EMPLOYMENT TRIBUNALS

Claimant: Ms F Takyi-Micah

Respondent: The Commissioner of Police of the Metropolis

Heard at: London Central

On: 28, 29, 30, 31 October & 4 November 2019

In chambers: 5 & 6 November 2019

Before: Employment Judge Khan
Mr M Simon
Dr V Weerasinghe

Representation
Claimant: Mr J Bromige, Counsel
Respondent: Mr T Kempster, Counsel

RESERVED JUDGMENT

The unanimous judgment of the tribunal is that:

(1) The complaints of direct race discrimination, discrimination arising from disability and victimisation fail and are dismissed.

(2) The complaint of failure to make adjustments is dismissed on withdrawal.

REASONS

1. By an ET1 presented on 15 March 2018, the claimant brought complaints of race discrimination (i.e. harassment, direct discrimination and victimisation), disability discrimination (i.e. discrimination arising from disability and failure to make adjustments), sex discrimination (i.e. harassment and direct discrimination), whistleblowing detriment and trade union detriment.

2. By a second ET1 presented on 28 February 2019 the claimant brought additional complaints of race and disability discrimination. This second claim is currently stayed.

3. The respondent resists these complaints.

4. The complaints of race-related harassment, sex discrimination, whistleblowing detriment and trade union detriment were dismissed on withdrawal.

5. During the course of this hearing:

    5.1 The claimant withdrew the failure to make adjustments complaint.

    5.2 The claimant withdrew three of the eight allegations of direct race discrimination.

    5.3 The claimant withdrew one of the eight allegations of discrimination arising from disability.

    5.4 The claimant withdrew one of the eight allegations of victimisation. She also withdrew one of the protected acts relied on.

    5.5 We agreed to the claimant's application to amend the victimisation complaint to add a second limb to the second protected act relied on (PA 2.2) with the respondent conceding that this did not put it to any disadvantage.

    5.6 By consent, the respondent amended the aim it relied on to justify two of the claimant's seven remaining allegations of unfavourable treatment.

The Issues

6. We were required to determine the following issues on liability, the same having been clarified and refined over the course of the hearing, including by the production of Scott schedules by the claimant:

    Direct race discrimination

    6.1 Was the claimant treated less favourably because of her race i.e. being Black:

        6.1.1 On 4 January 2018, Inspector Tempest falsely accusing her of intentionally threatening to kill Police Sergeant ("PS") Dale (i.e.

rather than it being an unintended, heat of the moment remark) ("R1")

6.1.2 On 4 January 2018, PS Lazarou falsely accusing the claimant of intentionally threatening to push PS Dale ("R2")

6.1.3 On 4 January 2018, Inspector Tempest threatening to section the claimant and by her being surrounded and caged in by several officers ("R3")

6.1.4 On 9 January 2018, by Chief Inspector ("CI") Wallis rejecting her appeal against being transferred to Tottenham ("R4")

6.1.5 On 12 January 2018, PS Lazarou contacting the claimant's GP surgery without permission and making an appointment for her ("R5")

6.2 The claimant relies on a hypothetical comparator i.e. a white PCSO in materially the same circumstances.

Discrimination arising from disability

6.3 Was the claimant subjected to the following unwanted treatment?

6.3.1 On 4 January 2018, CI Wallis deciding to transfer the claimant to Tottenham Police Station ("D1")

6.3.2 On 4 January 2018, Inspector Tempest falsely accusing the claimant of intentionally threatening to kill PS Dale (i.e. rather than it being an unintended, heat of the moment remark) ("D2")

6.3.3 On 4 January 2018, PS Lazarou falsely accusing the claimant of intentionally threatening to push PS Dale ("D3")

6.3.4 On 4 January 2018, Inspector Tempest threatening to section the claimant and by her being surrounded and caged in by several officers ("D4")

6.3.5 On 9 January 2018, by CI Wallis rejecting her appeal against being transferred to Tottenham ("D5")

6.3.6 On 12 January 2018, PS Lazarou contacting the claimant's GP surgery without permission and making an appointment for her ("D6")

6.3.7 From 4 January 2018 19 July 2018 by Mr Baird's unreasonable delay in and failure to conclude the claimant's grievance ("D7")

6.4 Was this because of something arising in consequence of the claimant's disability? The claimant relies on being treated at a Crisis centre at that time.

6.5 If so, was the treatment a proportionate means of achieving a legitimate aim? The respondent relies on the aim of the claimant's welfare, in relation to 6.3.4 and 6.3.6.

6.6 The respondent agrees that it was aware of the fact of the claimant's disability at the relevant time.

Victimisation

6.7 Did the claimant do any protected acts?

6.7.1 In accordance with sections 27(2)(a), (c) or (d) EQA, the meeting with CI Wallis and Inspector Tempest on 8 November 2017 ("PA1")

a. "I didn't think there would be fairness from past experience, from the inspector they all lied about me and eventually I had to go to court, go to Human Rights Commission before I have some justice. I don't know if it's a habit but people have… senior officers had to lie to cover up I don't know" ("PA1.1") – the claimant relies on sections 27(2)(a) and (c) EQA

b. "Yeah, I'm happy with that but I would say my papers are ready to present to employer tribunal, ET. I've done it before and I will do it again because all I want is justice…" ("PA1.2") – the claimant relies on sections 27(2)(a) and (c) EQA

c. "But yet we don't do that because we or me I am on underdog so sometimes you might misunderstand my language because I have problems sometimes talking. I'm just fed up with it that… I'm bringing race in, sometimes I think it's racism. It is racism underneath it. Surface, no, they pretend it's not but that is racism. Three people were stressed under Inspector Tempest they all BME why is that?" ("PA1.3") –the claimant relies on section 27(2)(d) EQA

6.7.2 In accordance with section 27(2)(d) EQA, the response to Acting Inspector McCarthy dated 3 December 2017 ("PA2")

a. "He [PS Dale] still refers us, PCSO, as MIGMOGS… If he says he has stopped calling us MIGMOGS (I understand this word is a derogatory term for Down Syndrome people) then why is Sergeant Crosby who joined the team recently has started using the word MIGMOG too…" ("PA2.1")

b. The claimant's allegations on similar terms in her letter to Acting Inspector McCarthy on 21 October 2017 as recorded by him in the report sent to the claimant on 29 November 2017 "that inappropriate language has been used in the past by PS Dale in describing PCSO's as 'MING-MONGS'" ("PA2.2")

6.7.3 In accordance with section 27(2)(d) EQA, the claimant's appeal against the transfer decision on 4 January 2018 ("PA3")

a. "I feel I have been unfairly treated. Firstly I haven't been given any reason for been moved. I feel the move is victimising me and it's against my interest"

b. "I have been suffering from work related depression and it will be in my best interest to carry on working in Edmonton"

c. "I am on strong medication that makes me sleep and going to Tottenham will mean I have to wake earlier than usual"

d. "When I moved from Victoria to Edmonton, I had problem settling down because I was still suffering from work related depression… I am still under the mental health team… I wish to remain in a familiar environment where I know the people and the borough. At least let me settle and feel better before any move is considered"

6.8 If so, did the respondent subject the claimant to detriment because the claimant had done so?

6.8.1 On 4 January 2018, CI Wallis deciding to transfer the claimant to Tottenham Police Station ("V1") – because the claimant had done PA1 and PA2.

6.8.2 On 4 January 2018, Inspector Tempest falsely accusing the claimant of intentionally threatening to kill PS Dale (i.e. rather than it being an unintended, heat of the moment remark) ("V2") – because the claimant had done PA1 and PA2.

6.8.3 On 4 January 2018, PS Lazarou falsely accusing the claimant of intentionally threatening to push PS Dale ("V3") – because the claimant had done PA1 and PA2.

6.8.4 On 4 January 2018, Inspector Tempest threatening to section the claimant and by her being surrounded and caged in by several officers ("V4") – because the claimant had done PA1 and PA2.

6.8.5 On 9 January 2018, by CI Willis rejecting her appeal against being transferred to Tottenham ("V5") – because the claimant had done PA1 – PA3.

6.8.6 On 12 January 2018, PS Lazarou contacting the claimant's GP surgery without permission and making an appointment for her ("V6") – because the claimant had done PA1 and PA2.

6.8.7 From 4 January 2018 19 July 2018 by Mr Baird's unreasonable delay in and failure to conclude the claimant's grievance ("V7") – because the claimant had done PA2.

Relevant Legal Principles

Direct discrimination

7. Section 13(1) EQA provides that a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

8. The protected characteristic need not be the only reason for the treatment but it must have been a substantial or "effective cause". The basic question is "What, out of the whole complex of facts before the tribunal, is the 'effective and predominant cause' or the 'real or efficient cause' of the act complained of?" (see O'Neill v Governors of St Thomas More RC Voluntarily Aided Upper School and anor [1997] ICR 33, EAT).

Discrimination arising from disability

9. Under section 15(1) EQA 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.

10. Unfavourable treatment is not defined, the EHRC Code of Practice of Employment says "must have been put at a disadvantage". There is no need for a comparator.

11. The unfavourable treatment must be shown by the claimant to be "because of something arising in consequence of his [or her] disability". The tribunal must ask what the reason for this alleged treatment was. If this is not obvious then the tribunal must enquire about mental processes – conscious or subconscious – of the alleged discriminator (see R (on the application of E) v Governing Body of JFS and The Admissions Appeal Panel of JFS and Ors [2010] IRLR, 136, SC).

12. In Pnaiser v NHS England [2016] IRLR 170 Mrs Justice Simler set out the following guidance:

    (a) A tribunal must first identify whether there was unfavourable treatment and by whom.
    (b) The tribunal must determine the reason for or cause of the impugned treatment. This will require an examination of the conscious or unconscious thought processes of the putative discriminator. The something that causes the unfavourable treatment need not be the main or sole reason but must have at least a significant (or more than trivial) influence on the unfavourable treatment and amount to an effective reason for or cause of it. Motive is irrelevant. The focus of this part of the enquiry is on the reason for or cause of the impugned treatment.
    (c) The tribunal must determine whether the reason or cause is something arising in consequence of B's disability. The causal link between the something that causes the unfavourable treatment and the disability may include more than one link. The more links in the chain the harder it is likely to be to establish the requisite connection as a matter of fact. This

stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(d) The "because of" enquiry therefore involves two stages: firstly, A's explanation for the treatment (and conscious or unconscious reasons for it) and secondly, whether (as a matter of fact rather than belief) the "something" was a consequence of the disability. It does not matter precisely in which order these questions are addressed.

13. The employer will escape liability if it is able to objectively justify the unfavourable treatment that has been found to arise in consequence of the disability. The aim pursued by the employer must be legal, it should not be discriminatory in itself and must represent a real, and objective consideration. As to proportionality, the Code notes that the measure adopted by the employer does not have to be the only way of achieving the aim being relied on but the treatment will not be proportionate if less discriminatory measures could have been taken to achieve the same objective.

Victimisation

14. Section 27(1) EQA provides that a person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes B has done, or may do a protected act.

15. Section 27(2) EQA enumerates the four types of protected act as follows:

(a) bringing proceedings under the Act (i.e. EQA)
(b) giving evidence or information in connection with proceedings under this Act
(c) doing any other thing for the purposes or in connection with this Act
(d) making an allegation (whether or not express) that A or another person has contravened this Act.

16. A protected act for the purposes of section 27(2)(c) EQA can be said to be done "if it is done by reference to the race relations legislation in the broad sense, even though the doer does not focus his mind specifically on any provision of the Act" (see Aziz v Trinity Street Taxis Limited [1988] IRLR 204).

17. As to causation, the tribunal must apply the same test to that which applies to direct discrimination i.e. whether the protected act is an effective or substantial cause of the employer's detrimental actions.

Detriment

18. Section 39(2) EQA provides that:

> An employer (A) must not discriminate against an employee of A's (B) –
> …
>
> (a) by subjecting him to any other detriment.

19. A complainant seeking to establish detriment is not required to show that she has suffered a physical or economic consequence. It is sufficient to show that a reasonable employee would or might take the view that they had been

disadvantaged, although an unjustified sense of a grievance cannot amount to a detriment (see Shamoon v Chief Constable of RUC [2003] IRLR 285, HL).

20. The EHRC Employment Code provides that "generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage".

21. Any alleged detriment must be capable of being regarded objectively as such (see St Helens MBC v Derbyshire [2007] ICR 841).

Burden of proof

22. Section 136 EQA provides that if there are facts from the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

23. Section 136 accordingly envisages a two-stage approach. Where this approach is adopted a claimant must first establish a prima facie case at the first stage. This requires the claimant to prove facts from which a tribunal could conclude that on the balance of probabilities the respondent had committed an unlawful act of discrimination (see Madarassy v Nomura International plc [2007] ICR 867, CA).

24. The two-stage approach envisaged by section 136 is not obligatory and in many cases it will be appropriate to focus on the reason why the employer treated the claimant as it did and if the reason demonstrates that the protected characteristic played no part whatsoever in the adverse treatment, the complaint fails (see Chief Constable of Kent Constabulary v Bowler UKEAT/0214/16/RN). Accordingly, the burden of proof provisions have no role to play where a tribunal is in a position to make positive findings of fact (see Hewage v Grampian Health Board [2012] IRLR 870).

25. In exercising its discretion to draw inferences a tribunal must do so on the basis of proper findings of fact (see Anya v University of Oxford [2001] IRLR 377, [2001] ICR 847, CA).

26. Tribunals must be careful to avoid too readily inferring unlawful discrimination on a prohibited ground merely from unreasonable conduct where there is no evidence of other discriminatory behaviour on such ground (see Igen Ltd v Wong [2005] IRLR 258, para 51).

27. In a victimisation complaint, as essential element of the prima facie case is that the claimant must show that the putative discriminator knew about the protected act on which the complaint is based or believed that a protected act was done by the claimant (see Bowler).

The Evidence

28. We heard evidence from the claimant.

29. For the respondent, we heard from: Ian Wallis, formerly Chief Inspector; Thomas Lazarou, Police Sergeant; Duane Bird, Grievance Team Assessor; and Tracy Tempest, Inspector.

30. There was a bundle exceeding 1100 pages. We admitted into evidence additional documents relating to the transfer of staff. We read the pages of this bundle to which we were referred.

31. We also considered written submissions from both parties together with the authorities they relied on.

The Facts

32. Having considered all the evidence we make the following findings of facts on the balance of probabilities. These findings are limited to points that are relevant to the legal issues.

33. The claimant is a Black African woman.

34. She has been employed by the respondent since 1 September 2001, initially as a Traffic Warden and since 2003 as a Police Community Support Officer ("PCSO"). She was a lay trade union representative from 2003 until 2017.

35. The claimant was diagnosed with depression in 2011. The respondent accepts that she is disabled because of the effect this has had on her daily activities. She has reported thoughts of self-harm and suicide since 2013.

36. The claimant also has a back condition, although this is not said to be a disability.

37. In 2013 the claimant transferred into one of three Safe Transport Teams ("STT") based at Edmonton Police Station. The STTs were part of the Road Traffic Policing Command ("RTPC"). Each STT consisted of four PCs and three PCSOs and was supervised by a police sergeant ("PS"). The STTs were managed by Inspector Tempest. They were situated in an open plan office on the fourth floor of the station building. This station, so far as the RTPC was concerned, fell under the command of Chief Inspector Wallis.

38. The claimant's role involved patrolling local transport hubs, including on the buses. This was a community-based role.

39. We accepted the respondent's unchallenged evidence that a supervisor of one STT would often be required to supervise other STTs as and when required, for example, when the designated supervisor was unavailable.

40. One of the STTs was supervised by PS Dale who was on restricted duties and office-based.

41. The claimant brought tribunal proceedings against the respondent on 30 June 2014 for trade union detriment under section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRA"). This claim was struck out by a tribunal judgment dated 1 October 2014.

42. The claimant worked without incident between December 2014 and May 2016.

43. In June 2016 she complained, in her role of union representative, that Inspector Tempest's dogs had fouled the office creating a health and safety hazard.

44. We accept the claimant's unchallenged evidence that from 2016 PS Dale made derogatory comments about PCSOs: he called them "ming mongs" which she understood to be a derogatory reference to Down's Syndrome, "lazy fuckers" and "a waste of space". The claimant understood that PS Dale was critical of PCSOs because they did not perform the same role as police officers. We also accept her unchallenged evidence that she met with PS Dale to challenge this behaviour, in her capacity as union representative. However, the claimant did not complain about PS Dale's language (the "name-calling allegation") to the respondent until late 2017.

45. Following his transfer to the Edmonton station in 2017 PS Darren Crosby became the claimant's line manager.

Metvest incident on 18 May 2017

46. Towards the end of her shift on 18 May 2017 the claimant was challenged by PS Dale for not wearing a Metvest i.e. personal issue body armour in the office. He said that other colleagues had noted this and he implied that this was also an issue for Inspector Tempest who was going to talk to her about it. The claimant told him she had returned from her tour of duty and her vest was in her locker. She explained that she had a back condition and had been advised by a physiotherapist to rest her back by removing the vest whenever possible. PS Dale told her that if she could not wear the vest then she was not fit for duty. He had not been made aware that the claimant had a back condition. When he was later questioned, PS Dale explained that one of the reasons he challenged the claimant was that she had not been wearing epaulettes and a name badge as required. The claimant agreed that she was not wearing a name badge although she said she had worn the correct epaulettes.

47. The claimant spoke to Inspector Tempest the next day who told her that she had no issues about the Metvest as she was aware of her back condition. She had not discussed this with PS Dale. The claimant felt that PS Dale had alluded to Inspector Tempest as a threat to intimidate her.

Canteen incident on 20 June 2017

48. The claimant was entitled to one rest break of 45 minutes per shift. On 20 June 2017 PS Dale instructed the claimant to return to the office at 9.30am for a refreshment break. The claimant told him that she had taken her morning medication with her breakfast and would need a break at lunchtime so that she could take her next medication with food. As she was the only PCSO assigned to the transport hub PS Dale agreed that she should return to the station at 10am to be reposted to duties when the next shift started. The claimant returned to the station where she remained until 10.48am when she went out to the bus hub accompanied by two colleagues. She returned to the station at 1pm. PS Dale asked her why she was there. She told him that she had come back to have lunch and take her medication. PS Dale challenged the claimant in the canteen about her breaks. He asked her why she was having two breaks. Although the claimant says that PS Dale asked her "Are you taking the piss?" we find that PS Dale asked her "Are you taking the mick?" as this was corroborated by one of the other officers present, PSCO Bronstein. When the claimant returned to the office to discuss this with PS Dale he threatened her with disciplinary action. She agreed that she accused PS Dale of taking

unauthorised smoking breaks and time out to have coffee, and chat to colleagues. The claimant raised her voice at PS Dale. This was witnessed by several colleagues. She was upset. She had been threatened She could not understand why PS Dale was questioning her breaks when she felt they had agreed that she would take her break at 1pm and she had been threatened with disciplinary action.

49. We find that it is likely that this was a misunderstanding: the claimant thought that PS Dale had agreed that she could have a break at lunch-time, whereas PS Dale understood that the claimant had already taken her break at 10am. This misunderstanding then escalated because of the way that each reacted to the other when PS Dale challenged the claimant in the canteen. The claimant felt that this was the second time in as many months when PS Dale had bulled her.

The respondent's Grievance Procedure

50. The respondent's Grievance Procedure consists of a mandatory informal resolution stage followed by a two-stage formal process. Under the informal resolution stage individuals "must raise issues about work with line management on an informal basis either verbally or in writing" (section 3.2). This can be escalated to the second line manager if appropriate. The formal process is triggered when an employee submits a prescribed grievance form to the grievance management team ("GMT") (section 5.1). Submitting a grievance form triggers a 10-day period for informal resolution if one has not already been completed. Once the mandatory informal resolution stage has been completed the grievance is then referred to the GMT for investigation by an assessor. The formal grievance stage should take no more than 45 working days, although the Grievance Procedure provides for a longer 90-day period in exceptional circumstances (section 8.2). A complainant has the right to appeal the outcome of this first formal stage (section 5.2.1). There is an overlap between the Grievance Procedure and misconduct proceedings which are brought by the Directorate of Professional Standards ("DPS"). The DPS can intervene at the fact-finding stage of the Grievance Procedure. Where the complaint has been dealt with under another standard operating procedure ("SOP") it will only be considered under the Grievance Procedure in exceptional circumstances (section 13.1).

The claimant's complaint to Inspector Tempest on 25 June 2017

51. The claimant submitted a complaint to Inspector Tempest about PS Dale on 25 June 2017. She complained about the Metvest and canteen incidents. The email was headed "anxiety and stress". She complained about intimidation and bullying. She said that it was beginning to make her unwell. She did not complain of discrimination. She did not refer to the name-calling issue. Nor did she refer to this as a grievance. The claimant had been a lay union official for 14 years and would have been familiar with the respondent's HR policies.

Crosby factfinding

52. Inspector Tempest did not deal with the claimant's complaint under the informal resolution stage of the Grievance Procedure. She tasked PS Crosby as the claimant's line manager with conducting an initial factfinding exercise. The

claimant initially agreed to PC Crosby acting as factfinder and as a potential mediator.

53. We accept the claimant's unchallenged evidence that in July 2017, PS Dale obstructed her in the corridor. Although she did not complain about this at the time, she subsequently discussed the obstruction incident with PS David Waite.

54. Concerned by the delay in the factfinding process, the claimant wrote to PS Crosby on 23 August 2017 to withdraw her complaint as she wanted someone outside the team to deal with it. She also noted that she no longer wanted PS Crosby to act as mediator.

55. On 12 September 2017 Inspector Tempest sent an email to the team with a "timely reminder" of the MPS Code of Ethics warning that bullying and harassment would not be tolerated. We accept Inspector Tempest's evidence that this communication was prompted by an email from the PSU about bullying which was unrelated to the claimant because the email she circulated contained generic guidance which was unrelated to the specific conduct the claimant had complained about.

56. We accept the claimant's unchallenged evidence that she witnessed PS Crosby shouting to PS Dale "Do you think I'm a ming mong?" on 15 September 2017. She referred to this allegation several times in correspondence including her letters to Superintendent (Supt) Naughton in October and December 2017. For the claimant, this reinforced her view that PS Crosby was an ally of PS Dale.

57. PS Crosby continued with his factfinding. He found no case to answer against PS Dale and concluded that further investigation was not required. He and Inspector Tempest met with the claimant on 19 September 2017 to confirm this outcome.

    57.1 In respect of the Metvest incident he concluded that PS Dale was within his rights to question the claimant about her uniform. He noted that PS Dale had not been aware of the claimant's back condition. PS Crosby had now updated PS Dale about the claimant's back condition and Occupational Health advice.

    57.2 In relation to the canteen incident PS Crosby noted that PS Dale had alleged that the claimant had on several occasions appeared to have taken more than one refreshment break. He concluded that the claimant had raised her voice to PS Dale and that he had himself observed that she had a condescending attitude when speaking to PS Dale. He warned her that management action would be considered if she repeated this behaviour.

    57.3 He also concluded that he did not believe that PS Dale was a bully. He did not explain why other than to note that PS Dale had been entitled, as a manager, to question the claimant if he felt she was in breach of a regulation or policy.

58. In this hierarchical work culture, the claimant had been deemed to have acted insubordinately in the way that she had challenged PS Dale about his breaks in relation to the canteen incident. She had raised her voice and challenged PS Dale's own conduct in relation to his breaks. Equally, PS Dale's actions in

relation to both incidents were deemed to be consistent with his supervisory function and therefore appropriate.

59. Inspector Tempest told the claimant that she could not appeal this outcome because it had been approved by the PSU.

60. Although the claimant denied this, we accept Inspector Tempest's evidence that the claimant refused to speak to PS Crosby during the meeting on 19 October 2017. She was upset by the conclusions of his factfinding which she felt were neither fair nor impartial. As she later complained, she felt that his findings were fabricated. She felt that PS Crosby was protecting PS Dale. PS Crosby was now a potential source of conflict for her. This is why Inspector Tempest assigned PS Waite to act as the claimant's contact and welfare officer when she went on extended sick leave the next day because of depression.

61. The claimant remained on sick leave until 4 January 2018.

62. Inspector Tempest and PS Waite conducted a home welfare check with the claimant which was required after 28 days' sickness absence. PCSO Djelal Birsen was also in attendance to support the claimant. This took place in a café in Potters Bar. The claimant said that she wanted to challenge PS Crosby's report. Inspector Tempest referred her to the Grievance Policy. The claimant was upset throughout this meeting. In her evidence, Inspector Tempest said that she felt that her professional relationship with the claimant began to break down from this point.

The claimant's complaint to Supt Naughton on 21 October 2017

63. The claimant wrote to Supt Naughton on 21 October 2017 to complain that PS Crosby's factfinding was neither fair nor impartial. She explained the impact of bullying on her mental health. She referred to the Metvest and canteen incidents. She did not complain of discrimination. This was not on a prescribed grievance form nor did the claimant say that this was a grievance. The claimant complained that the outcome of her complaint was Inspector Tempest's "way of getting back to me because I reported her for bringing dogs into the office".

64. It was evident that PS Dale, PS Crosby and Inspector Tempest were now sources of conflict for the claimant and were supervisors or managers in whom she had lost trust.

PA2.2

65. In the same letter, the claimant also complained that PS Dale "used to address PCSOs as 'Migmogs' meaning Down Syndromes, people with learning difficulties". She alleged that this language was still being used because PS Crosby had referred to himself as a "Migmog" more recently. This complaint is relied on as a protected act (PA2.2) as recorded in a report which was sent to the claimant on 29 November 2017 as follows: "that inappropriate language has been used in the past by PS Dale in describing PCSO's as 'MING-MONGS'".

66. This was the first time the claimant had made a written complaint about the name-calling allegation. She had not included this allegation in her original

complaint to Inspector Tempest and it had not therefore been considered as part of PS Crosby's factfinding.

67. In an email to Inspector Tempest on 24 October 2017 the claimant reported having suicidal thoughts. PS Waite conducted an urgent welfare check on the claimant at her home on 24 or 25 October 2017 as instructed by Inspector Tempest. The claimant told PS Waite that she was under the care of the Crisis team via her local mental health team.

68. Supt Naughton referred the claimant's complaint to Chief Inspector ("CI") Ian Wallis and instructed him to meet with the claimant and resolve it. CI Wallis was briefed by Inspector Tempest from which he understood that the focus of the claimant's complaints was the Metvest and canteen incidents. These were the two issues which the claimant had raised in her original complaint. CI Wallis did not treat this as a pre-grievance complaint but within his purview of local management action outside of the Grievance Procedure. He relied on the fact that the claimant had not by this stage submitted a formal grievance form. We find that his motivation was to resolve this complaint locally and informally. We also find that this related to his seniority and also to his view that the claimant's complaints were trivial in the sense that they were readily capable of resolution. His aim was to achieve this resolution by means of an informal meeting between the claimant and PS Dale, although he was aware that PS Dale had previously declined to take part in mediation.

69. In correspondence between them to arrange a meeting, the claimant emailed CI Wallis on 30 October 2017, when she told him that she was under the care of the Crisis team who visited her at home every day for Cognitive Behavioural Therapy ("CBT"). They arranged to meet on 8 November 2017. The day before this meeting the claimant emailed CI Wallis again to tell him that she was having "an anxiety attack and find it difficult to sleep…my brain is ruminating".

Terms of reference meeting on 8 November 2017

70. CI Wallis and Inspector Tempest met the claimant on 8 November 2017 at New Scotland Yard. PCSO John Holmes-Yarde, the claimant's union representative, was also present. The purpose of this meeting was to agree on a way forward for dealing with the claimant's complaint and to explore her return to work. The claimant covertly recorded this meeting.

71. Although his intention had been to find an informal way of resolving the conflict between the claimant and PS Dale, when confronted by the claimant's strength of feeling about the Crosby factfinding, CI Wallis agreed to an independent review. In agreeing to this, CI Wallis emphasized that this review would need to be proportionate. He said that this was not a murder investigation. In his evidence, he said that the claimant latched onto this word. The transcript of this meeting records that the claimant stated "To me it's murder…if I jump in the Thames now it will be murder, the MPS have killed me. It's not the first time." CI Wallis told the claimant this independent review would also be reviewed by the PSU. He also told her that she could provide more detail of her complaints in writing.

72. In respect of the claimant's return to work, CI Wallis offered to transfer the claimant to one of the other boroughs in his cluster. He said this would be a

fresh start for the claimant. The claimant was clear that she did not want to relocate. She agreed that there was nothing which could be done to facilitate her return to work as at this date.

73. From the transcript of the recording it is clear that the claimant was at times distressed, used emotive language and continued to feel that the Crosby factfinding was fabricated and biased, and PS Dale was untouchable.

PAs 1.1 – 1.3

74. The claimant relies on the following statements which were recorded in the transcript as protected acts:

    74.1 "I didn't think there would be fairness from my past experience, from the inspector they all lied about me and eventually I had to go to court, go to Human Rights Commission before I have some justice. I don't know if it's a habit but people have…senior officers have to lie to cover up I don't know" (PA 1.1). This was said by the claimant in relation to her concern that PS Crosby had investigated PS Dale who was his friend.

    74.2 "Yeah, I'm happy with that but I would say my papers are ready to present to employer tribunal, ET. I've done it before and I will do it again and all I want is justice" (PA 1.2). This was said by the claimant in response to CI Wallis's agreement to conduct an independent review.

    74.3 "But yet we don't do that because we or me I am underdog so sometimes you might misunderstand my language because I have problems sometimes talking. I'm just fed up with that…I'm bringing race in, sometimes I think its racism. It is racism underneath it is. Surface no, they pretend it's not but that is racism. Three people were stressed under Inspector Tempest they all BME why is that?" (PA 1.3).

75. We accept CI Wallis's evidence that he treated the claimant's reference to racism as a passing comment and did not understand that the claimant was complaining that the respondent had discriminated against her. The claimant's comment was broad-brush and she made no specific allegations of racism against Inspector Tempest. The claimant had the opportunity to articulate any allegations of racism at this meeting or to follow this up in writing after this meeting. She did neither.

76. In her evidence, Inspector Tempest said that she recalled the claimant's reference to racism but not that it was aimed at her. Although she did not recall the claimant referring to an employment tribunal during this meeting, she remembered that on accompanying her to Westminster underground station afterwards the claimant told her that she wanted to take PS Crosby to a tribunal before he retired. She therefore understood that the claimant wanted to pursue a tribunal claim against PS Crosby although the type of complaint which the claimant was proposing to bring was unclear.

77. The claimant emailed PS Waite the next day to request that Inspector Tempest did not attend the forthcoming case conference. She also told him that she had spoken to Occupational Health who felt there was a risk that she would harm herself if she was left alone at home and she would be attending a day centre

every day for the next fortnight.

78. The claimant had a counselling session arranged via Occupational Health on 14 November 2017. The counsellor's report noted "Client is determined to stay at Edmonton despite all of the difficulties that are contributing to her mental health, but needs to be away from this environment" and "I have indicated that Edmonton is perhaps not the best or safest environment for her mental health".

McCarthy review of Crosby factfinding

79. CI Wallis assigned Temporary Inspector ("T/I") Dave McCarthy to review PS Crosby's factfinding. He met with the claimant on 18 November 2019.

80. Five days later, on 23 November 2019, the claimant emailed T/I McCarthy to submit a grievance form and related documents. In her grievance form she complained that PS Dale had subjected PCSOs to bullying and name-calling for two years although she did not specify what this was. She also reiterated her allegation that Inspector Tempest had refused her appeal because she had complained about her dogs. She did not complain of discrimination. Nor did she refer to the use of derogatory language in the grievance form although in one of the documents attached with her email she complained that PS Dale had used the following language "Migmogs, (Meaning Down Syndrome), lazy fucker and waste of space".

81. T/I McCarthy was advised by the GMT to conduct his review under the informal stage of the Grievance Policy. Having completed his review, T/I McCarthy emailed his report to the claimant on 29 November 2017. He did not uphold the claimant's complaints.

    81.1 In respect of the Metvest incident, he concluded that PS Dale had been entitled to uphold uniform standards.

    81.2 In respect of the canteen incident, T/I McCarthy's focus was on the claimant's reaction to being questioned about her breaks by PS Dale. He concluded that her challenge to PS Dale had been disproportionate. He based this on the accounts of five officers who had witnessed her exchange with PS Dale and had viewed the claimant's conduct as "loud and animated" and "aggressive". Although the claimant says this amounts to stereotyping of her as a Black woman, we have found that she raised her voice at PS Dale on this occasion.

82. T/I McCarthy confirmed that he had been advised by the RTPC PSU to refer the claimant's "historic" allegation that "inappropriate language has been used in the past by PS Dale in describing PCSOs as 'MING-MONGS' and Lazy Fuckers" to Inspector Tempest to conduct "appropriate fact finding, assessment and intervention". Because of this the name-calling allegation which the claimant had not raised at the time, which did not include any specific dates and which centred on PS Dale's attitude towards the PSCOs as a group and not to the claimant individually, was treated by the respondent as historic and separate from her complaints about the Metvest and canteen incidents. Inspector Tempest's evidence was that she first became aware of this allegation in November 2017. Noting that the claimant did not herself refer to discrimination, we accept Inspector Tempest's evidence that she viewed this

allegation as being about the use of inappropriate language and not as an allegation of discrimination. She then sent an email to her team to invite colleagues to raise any conduct issues they had. She received no reply. She said she spoke to PS Dale although she was unable to recall when this was. She did not speak to the claimant as she remained on sick leave. She spoke to PCSO Matloob in early January 2018 in response to an unspecified comment made by the claimant on 4 January 2019. There was no report. This was not a factfinding exercise or investigation in any meaningful sense. Inspector had made only made some preliminary enquiries. CI Wallis's evidence was that he believed that Inspector Tempest looked into the name-calling allegation and concluded that it was unfounded although he did not discuss this with her in any great detail. We find that he did not give much consideration to this allegation which had not formed part of the claimant's original complaint and which he had not been asked to look into by Supt Naughton.

83. In his email attaching his report, T/I McCarthy told the claimant that if she wished to submit a grievance she should email Leighann Robson who was the GMT Co-ordinator. The claimant forwarded her grievance form and related documents to Ms Robson at 0.28am on 30 November 2017.

Urgent home visit on 30 November 2017

84. The claimant felt suicidal on receiving T/I McCarthy's review outcome. She called the counselling service on 30 November 2017 to say that she was having suicidal thoughts, specifically that she was going to jump in front of a train. An urgent referral was made to Hertfordshire Police and PS Matt Dawson and PS Tim Hannah, who were based at the Tottenham Police Station, were despatched to the claimant's home.

85. In his report of this visit, PS Dawson noted that the claimant said something like "If I can't kill him I'll kill myself" about PS Dale. He noted that this had been recorded on the body worn cameras. Although the claimant disputed this she agreed that she said "If he was here I would kill him". She said that this was a flippant comment although she agreed that her comments about suicide needed to be taken seriously.

86. PS Dawson emailed his report of this incident to Inspector Tempest and PS Waite. This was also reported to a member of the senior leadership team.

87. This incident was not treated as a potential criminal offence nor was the claimant perceived to be an immediate threat to PS Dale. The evidence was not secured. Body-worn cameras were switched off during the visit at the claimant's request. The videos from these cameras were not secured. The officers' police notebooks were not secured. Statements were not taken. Nor was this treated as a potential misconduct issue because a referral was not made to the PSU. Nor was there any risk assessment conducted to assess the credibility of the claimant's threat.

88. In her evidence to the tribunal, Inspector Tempest said that any decision about charging the claimant was a matter for higher up the chain of command. She viewed the potential threat posed by the claimant as an unknown one. Although she understood the context in which the claimant made this comment

she felt that she could not treat it as a throwaway comment made in the heat of the moment. She felt obliged to disclose this threat to PS Dale.

89. CI Wallis did not believe that this threat gave rise to a criminal offence. In his evidence he explained that the officers who attended her home on 30 November 2017 would have known that the claimant had recently received the McCarthy review, she had a mental health condition and this would have impacted on her state of mind at time. This was not treated as a conduct issue but a welfare issue i.e. ensuring that the threat of suicide was averted. However, he did not agree that the claimant's threat was merely a comment made in the heat of moment as he concluded that it revealed the strength of her antipathy towards PS Dale. He felt that the claimant posed a plausible potential threat to PS Dale.

90. The claimant attempted suicide the next day. We were not taken to any documents which showed that the respondent was aware of this at the time.

PA2.1

91. The claimant emailed Supt Naughton on 3 December 2017 attaching a letter in which she complained about the Crosby factfinding and McCarthy review. She referred again to the Metvest and canteen incidents. She also referred to "the emotional abuse" from PS Dale although she did not specify what this was. She also complained about the use of derogatory language by PS Dale as follows:

> "He still refers us, PCSO (MIG MOGS)…If he says he has stopped calling us Mig Mogs (I understand that this word is a derogatory term for Down Syndrome people) then why is Sergeant Crosby who joined the team recently has started using the word MIG MOG too".

She relies on this as a protected act (PA2.1).

92. The claimant forwarded this email to CI Wallis although it is not clear from the document in the bundle that we were taken to whether this included her attached letter. Although CI Wallis could not recall whether he saw this letter he agreed that he may have done and we find that it is likely that he did. As we have noted, CI Wallis was aware of this allegation and understood that Inspector Tempest had looked into it.

93. When PS Thomas Lazarou was transferred to the Edmonton RTPC on 4 December 2017 he took over as the claimant's line manager and welfare officer because PS Waite was being redeployed. This was a temporary arrangement because the claimant was not in PS Lazarou's designated STT. PS Lazarou came into the station a week before when he met PS Waite. A handover meeting between both officers and the claimant was scheduled on 20 December 2017.

94. In his evidence to the tribunal, PS Lazarou said that he gathered from PS Waite and other colleagues that the claimant was unhappy with Inspector Tempest managing her, she did not like PS Dale and there was also an issue with PS Crosby because he no longer line-managed her. He knew that the claimant had complained that PS Dale used the derogatory language of "ming mong" which he understood had been investigated and found to be unsubstantiated.

We find PS Lazarou was therefore cognisant of PA2. He was also aware of the incident on 30 November 2018 and understood that a decision as to whether to charge the claimant for threatening PS Dale or to refer her to the PSU had been delayed because of the claimant's mental health i.e. to give her time to recuperate. He said that there had been a general discussion about moving the claimant because she had made a substantial threat to PS Dale although no decision had been made. He was not aware that of the claimant's reference to a tribunal claim on 8 November 2017.

95. PS Lazarou made contact with the claimant on his first day, 4 December 2017, to introduce himself when he suggested that an Occupational Health referral was now made. Although the claimant told him her preference was that a referral was not made until after the handover meeting later that month, PS Lazarou said that he would complete a draft referral and send this to her. Having accessed her HR records, PS Lazarou sent his draft referral to the claimant the next day in which he noted that she had complained of bullying and intimidation which had been investigated and found to be unsubstantiated and in which he referred to the claimant feeling suicidal on 30 November 2017.

96. The claimant had a telephone review with Occupational Health on 11 December 2017. The assessment was that she was unfit to return to work and this would be reviewed when her current fit note expired on 22 December 2017.

97. PS Lazarou emailed Inspector Tempest on 12 December 2017 with an update on the claimant in which he relied on information provided by PS Waite. He noted:

> "Fanny is considered mentally unwell by her previous line manager [PS Waite] and one of the reasons is that she feels unfairly treated at work. She has previously threatened self-harm and has had mental health issues for many issues for many years. Whenever she feels things are not going her way, there is a regression in her mental health".

98. CI Wallis met with Mr Holmes-Yarde on 13 December 2017 to discuss potential options for the claimant's return to work. He suggested the option of redeploying the claimant to the Safe Neighbourhood Team ("SNT") which was also based at Edmonton. He emailed the claimant two days later when he referred to his discussion with Mr Holmes-Yarde and noted that there was no obvious solution. We find that CI Wallis had formed a view that the claimant could not return to work at Edmonton because of her animosity towards PS Dale and the potential risk of conflict between them if they had to work alongside each other again.

99. Mr Holmes-Yarde replied to CI Wallis on 19 December 2017 to summarise the claimant's complaints about the McCarthy review. He said that the claimant wanted her concerns to be "addressed with fairness and transparency in order for her to move on and return back to work". He confirmed that she wanted to remain in Edmonton once these issues had been resolved.

Handover meeting on 20 December 2017

100. The handover meeting on 20 December 2017 between the claimant, PS Waite and PS Lazarou took place in the canteen at Edmonton police station. PSCOs

Kirsty Cohen, Julie Campbell, Birsen and Matloob were also in attendance at the claimant's request.

101. In his evidence to the tribunal, PS Lazarou said that in what was a matter of seconds, the claimant threatened to push PS Dale "if he was stood in front of me". He said that the claimant's face became distorted and showed signs of aggression and it looked to him that the claimant still had serious issues with PS Dale. Although the claimant denies this and relies on the fact that none of the other PSCOs from whom she subsequently obtained statements corroborated PS Lazarou's account, we find that the claimant did refer to pushing PS Dale at this meeting for the following reasons.

    101.1 We accept the veracity of the statement provided by PS Waite on 16 January 2018 in which he said that the claimant commented that she would "push him [PS Dale] out of the way" and he recalled another conversation with the claimant when she alleged that PS Dale had deliberately obstructed her. We find that this was a reference to the July 2017 incident. PS Waite also noted that the claimant said "if I was in the office I would have to stop myself from attacking Tony Dale". We find that in saying this the claimant was making it clear that she did not want to be redeployed into an office-based role. However, she was also expressing, equally clearly, her animosity towards PS Dale. PS Waite viewed these as throwaway comments and did not perceive that there was a risk that the claimant would physically attack PS Dale. He said that he had seen the claimant angry in the past which inferred that she had not been angry on this occasion. We find his account to be detailed and balanced, and credible.

    101.2 The fact that none of the PCSOs were able to recall this incident does not in our view detract from the veracity of PS Waite's statement. They were not directly involved in this meeting it is likely they were not completely focussed on the discussion which was taking place in a canteen and where there were other distractions. We accept PS Lazarou's evidence that at times they talked amongst themselves.

    101.3 In her evidence to the tribunal, the claimant denied having any animosity towards PS Dale. We do not find that this is credible. She had complained about PS Dale's conduct repeatedly and she had used unequivocally threatening language about him on 30 November 2018. She continued to feel strongly that he had bullied her and other PCSOs. We find that she harboured an evident animosity towards PS Dale.

    101.4 Whilst this incident was not recorded by PS Lazarou in the entry he made for the claimant's service record, in forwarding this entry to Inspector Tempest the next day he noted "I hope to speak to HR tomorrow re our concerns and options…" which is consistent with their evidence that they discussed this issue on this date.

102. We find that PS Lazarou genuinely perceived that the claimant was a threat to PS Dale because of the threats she had made on 30 November and 20 December 2017. By the date of PS Waite's statement on 16 January 2018 he understood that the claimant's threat to push related to the obstruction incident.

103. The claimant confirmed that she wished to return to work in Edmonton. PS

Lazarou made arrangements for another Occupational Health review to be conducted.

104. PS Lazarou reported to Inspector Tempest the next day when he told her that she had threatened to push PS Dale. Inspector Tempest's evidence was that this was the first time she considered moving the claimant as this second threat added weight to the claimant's threat on 30 November 2017. As we have noted, such a move was already being contemplated by CI Wallis. To assist this process, it was agreed that PS Lazarou would complete a risk assessment as well as looking at the other roles that the claimant could do to enable senior management to decide on what action to take.

105. PS Dale was also informed about the claimant's comments. As PS Waite subsequently noted in his statement, whilst he viewed the claimant's comments as "throwaway…once being informed of the conversation, I understand Sgt Dale's concerns about working in an office with PCSO Takyi-Micah whether when she has made such a claim, whether genuine or not."

106. CI Wallis wrote to Mr Holmes-Yarde on 21 December 2017 to update him that the claimant's complaint would now be referred to the GMT to determine whether to appoint an independent assessor under the formal grievance procedure. However, the following day HR concluded that the McCarthy review was not an acceptable attempt at local resolution. This meant that mandatory informal resolution had not been deemed to have been completed.

107. On 29 December 2017 PS Lazarou sent Inspector Tempest an email headed "Fanny options" in which he listed the pros and cons of retaining the claimant at Edmonton, a risk assessment and a stress risk assessment. The claimant was due to return to work imminently. There remained the potential for conflict and there was a lack of clarity about how to prevent a confrontation. He was aware that PS Dale was also concerned about this.

    107.1 In his email PS Lazarou noted the benefit to the claimant of remaining at Edmonton in that she would continue to work in and around a familiar environment and with supportive colleagues who were aware of her mental health symptoms; however, he also referred to the unresolved issues with three out of the four line managers as well as the claimant's threat to kill PS Dale who had himself refused mediation with the claimant and felt threatened by her, the risk of the claimant and PS Dale working alone together in the office, and the risk of another "MH [mental health] episode". PS Lazarou also referred to the risk of a complaint "via a tribunal that not enough was done to accommodate Fanny in regards to her MH before moving her". We find that PS Lazarou was anticipating a potential disability discrimination complaint against the respondent that it had failed to make adjustments. We find that this was unrelated to the claimant's allusion to an employment tribunal claim on 8 November 2017 i.e. PA1.2. in which the claimant had not referred to such a complaint and of which we have found PS Lazarou was unaware.

    107.2 In the risk assessment, he identified two deployment options: for the claimant to be relocated which he noted she did not want or to remain at Edmonton. PS Lazarou flagged the apparent conflict with the requirement for 28 days' notice for any change of location and the

claimant's imminent return to work on 4 January 2018. He recommended that Occupational Health advice was obtained to assess the risk to PS Dale of the claimant's return to work.

It is likely that these documents would have informed Inspector Tempest's ongoing discussions with CI Wallis about the claimant's deployment.

108. The claimant had an Occupational Health telephone assessment on 2 January 2018 when she was deemed fit to return to work on recuperative duties working four hours a day initially. Although Occupational Health recommended that resolution of "perceived work place stressors / issues were expedited" no assessment was made of the risk that the claimant's return to work posed to PS Dale or the claimant.

Transfer decision (D1 and V1)

109. The decision to move the claimant to the Tottenham police station was taken by CI Wallis in late December 2017 following discussion with Inspector Tempest. Inspector Tempest looked into the option of retaining the claimant in Edmonton in Property Stores but concluded that this was not feasible. They both agreed that the claimant should be transferred.

110. We find that the reason for the claimant's transfer was that CI Wallis concluded that because her animosity towards PS Dale there was a risk of confrontation between them and it would not be safe for them to work in the same location.

110.1 CI Wallis concluded that the claimant had a deep-seated animosity towards PS Dale. He accepted Inspector Tempest's account of the history between the claimant and PS Dale. This was substantiated by his view that the claimant remained fixated on her allegations against PS Dale which related to the Metvest and canteen incidents. He also took the claimant's threat on 30 November 2017 into consideration. As we have found, he neither believed that this gave rise to a criminal offence, nor that it was a throwaway comment made in the heat of the moment, but revealed the claimant's strength of feeling towards PS Dale. The claimant agreed that she had made a threatening comment about PS Dale. She had also made comments about suicide around the same time which she agreed needed to be taken seriously. CI Wallis accordingly concluded that the claimant posed a potential plausible threat to PS Dale.

110.2 If they remained based at the same location there would be an operational need for the claimant and PS Dale to work together: because of the overlap between the STTs PS Dale would be required to supervise the claimant on an ad hoc basis; additionally, because PS Dale was desk-bound there was a risk that he and the claimant would be in the office alone together.

110.3 He had a duty of care to both parties. The claimant had made suicide threats and there remained a risk to her and to the organisation if she harmed herself or if there was a confrontation between the claimant and PS Dale.

110.4 As Inspector Tempest subsequently wrote, on 15 February 2018, "The reason for her move is the unworkable position after the threats she made to Tony Dale." CI Wallis also wrote to the claimant on 16

February 2018 to explain "your return to Enfield STT isn't practical in view of your animosity towards Sergeant Dale".

111. Although it is unlikely that CI Wallis would have known this at the time, as we have noted, the counselling service had recommended in November 2017 that the claimant was relocated because as it was "not the best or safest environment for her mental health". This was consistent with the view he had formed.

112. We accept CI Wallis's evidence that he did not consider the claimant's threat to push PS Dale on 20 December 2017. Nor did he consider the name-calling allegation as this had not been part of the claimant's original complaint which he had been asked to look into by Supt Naughton. He also understood, erroneously, that this issue had been investigated and found to be unsubstantiated by Inspector Tempest. His focus was with what he perceived to be an irremediably fractious relationship between two colleagues. CI Wallis agreed that it was unusual for a transfer to be made because of a personality clash but he said that there came a time when this was unsustainable. There was also a perceived need to take immediate and decisive action because the claimant was due to return to Edmonton imminently.

113. We do not therefore find that an effective cause of this decision was the claimant's race nor that it related to her treatment at the Crisis centre. Nor do we find that it was because of the complaints she made on 21 October, 8 November or 3 December 2017 i.e. PA1 and PA2.

114. When considering an alternative location for the claimant CI Wallis and Inspector Tempest considered journey times and travel cost. The Tottenham Police Station was two miles from the Edmonton station and they estimated by using the TfL route planner that this would add between 10 – 15 minutes to the claimant's journey, although this did not take account of the traffic congestion caused by the ongoing construction work for the new football stadium. They were also mindful that Tottenham was due to amalgamate with Enfield as part of an impending restructure which meant that the claimant would be reunited with some of her colleagues although based at a different location.

115. In his evidence, CI Wallis said that he discussed this decision with either Supt Naughton or Supt Revel. As Supt Naughton was on special duties until 3 January 2018 it is likely that it was with Supt Revel. Although we find that there was a lack of an audit trail in relation to this decision we have accepted CI Wallis's reasons for making it.

    115.1 The process for transferring staff is governed by the Local Resource Planning Terms of Reference. Save in exceptional circumstances, any redeployment decision is pre-approved at a local resource planning meeting ("LRPM"). The claimant's move was not discussed until the LRPM on 11 May 2018. CI Wallis speculated that the claimant's deployment would have been discussed at the January LRPM if she had not become unwell, however, this would still have been after the date of his decision to transfer the claimant.

    115.2 Workforce changes could also be dealt with outside an LRPM. This applied where there were exceptional circumstances and any delay would present "significant risks to the business". We accept that CI

Wallis took the view that these were exceptional circumstances because the claimant was due to return to work on 4 January 2018. He therefore decided that it could not wait until the next LRPM. There was still a requirement for a rationale for any move to be submitted for approval by the supervising officer. CI Wallis did not submit anything in writing but discussed this with Supt Revel. Although he said that he was not required to submit a written rationale we find that this was required and CI Wallis should have set out his rationale in writing. However, we do not find that in failing to do this he was attempting to hide his reasons for this decision. Rather we find that he acted with complacent disregard for the correct process. We find that his actions in relation to the transfer process (including the appeal) reveal more that as a senior officer who was responsible for some 450 staff across nine boroughs he was used to doing things his own way.

116. The decision to transfer the claimant to Tottenham was imposed on the claimant who had stated repeatedly that she wanted to remain with her colleagues in Edmonton. Mindful of the claimant's reaction to A/I McCarthy's report, CI Wallis and Inspector Tempest agreed that this decision would be communicated to the claimant at a face to face meeting on her return to work as they were concerned about the claimant's reaction to the transfer.

The events on 4 January 2018

117. The claimant met with Inspector Tempest and PS Lazarou at 11.30am at the Enfield police station. She was accompanied by PCSO Matloob. A Professional Standards Officer, PS Kemp, was also present. PS Matt Beale was also available as another point of contact if necessary.

The threat to kill PS Dale (R1, D2 and V2)

118. Inspector Tempest told the claimant that she was being transferred to Tottenham. In her evidence, the claimant said that Inspector Tempest told her "I am not having you here, I've made a decision that you can't work here as you have threatened to kill PS Dale". The claimant acknowledged that she had used this language which she explained had been in response to receiving the outcome of the McCarthy review.

119. We find that in saying this, Inspector Tempest was not accusing the claimant of intentionally threatening to kill PS Dale. She was stating the fact, which the claimant acknowledged, that a threat had been made. Although Inspector Tempest had concluded that the claimant did not have an intent to kill PS Dale when she made this threat, she did not accept that this was a throwaway comment said in the heat of the moment. She treated this as a genuine threat in the sense that she regarded it as an expression of genuine animosity by the claimant towards PS Dale. We do not therefore find that she falsely accused the claimant of intentionally threating to kill PS Dale.

The threat to push PS Dale (R2, D3 and V3)

120. PS Lazarou then referred to the claimant's threat to push PS Dale which she had made at the handover meeting on 20 December 2017. We do not find that this was a false accusation because we have already found that the claimant

made this threat which PS Lazarou understood to be genuine.

The threat to section the claimant and the claimant being surrounded and caged-in (R3, D4 and V4)

121. The claimant agreed that she reacted to this accusation. We accept PS Lazarou's evidence that the claimant became agitated, stood up and gesticulated. She said "I don't trust any of you". Although the claimant denied this, we find that the claimant stormed out of the room. This is what both Inspector Tempest and PS Lazarou recalled. The claimant was upset. She had been told that she was being transferred against her will and she felt very strongly that PS Lazarou's accusation was unjustified. She also understood that CI Wallis had made his decision to transfer her because of this accusation, as she later confirmed in an email to PS Lazarou on 12 January 2018.

122. The claimant went to the toilet. When she returned, she asked to go home. She told Inspector Tempest that this was making her ill. Inspector Tempest was insistent that the claimant was escorted home.

123. The claimant left the meeting again and called a counsellor, from another room. We accept Inspector Tempest's evidence that PS Beale who followed the claimant into the room, overheard the claimant say that she was going to throw herself under a bus. This is consistent with what the claimant wrote in her witness statement which was that PS Beale overheard her telling the counsellor that she was having suicidal thoughts and we do not accept the evidence she gave during cross-examination which contradicted this. We do not find that Inspector Tempest would have invented this detail which is also consistent with the claimant's suicide threat on 30 November 2017. When PS Beale reported this to Inspector Tempest she was now genuinely concerned that the claimant was at risk of harming herself and contemplated "sectioning" the claimant under the provisions of the Mental Health Act 1983 ("MHA") unless she agreed to go home accompanied by another officer.

124. Cognisant of this and worried about the claimant's mental health, PS Lazarou contacted the claimant's GP surgery as he understood that it was necessary to consult with a registered medical practitioner before such an intervention.

125. PC Gemma Carlton was assigned by Inspector Tempest to remain with the claimant. The claimant went into the locker room and then to the toilet accompanied by PC Carlton. She was crying and went into a cubicle.

126. Inspector Tempest entered the toilets and asked the claimant who she had been speaking to. When the claimant confirmed that she had spoken to her counsellor Inspector Tempest asked for a phone number, the claimant redialled it on her phone and handed it over. Inspector Tempest left the toilet with the claimant's phone. We accept Inspector Tempest's evidence that the counsellor told her that she was concerned about the claimant's mental state and the risk that she would harm herself. This is entirely consistent with the claimant's witness statement.

127. Inspector Tempest returned with two male officers and threatened to section the claimant unless she agreed to go home accompanied. The claimant asked her under what legal authority she was acting. Inspector Tempest referred to

section 136 MHA. The claimant said that Inspector Tempest had upset her. She wanted to go home. We find that Inspector Tempest threatened to section the claimant because the claimant was evidently distressed, she had reported having suicidal thoughts and the counsellor had confirmed that there was a credible threat of self-harm. This was also a credible threat because the claimant had threatened suicide on 30 November 2017 in response to the McCarthy review outcome.

128. The claimant alleges that when she left the toilet she was surrounded by eight officers. PS Lazarou who was not present for all of the time said that there were about five other officers: PC Carlton, PCSO Matloob, Inspector Tempest and two officers from the SNT. He could not recall whether PS Beale was there. It is likely that he was. We find that when the claimant left the toilet at least six officers were present. We accept that this made the claimant feel that she was surrounded and caged in. We find that the reason why the claimant was surrounded was because she presented a credible risk of self-harm for the same reasons we have cited above. These officers rushed to the scene to control a potentially volatile situation.

129. We do not therefore find that an effective cause for the threat to section the claimant or that she was surrounded by officers as she came out of the toilet was the claimant's race. Nor do we find that this was related to her treatment at the Crisis centre. Nor do we find that it was because of the complaints she made on 21 October, 8 November or 3 December 2017 i.e. PA1 and PA2.

130. The claimant was not restrained nor were her actions otherwise impeded. She went outside for some air. All followed her. She agreed to be accompanied home by PS Beale, PCSO Matloob and a third officer. It was agreed that PS Beale would remain with the claimant at home whilst appropriate support was put in place. Inspector Tempest decided that the threat of self-harm was being managed and there was no need to section the claimant.

<u>The claimant's appeal against the transfer decision (PA3)</u>

131. The claimant wrote to CI Wallis to appeal against the transfer decision later that day, on 4 January 2018. She complained that she was being victimised.

> "I feel I have been unfairly treated. Firstly I haven't been given any reason for been moved. I feel the move is victimising me and it's against my interest…
>
> I have been suffering from work related depression and it will be in my best interest to carry on working in Edmonton…
>
> I am on strong medication that makes me sleep and going to Tottenham will mean I have to wake earlier than usual…
>
> When I moved from Victoria to Edmonton, I had problem settling down because I was still suffering from work related depression…I am still under the mental health team…I wish to remain in a familiar environment where I know the people and the borough. At least let me settle and feel better before any move is considered".

She relies on this as being a protected act (PA3).

132. The claimant requested written reasons for the transfer as these had not been provided. She also noted that this transfer would mean that she would incur additional travel costs and she asked if this would be covered by the respondent.

133. The claimant returned to work the next day, on 5 January 2020, with the intention of collecting her belongings. She was upset. She had a panic reaction. She left the station and called PCSO Matloob. She was crying and would not tell him where she was. She told him that she had not slept for two nights, she had come into work to collect her belongings and said "I can't do this anymore, I am tired". She rang off and stopped answering her phone. She was worried that Inspector Tempest would try to section her. She went to Enfield cemetery to gather her thoughts. In the meantime, PCSO Matloob reported his concerns about the claimant's safety to PS Lazarou. The claimant was treated as a high-risk missing person ("misper").

134. The claimant attended Chase Farm Hospital and was transferred to the Mental Health Team at Barnet Hospital. By this point she had contacted the station. The claimant was signed off work and returned home accompanied by two colleagues.

The appeal decision by CI Wallis on 9 January 2018 (R4, D5 and V5)

135. CI Wallis rejected the claimant's appeal. The respondent accepts that this was a detriment. CI Wallis replied to her on 9 January 2018, copying in Mr Holmes-Yarde, when he told her that she could not continue to work in Edmonton because the comments she had made on 30 November 2017 made this "unworkable". He also referred to "similar comments" made by the claimant on 4 January 2018 although he did not specify what these were. He concluded "it's become very clear that you can't work in the same environment as Sgt Dale without expressing animosity towards him which isn't conducive to efficient working at Enfield STT". CI Wallis also noted that the Tottenham and Edmonton teams would be amalgamating in March 2018 when they would be under the same command. This, he said, would be a fresh start for the claimant and everyone else involved.

136. CI Wallis did not refer the claimant's appeal to Chief Supt Ricketts as required by the LRPM Terms of Reference. His evidence was that he was in a senior leadership role and acted with the delegated authority of the Chief Supt. The claimant's complaint is not that CI Wallis acted improperly in dealing with this appeal, instead of passing this up the chain of command to Chief Supt Ricketts, she complains about his decision to reject her appeal. We accept CI Wallis's evidence that he dealt with the appeal because it was addressed to him. We do not find that he acted in this way because he was trying to cover up his original decision to transfer the claimant. As noted, he copied his appeal decision to the claimant's union representative. Once again CI Wallis acted with complacent disregard for the correct process. He thought he was right to act as he did. He also felt that this issue was clear-cut. He had formed his view that the combination of the claimant and PS Dale was a combustible mix and presented a risk to both individuals and the organisation.

137. Having already made his decision to transfer the claimant for the reasons we have found we find that he rejected the claimant's appeal for the same

reasons. We do not therefore find that the reason for this decision was because of the claimant's race, or that it related to her treatment at the Crisis centre. Nor do we find that CI Wallis rejected this appeal because of the complaints she made on 21 October, 8 November, 3 December 2017 or 4 January 2018 i.e. PA1 – PA3.

GP contact by PS Lazarou on 12 January 2018 (R5, D6 and V6)

138. PS Lazarou contacted the claimant's GP to arrange an appointment on 12 January 2018. He emailed the claimant the same day to confirm that her GP surgery had an available slot on Monday afternoon "should you wish to attend". The claimant was upset by this because PS Lazarou had contacted her GP without discussing this with her and without obtaining her consent. Although PS Lazarou had previously contacted the claimant's GP on 4 January 2018 and he also understood that the claimant had given PS Beale permission on 4 January 2018 to contact her GP we do not agree that this obviated the need for him to obtain the claimant's consent directly. We agree that for the claimant this amounted to an invasion of her privacy.

139. We find that PS Lazarou's intervention was prompted by a report earlier that day from Occupational Health that the claimant remained unwell with symptoms related to stress / depression and had been trying to arrange an appointment with her GP. As he was about to go on leave, PS Lazarou, who remained the claimant's welfare officer, acted out of concern for the claimant's welfare and contacted her GP to avoid her being without support at a time when she was vulnerable.

140. This is consistent with an email PS Lazarou sent to PS Darren Judge, who was coordinating an attendance management report for CI Wallis, on the same date in which he explained the background to his intervention. Although PS Lazarou noted in this email that the claimant had been seen by the community health team on 8 January 2018, we do not find that this was a significant reason for his intervention. More significant were the claimant's conduct on 4 January 2018, her panic reaction on 5 January 2018 and the message that PCSO Matloob had passed on which led to her being treated as a high-risk misper, combined with her threats of suicide.

141. Nor do we find that the reason for this intervention was the claimant's race or the complaints made by the claimant on 21 October, 8 November or 3 December 2017 i.e. PA1 and PA2.

142. Later that day, an on-call Occupational Health adviser reported that the claimant "has been in contact with OH displaying possible MHI/suicidal tendencies. Shouting and hung up the phone…" Local police officers were despatched to the claimant's home when they reported that the claimant was "considerably calmer".

143. PS Beale took over interim line management of the claimant on 16 January 2018.

Safeguarding Adults Case Conference on 16 January 2018

144. The claimant attended a Safeguarding Adults Case Conference on 16 January

2018. There was a pre-meeting between CI Wallis, Inspector Tempest and Safeguarding Adults team when Inspector Tempest told them that the claimant's allegations against PS Dale had been looked into and were unfounded. She also said that having made a threat to kill PS Dale the respondent had decided that the claimant could not return to work in Edmonton. When the claimant joined the meeting she said that she wanted to return to Edmonton and that she would be able to work alongside PS Dale.

145. Several options were discussed at this meeting in an attempt to resolve this impasse: the claimant could transfer to any other station of her choice that was under CI Wallis's command; she was offered a travel pass to assist with any additional travel costs, although this would be of limited duration; she could have a phased return to work on reduced working hours; she could be provided with support to consider other career options. Although the claimant denied this, we find that she declined all of these options as recorded in the case conference record. She remained unhappy with the decision to transfer her. The conclusion of this conference was that these were deemed to be work-related issues which did not require further involvement by the safeguarding team.

146. When Mr Holmes-Yarde joined the meeting, CI Wallis and Inspector Tempest left. The claimant then said that the only acceptable alternative to returning to Edmonton was a financial settlement. The safeguarding process was closed.

Formal grievance

147. The claimant's grievance complaints about PS Dale and PS Crosby remained outstanding. She wrote to the grievance team on 26 January 2018 to request a copy of the policy on compulsory transfers. She complained of victimisation and discrimination. She said that the proposed transfer would impact on her mental health. This is not relied on as being a protected act. The claimant also wrote to Assistant Commissioner Helen Ball. She wanted to return to work in Edmonton.

148. Ms Robson wrote to the claimant on 1 February 2018 to confirm that her grievance had been reopened "in light of the new information you have provided" i.e. the claimant's complaint about her transfer to Tottenham.

149. The claimant's mother died in Ghana on 20 February 2018. She was granted compassionate leave on full pay to attend her mother's funeral from 21 March – 17 April 2018.

150. The claimant returned to work in May 2018. She was now based in Tottenham. Her new line manager was PS Phil Salter with whom she had worked before. Her transfer was approved at the LRPM on 11 May 2018. She started on recuperative duties working 10am – 2pm. She resumed full-time working hours including 10-hour shifts in around November 2018.

The Baird investigation (D7 and V7)

151. Duane Baird, Grievance Team Assessor, was appointed to conduct an investigation into the claimant's grievance. The claimant does not complain about the outcome of Mr Baird's investigation but about the delay in concluding

her grievance.

152. Mr Baird was commissioned to conduct an investigation on 1 February 2018 although he was unable to begin his investigation until he returned to work from leave on 12 February 2019. He submitted his completed investigation report to Quality Assurance more than five months later on 17 July 2018. The final report was then approved and sent to the claimant on 31 August 2018. It had therefore taken more than six months to complete this process. This significantly exceeded the time limits stipulated in the Grievance Policy which were 45 working days or 90 working days in exceptional circumstances. Mr Baird's investigation was not extensive and there were no exceptional circumstances which applied. We therefore find that the grievance outcome was unreasonably delayed.

153. Mr Baird took the following steps in conducting his investigation:

153.1 He made first contact with the claimant on 13 February 2018 and they agreed to have an initial discussion about her grievance the following day. The claimant resent her grievance document on 19 February 2018 and related documents. They arranged to meet on 22 February 2018. This was rearranged to 1 March 2018 because of the claimant's bereavement. Mr Baird sent his draft record of their meeting to the claimant on 14 March 2018. The claimant replied on the same date with some corrections.

153.2 He contacted CI Wallis and Inspector Tempest on 12 March 2018 to arrange a meeting to discuss the claimant's grievance complaints. He met with them separately on 22 March 2018. He emailed the claimant to confirm this on 12 April 2018 when he noted that he had been unable to meet with PS Crosby before his retirement and he had arranged to meet PS Dale later that month. He met with PS Dale on 27 April 2018.

153.3 The claimant also requested that he interviewed PS Angela Knight and PCSOs Matloob and Campbell. Mr Baird interviewed PS Knight on 30 April 2018. He wrote to PCSO Matloob on 30 April 2018. PCSO Matloob replied on 22 May 2018 to agree to meet but failed to respond to Mr Baird's follow-up email on 24 May 2018. Mr Baird arranged to meet PCSO Campbell on 30 May 2018 which she cancelled and they rearranged to meet on 14 June 2018 which she also cancelled.

153.4 Mr Baird also contacted PS Andrew Arnold, who had been the PSU sergeant for RTPC during the Crosby factfinding, on 12 April 2018 and again on 28 June 2018. We accept his evidence that they spoke around that date.

153.5 He sent his completed report to Quality Assurance for approval on 17 July 2018.

153.6 The table of documents in his report listed 17 documents which the claimant submitted and which were considered by Mr Baird. This list referred to one document dated 19 February 2018 which outlined the claimant's grievance and included nine attachments. This included the claimant's letter to A/I McCarthy dated 21 October 2018 i.e. PA2.2. This did not include PA2.1.

154. We accept Mr Baird's evidence that his investigation was prolonged by difficulties in arranging interviews around leave and workload. Although Mr

Baird did not conduct any interviews after 30 April 2018 we also accept his unchallenged evidence that he waited until he had exhausted his attempts to interview PCSOs Matloob and Campbell in June 2018 before drafting his investigation report which he completed the next month.

155. The claimant's grievance was not upheld.

155.1 In relation to the claimant's transfer, Mr Baird concluded that the reason for this decision was because of the claimant's threats towards PS Dale although he found that it had not been proportionate for him to "validate the veracity of the alleged threats". He also noted that this decision had not been communicated in writing, nor had the claimant been given 28 days' notice of this decision.

155.2 Mr Baird did not investigate the name-calling and bullying complaints against PS Dale. He had questioned Inspector Tempest on 22 March 2018 about the bullying complaint when she told him that this had been investigated by PS Crosby and A/I McCarthy and both investigations had been verified by PS Arnold. We accept his evidence that PS Arnold confirmed this. Mr Baird therefore understood that these complaints had been dealt with and it would not be proportionate to reinvestigate these issues. In his evidence, Mr Baird agreed that neither the Crosby factfinding nor the McCarthy review had looked into the name-calling allegation. We find that he had a genuine but mistaken belief to the contrary when he conducted his investigation.

155.3 Mr Baird did not investigate the complaint that the Crosby factfinding was biased for the same reason.

156. We do not find that Mr Baird knew that the claimant was being treated at the Crisis centre. Neither the record of his meeting with the claimant on 1 March 2018 nor the corrections made by the claimant refer to this treatment. Nor was there any reference to this in his report. Nor were we taken to any documents which the claimant sent to Mr Baird which referred to this treatment. We do not therefore find that this was a reason for his delay in completing his investigation.

157. The claimant appealed this grievance on 19 September 2018. Her appeal was dismissed on 24 October 2018.

Conclusions

The allegations that fail on the facts

158. We have found that R1, R2, D2, D3, V2 and V3 fail on the facts.

Direct race discrimination

159. We have found that R3, R4 and R5 were detriments but they were not done because of the claimant's race.

160. This complaint fails.

Discrimination arising from disability

161. We find that the claimant's treatment at the Crisis centre was something which arises from her disability. The claimant says that the alleged perpetrators of the impugned treatment were subconsciously motivated by this.

162. We have found that D1 and D4 – D7 amounted to unfavourable treatment.

163. We have found that the claimant's treatment at the Crisis centre was not a significant reason for this unfavourable treatment.

164. This complaint fails.

Victimisation

165. We find that in making the complaints PAs 1.3, 2.1 and 2.2 the claimant did protected acts in accordance with section 27(d) EQA.

165.1 We find that PA1.3 is a protected act. Although this complaint lacks specificity, the claimant referred to racism and to the alleged impact that Inspector Tempest had had on three "BME" staff.

165.2 We also find that find that PAs 2.1 and 2.1 are protected acts. The claimant was complaining that PS Dale was demeaning his junior PCSO colleagues by using language which was disability-related. We therefore find that this complaint amounted to an implied, if not express, allegation of disability-related harassment.

165.3 We do not find that PAs 1.1 and 1.2 are protected acts. Neither complaint refers to proceedings which have been brought under the EQA. Nor we do find, applying the Aziz construction, that these allegations convey any other acts done for the purposes or in connection with the EQA. PA1.1 refers to having gone to court and the Human Rights Commission and PA1.2 to the employment tribunal in order to get justice. As noted, the claimant's previous employment tribunal claim was brought under TULRA and not the EQA. Wanting justice on its own does not amount to the doing of a protected act for the purposes of sections 27(2)(a) or (c) EQA.

165.4 Nor do we find that PA3 is a protected act. Whilst the claimant has referred to victimisation, we find that in the absence of any related assertion that this was because she did a protected act the claimant was complaining of victimisation in the sense of being singled out and outwith the narrower meaning prescribed by the EQA. In respect of the other allegations which refer to the claimant's disability, we find that none of these amount to complaints that there had been a contravention of the EQA.

166. We have found that CI Wallis and Inspector Tempest knew about PA1.3 and PA2. We have also found that PS Lazarou knew about PA2. We have also found that Mr Baird knew about PA2.2.

167. We have found that PAs 1.3 and PA2 were not an effective cause of V1, V4, V5 or V6.

168. In respect of V7 we do not find that the claimant has established a prima facie case so that the burden of proof has not shifted. We have found that Mr Baird

took active steps to investigate the claimant's grievance between February and June 2018, we have accepted that his investigation was prolonged by difficulties in arranging interviews around leave and workload and that he waited until June 2018 once he had exhausted his attempts to interview PCSOs Matloob and Campbell before writing his report. He was then required to submit his draft report for approval and this process took more than a month. We have also found that Mr Baird had a genuine though mistaken belief that the claimant's complaints about PS Dale (i.e. name-calling and bullying) and PS Crosby (i.e. that his factfinding was biased) had already been investigated and he therefore concluded that it would not be proportionate to reinvestigate these issues. When weighed against these findings, we do not find that the failure by Mr Baird, who had no prior involvement in the claimant's case, to investigate these complaints reverses the burden of proof. We do not therefore find that PA2.2 was an effective cause of V7.

169. This complaint fails.

Burden of proof

170. We have applied the burden of proof provisions to V7. In respect of the other detrimental / unfavourable treatment, we have found that the respondent has provided cogent reasons for this treatment and it was therefore unnecessary to apply the burden of proof provisions. For completeness, had we applied these provisions, we would not have found that the claimant established a prima facie case so that the burden of proof would not have been reversed.

Overview

171. We have also, for completeness, considered whether an inference can be drawn in any respects from considering one or more incident together. We find that it cannot. The explanation provided by the respondent for the treatment of the claimant was that she had made threats towards PS Dale on 30 November 2017 and 20 December 2017 (D1 and V1), she was a credible risk of self-harm on 4 January 2018 (R3, R4, D4, D5, V4 and V5) she continued to be unwell and in need of GP support on 12 January 2018 (R5, D6 and V6). We were satisfied that these reasons were genuinely held and were unrelated to the claimant's race, her treatment at the Crisis centre or to the complaints she had made about Inspector Tempest (PA1.3) or PS Dale (PA2). In respect of the delay in completing the grievance (D7 and V7) we have found that Mr Baird was not aware of the claimant's treatment at the Crisis centre and whilst he was cognisant of the claimant's complaint about PS Dale (PA2.2) the claimant has not established a prima facie case that this could have been an effective reason for this delay. We have considered the process failures we have identified i.e. the decision to transfer the claimant without a clear audit trail and written reasons, the decision by CI Wallis to deal with the claimant's appeal against her transfer and the failure to fully investigate the name-calling allegation but overall we have not found that there is sufficient evidence to shift the burden of proof. We do not therefore find in respect of the detrimental / unfavourable treatment the claimant was subjected to that a White PCSO in materially the same circumstances would have been treated any differently. Nor do we find that the claimant would have been treated any differently if she had not been treated at the Crisis centre or if she had not done the protected acts.

172. For all of these reasons the complaints fail and are dismissed.

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Employment Judge Khan

Date 09/06/20

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

09/06/2020.....

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FOR EMPLOYMENT TRIBUNALS