



EMPLOYMENT TRIBUNALS

(RESERVED JUDGEMENT)

Claimant: Mrs A Ahir

Respondent: The Chief Constable of West Midlands Police

Heard at: Birmingham

On: 24th – 28th September 2018

Reserved to 1st November 2018

Before: Employment Judge Hindmarch
With Members Mr R S Virdee, Miss L S Clarke

Representation

Claimant: Mr Brockley (Counsel)

Respondent: Mr Berry (Counsel)

RESERVED JUDGMENT

The unanimous decision of the Tribunal is the complaints of victimisation are not well founded and are dismissed.

REASONS

1. By a claim form dated 16 February 2018 the Claimant, a serving police officer, brought a complaint of victimisation against her employer, the Respondent.
2. There was a Preliminary Hearing Case Management on 24 April 2017 before Employment Judge Flood where the issues were agreed.
3. There was an agreed bundle. The Tribunal heard evidence from the Claimant and 3 witnesses for the Respondent. Catherine Ward - Appropriate Authority, DS Neil Hughes - Temporary Inspector within Force Intelligence Department and Jenny Birch – Senior Intelligence Manager. A supplemental statement was tendered for Jenny Birch during the course of the hearing and before she gave evidence, such that the Claimants representative had opportunity to consider that statement and cross-examine upon it.

4. The Respondent had a witness statement for a 4th witness who was unable to attend to give evidence. At the outset of proceedings the Claimants representative objected to the Tribunal reading that statement on the basis that the witnesses inability to attend the hearing had only recently been made known to the Claimant's representative and being unable to cross-examine the witness would cause unfair prejudice to the Claimant. The Tribunal decided not to read the statement until hearing all of the evidence and concluded it was able to decide the matter without the need in fact to do so.
5. At the outset of proceedings the Claimant made a request for a cushioned chair which was provided and for regular rest breaks if requested which we agreed to. As a serving Police Officer the Claimant also requested that if members of the public were in attendance her home address should not be referred to and again we agreed.
6. We were handed a Chronology and a Skeleton Argument from the Respondent's representative. Oral submissions following evidence were made by the Claimants representative and the Respondents representative spoke to a 'closing note' which he later emailed to the Tribunal for consideration.

ISSUES

7. The Respondent was contending that part of the Claimants claim was out of time, that there was no conduct extending over a period of time, and that it would not be just and equitable to extend time.
8. The Claimant had filed previous complaints of discrimination against the Respondent who accepted that these were protected acts, for the purposes of S27(2) of the Equality Act 2010. These were the case numbers:
 - 1309142/2010
 - 1309987/2012
 - 1302098/2013
9. The Claimant alleged before us that she was subjected to the following detriments as a result of carrying out the above mentioned protected acts as follows:
 - a) The issuing of a Management Action on 9th September 2016,

- b) The fact that the Management Action of 9th September 2016 was issued for a different reason than the complaint raised by Fiona Washington which led to it,
 - c) The carrying out of an inappropriate investigation into the allegation made by Fiona Washington (which the Claimant alleged was a continuing act of detriment from 30 June 2015 until 9th September 2016) and,
 - d) The causing of stress, anxiety and injury to feelings (personal injury)
10. The Respondent accepted that a Management Action was issued to the Claimant on 9th September 2016 and that this was capable of amounting to a detriment albeit the Respondent did not accept the reason why the Management Action was issued was because the Claimant had done a protected act.
11. We would need to consider whether the treatment identified at paragraph 9 b-d above amounted to a detriment or detriments and then whether the Respondent meted out such treatment (in the case of each of the alleged detriments at paragraph 9) because the Claimant had done a protected act (the bringing of the previous claims).

FINDINGS OF FACT

12. The Claimants role as a serving police officer is subject to The Police Conduct (Regulations) 2012 (hereinafter called 'The Regulations') pages 42-59 of the bundle, a Code of Ethics pages 60-73 and the Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures (Revised May 2015) pages 74-97.
13. The Regulations define the 'appropriate authority' as;
- a. Where the officer concerned is the Chief Officer or acting Chief Officer of any Police Force, the local policing body for the force's area,
 - b. In any other cases, the Chief Officer of Police of the police force concerned.
14. The Regulations define 'Interested Party' as a person whose appointment could reasonably give rise to a concern as to whether he could act impartially under these Regulations;

15. The Regulations define 'Management Action' as action or advice intended to improve the conduct of the officer;
16. The Regulations define 'Management Advice' as management action imposed following misconduct proceedings or an appeal meeting.
17. Part 3 of the Regulations deals with Investigations and Regulation 13 'Appointment of Investigator' provides 'No person shall be appointed to investigate the matter under this regulation;
 - a) Unless he has an appropriate level of knowledge, skills and experience to plan and manage the investigation;'
 - b) if he is an interested party.
18. Part 4 of the Regulations deals with Misconduct Proceedings and Regulation 19, 'Referral of case to Misconduct Proceedings' at (3) provides 'where the appropriate authority determines there is no case to answer it may –
 - c) take management action against the officer concerned.'
19. Schedule 2 of the Regulations deals with Standards of Professional Behaviour and under the heading 'Authority, Respect and Courtesy' provides 'Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.'
20. The Guidance provides at section (b) 'Whilst it is not necessary to follow its terms exactly in all cases, the guidance should not be departed from without good reason'.
21. Section 1.4 of the Guidance provides 'A breach of the Code of Ethics will not always involve misconduct or require formal action under the Conduct Regulations – Managers, supervisors, professional standards departments and appropriate authorities will be expected to exercise sound judgement and take into account the principle of proportionality in determining how to deal effectively with relatively minor shortcomings in behaviour.'
22. At Section 1.7 the Guidance provides '.... these standards of professional behaviour or misconduct shall be applied in a reasonable, transparent, objective, proportionate and fair manner. Due regard shall be paid to the nature and circumstances of a police officer's conduct including whether his or her actions or omissions were reasonable at the time of the conduct under scrutiny.'

23. At Section 1.9 of the Guidance provides 'Where the misconduct procedure is being applied, it is important to identify the actual behaviour that is alleged to have fallen below the standard expected of a police officer, with clear particulars describing that behaviour.'
24. At Section 1.10 of the Guidance provides 'It should be remembered that the unsatisfactory performance procedures exist to deal with unsatisfactory performance, attendance and issues of capability.'
25. Under the heading 'Misconduct Procedures' within the Guidance there is a sub heading 'Assessment of Conduct' – (Is the case one of misconduct?) 'The assessment may determine that the conduct alleged amounts to an allegation of unsatisfactory performance rather than one of misconduct. In such circumstances the matter should be referred to be dealt with under the UPPs (Unsatisfactory Performance Procedures).'
26. Under the Heading 'Dealing with misconduct' the Guidance provides 'unless there are good reasons to take no action, there are two ways by which line managers can deal with matters which have been assessed as potential misconduct;
- a) Management action,
 - b) Disciplinary action for misconduct.'
27. Under the heading 'Management Action' the Guidance provides the purpose of Management Action is stated to be to deal with misconduct in a timely, proportionate and effective way that will command the confidence of staff, police officers, the police service and the public.
- Identify any underlying causes or welfare considerations
 - Improve conduct and to prevent a similar situation arising in the future.'
28. The Guidance further provides 'Management Action may include,
- Pointing out how the behaviour fell short of the expectations set out in the Standards of Professional Behaviour,
 - Identifying expectations for future conduct
 - Establishing an improved plan
 - Addressing any underlying causes of misconduct.

29. The Guidance further provides 'Management Action is not a disciplinary outcome but is considered to be part of the normal managerial responsibility of managers in the police service.'
30. The Claimant commenced her role with the Respondent in April 2003. In April 2014 the Claimant was involved in a Road Traffic Accident and injured her back needing time off work. She returned to work on a restricted phased return on 29 July 2014.
31. The Claimant sent Fiona Washington, the Respondents Equalities and Diversity Officer, an email on 5 August 2014 asking to speak with her regarding 'reasonable adjustments'. A copy of the email is at page 108. The Claimant spoke with Fiona Washington and followed it up on 6 August 2014 by a further email (page 109) confirming she had arranged an interview with Access to Work and seeking assistance with respect to a location move. The Claimant was seeking specialist equipment to support her back and a work station assessment.
32. An appointment was made for the Claimant to meet with Fiona Washington on 14 August 2014 to try out some chairs that offered back support. The meeting does not appear to have resolved matters satisfactorily for the Claimant. On 18 August 2014 the Claimant spoke with DS Ahmed of the Tactical Intelligence Development Team and there was a discussion between them regarding the adjustments concerned. DS Ahmed agreed to speak with Fiona Washington about this. At pages 145 and 146 are emails sent by DS Ahmed to colleagues after his telephone conversation with Fiona Washington, and after another conversation with the Claimant. DS Ahmed records that he advised the Claimant to contact Access to Work and to keep him updated.
33. On 19 August 2014 the Claimant emailed Fiona Washington setting out a chronology of her attempts to obtain the adjustments – page 147 – 148. The email contains some sections that are in bold, some underlined and some in capitals, in our view expressing frustration, and the email ends '**This is not a complaint**, but a request for assistance. Thank you'.
34. Fiona Washington emailed DS Ahmed and other colleagues on 19 August 2014 – page 150 to update them that the Claimant had booked an Access to Work appointment and that she was looking into temporary solutions for the Claimant until that could take place. A backrest had been provided but the Claimant had subsequently said it was unsuitable and Fiona Washington felt her team could do nothing until Access to Work had reported back.

35. On 19 August 2014 Fiona Washington emailed DS Ahmed asking for the back support to be returned, page 160, and DS Ahmed responded, page 159, 'I will get that back tomorrow if she actually brings it with her'. On 20 August 2014 DS Ahmed emailed Fiona Washington to update her, pages 158-159, following a meeting he had conducted with the Claimant, in which he concluded, 'I have a comprehensive record of our (his and the Claimants) meeting this morning detailing what we discussed and what support was put in place for her return to intelligence'. DS Ahmed made a note of that conversation and sent an email to colleagues (effectively of the note), page 163-164. In the record DS Ahmed says he discussed the email the Claimant had sent to Fiona Washington on 19 August 2014 with the Claimant and records, 'I informed her that my personal view of the email was that it was not very well written or clear and appeared to contradict things she had told me previously. Angela was quite defensive'.
36. Access to Work visited the Claimant on 27 August 2014. The next step was for them to prepare a report. On 29 August 2014 the Claimant met with DS Ahmed, his record of the conversation is at, page 175, complaining of back pain just before the onset of annual leave
37. Access to Work provided their report dated 4 September 2014, page 180, in which they recommended a chair and desk at a total cost of £914.40. The Claimant sent a copy to Fiona Washington on 12 September 2014, page 186.
38. Fiona Washington replied the same day to say 'the equipment will be ordered and delivered in a reasonable time frame... usually takes no more than 2 weeks on average'.
39. On 12 September 2014 the Claimant replied to Fiona Washington asking in summary when the equipment would be ready and essentially again summarising the chronology of delay as she saw it, page 196.
40. Fiona Washington forwarded the Claimants email, one of the Claimant's managers, page 199, stating 'I am a little concerned by the nature and tone of Angela's response. We amongst a number of other departments have gone over and above to try and help her and get her suitable equipment to assist her.
41. The Claimant received the equipment on 17 November 2014.
42. On 1 May 2015 the Claimant sent an email to Fiona Washington, page 212-213, following a conversation between them the previous day, stating that payment had not been made for the equipment.

43. On the same day Fiona Washington emailed DS Neil Hughes and DS Bates as follows;

'Both,

I am not sure which of you supervises Angela Ahir. I would like a confidential conversation with you regarding her behaviour at some point.'

44. DS Hughes replied to say DS Bates was the Claimants prime supervisor but he was off work until the following week. Fiona Washington replied to say matters could wait until his return.

45. On 6 May 2015, page 221, the Claimant emailed Fiona Washington copied to DS Bates, stating that someone had re-adjusted her chair and it was causing her pain and she needed someone to fix it.

46. On 7 May 2015 PC Peggy Lamont, Police Federation Representative, emailed Fiona Washington on the Claimants behalf to say;

'Anita (sic) Ahir has contacted me saying there is some mix up with the payment from the force towards the cost of her reasonable adjustments.'

47. On 11 May 2015 Fiona Washington emailed the Claimant, page 227, to confirm payment was made in full shortly after delivery. She also explained how the Claimant could contact the suppliers for assistance with re-adjustment.

48. On 12 May 2015 the Claimant emailed Fiona Washington, page 228, copied to Police Federation Representative Tom Cuddleford, entitled 'Reasonable Adjustments.

'Fiona,

Thank you for your email/updated finally ...

I just want to get on with my daily work and as a 'diversity manager' I believe you will not mind if I provide some constructive criticism – there was some very poor communication from yourself by ignoring email/calls and not replying at the minimum which is a form of bullying and unfortunately it took the introduction of Police Fed Rep to become involved in order to get a simple answer'

The email contained a number of bold and italicised and high-lighted words.

49. The email also referred to *'listening to the Fed Rep Peggy Lamont yesterday stating that you don't see the point in contacting me is a poor attitude'*.

50. Fiona Washington forwarded the email to DS Bates on the same day describing it as 'interesting – but not unpredictable' and 'it would appear she's itching for her next target', page 230.
51. Tom Cuddleford, who was copied into the email, emailed Fiona Washington on 12 May 2015, page 235, stating '*I have emailed Angie advising her to leave things as they are and to move forward concentrating on her current role*'.
52. On 14 May 2015, page 240, Fiona Washington emailed DS Bates and copied in DS Hughes;

'Further to my recent emails I was contacted yesterday about Angela. One in particular phoned me to apologise to me for the content of Angela's email to me and was particularly upset that Angela had lied about what she had advised. This is the third occasion that Angela has blatantly lied to me and colleagues to undermine their integrity. I don't think that this is appropriate behaviour for a police officer and I believe it should be addressed before somebody is unfairly investigated/disciplined because of her actions'
53. DS Hughes replied on 18 May 2015, page 242, to say that he and DS Bates would take some advice on the matter. We found DS Hughes credible when he told us that whilst he had previous knowledge of prior Employment Tribunal claims made by the Claimant he kept this confidential and did not discuss it with the Claimant and he spoke highly of her.
54. At page 246-247 Fiona Washington sent DS Neil Hughes a detailed memorandum dated 21 May 2015 setting out her concerns about the Claimant. On receipt DS Hughes emailed Fiona Washington on 21 May 2015, page 251, asking her to address the report to DI Gail Rumble and on 22 May 2015 he confirmed to Fiona Washington that DI Gail Rumble would pass it to the Complaints Appropriate Authority Chief Inspector Ian Stainer 'for direction and guidance'.
55. DS Hughes sent it by email to DI Rumble the same day, page 257. Gail Rumble sent it to Ian Stainer on 2 June 2015, page 261, in which she described the email (sent by the Claimant to Fiona Washington) as '*practically rude and abrupt*'. On 3 June 2015 Ian Stainer emailed Gail Rumble, page 201, '*I have read this and on the facts presented the allegations do not fall within the definition of Gross Misconduct. Please can you undertake a **proportionate** investigation into the circumstances as to whether there is a case to answer for misconduct in relation to breach of honesty and integrity elements of the code*'
56. DI Gail Rumble commissioned DS Bates to conduct the investigation. He took advice from DCI Brian Carmichael. In his investigation he obtained

witness statements from Fiona Washington on 10 June 2015, page 284-292, and Peggy Lament on 18 July 2015, page 299.

57. On 30 June 2015 a Notice of alleged breach of the Standards of Professional Behaviour Regulations Police (Conduct) Regulations 2012 was prepared, page 296. The Notice informed the Claimant of the allegation against her being 'dishonesty in making representations concerning the actions of the equality and diversity team in relation to her reasonable adjustment in the workplace'. The Notice stated 'based on the information available at this time the conduct described above, if proven or admitted, has been assessed as amounting to misconduct'. The Claimant was issued with the Notice and signed it (page 299) on 30 June 2018.
58. DS Bates, before he could conclude his investigation went on long term sick leave and it was anticipated he would not return before his planned retirement. It was then determined that DS Hughes would carry on the investigation.
59. The Claimant went on sick leave, her last shift was on 23 November 2015, from 26 November 2015 – 7 March 2016. During that time DS Neil Hughes conducted welfare discussions with the Claimant. She confirmed there were no welfare issues at that time.
60. Before his absence and retirement, DS Bates prepared a draft Regulation 18 report and sent it to DS Hughes on 20 November 2015, pages 335-336. At the time of preparing the draft report the Claimants account of events was not known but nevertheless in the draft recommendations section DS Bates wrote;

'Both elements of the complaint can be proved against PC Ahir, however, as this would appear to have arisen from what it is a minor misunderstanding, my recommendations are as follows; PC Ahir receive Management Advise' (sic)

61. On her return from sick leave the Claimant provided her response to the allegations to DS Hughes on 18 May 2016, pages 319 to 331. DS Hughes was of the view that this did not change DS Bates initial assessment and finalised the report on 26 May 2016, pages 339-344 and his recommendations concluded;

'The complaint of lying cannot be proved against PC Ahir. There appears to have been a real clash of personalities between both Fiona and Angela and a lack of real understanding and communication on the part of both staff members.

I strongly believe that this has been a proportionate investigation. There has been a great deal of policing time spent during this investigation.

There have been no issues regarding PC Ahir's performance or honesty or integrity since I have supervised her.

I believe this matter should be filed with no further action.'

62. DS Hughes Regulation 18 Report of Investigation was sent to Jenny Birch, the new Force Intelligence Complaints Appropriate Authority, in April 2016, pages 346-353.
63. Jenny Birch's role was to make a Regulation 19 decision. It was the first one she had made since becoming Appropriate Authority. We found her a credible and honest witness. Her initial assessment was that DS Hughes recommendations were correct but that the Claimant should receive some Management Action. As it was her first time in this particular role she sought to 'sense check' her view with another Appropriate Authority without identifying the Claimant. That sense check resulted in confirming her thoughts.
64. From February – November 2016 Jenny Birch was assigned to another project and was very busy. This led to an unfortunate delay in confirming the outcome to the Claimant. The decision was not conveyed to the Claimant until 9 September 2016 in a Skype call to the Claimant and her then Police Federation Representative John Tooms. Pages 356-357 set out the rationale that was conveyed in that conversation and page 358 is the memo from Jenny Birch to Chief Superintendent Todd, Head of Intelligence, confirming the same.
65. The Claimant was informed that Management Action is not a disciplinary outcome but would be disclosed as part of any vetting enquiry and in future proceedings where relevant. Jenny Birch explained she had found clear misunderstandings on both sides;

'Due in part to your communication style. ... the management action is in relation only to your communication style. The action is:

1. *For you to ensure that your email correspondence is at all times polite, measured and does not excessively use bold, capitals or underline as this can be misinterpreted by others;*
2. *For you to ensure that you consider the impact of your communication, both written and verbal, as others;*
3. *For your line manager (DI Rumble) to issue words of advice on adherence to the Code of Ethics.*
4. *For you to ensure that you seek support from your line manager should a similar situation develop in future;*

5. *For you to ensure that if you feel you are not receiving the support you need from your line managers you make the department SLT aware, should a similar situation develop in the future.'*
66. She confirmed there was no right of appeal against management action.
67. No action was issued to Fiona Washington or Penny Lamont.
68. The Management Action would be recorded on a system known as Centurion. At page 279 we saw a print out of the system showing the Claimant 'Professional Standards Staff History.'
69. In 2012 the Claimant had applied for a role of Intelligence Officer and was interviewed by Jenny Birch and another. She performed very well and was successful. She was put forward for a career discussion with other officers. Jenny Birch did not take part. The officers involved in the career discussion later informed Jenny Birch they had some concerns about the Claimant's access of police information systems. Jenny Birch made enquires and prepared a report dated 20 April 2012, page 434. The job offer was later withdrawn but Jenny Birch said she did not know what happened to the report. Nevertheless the Claimant later joined the Intelligence Department and Jenny Birch assisted in finding a role for her. The Centurion record for the Claimant does state that she had previously received Management Action in 2012 for 'a case to answer' namely 'Officer failed to adhere to guidelines in connection with the use of Police systems (using systems under colleagues log on).' Jenny Birch became aware of the Claimants prior Tribunal claims in around 2013.
70. The Claimant later raised a grievance on 27 October 2016.
71. Jenny Birch was asked by DCI Carmichael during the investigation thereof to confirm whether she had given the Claimant Management Action and in an email dated 14 November 2016, page 300, she confirmed that she did and that she had taken 'some advice from another Appropriate Authority as I am new to the role but ultimately the decision was mine. If this was inappropriate then I will of course take that feedback'. DCI Carmichael replied to say her actions made 'perfect sense'.

SUBMISSIONS

72. We heard oral submissions from the Claimants representative. As regards the evidence of the Respondents witnesses he appeared to accept there were no negative intentions on the part of DS Hughes who he described as 'empathetic'. However he sought to distinguish Jenny Birch. He attacked

her credibility as regards the email she sent to DCI Carmichael on 14 November 2016 describing her as 'acknowledging there was impropriety in the taking of Management Action.' He asked the Tribunal to view this as Jenny Birch acknowledging Management Action was wrong and opening up the question of if so, what was the real reason why Jenny Birch chose to give it.

73. He asked us to find that Jenny Birch was not in fact supportive but rather critical in the giving of Management Action. Jenny Birch had some involvement with the Claimant in 2012 and formed some kind of bias against her.
74. On the time point the Claimants representative submitted it would be unfair to separate the investigation and outcome.
75. He further submitted that because the Guidance talks of allegations being precise, it would be inconsistent to take Management Action for different reasons.
76. As regards to his role as the initial investigator, the Claimants representative argued that DS Bates was not sufficiently competent using the incorrect term 'advise' in his draft report.
77. We had detailed written submissions from the Respondent's Representative which we do not set out but refer to as necessary in our conclusions.

THE LAW

78. On the time point S123 Equality Act 2010 provides;-

- (i) *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 after period as the employment tribunal thinks just and equitable,*
- (3) *for the purposes of this section;-*
 - (a) *Conduct extending over a period of time is to be treated as done at the end of the period '*

79. The relevant statutory provisions for a claim or claims of victimisation is 27 Equality Act 2010 as follows;

(1) A person

(a) Victimises another person

(b) If A subjects B to a detriment because –

(a) B did a protected act, or

(b) A believes that B has done, or may do, a protected act

(2) Each of the following is a protected act-

(a) Bringing proceedings under this Act'

80. It is well established that the word 'because' found in S27(1) compels the Tribunal to consider 'the reason why' the act complained of was done (Nagarajan v London Regional Transport (2000) 1 AC 501.)

81. When considering the matters alleged by the Claimant to be detriments the Tribunal would need to consider the guidance of Elias LJ in Deer v University of Oxford (2015) ICR 1213 'The concept of detriment is determined from the point of view of the Claimant: a detriment exists if a reasonable person would or might take the view that the employers conduct had in all the circumstances been to her detriment; but an unjustified sense of grievance cannot amount to a detriment...'

CONCLUSIONS

82. Turning firstly to the burden of proof, we noted that Respondent admitted that the Claimant had done a protected act (by bringing previous relevant employment tribunal claims) and that the Respondent accepted that one of the pleaded detriments was indeed a detriment. On all other matters the burden of proof is set out in S136 Equality Act 2010 which provides,

'(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that contravention occurred.

(3) But section (2) does not apply if A shows that A did not contravene the provision'.

83. The Claimant's alleged detriments are four in total. The Claimant's detriment number c, as identified at paragraph 9 above, is argued by the Respondent to have been bought out of time. The parties were in agreement, having regard to when the Claimant contacted ACAS, that any matters occurring before 6 September 2016 are not in time. The Respondents argument is that detriment c, essentially the investigation,

concluded 4 months before that date and must be out of time. The Respondent argues that the investigation can be separated from the function of the Appropriate Authority described in Regulation 19 which, was effectively to give the Claimant the outcome of the investigation, that function being performed on 9 September 2016 and which is itself in time. The Respondent argues that the investigator's function which is described in Regulation 17 and 18 is separate from the function in Regulation 19. The Tribunal does not agree with the Respondents contention. It is of the view that any such separation is artificial and that an investigation must be a continuing act until the outcome of that investigation is given to the employee under investigation. The appropriate test concerning a continuing act is whether the employer is responsible for an ongoing situation and/or continuing state of affairs in which the discrimination occurred, as opposed to a series of unconnected incidents. We take the view that the investigation was such an ongoing situation until Jenny Birch conveyed the outcome to the Claimant on 9 September 2016 and thus this element of the claim is in time.

84. Turning to the 4 alleged detriments , and noting the Respondent accepts the allegation at detriment a at Paragraph 9 above, that of the issuing of Management Action does quantify as a detriment, the Tribunal needed to decide whether the 3 other alleged detriments were in fact such.
85. The 2nd detriment alleged (detriment b from paragraph 9 above) was the fact that the Management Action issued on 9 September 2016 by the Appropriate Authority Jenny Birch (detriment b) was issued as argued by the Claimant for a different reason than the complaint raised by Fiona Washington which led to it. It is clear from the Regulations that Management Action can be given for a different reason to the subject of the complaint. Management Action can be given 'to improve the conduct of the officer' and Part 4 of The Regulations confirm that the Appropriate Authority may determine there is no case to answer to but still 'take Management Action'. DS Bates preliminary view was 'It was a minor understanding' and DS Hughes concluded after speaking to the Claimant that there should be 'no further action'.
86. Fiona Washington was complaining about the conduct of the Claimant and so the Regulation 15 notice was drafted showing an allegation of 'dishonestly in making representations concerning the actions of the equality and diversity team. In fact the Management Action was essentially given for 'communication style'.
87. After a finding of fact that there was no case to answer in relation to the Regulation 15 allegation, the Management Action given by Jenny Birch was

in the Tribunal's view issued to guide and encourage the Claimant going forward regarding her communication style. The fact that the Management Action was limited to the Claimant's communication style, and not concerned with her honesty or integrity, is in fact in her favour rather than being a detriment.

88. The 3rd detriment relied on by the Claimant (detriment c from paragraph 9 above) was the carrying out of an inappropriate investigation into the allegation made by Fiona Washington. In the ET1, during her evidence and in cross-examination the Claimant put more flesh on the bones of the argument regarding inappropriateness of the investigation of matters. The various criticisms that she makes of the investigation are summarised below:-

a) The investigation was insufficiently thorough.

The Claimant sought to contend that a member of staff at Access to Work could have been contacted for a witness statement, when in fact the only statements taken were from the complainant Fiona Washington, PC Lamont and the Claimant herself. Given that DS Bates has considered matters to be 'a minor misunderstanding' before he even spoke to the Claimant, it is difficult to see what detriment the claimant may have suffered from either DS Bates and /or DS Hughes failing to interview an additional witness who would add nothing.

b) The fact the investigation into conduct was commenced and/or not treated or moved to an investigation of a performance issue.

The Tribunal itself questioned the Claimant carefully in relation to this matter. On the facts the Claimants' line manager received a complaint from a senior member of the first Respondent's staff, the forces diversity and equalities officer, that the Claimant had been dishonest. The Claimant accepted in her answers that this would have to be investigated. On any objective reading of her emails sent to a Senior Officer, the Tribunal concluded that they were somewhat insubordinate and rude. Colleagues such as DS Ahmed and Gail Rumble agreed. Ian Stainer's initial, and the Tribunal's view, reasonable position was that it was not gross – misconduct but a proportionate investigation should be undertaken to establish whether there was any misconduct.

Given the Regulations as previously mentioned require that 'police officers act with self-control and tolerance, treating members of the public and colleagues (our emphasis) with respect and courtesy' this was a perfectly sensible approach.

The Tribunal finds that the allegations were initially properly dealt with under The Regulations, there being allegations of dishonesty, and when the conclusion was made of no case to answer there was therefore no apparent need to adopt the performance regulations at this stage.

c) Allegations regarding the investigator

The original investigator was DS Bates who was able before going on sick leave to reach a preliminary conclusion of 'a minor misunderstanding'. The Regulations set out guidance in relation to the competency of the investigating officers. DS Bates draft report recommended the sanction of "Management Advise" (sic) which is a more severe penalty than Management Action. This may have been a mistake by DS Bates and in any event cannot itself be a detriment because firstly DS Bates had concluded there was only 'a minor misunderstanding' before even interviewing the Claimant and secondly the final conclusion was made by DS Hughes and he reduced that suggested action to Management Action. There was no evidence before us that DS Bates was not competent. His draft conclusion was that he effectively exonerated the Claimant in relation to the serious conduct allegations made by Fiona Washington

89. The 4th detriment (detriment d in paragraph 9 above) complained of was causing stress, anxiety and injury to feelings (personal injury). The Claimant's counsel confirmed that he was offering no evidence in relation to this allegation. There was no evidence offered by the Claimant in her witness statement that she had been caused stress, anxiety or injury. In fact the evidence of DS Hughes was that at his welfare meetings with the Claimant between November 2015 and May 2016 no such matters were raised by the Claimant.

90. As such the Tribunal is not persuaded, having regard to the burden of proof as set out above that the Claimant suffered the detriments alleged at Paragraph 1-c above. The question then becomes that of causation namely what was 'the reason why' Jenny Birch gave the Management Action. There was much made by the Claimant of the knowledge and motivation of some of the players in the claim. Both DS Hughes and Jenny Birch freely admitted they were aware that the claimant had done protected acts. Fiona Washington in her correspondence with DS Ahmed suggested she was at

least aware of the previous complaints (she used the wording in her email of 12 May 2015 'it would appear she's itching for her next target') and it could be argued that her motivation in making a claim against the Claimant was because of whatever knowledge she might have had about the Claimant previously. Nevertheless Fiona Washington was not the decision maker and it is not alleged that she herself caused any detriment to the Claimant.

91. What we are concerned about is the motivation of Jenny Birch in giving the Management Action on the 9 September 2016. She was a credible witness and we find that she refuted any suggestions of improper motive that were put her in cross-examination. It was suggested to Jenny Birch that she had prior involvement with the Claimant in 2012 in relation to a job application, and the discovery during the application process of the Claimant having been subject to previous Management Advice, made Jenny Birch take against the Claimant in some way, and that that was her possible motivation for giving the Management Action. It is clear that Jenny Birch herself was supportive of the Claimant in her application for the 2012 job initially albeit that this was left to other staff members to decide. The suggestion was she carried some grudge against the Claimant after 2012, for which no evidence was offered, and that she had an agenda to victimise the Claimant. If this were so, she could have taken action far more severe than Management Action for 'communication style'. We find, when addressing 'the reason why' any knowledge of the Claimant's prior Tribunal claims was not in the mind of Jenny Birch. Rather she was fairly and supportively seeking to guide the Claimant in her future communication style. It is suggested by the Claimant that by 'sense-checking' the decision she made to impose 'Management Action', before she so imposed it, and by later seeking to explain the decision to DCI Carmichael during the course of the Claimants grievance, Jenny Birch must have known her decision was wrong, and somehow that suggests she was motivated by her knowledge of the Claimants protected acts. The Tribunal does not agree and finds there was nothing sinister in Jenny Birch's actions. In fact, this being the first time she had acted as Appropriate Authority, we find she was acting properly and prudently. The guidance makes it clear 'Management Action is not a disciplinary outcome but is considered to be part of the normal managerial responsibility of managers in the police service' and that in our view is what Jenny Birch was doing.
92. For the reasons above the claim must fail.

Employment Judge **Hindmarch**

22 November 2018