively reasonable. Superintendent King was seeking to manage an employee for whom she had responsibility and optimise the effective utilisation of his time. Whilst the Claimant undoubtedly regarded this as her harassing him that was not objectively reasonable and therefore this claim fails.

<u>32.1: Denial of development opportunities July-October 2020 and February-May 2021</u>

425. For the reasons set out above the claim of victimisation fails and is dismissed.

426. Also for the reasons set out above, which will not be repeated ad infinitum to avoid this judgment becoming unmanageably long, the claim of discrimination arising from disability fails.

427. The claims for harassment on account of race and disability fails. First, we find no link between the protected characteristics and the denial of developmental opportunities and, in any event, we do not consider that this would be capable of constituting harassment when considered objectively.

428. We have reviewed the schedule annex to the Respondent's skeleton submissions and cross referenced the Claimant's Scott Schedule. The Respondent's table, notwithstanding that it was reviewed and approved by the Claimant, does not include his contention of direct race and disability discrimination. We have therefore considered this and whether he was treated less favourably than actual or hypothetical comparators. We consider that he was not. We consider that in accordance with s.123 of the EQA the material circumstances of PS Noonan and PS Sidoli were different to the Claimant's. PS Noonan was aligned to the Learning and Development unit (LDU) and PS Sidoli was not a public facing officer and was able to work in the office, manage staff and complete remote review officer duties. In contrast the Claimant's role inherently involved interaction with colleagues and members of the public and he was precluded from undertaking that role.

<u>34.1: Refusal to attend mediation meeting; arranging case conferences without Claimant's knowledge 7 October 2020, all October 2020 and 9 November 2020</u>

429. For reasons as set out above the claim of victimisation fails and is dismissed.

430. In respect of discrimination arising from disability we reject the contention that the refusal to set up a mediation meeting was something arising from the Claimant's disability. The suggestion of possible mediation was in the context of the breakdown of the Claimant's working relationship with Superintendent King in particular. From an evidential

perspective there was no proposed mediation meeting but we note from paragraph 72 of Superintendent King's witness statement that she would probably have declined to attend such a mediation meeting had it been arranged. Nevertheless, we do not consider that this had any connection with the Claimant's disability and therefore the claims of discrimination arising from disability, harassment on account of disability and direct disability discrimination fail.

431. In arranging case conferences without the Claimant's knowledge we consider that this was something arguably arising from his disability. The reason for arranging case conferences was, at least in part, as a result of his inability to perform his full duties to include in person working. However, we consider that the Respondent had legitimate and proportionate grounds of justification for arranging case conferences in those circumstances. It is self-evidently incumbent upon an employer to manage circumstances where as a result of ill health an employee cannot perform the overwhelming majority of their normal duties. This claim therefore fails.

432. In relation to the direct race discrimination claim we find no evidence to infer that it had anything to do with the Claimant's race and therefore the burden of proof does not shift to the Respondent.

433. In relation to the direct disability discrimination claim we do not consider that the Claimant was treated less favourably than his named comparators, Mr Davies, Ms Anear and PS Sidoli. We find that their circumstances were not materially the same as the Claimant's as he was undertaking no meaningful work and was refusing, or at least expressing considerable reluctance, to undertake the allocated CRIB work. This was not the position of the named comparators.

434. Further, we do not consider that arranging case conferences would have been something which required the Claimant's consent. It would be perverse if any employee, subject to a case conference in circumstances where they were unable to perform the overwhelming majority of their duties, is required to provide their consent. It was a perfectly appropriate managerial decision and not capable, when considered objectively, of constituting harassment. This claim therefore fails.

<u>35.1: Confusing Claimant with another BAME staff member throughout and 24 November 2020</u>

435. As above we find this did not constitute victimisation.

436. We have considered whether it would be arguable that the something arising from disability was a reduced level of familiarity with the Claimant's name and appearance. However, we take account of the fact that he had been working in person at SPI from October 2019 and therefore Superintendent King would have been familiar with his name and appearance and also had substantial engagement with him. We therefore reject this claim.

437. The direct disability and race discrimination claims fail. Any oversight of Superintendent King regarding the Claimant's name and confusion between him and Mr Rajan, or any other BAME employee, was in our view a one off isolated incident and not

capable of constituting less favourable treatment on account of race or disability and therefore the burden of proof does not shift to the Respondent.

438. As to whether it constitutes harassment we reject the contention that it had anything to do with the Claimant's disability. We do, however, consider that confusing an ethnic minority employee's name could if repeated, and not corrected, constitute harassment. However, we accept that this constituted a one off incident, as in the call involving Superintendent King, Mr Rajan and the Claimant on 24 October 2022, and something which Superintendent King immediately corrected. As such it represents a de minimis event and in accordance with guidance provided in cases such as Richmond Pharmacology not capable of constituting harassment and therefore this claim fails.

38.1: Hostile PDR comments 8 May 2021

439. Whilst the Claimant has pleaded this contention using 7 different heads of claim we have looked at it from an evidential perspective as to whether the comments made by Superintendent King on the Claimant's PDR were capable of being construed as "hostile". We find that they were not. We suspect that the Claimant's objection was to her referring to him having "minimal work" to do from home. That is not capable of constituting a hostile comment but rather her assessment of the limited meaningful work he was undertaking. In any event Superintendent King exercised her discretion that the Claimant should retain his previous year's performance grading. It not therefore necessary for us to consider the individual contentions as to whether this constituted victimisation, whistleblowing detriment, discrimination arising from disability, direct race or disability discrimination or harassment on the grounds of the protected characteristics of race and disability. The claim fails.

40.1: Intimidating comments to return to office 22-28 June 2021 and July 2021

440. This in effect represents a repetition of allegation 26.1 but in a later time period. It adds an allegation that it constituted a whistleblowing detriment.

441. We take specific account of the meeting between the Claimant and ACI Marshall on 22 June 2021. During this meeting ACI Marshall proposed a phased return to working in the office as approved by OH. We do not consider that this, or other comments made by ACI Marshall or others, constitute "intimidating" comments.

442. It is unnecessary for us to set out a more detailed findings as they are replicated from our conclusions pertaining to allegation 26.1.

42.1: Racist remarks and comments re Claimant's vaccination status 22 June 2021

443. The victimisation and whistleblowing detriment claims fail as we find no connection between the protected act and protected disclosures and the alleged detriment.

444. The disability discrimination arising claim fails as there is nothing arising from the Claimant's disability which would engage s.15 of the EQA. The Claimant's position is that he was highly vulnerable as a result of his medical status to Covid. A refusal by him to be vaccinated was not something arising from that vulnerability, and the Claimant accepted that he had received no medical evidence that it would be unwise for him to be vaccinated,

and we suspect that any medical advisor, given his vulnerability, would have advocated his early vaccination.

445. We have carefully considered whether ACI Marshall made a comment to the effect of "it must be a cultural thing as your people don't believe in getting the jabs" and find on the balance of probabilities that he did not make such a comment. There is no independent evidence of his making such a comment. Whilst the Claimant asserts that he did ACI Marshall strongly refutes doing so. We have considered this comment in the context of the accepted discussion regarding the prevalence of the delta variant in Slough, the Claimant's home town. We also take account of the fact that Slough is known to have a relatively high Asian population and it may be in that context that the discussion took place regarding the Claimant's potential vulnerability. However, that does not go as far as us finding that ACI Marshall, on the balance of probabilities, made a pejorative, and arguably racist, comment to the effect of "your people".

446. The Respondent accepts that ACI Marshall used the term "anti-vac" in connection with the Claimant. The Claimant considers that this is pejorative and racist. We reject this assertion. As a matter of fact the Claimant was "anti-vac". His rationale for rejecting the vaccine was variously stated but included comments aired on LBC referring to possible risks but also his belief that the BAME population had a lower uptake of the vaccine. The Claimant declined the vaccine without any medical advice that he was prudent to do so and therefore the Respondent's description of him as being "anti-vac" is logically correct and therefore cannot be one which is discriminatory whether on account of the Claimant's race, disability or otherwise.

<u>44.1: Racist remark (use of the term "Guru") email of 22 June 2021</u>

447. We accept, and objectively understand, ACI Marshall's evidence that he used the word "Guru" in the context of the Claimant acquiring expertise in a particular discipline. Whilst the Claimant asserts that it was an overt act aimed at him in the context of his Sikh religion, and his worshiping his Gurus, we reject this assertion. There is no evidence ACI Marshal had, or could reasonably be expected to have, knowledge of the significance of Gurus to Sikhs. Whilst the Claimant referred to a conversation with ACI Marshall at Heathrow some years earlier he explained his religious beliefs, to include the significance of Gurus, this is denied by ACI Marshall and on the balance of probabilities we find it unlikely that any such detailed conversation took place. In any event given the passage of time ACI Marshall may well have forgotten the significance the Claimant placed on his Gurus.

448. In any event there is no basis for any purported connection between the Claimant's protected disclosures and this comment being made. Nor does the Claimant's claim of discrimination arising from disability have any logical basis.

449. Given that we have found that the word was used with its normal English language meaning, and not directly or indirectly relating to the Claimant's religion, the claims of direct race and disability discrimination fail. In any event there is no possible link between the Claimant's disability and the use of the term.

450. The race discrimination claim would arguably have been more appropriately brought on the basis of religion and belief. However, accepting that Sikhs constitute an identifiable

race or ethnic group we nevertheless find that the use of this term did not constitute less favourable treatment of the Claimant than a non-Sikh employee.

451. Further, we reject the assertion that it would have been capable of constituting harassment given that it was a single comment and one in respect of which ACI Marshall immediately apologised once the Claimant had highlighted his issue with its use.

45.1: Intimidating conduct in meeting 22 June 2021

452. We have reviewed the Claimant's note to self of this meeting. Whilst we accept that ACI Marshall was by this stage becoming increasingly frustrated and exacerbated in his dealings with the Claimant we do not consider that, even based on the Claimant's version of that meeting, it could be objectively construed as intimidating conduct. Whilst the Claimant's subjective interpretation of the meeting may have been that it was intimidating we consider that ACI Marshall was using his best endeavours to facilitate the Claimant's return to active duties, but perceived that his endeavours were being frustrated by the Claimant's approach to include, but not limited to, his refusal to have a vaccination.

453. We do not consider that the frustration and exacerbation of ACI Marshall had anything to do with the Claimant's race or disability. Whilst there may be background factors they were not the reason why he was becoming frustrated. His irritation related to the very significant time he was spending in addressing issues with the Claimant to include meetings and numerous and lengthy emails.

48.1: Expressing suspicion re-Claimant's disabled status through use of the term "apparently" 23 and 27 July 2021 and August 2021

454. We have carefully considered ACI Marshall's email to Ms Waller of 29 July 2021. We undertook a word search against "apparently". We find multiple usages by ACI Marshall, but in what we consider to be a neutral context, save for the reference to the Claimant's "apparent anguish" in the paragraph entitled mental health. This should be seen in the context of his opening the paragraph by referring to the Claimant: "tops all his conditions of with his mental health". We consider that this was pejorative. We do, however, consider this to be in the context of the self-evident frustration and exacerbation which ACI Marshall was experiencing in his dealings with the Claimant.

455. We do not consider that this paragraph was primarily on account of the Claimant's disability. We place it in the context of ACI Marshall's exacerbation regarding what he considered to be the Claimant's general behaviour and self-proclaimed vulnerability.

456. Whilst we accept the Claimant's understandable grievance on sight of this communication the email was not sent to him and not received by him until disclosure a year or more after it was sent. Self-evidently the Claimant cannot have been harassed by a comment of which he was not aware. In any event, even if it were to be accepted that the use of the words "apparent anguish", was on the basis of the Claimant's mental health disability we do not consider that it would be sufficient to give rise to harassment when considered objectively as it was a one off incident not having the gravity to constitute harassment. This claim therefore fails.

49.1: Asking CMO to inspect Claimant's medical records June/July 2021

457. This relates to a question raised by ACI Marshall and reflected in Dr Ryan's OH report dated 10 September 2021 in which he was asked whether he required to see the Claimant's medical documents and correspondence and proposed treatment plan. The Claimant's objection is predicated on his belief that scepticism existed regarding the genuineness of his medical conditions. He says that other Officers' medical situations, specifically Ms Anear, Mr Davies and PS Sidoli, were accepted at face value. However, we do not have access to their underlining medical records and therefore are not able to say whether their material circumstances were the same as the Claimant's.

458. We find no evidence that this request had any connection with any protected act or protected disclosure. Therefore these claims must fail.

459. We reject the contention that this request was capable of constituting harassment on account of race or disability. We look at this from an objective perspective. Further, the Claimant was not aware that this question was asked so it is incapable of constituting harassment of him even if it objectively capable of being so which we reject.

460. As for the claim of discrimination arising from disability we do take the view that the Claimant's perception of his vulnerability to Covid was something arising from a disability, namely his bronchitis, which gave rise to increased vulnerability. However, we reject the contention that the question as to whether it would be beneficial to see his medical records constituted less favourable treatment. It was an entirely appropriate step for the Respondent to take given the Claimant's complex medical history and his perception of his vulnerability. In any event the OH advised that it was not necessary for him to see the medical records. Further, we would have taken the view that the question constituted a proportionate means of pursing a legitimate aim, namely that the Respondent had an obligation to take appropriate steps to assess and obtain appropriate advice regarding the medical situation of its employees, particularly those having heightened vulnerability. This formed part of the Respondent's reasonable duty of care to the Claimant. Therefore these claims fail.

<u>50.1: Attempting to prevent Claimant's OH risk rating being revised from "medium" to "high" 27 July 2021.</u>

461. We reject the contention that this had anything to do with any protected act or protected disclosure and therefore these claims fail.

462. We also reject the allegation that this constituted harassment on account of race or disability. Whilst we acknowledge that ACI Marshall had a degree of scepticism regarding the full extent of the Claimant's various health conditions we find no evidence that he sought to influence OH in their assessment of his Covid risk level. Had he sought to do so it would have been inappropriate, and in any event the doctors conducting the OH assessments had an obligation to conduct an objective assessment of the Claimant's risk level based on the medical evidence. It was as a result of this assessment that his risk grading was increased from medium to high.

463. As for the discrimination arising from claim we accept that the Claimant's Covid vulnerability was at least in part attributable to his bronchitis and therefore was something arising from a disability. However, we reject the contention that there was any less

favourable treatment of the Claimant as a result of something arising. It was, as previously indicated, entirely appropriate for the Claimant's medical situation and level of vulnerability to be referred to OH and no irreversible decisions were made regarding his return to office based work prior to OH opining on this issue.

51.1 Refusing Claimant permission to attend three day in person course, 10 August 2021

464. We reject the allegation that this constituted an act of victimisation or whistleblowing detriment.

465. ACI Marshall in his email to the Claimant of 10 August 2021 advised him that he would be happy to support his wish to go on the three day COSII Open Source Internet Investigators course and that he had passed his details to DI Crinyion for his consideration. There is no evidence that the Claimant proactively followed this up with either DI Crinyion or ACI Marshall and in effect it fell into abeyance.

466. Whilst not specifically alleged by the Claimant we accept the Respondent's evidence that this constituted an in person course given that it would have involved accessing secure servers. The Claimant has not alleged that a reasonable adjustment should have been made on account of his disability to enable him to undertake the course online.

467. We reject the Claimant's assertion that this was capable of constituting an act of harassment on account of his race or disability.

468. As for the discrimination arising from allegation we do not consider there is any basis put forward as to what the something arising from his disability was and therefore this allegation must fail.

51.1: Accusing the Claimant of being on sick leave when he was not

469. This is a separate allegation relating to an email from DCI Kerr to ACI Marshall of 16 July 2021 concerning the possibility of the Claimant providing support to Mr Fleeman, and his comment that a sergeant who is sick, has his own issues, and who might not want to go there would not make Mr Fleeman's life any easier. There was no suggestion that the Claimant was on sick leave. This allegation therefore fails. It was an appropriate comment and did not involve any erroneous statement regarding whether the Claimant was or was not on sick leave. There was no suggestion that he was on sick leave but rather an acknowledgement that he had health issues which the Claimant himself accepts.

52.1: Intimidated to waive consent of an OH form without reading it 13 August 2021

470. We reject the allegation that this constituted an act of victimisation or whistleblowing detriment.

471. This relates to ACI Marshall's email of 13 August 2021 in which he asks the Claimant, to avoid delay of his review of the OH feedback that would be generated following the next appointment, to provide his written consent to the OH mailbox for DCI Kerr to be shared with the report. There is no evidence that the Claimant provided such consent and we find that on the balance of probabilities he did not do so.

472. We reject the Claimant's assertion that this constituted intimidation. We find that ACI Marshall was acting appropriately in his managerial role with a view to expediting the review of the Claimant's medical position by OH so that appropriate steps could be taken by DCI Kerr as his successor Line Manager. We find that this was entirely appropriate and as such not capable of constituting harassment whether on account of race or disability.

473. Further we reject the allegation of discrimination arising from disability. Once again what the something arising is has not been particularised by the Claimant and in this allegation and in many of those alleged it is not beholden on us to interpret and form the basis of an allegation which has not been pleaded.

54.1, 54.1-54.5 Hostile comments/detriments regarding the case conference. August/September 2021, 7 September 2021 and 9 September 2021

474. We break this down to reflect the individual elements of the allegation as follows.

Show me as AWOL on email

475. We interpret this as the Claimant referring to the email from Ms Waller to ACI Marshall of 10 August 2021 in which she says, "If he is flatly refusing to return to the work place then he should report sick or we will look into being AWOL". The Claimant did not see this email contemporaneously. Whilst Ms Waller's use of the term "AWOL" may appear draconian, given that the Claimant was consensually predominantly working from home, we reject the assertion that it constituting an act of harassment.

Go ahead with case conference if can't make it

476. We interpret this as being a reference to ACI Marshall's email to the Claimant of 12 August 2021 when he says if the Claimant feels unable to attend he may ask a Federation representative or a friend to attend on his behalf and make any written submissions. He was encouraged to attend. As a matter of fact he did so.

Absence letter when not sick

477. The Claimant makes repeated assertions that he was not on sick leave. He is correct. However, it is self-evident that he was not capable of performing the overwhelming proportion of his duties as a Borders Officer which intrinsically involved substantial personal interaction which he was not capable of undertaking. We consider it reasonable that the word "absence" should be interpreted to reflect the Claimant's absence from the work place for the majority of the working week.

DCI states case conference will be on MS Teams

478. We consider that the Claimant's request that the case conference should take place in person was surprising and wholly inconsistent with his own statements that as a highly vulnerable individual he was self-isolating. We do not consider that any reasonable basis has been put forward by the Claimant as to why the meeting would be less intimidating in person than on Teams. We consider it reasonable that the Respondent considered MS Teams to be an appropriate forum for the meeting to ensure all those who needed to be in attendance were able to participate.

Capability threat on email

479. We consider that this represents the Claimant's objection to terminology such as "absence management". On an overarching basis we consider that whilst case conferences may typically be used in sickness absence/capability management processes that that does not always follow. Given that at the time of the meeting Covid had been in existence for 18 months, and the Respondent was having to cope with the management of prolonged absences, we consider it appropriate that the Claimant's absence, given his multiple health issues, was addressed at a case conference.

Forced to go to a case conference when I was never sick

480. As above the Claimant was not on sick leave but he was absent from the work place for the majority of the working week as a result of his health issues.

Hostile triggering of adjusted duties

481. We reject the assertion that there was anything hostile about a review of the Claimant's ability to perform his duties and a possible transition from recuperative to adjusted duties. That constituted part of the normal management of an employee in the Claimant's circumstances.

482. Looked at in totality we reject the Claimant's assertions that any element of the case conference, to include the arrangements for it and subsequent actions, constituted acts of victimisation or whistleblowing discrimination. Further, we reject his allegations that any element of it constituted harassment on account of his race or disability.

483. In respect of the discrimination arising from claim whilst the Claimant's absence from the work place was something arising from his disability, and we accept that attending a case conference could constitute unfavourable treatment, we find that the Respondent had proportionate and legitimate aims i.e. the management of its employees with a view to optimising the effective deployment of its personnel resources, in requiring the Claimant to attend the case conference. We accept DCI Kerr's evidence that the purpose of the case conference was to review the Claimant's health position and discuss a plan going forward. We consider that this was appropriate and do not consider the Claimant had any legitimate ground to object to this approach.

55.1: Lack of welfare support August-September 2021

484. We find this allegation wholly without merit. The Claimant has not specified what welfare support he was seeking. We note, for example, that DI Crinyion granted him four days' compassionate leave in late August 2021. The Claimant self-evidently objected to being required to attend a case conference and did not regard this as being the type of welfare support he was seeking. Nevertheless it fell within the Respondent's overarching holistic responsibility to manage the Claimant given the circumstances of his absence from the work place.

485. We find no grounds to infer that this was capable of constituting an act of victimisation, whistleblowing detriment or harassment on account of race or disability.

486. As for the discrimination arising from claim the something arising was the Claimant's health issues and absence from the work place. However, we do not consider that he was subject to any unfavourable treatment on the basis that the Respondent did not extend a greater level of welfare support to him. The Claimant was referred to OH and had the opportunity to participate in mental health counselling which he did not take up as he preferred to address his mental health issues outside the work place.

56.1: Duplicate OH referral form 10 – 20 September 2021

487. We accept Inspector Baird's evidence that as part of his new line management responsibilities for the Claimant he made an OH referral as a result of information regarding the Claimant's knee injury arising from the 9 September 2021 case conference and he was seeking specific advice on how best to support him in respect of his knee condition. We reject the Claimant's assertion that this represented an attempt by Inspector Baird to remove him from SPI but rather consider it represented part of an evolving situation regarding the management of his health issues with appropriate engagement from OH. The position was undoubtedly becoming increasingly complex and it is entirely understandable that there may have been an element of duplication in the OH referrals particularly given the passage from one line manager to another at regular interviews.

488. We reject the allegations of victimisation, whistleblowing detriment and harassment on account of race and disability. This represented a normal part of the Respondent's managerial responsibilities.

489. Once again in relation to the discrimination arising from claim we reject the Claimant's assertion that this was capable of constituting unfavourable treatment. Whilst the OH referrals was something arising from his disability there was nothing unfavourable about them in the circumstances.

58.1: Denial of development opportunities September-December 2021

490. The Claimant has selected a narrow period during which he says he was not provided with development opportunities. This coincided with the commencement of Inspector Baird's line management responsibility for him. He undertook a review of the Claimant's position, the type of work he may be able to undertake and what, if any, opportunities existed for project work or what the Claimant characterises as development opportunities. Inspector Baird says that there were no suitable opportunities. There were a limited number of potential opportunities for predominantly home based project work or that constituting a development opportunity. There were none available for the Claimant.

491. It is notable that the Claimant was offered opportunities both prior to this time period and thereafter.

492. We reject the allegations that this constituted victimisation, whistleblowing detriment or harassment on account of race or disability.

493. We also reject the contention of discrimination arising from disability. Once again whilst the something arising from a disability was the Claimant's working from home we do not consider that there was unfavourable treatment given that we accept the Respondent's evidence that there were no suitable opportunities for him.

494. We also reject the Claimant's contention that he was treated less favourably than a white colleague. We assume that this represents a reference to PC Davies but consider his material circumstances to have been different from the Claimant given that he had specialist IT skills and was deployed to an IT project when the Claimant's evidence was that this was not his forte.

495. We also consider that PS Noonan as a Training PS was in a different position to the Claimant and therefore was qualified to undertake certain types of work which would not have been suitable for the Claimant.

59.1: Hostile comments 14 September 2021

496. This relates to a telephone call between Inspector Baird and the Claimant. It is significant that the Claimant in an email to Inspector Baird of 15:50 on 14 September 2021 said, "It was good to chat with you earlier today". We find this contemporaneous evidence wholly inconsistent with the Claimant's contention that Inspector Baird was hostile towards him during that call. As such the allegations of victimisation, whistleblowing detriment, harassment on account of race and disability and discrimination arising from disability a fail.

59.2 Ignoring health concerns raised by Claimant's email 4 November and 10 December 2021.

497. We reject the assertion that the Respondent ignored the Claimant's health concerns. We consider that there is manifest evidence that the Respondent proactively considered and sought to address his various health issues with appropriate and multiple referrals to OH.

498. We refer specifically to the email sent by DCI Kerr on 3 November 2021, the purpose of which was to introduce the Claimant to CI Davies, and used the opening conversational remark of "how are you?". The Claimant responded on 4 November 2021 with a relatively detailed email setting out his various medical conditions, and we suspect took umbrage at DCI Kerr not then responding, but we do not consider that there was no need for him to do so given the purpose of his original email.

60.1: Threats to allocate the Claimant to PDS role, hostile comments regarding Claimant's disabilities and work from home arrangements 25 and 26 November 2021 and 1 December 2021.

499. We reject the Claimant's assertions that there was a threat to allocate him to the PDS role. We accept Inspector Baird's evidence that he was not aware of the Claimant's previous allegations of discriminatory treatment regarding this role and that his raising it as a possibility was done in good faith. Further, Inspector Baird on being informed of the Claimant's previous experience at PDS apologised and immediately

discontinued consideration of this as an option. It was an option and not a threat as it would not have been imposed unilaterally.

500. In relation to the allegation of hostile comments regarding the Claimant's disability we consider that this primarily relates to the draft email sent by Inspector Baird to CI Davies on 1 December 2021. In particular his reference to: "So for almost three months so far, you have been paid to work in a post that adjustments prevent you from performing, with no meaningful work to do. This is not value for money which the MPS and the public expect". This draft email was softened by CI Davies before it was sent to the Claimant. Given that the Claimant did not see the draft email until disclosure he cannot have suffered subjective harassment from it. In any event we do not consider that looked at objectively it is capable of constituting harassment as Inspector Baird was setting out what he genuinely perceived to be the position and objectively it is not capable of constituting harassment of the Claimant.

501. Further, we reject the allegations of victimisation, whistleblowing detriment and discrimination arising from disability for the reasons previously set out which need not be repeated.

61.1: Private medical information shared to staff mailbox 2 and 3 December 2021

502. We accept Inspector Baird's evidence that this represented an inadvertent oversight and that he immediately apologised to the Claimant on it coming to his attention. The oversight had arisen as result of the Claimant's medical information being attached to an email chain and Inspector Baird forwarding the most recent email without checking what was attached. This represented an unfortunate error on his behalf and one in respect of which he was apologetic. However, we reject the Claimant's assertion that it represented a deliberate act by Inspector Baird on account of his race, disability or otherwise. The claims of victimisation, whistleblowing detriment, harassment on account of race and disability and discrimination arising from disability fail.

62.1: Denial of request to join retirement seminar preferred date 12 and 14 December 2021

503. We reject the Claimant's various allegations. It was entirely reasonable in our view for the Respondent to require him to participate in this seminar on a working day. There were other available dates and there was no specific basis for the Claimant's request that it should take place on a non-working day. We accept the Respondent's evidence that there was a potential additional cost consideration of his having a day off in lieu when he was undertaking little meaningful work on his working days.

504. Therefore we reject the allegations of victimisation, whistleblowing detriment, harassment on account of race and disability and discrimination arising from disability.

63.1: Changes to office hours (without consulting Claimant or considering OH advice) 2, 15 and 21 December 2021

505. We consider that Inspector Baird's email to the Claimant of 15 December 2021 that on future days in the office he should work full 10 hour shifts was a proposal and not something which was imposed. In particular we refer to his email to the Claimant of

21 December 2021 which said that for peace of mind let us seek further clarification from OH and that in the meantime the Claimant could continue to work from home.

506. We reject the Claimant's allegations of victimisation, whistleblowing detriment, harassment on account of race or disability and discrimination arising from disability. This is in the context of us having found that Inspector Baird was making a proposal in the context of the Claimant's then working arrangements and it was not imposed. Further, we reject the Claimant's assertion that doubling the length of his in-office working day would have exponentially increased his Covid risk. It is erroneous to assert that the risk increases exponentially to reflect time exposed as the Claimant would almost certainly, if he was likely to be, have been infected in the first five hours in the office.

64.1: Making OH referral; asking whether the case worthy of review by CMO 2, 20 and 22 December 2021

507. We reject the Claimant's assertion that a further OH referral was inappropriate or constituted an act of harassment, detriment, victimisation, or less favourable treatment. We consider that Inspector Baird's question in the OH referral dated 10 March 2022 as to whether the case was worthy of a review by the CMO was appropriate given the myriad of arguably interrelated health conditions set out as a background to the referral.

65.1: Refusing Claimant permission to attend a meeting remotely 9 February 2022

508. This related to a rolling series of briefings given by Commander Smith regarding alleged discrimination in the Met and how this would not be tolerated. We accept the Respondent's evidence that given the confidential nature of this briefing it needed to be confined to in person attendees given that there would have been a risk that on line access would have enabled non entitled individuals to listen in and that recordings could be made and circulated.

509. We reject the Claimant's allegations of victimisation, whistleblowing detriment and harassment on account of race and disability. Whilst we acknowledge that the Claimant was disadvantaged as a result of something arising from his disabilities in that he was not in work place attendance for the majority of the time and therefore was less able to attend the in person meeting than he otherwise would have been, we consider that the Respondent had a legitimate reason for refusing online access given the confidentiality concerns. It is also relevant that the Claimant would have been capable of asking Officer 11, or another colleague who was in attendance, as to the key takeaways from the meeting and there is no evidence that he did so. As such any disadvantage was theoretical rather than one which had a materially impact on him.

510. Further, from a practical perspective the Claimant only made his request for online access 14 minutes before Commander Smith's briefing was due to commence and it would have been impracticable, even if the confidentiality concerns had not existed, for the Respondent to have facilitated online access.

511. We also consider that the disadvantage the Claimant suffered of not attending this meeting would have been minor or trivial in accordance with s.212 of the EQA. As

already stated we consider that it would not have been a reasonable adjustment for the Respondent to have enabled online access given that the Respondent had justification for not providing online access given its concerns regarding confidentiality of the sensitive material being discussed.

66.1: Moving Claimant from SPI to LCY

512. We accept the Respondent's evidence that this was a "paper based" exercise undertaken by Mr Williams and that there was no intention that the Claimant's place of work would physically transfer. In any event the Claimant was predominantly working from home at this stage. Whilst the Claimant may for a period of 13 days have been under the misapprehension that he was to be transferred that concern was allayed by Inspector Baird as soon as he was aware and he reassured the Claimant that it was an entirely notional exercise.

513. We reject the Claimant's allegations of victimisation, whistleblowing detriment, harassment on account of race and disability and discrimination arising from disability. We find that the Respondent's actions were unrelated to the Claimant's protected acts, protected disclosures or on account of his protected characteristics.

514. We consider that no basis has been put forward by the Claimant to support his claim of discrimination arising from his disabilities and therefore this claim fails.

67.1 Not allowed to work on Bank Holidays over Christmas 2021 and 18 April 2022.

515. We accept the Respondent's position that with reduced staffing numbers on Bank Holidays it was essential that only operational officers were included within the roster. We note from an email sent by Afonso Sheetal on 2 March 2020 to SO15 Ports – all staff that officers who are still non accredited, recoup, non-operational duties cannot be included on Bank Holiday strength.

516. We reject the Claimant's assertion that his non deployment on a Bank Holiday had anything to do with protected disclosures or protected acts.

517. In relation to disability whilst there was something arising on account of his disability in that the Claimant was not performing an operational role and at least arguably was treated unfavourably in not having the benefit of working on Bank Holidays, albeit different employees would take a different view as to whether this was a benefit or a detriment, it was in our view entirely justified and proportionate for the Respondent to insist that only operational officers were deployed with a reduced staff. Further, in relation to the Claimant's reasonable adjustments argument we would need to balance from an objective perspective the considerations of the Claimant and the Respondent and find that objectively it was reasonable for the Respondent to resist any such adjustment given its operational concerns.

68.1 Failing to call Claimant during sick leave for over 9 months despite being sick for 3 months from 25 November 2021 to mid-August 2022

518. This primarily related to the period during which Inspector Baird was the Claimant's Line Manager. His evidence is that his standard modus operandi in communicating

with his line reports was to use email so that a paper trail existed. However, we consider it probable that by late March 2022 he was increasingly reluctant to enter unnecessary additional communications with the Claimant given the Claimant's email to him of 27 March 2022 in which he advised him that he had raised a grievance against him and did not feel comfortable engaging with him further for fear of victimisation.

519. We consider there is a contradiction in the Claimant stating on the one hand that he did not want to further engage with Inspector Baird but then complaining about a lack of calls during the period until mid-August 2022.

520. As a matter of fact the Claimant never met Inspector Baird in person during the period from 31 August 2021 until 22 June 2022 when he was his Line Manager. We note from the evidence of Inspector Baird that he considered it to be "something of a coincidence" that the Claimant's in person working days at SPI never coincided with days when he was scheduled to be there, and whilst we do not make any finding on this we consider that if the Claimant had genuinely wanted to have an in person meeting with him it would have been open for him to have facilitated this by requesting such a meeting and seeking to coordinate his working days to ensure that his attendance at SPI coincided with that of Inspector Baird. There is no evidence that he did so and as such we question the extent to which he actually wanted an in person discussion with Inspector Baird which would have included enquiries being made as to his wellbeing.

521. We also take into account the multiple emails sent by Inspector Baird to various personnel, for example his email to Sam Williams MPS Support, of 28 March 2022. These are all indicative of his taking his line management responsibilities for the Claimant extremely seriously and taking all appropriate steps to procure the most appropriate assistance in view of his various health issues.

522. We also note that CI Davies had a long conversation with the Claimant on the phone on 15 July 2022.

523. We reject the assertion that the lack of calls to the Claimant over this period had anything to do with his protected acts or protected disclosures. Further, it would not be capable of constituting harassment whether on account of race or disability.

524. As for the discrimination arising from claim we accept that the Claimant's absence from the work place was something arising on account of his disabilities, but do not consider that a lack of calls to see how he was, was something arising from those disabilities given we accept Inspector Baird's evidence that it was not his normal practice to make calls to absent employees. We take account of the multiple tasks Inspector Baird was performing with his line management responsibilities being a relatively small proportion of his overall responsibilities. We take account of his email to the Claimant of 15:32 on 26 March 2022 which concluded with him saying: "I hope that once we finally meet in person you may see how supportive, positive and progressive our relationship can be". This is indicative of him seeking to provide reassurance to the Claimant that they can have a harmonious working relationship. It is therefore significant in our view that within an hour the Claimant responded by

referring to his grievance and how he felt uncomfortable engaging with him for fear of victimisation.

69.1 Deliberate delay in processing grievance, intimidating Claimant not to contact ACAS 13 January 2022

525. We considered that there were deficiencies in the conduct of the grievance process. It was inordinately delayed and those delays were in excess of what can reasonably be explained by the complexity of the case and the unexpected non-availability of the originally appointed grievance assessor. Nevertheless, we reject the Claimant's assertion that it had anything to do with his protected acts or protected disclosures.

526. We also consider that Ms Vernosi took an inappropriately narrow view of the scope of her responsibilities. She asserted that she was the grievance assessor and not an investigator. We consider that part of her role was to investigate the grievance as how else would you be able to assess whether or not it was meritorious. For example, she and Ms Shah visited the Claimant at his home and the Claimant says that he showed her two folders of documents he had put together relating to his grievance. We consider it surprising that she did not request copies of those to be provided to her but rather worked on the basis that if the Claimant wanted to send any emails to her with documents attached she would take them into account. We consider that Ms Vernosi adopted a passive role rather than proactively seeking to investigate concerns which had been raised.

527. In relation to the scope of the grievance we consider it significant that the document headed "incidents for GMT to investigate" dated 23 September 2022 (as at page 1540 in the bundle) expressly refers to investigate which we consider reflects the reality of the process which should have been followed, and indeed largely was followed, as how else do you characterise interviews with those involved, for example ACI Marshall and his detailed responses, than as an investigation of the concerns raised by the grievant because without an investigation you cannot possibly form an assessment of the individual allegations.

528. We also consider, and the Respondent acknowledges, that Claire Horgan, Disputes Resolution Champion, (Ms Horgan), particularly in her email to the Claimant of 21 February 2022, inappropriately advised him not to pass his details to ACAS at this stage. Ms Vernosi acknowledged that this did not represent the Respondent's practice and that it was appropriate for grievances and employment tribunal proceedings to run concurrently.

529. We reject the assertion that any element of the conduct of the grievance process, to include advice pertaining to ACAS, constituted harassment on account of race and disability.

530. We also reject the assertion that it constituted discrimination arising from disability. It is significant that the Claimant's grievance involved multiple allegations, as set out in the grievance notification of concern document at page 1290 in the bundle, where the Claimant ticked those boxes relating to disability, harassment, racial discrimination, religious belief/faith discrimination, sex discrimination, victimisation and behaviour/decision by management. Therefore it was a wide ranging grievance

and this is contrary to his assertion that the deficiencies in the grievance process were something arising from his disability.

72.1 Comments about "living the dream" in relation to Claimant's disabilities 20 May 2022

531. It is acknowledged by CI Davies that she made the "living the dream" comment 2022 (she says it was much earlier than 20 May 2022) but that it was made generally in relation to the poor state of the building and not directed at the Claimant. We accept her evidence. We find no evidence upon which we can infer that she directed the comment specifically to the Claimant.

532. We reject his assertions that it had anything to do with his protected acts or protected disclosures. Given our finding above it would not be capable of constituting an act of harassment on account of race or disability. Further, we reject the claim of discrimination arising from disability as we do not consider that the comment was made specifically towards the Claimant and therefore it was not something arising from his disabilities.

533. We take account of CI Davies' evidence that at the time of the comment she did not know who the Claimant was and that the room was full of officers. It would in our opinion have been highly improbable that in these circumstances she would deliberately have targeted the Claimant with such a remark.

73.1 Threatening Claimant with UPP 14 June 2022

534. We do not consider that the Claimant was threatened with UPP. We refer to Inspector Baird's letter to him of 14 June 2022 when he set out the possible outcomes of the Local Resource Planning Meeting (LRPM) review which at (h) included UPP. However, given that the Claimant had not been performing his active operational duties for nearly two years we consider it inevitable that UPP was a possible outcome and that must have been self-evident to the Claimant given the situation. It was not a threat it was merely a statement of the options which may arise.

535. For reasons set out above the victimisation, whistleblowing detriment and harassment claims must fail. As for the discrimination arising from disability claim we accept that the circumstances giving rise to Inspector Baird's letter of 14 June 2022 arose from the Claimant's disabilities, and that the option of UPP would be unfavourable treatment but nevertheless we consider that the Respondent had justification for setting out the options as per Inspector Baird's letter.

74.1 Referring to Claimant as a "numpty" 15 July 2022

536. We accept CI Davies' evidence that the comment was made during her call with the Claimant on 15 July 2022 in a light hearted manner. We reject his assertion that it had anything to do with his protected acts or protected disclosures. We do not consider that the term "numpty" has any racial or disability connotations and in the context that it was used, in what we considered to be a light hearted manner, not one which was capable of constituting harassment when looked at objectively. We acknowledge the Claimant may subjectively have perceived the comment to be

directed at him and to be disparaging but consider it relates to his heightened sensitivity rather than how the comments would be objectively viewed.

537. We also rejected his claim of discrimination arising from disability given our findings above that the comment was not in any way related to the Claimant's disabilities.

538. We take account of the fact that CI Davies in her use of language i.e. the "living the dream", "numpty" and "I want to be a ballerina" comments uses informal, arguably self-deprecating and humorous language. We do not consider given the context in which these comments were made, that they were intended, or could reasonably be construed, as constituting harassment.

75.1 Threatening to allocate Claimant to a PDS role 15 July 2022

539. We consider that CI Davies was acting appropriately, and in accordance with her managerial responsibilities for the Claimant, in exploring what roles may be suitable for him. We consider that by July 2022 it would have been apparent to the Claimant, and his line managers, that it was very unlikely that he was going to return to front line operational duties given that he was in his final year prior to retirement. It is in that context that CI Davies made the "and I want to be a ballerina" comment to the Claimant when he said that his wish was to return to operational duties at SPI. We consider that CI Davies would have been mindful of the fact that if it was not possible to secure a suitable alternative role for the Claimant, and we note the distinction the Respondent draws between roles and posts in terms of budget allocation, that the prospect of UPP may have become more tangible and that was obviously a situation which the Claimant wished to avoid. We find no evidence that CI Davies had any awareness of the Claimant's previous experiences at PDS, and in any event significant time had elapsed and the Respondent says that a lot of changes had taken place since 2017 with PDS now being part of the Regional Control Desk.

540. We therefore reject the Claimant's contentions of victimisation, whistleblowing detriment, discrimination arising from disability and harassment

76.1 Failed to submit a disability sickness request June-September 2022

541. We have carefully considered the chronology of events. There is no evidence that the Claimant signed off as being on sick leave. We accept the Respondent's position that a precursor to sickness absence being attributed to disability is that the officer is on sick leave and that a disability related categorisation is retrospectively applied at the end of the sickness absence.

542. We reject the Claimant's assertion that this constituted an act of victimisation or whistleblowing detriment.

543. As for the discrimination arising from disability claim we do not consider that the Claimant was subject to any unfavourable treatment arising from his disability. First, the Claimant did not suffer any reduction in pay given that at no point did he go on sick leave and in any event the Respondent's policy of only retrospectively applying disability attribution to sickness absence was one which was justified as being a proportionate and legitimate means of monitoring and categorising sickness absences.

77.1 Ignoring discrimination concerns in PDR April 2022-September 2022

544. We accept Inspector Baird's position that it was not incumbent or appropriate for him, in the context of the performance development review (PDR) to address the Claimant's concerns of what he perceived to be "historical" allegations of discrimination emanating from his time at PDS. Inspector Baird would have been aware that the Claimant had invoked the grievance procedure and we consider that he had a legitimate concern that his discussion of these matters with the Claimant may be contrary to the independence of that grievance process.

545. We consider it surprising that the Claimant ticked the box that he was interested in promotion in the Summer of 2022 when in previous PDRs, for example, with Superintendent King he had said that he was no longer interested in promotion. Given that the Claimant remained physically incapacitated and incapable of operational duties at this stage, and was within approximately 12 months of reaching the 30 year retirement threshold, we question whether an interest in promotion was genuinely and reasonably held by the Claimant as opposed to being used by him as a means of raising his long-standing concerns about what he perceived to be his less favourable treatment on account of his various protected characteristics.

546. Therefore we reject the Claimant's assertions of victimisation, whistleblowing detriment, discrimination arising and harassment.

78.1 Denying the Claimant project work and requiring the Claimant to communicate with extremists September 2022

547. We accept CI Davies' evidence that there was no project work available to give to the Claimant. Whilst she initially proposed that he undertook what the Claimant describes as "administrative work" in respect of the Respondent's reward and recognition records she decided that this was a task it would be easier for her to undertake. Given that the Claimant had described her initial inquiry as to whether he would undertake this task as being "humiliating" we consider it surprising that he then took exception when she decided to do it herself.

548. We do not consider that any evidence exists that the Claimant was required, or it was proposed that he be required, to communicate with extremists. We have reviewed the OH report of 30 August 2022 and it makes no reference to carrying out reviews with suspected extremists. Therefore, whilst the Claimant raised his concerns with Mr Hall in his email of 30 August 2022 we read that as the Claimant carrying out remote reviews rather than communicating directly with suspected terrorists. In any event it would be highly improbable from an operational perspective that an officer working remotely would telephone or email suspected terrorists.

549. We therefore reject the Claimant's allegations of victimisation, whistleblowing detriment, harassment and discrimination arising from disability.

80: Not allowed to work Bank Holiday October 2022

550. As 67.1 above.

551. In relation to the reasonable adjustment claim we construe, albeit it is not specified by the Claimant, that the PCP would be a provision that to be entitled to work on a Bank Holiday an officer would need to be fit for front line operational duties. The adjustment would be to enable such an officer to work on a Bank Holiday notwithstanding not being so capable. The Respondent's policy on the exercise of discretion to enable an officer to work on Bank Holidays excludes those who are on adjusted duties or recouperation. We find that the Respondent had justification for its requirement that only officers capable of working in person and performing operational duties should be allocated work on Bank Holidays.

82.1 GMT – failure to support during process - undated

552. We reject the contention that the Claimant was not supported during the grievance process. The claim is abstract as the Claimant has not specified the type of support he required and therefore it is very difficult for the Respondent to assess exactly what actions he contends should have been taken. Whilst we have criticised the duration and conduct of the grievance process we do not consider that there was a failure to provide the Claimant with appropriate support. Ms Venosi visited the Claimant at his home as part of the grievance process. That was unusual. He was offered, but declined counselling. He resented the various referrals to OH. He makes a similar allegation regarding Inspector Baird and for reasons we have already set out that allegation is rejected.

553. We find no connection between the Claimant's protected acts and protected disclosures and therefore these claims must fail. The claims of discrimination arising and harassment also fail as the relevant tests are not satisfied.

Final observation on approach taken

554. In relation to the approximate 271 individual allegations, all of which we have rejected and therefore fail, for the avoidance of doubt we have applied the relevant legal tests to include whether the burden of proof shifts. In all instances it does not, and those applicable to the assessment of the claims for direct discrimination on account of race and disability, discrimination arising from disability, reasonable adjustments on account of disability, harassment on account of the protected characteristics of race and disability, victimisation on account of having undertaken protected acts and detriment on account of having made protected disclosures, but to avoid this judgment becoming unmanageably long and repetitious, have not set out the applicable tests against each individual allegation, but for the avoidance of doubt they have been applied diligently by the Tribunal during its deliberations.

Out of time

555. Whilst we have considered all of the allegations above it is nevertheless necessary for us to consider which of the allegations were out of time and therefore ones the Tribunal does not have jurisdiction to consider.

Relevant chronology

556. The Claimant's ET1 was issued on 22 March 2022. Three months prior to that date was 22 December 2021. In line with section 207B (3) of the ERA, the 31-day period between 11 February 2022 and 14 March 2022, during which the parties participated in the ACAS early resolution procedure, is not to be counted. This means that the three-month period for the purposes of section 48 (3) of the ERA is deemed to have begun on 21 November 2021.

557. The alleged treatments occurring on or before 22 November 2021 are out-of-time, unless there was this conduct which extends over a period of time beyond 22 November 2021 or "part of a series of similar acts or failures" with other (unlawful) acts or failures in the series occurring after 22 November 2021

The Claimant's argument that his claims are in time

558. The Claimant argues that all of the alleged treatment pre and post 22 November 2021 were part of an act / conduct extending over a period of time which he has stressed "stems back to" and "are all linked to the PDS removal. In support of his argument that there was a continuing act, he relies upon "on the fear and severe daily anxiety that the abrupt PDS removal caused…" his "state of mind". Essentially he asserts a "conspiracy and plot to victimise him and remove him from Borders amongst managers up to and including SLT level.

The Respondent's contentions that there was no continuing course of conduct

559. The Respondent says that there are multiple discrete allegations against a range of individuals with different levels of responsibility; 1st line and 2nd line managers and HR from Superintendent King, Mr Balcombe, ACI Marshall, DCI Kerr, Inspector Baird and Ms Waller.

560. The Respondent says that there is little factual interaction between the types of allegations which are prima facie out of time and those in time such as complaints about CI Davies' "living the dream" / "numpty" comment.

ERA and whistleblowing detriments

561. We find that whilst all detriments on or before 22 November 2021 are out of time based on the primary time-limit, that they nevertheless form part of an alleged act or failure to act as part of a series of similar acts or failures which forms part of an alleged continuing course of conduct from the Claimant's move from T5 to SPI on 21 October 2019 as set out below, which means that the alleged detriments were in time.

EQA

562. We have considered whether there was a continuing act which would enable those acts and omissions relied on before 22 November 2021 to be in time. We consider that there was a continuing course of conduct from the Claimant's move from T5 to SPI on 21 October 2019. This means that those acts and omissions prior to 21 October 2019 are out of time. In reaching this decision we take account of the fact that there were a relatively small number of different and largely unconnected

incidents prior to this date. However, from 21 October 2019 there were a series of incidents relied on by the Claimant which had some level of connectivity. He argues that his sequential line managers during this period namely Superintendent King, ACI Marshall and Inspector Baird communicated with one another and that a pattern of discriminatory and otherwise detrimental conduct towards him ensued. Whilst we have rejected his substantive allegations we nevertheless consider that these matters are in time.

563. Further, we consider that it would have been, had it been necessary, just and equitable to extend time. The reason being that where someone remains in employment and relies on multiple allegations which sequentially arise during their employment it is understandable that the employee does not immediately commence ACAS early conciliation particularly where a grievance is raised. We take account of what we consider to have been the tardiness of the Respondent's conduct of that grievance process. We also take account of the admitted mistaken advice from Ms Horgan that the Claimant should not initiate ACAS early conciliation whilst the grievance process remained extant. In those circumstances we consider that it would be just and equitable to extend time had it been necessary for us to do so.

General observations and conclusions

The multiple allegations

564. Whilst not strictly necessary we nevertheless consider it appropriate to make some general observations. The reason for doing so is the length of the hearing and judgment and the Claimant relying on an estimated 271 individual allegations. Without general observations there is a danger that the judgment becomes largely repetitious without addressing our overarching observations regarding the evidence and the basis upon which the claim has been pleaded.

565. These final conclusions emanate from our discussion at the end of our deliberations on the individual allegations and not as we went through them. We approached each of the individual allegations on the basis of their merits and reached our findings accordingly. Nevertheless, after six days of deliberations we consider that we would have been remiss not to include some overarching observations regarding how we perceived the overall claim.

566. The Claimant's approach was to rely on five or six separate allegations in relation to each individual incident. This resulted in substantial additional time being incurred in our deliberations when a more sensible approach would have been for him to focus on individual incidents as falling under one, two or perhaps three separate legal grounds. There are many examples we could give but we particularly highlight his reliance on virtually every allegation as being an act of victimisation as a result of his having undertaken a protected acts and/or a detriment as a result of his having made protected disclosures. For example, he makes these contentions in relation to Ms Venosi's conduct of the grievance procedure notwithstanding that substantial time had elapsed from his protected acts and protected disclosures and that no evidence was advanced that she was aware of those protected acts and disclosures and none at all that she was materially influenced by them in her conduct of the grievance process.

567. We also consider that the Claimant's labelling of virtually every allegation as constituting harassment on account of both race and disability constituted a scatter gun approach. Whilst we accept that his subjective perception was that he felt continuously harassed from his move from PDS in 2017 that falls short of an objective evaluation as to whether individual acts or omissions were capable of constituting harassment. A general sense of being harassed is not the same as an individual incident being capable of having that effect. In particular we refer to relatively de minimis matters such as the Claimant's contention that he was deprived of the opportunity of working on a Bank Holiday, or attending the retirement seminar on a day of his choosing, as being harassment. He also refers to matters such as the conduct of the grievance process or a general lack of support being offered/provided. They fell far short of objectively being so capable.

568. We also consider that many of the Claimant's allegations are inherently inconsistent. As previously noted he advised Inspector Baird in his email of 27 March 2022 that he wanted no further contact from him but complains that he failed to provide him with support during the remaining time as his line manager. Further, he makes multiple allegations that he received a lack of support for his disabilities and health issues but resented referrals to OH and case conferences. Further, he did not take advantage of the Respondent's offer to refer him to internal counselling and the EAP programme.

569. We consider it increasingly apparent that the Claimant considered that the dye was cast and attempts to address matters were not going to be successful. For example, during his performance review meetings with Superintendent King he said that he was not interested in promotion. He then went on to explain that he considered that he had been penalised by prior discriminatory treatment. We therefore consider it to be wholly inconsistent that in his performance review meeting with Inspector Baird in 2022 that he said he was interested in promotion. He had documented at considerable length in his PDR his experience of alleged discriminatory treatment emanating from his time at PDS when there was no proper basis for doing so in a PDR. We find this to be symptomatic of the Claimant majoring on his dissatisfaction rather than seeking to find appropriate solutions.

<u>Inconsistencies in the Claimant's position regarding his disabilities and vulnerability to Covid</u>

570. We consider that there was an inherent inconsistency between the Claimant continuously emphasising the seriousness of his disabilities and vulnerability to Covid, including that he was being sent to his death by being asked to return to the office, and his reference to "constant and unrelenting anguish", with his vehement opposition to any suggestion that he should be on sick leave.

<u>The Claimant's motivations</u>

571. We consider that from early 2020 increasing evidence existed that the Claimant was focussing on creating potential evidence for a likely legal claim. It is relevant to refer to the text message exchange between the Claimant and Officer 1 of 2 March 2020 which included Officer 1 stating "this is great fuel once again!". We consider this to be inconsistent with the Claimant experiencing conduct which he genuinely perceived to

constitute harassment but rather that it is consistent with a mindset of his and Officer 1 seeking to find evidence to support contentions of discriminatory and otherwise less favourable treatment.

The Claimant's increasing antipathy to his line managers

572. From our initial reading of his voluminous witness statement and throughout the hearing the Claimant repeatedly referred to his multiple disabilities, his vulnerability to Covid and his history of discrimination. Whilst we accept that he subjectively believed this to be the case we also consider that this mindset made it very difficult for him to view interactions with his line managers on a realistic and objective basis. Right from the outset of his introduction to a new line manager he set out the adverse treatment he had been subject to. When Inspector Baird referred to "historical" issues he took exception saying that it undermined their significance and ongoing implications. He would not let anything go and sought to connect every previous incident from his move from PDS in 2017 onwards to all future matters. For example, he reacted extremely strongly to Inspector Baird's suggestion that a possible option was a return to PDS saying that it was wholly inappropriate as five years earlier he perceived he had been discriminated against.

573. We consider that his motivations from probably 2018 onwards ceased to focus on career progression but rather his myriad of complaints from which he drew negative inferences as to the motivations of his line managers and other colleagues, spanning his time at PDS, T2, T5 and SPI.

The Claimant's allegations against ACI Marshall

574. The Claimant, during the hearing in response to a question from the Judge, described ACI Marshall as a "deeply racist" officer. In the context of serious historical issues of racism within the Met, and more recent concerns regarding discriminatory conduct, this self-evidently represents an extremely serious allegation and one in respect of which ACI Marshall would understandably have been concerned. We note that ACI Marshall was in attendance for the entirety of the hearing which no doubt in part was attributable to the serious allegation made against him. Not only did none of the Claimant's allegations succeed, but even if some had succeeded there would almost certainly have been no justification for the contention that ACI Marshall was "deeply racist".

Inspector Baird

575. By the time Inspector Baird was the Claimant's line manager we consider that he was in a virtually no win situation. The Claimant right from the outset found fault with his management of him and whatever Inspector Baird did or did not do was criticised by the Claimant. We consider that the Claimant had wholly unrealistic expectations of the role of a line manager. He perceived that his line manager should be providing him with at least weekly holistic interactions enquiring as to his wellbeing and responding to his multiple emails and that a failure to do so was evidence of their lack of care and discriminatory conduct towards him. The Claimant fails to take account that these were busy senior officers with multiple responsibilities and that he had not

been an operational officer for a long time but nevertheless continued to receive full pay.

The Respondent's operational inertia regarding the management of the Claimant

576. We consider a very significant, but not overly referenced element to the Claimant's career chronology, was that he was approaching the 30 year service threshold for early retirement. We were struck by the fact that many of the witnesses had reached 30 years and retired. It appears to be an accepted and inevitable fact of life in the Met that officers will retire at 30 years' service. There is therefore an inevitable, and perhaps understandable, temptation that matters are not dealt with in the years leading up to that 30 year threshold. For example it might have been considered that an officer in the Claimant's position, who had not been capable of performing front line operational duties i.e. their raison d'etre, for a substantial time, and with no reasonably foreseeable prospect of there being able to do so, would have been subject to an absence management procedure. None was proposed in relation to the Claimant despite his concerns regarding UPP. He therefore remained on full pay even though the Respondent's position was that from early 2020 until his retirement in September 2023 he was performing very limited meaningful duties. The Claimant does not appear to appreciate the benefit he gained in this respect.

577. A further possible explanation for the failure to take proactive steps to address the Claimant's absence from his active duties is the effect of the pandemic and many officers working from home as a result of underlying health issues. This no doubt meant that this was an experimental time for the Respondent, together with many employers, as adjustments were made towards home or hybrid working for an extended period.

578. We consider that the Respondent spent an inordinate, and arguably disproportionate, amount of time in endless lengthy interactions with the Claimant regarding individual incidents. However, we consider that it ought to have become evident to the Respondent probably in 2020, but certainly 2021, that the position was intractable and needed to be proactively managed. The issues were passed sequentially between line managers with significant involvement from HR. We consider that this was partly attributable to the Claimant approaching 30 years' service and early retirement in 2023, but we also consider that there may have been an element of kicking the can down the road rather than any individual line manager taking ownership/responsibility for proactively addressing matters.

579. Whilst we fully appreciate that these concluding paragraphs will be unwelcome to the Claimant we nevertheless consider it appropriate that they are included. We do not make these comments lightly but after careful consideration of the respective positions and concerns of the Claimant, the Respondent and particularly ACI Marshall and Inspector Baird.

Final conclusions

580. The claims for direct race and disability discrimination pursuant to section 13 of the EQA, discrimination arising from disability pursuant to S 15 of the EQA, failure to make reasonable adjustments on account of disability pursuant to S 20, 21, 22 and 39 of the

EQA, harassment on account of race and disability pursuant to S 26 of the EQA, victimisation pursuant to S 27 of the EQA, and detriment on account of making protected disclosures pursuant to S 47B of the ERA fail and are dismissed.

Employment Judge Nicolle

27 February 2025

Sent to the parties on:

5 March 2025

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For the Tribunal:

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