

# THE INDUSTRIAL TRIBUNALS

CASE REF: 00533/19

**CLAIMANT:** Michael Bradley

**RESPONDENT:** Chief Constable of the Police Service of Northern Ireland

## DECISION

The unanimous decision of the tribunal is that the claims of discrimination and harassment on the ground of gender are dismissed.

### CONSTITUTION OF TRIBUNAL

**Vice President:** N Kelly

**Panel Members:** Ms M J McReynolds  
Mr I Carroll

### Representation of Parties:

The claimant was represented by Mr Richard Smith, Barrister at Law, instructed by Edwards & Company

The respondent was represented by Mr Joe Kennedy, Barrister at Law, instructed by the Crown Solicitor's Office.

### Background

1. The claimant is a Police Sergeant who at the relevant times was based in Operations Planning for the Belfast District, ("the branch") in Musgrave Street station.
2. The claimant alleges that he had been treated less favourably and harassed on the ground of his gender and to promote a policy of gender balancing. He refers in his claim to a long list of alleged incidents. Not all the alleged incidents which had been initially raised, and subsequently maintained by the claimant, were pursued by the claimant at the hearing.

3. The claimant's allegations centre on his alleged treatment by Superintendent Haslett who had been the superintendent in charge of the branch, Inspector Ellson, his immediate line manager, and Superintendent Murdie.
4. When Superintendent Haslett took charge of the branch in 2017, the Superintendent, Chief Inspector, two Inspectors and five Sergeants who were the supervisors in that branch were all male.
5. In summary, the claimant alleges that he was penalised and subject to detriment in a campaign, principally led by Superintendent Haslett, to force him from his post in the branch because of his gender and to achieve or promote gender balancing in the supervisory cadre of that branch. The claimant remains in his post in the branch.

### **Procedure**

6. The claim was lodged on 5 December 2018 and the response on 4 March 2019.
7. A Case Management Discussion was held on 1 May 2019. Directions were given in relation to the interlocutory procedure and the witness statement procedure. Witnesses were directed to exchange witness statements in advance of the hearing in place of evidence in chief. Each witness was to be asked in turn to swear or affirm to that statement and would then move immediately into cross-examination and brief re-examination.
8. In the event, the claimant, in the course of cross-examination, made what appeared to be new allegations about a decision to issue a second Vacancy Bulletin in relation to a vacant Sergeant's post in the branch. Inspector Ellson was allowed to give additional oral evidence in chief to deal with that new allegation. An additional witness, Mr Brian McCarthy of the respondent's HR department was called to give oral evidence in chief and to be cross-examined in relation to that new allegation.
9. The substantive hearing was listed from 14 to 18 October 2019. The legal and factual issues were agreed and were appended to the record of that Case Management Discussion. That record was sent to the parties. It was not subsequently challenged and there were no subsequent requests to amend that list of issues.
10. Those issues first raised a time limitation point. That point was not pursued at the hearing.
11. The legal issues were whether or not the claimant had been discriminated against on the ground of his gender or harassed on the ground of his gender by the respondent. Four comparators were named for the purposes of the gender discrimination claim:-
  - (i) Sergeant Claire Lloyd;
  - (ii) Sergeant Joanne Eccles;
  - (iii) Sergeant Caralyn Robson; and

(iv) Sergeant Sharon Cromie.

12. The tribunal was faced with the difficult task of ensuring that all of the many allegations made by the claimant in this matter were considered. Some of these allegations were discontinued or simply not mentioned in the course of the hearing. At least one was added during the hearing. The full list of alleged incidents on which the claims were based, could be summarised as follows (paraphrasing the agreed list of factual issues attached to the CMD record for the hearing on 1 May 2019 and additional issues raised by the claimant in the course of the hearing, although some were not ultimately pursued at the hearing). The claimant alleged that each of these alleged incidents were either acts of discrimination based on his gender, acts of harassment based on his gender, acts designed to drive him from his post to facilitate the appointment of a female sergeant, or acts which proved that there had been a policy of gender balancing. It was often difficult to determine which was relevant to any particular incident.

- (i) that Superintendent Haslett had stated at various times that the sergeant's office in the branch had been "*too North Belfast male dominated*" and "*cock heavy*";
- (ii) that Sergeant Ireland (male) had left the branch to go to another part of the PSNI. His vacant post had been filled by another sergeant in the branch, Sergeant McQueen (male) creating another vacancy. The vacancies created by Sergeant Ireland's move and by Sergeant McQueen's move had not been offered to the claimant.
- (iii) that that vacancy for a sergeant in "*events planning*" (the role previously occupied by Sergeant McQueen) had been subject to a competency based competition and interview in which Sergeant Cromie (female) had been successful;
- (iv) a further issue was introduced in the course of the hearing, ie an allegation that the relevant vacancy bulletin for the Sergeants post in "*events planning*" had been reissued to achieve more female applicants and therefore to pursue the alleged gender balancing campaign;
- (v) that Superintendent Haslett and Inspector Ellson had attempted to reduce the role and the responsibilities of the claimant;
- (vi) that the claimant had been excluded from lunch time breaks;
- (vii) that Superintendent Haslett had ignored, overlooked and bypassed the claimant in relation to finance matters and meetings;
- (viii) that Superintendent Haslett had unduly scrutinised the claimant in relation to his overtime earnings;
- (ix) that Superintendent Haslett had, in the course of an away day for the branch, stated to the claimant in front of the other sergeants that he would make a good trainer;

- (x) that Superintendent Haslett had avoided contact with the claimant when he sought to complain about his treatment;
  - (xi) that in August/September 2018 Superintendent Haslett had refused to allow a change in line management, ie refused to allow the claimant's line manager to be changed from Inspector Ellson (male) to Inspector Hughes (male);
  - (xii) that on 19 February 2018, Superintendent Haslett had refused to meet with the claimant to discuss issues between them;
  - (xiii) that Superintendent Haslett had overturned the claimant's decision in relation to an internal matter concerning a rest day for a particular sergeant;
  - (xiv) that the claimant had been served with a Regulation 16 (Disciplinary) Notice;
  - (xv) that Inspector Ellson should have spoken to the claimant in the course of his IPR (performance appraisal) or otherwise, about the issues on which the Regulation 16 Notice were based;
  - (xvi) that Inspector Ellson had told him that there was no complaint against him;
  - (xvii) that pending the outcome of a disciplinary investigation, in relation to that Regulation 16 Notice, the claimant had been temporarily moved to Woodbourne Station;
  - (xviii) that the claimant's firearm had been removed, when he went on sick leave, and that an incorrect procedure had been followed in that regard;
  - (xix) that following the claimant's return from his temporary move to Woodbourne Station (although he had been on sick leave throughout this period with stress), the claimant's responsibilities had been redistributed among his colleagues;
  - (xx) that an Inspector Garrett (female) had been moved to the branch on a sideways welfare transfer to fill a vacancy at Inspector level caused by the departure of Inspector Hughes and that this had been done, not as a proper welfare transfer, but to promote gender balancing in the branch.
13. The claimant gave evidence on his own behalf. Sergeant Alan Gawne, Constable Andrew Hall, and Constable Michael Arthurs gave evidence on his behalf, in accordance with the witness statement procedure.
14. Superintendent Haslett, Chief Inspector McCauley, Inspector Ellson, Superintendent Murdie and Chief Superintendent Roberts gave evidence on behalf of the respondent in accordance with the witness statement procedure.
15. All the above witnesses were cross-examined, with the exception of Chief Superintendent Roberts whose statement was agreed and who was therefore not cross-examined.

16. Following the introduction of an additional complaint about the re-issuing of a vacancy bulletin for a vacant sergeant post in Operations Planning, additional oral evidence in chief was given by Inspector Ellson in relation to that complaint and an additional witness, ie Brian McCarthy of the HR Department gave oral evidence in chief and was cross-examined.

### **Sex Discrimination**

17. Article 3 of the Sex Discrimination (NI) Order 1976 states:

*In any circumstances relevant for the purposes of any provision of this Order, a person ("A") discriminates against another ("B") if, on the ground of sex, A treats B less favourably than A treats or would treat another person*

18. Article 8 deals with 'discrimination' as defined above in the employment field (which Art 84 in turn applies to police officers). It states:

(2) *It is unlawful for a person, in the case of a woman employed by him at an establishment in Northern Ireland, to discriminate against her-*

(a) *in the way he affords her access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or*

(b) *by dismissing her, or subjecting her to any other detriment*

(2A) *It is unlawful for an employer, in relation to employment by him at an establishment in Northern Ireland, to subject to harassment-*

(a) *a woman whom he employs, or*

(b) *a woman who has applied to him for employment.*

19. Article 4 applies this provision equally to men.

20. Article 6A of the 1976 Order states:

**6A.—(1)** *For the purposes of this Order, a person subjects a woman to harassment if—*

(a) *he engages in unwanted conduct that is related to her sex or that of another person and has the purpose or effect—*

(i) *of violating her dignity, or*

(ii) *of creating an intimidating, hostile, degrading, humiliating or offensive environment for her,*

- (b) *he engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect—*
    - (i) *of violating her dignity, or*
    - (ii) *of creating an intimidating, hostile, degrading, humiliating or offensive environment for her, or*
  - (c) *on the ground of her rejection of or submission to unwanted conduct of a kind mentioned in sub-paragraph (a) or (b), he treats her less favourably than he would treat her had she not rejected, or submitted to, the conduct.*
- (2) *Conduct shall be regarded as having the effect mentioned in paragraph (1) (a) or (b) only if, having regard to all the circumstances, including in particular the perception of the woman, it should reasonably be considered as having that effect.*

21. Article 6A(5) applies the above provision equally to men.

22. Article 63A (burden of proof), states as follows:

**63A.—(1)** *This Article applies to any complaint presented under Article 63 to an industrial tribunal.*

(2) *Where, on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this Article, conclude in the absence of an adequate explanation that the respondent—*

(a) *has committed an act of discrimination[F2 or harassment] against the complainant which is unlawful by virtue of Part III, or*

(b) *is by virtue of Article 42 or 43 to be treated as having committed such an act of discrimination[F2 or harassment] against the complainant,[F3 or*

(c) *has contravened Article 40 or 41 in relation to an act which is unlawful by virtue of Part III,]*

*the tribunal shall uphold the complaint unless the respondent proves that he did not commit or, as the case may be, is not to be treated as having committed, that act.*

23. In *Frank McCorry and Others v Maria McKeith [2016] NICA 47*, the Court of Appeal stated:-

*“The Shifting Burden of Proof.*

[35] *While Ms McKeith did not advance a claim for disability related discrimination in relation to the period before the dismissal decision, her background treatment in the preceding months did inform the approach of the Tribunal in relation to the dismissal decision. The background included the requirement that Ms McKeith remain absent from work for periods to look after her disabled daughter. Had it arisen for decision, the Tribunal would have concluded that the previous treatment of Ms McKeith amounted to disability related discrimination (paragraph 132).*

[36] *On taking into account that background and the evidence in relation to the dismissal of Ms McKeith, the Tribunal stated that “the shifting burden of proof is going to be crucial” (paragraph 136).*

[37] *The Burden of Proof Directive (EEC) 97/80 was extended to the United Kingdom in 1998 and Article 4(1) provided:–*

*“Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them have established, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.”*

[38] *Section 17A(1B) of the 1995 Act provides:–*

*“Where, on the hearing of a complaint under sub-section (1), the complainant proves facts from which the Tribunal could, apart from this sub-section, conclude in the absence of adequate explanation that the respondent has acted in a way which is unlawful under this Part, the Tribunal shall uphold the complaint unless the respondent proves that he did not so act.”*

[39] *The approach to the shifting burden of proof was considered by the Court of Appeal in England and Wales in Wong v Igen Ltd (2005) EWCA Civ 142. It was stated that the statutory amendments required a two-stage process. The first stage required the complainant to prove facts from which the Tribunal could, apart from the section, conclude, in the absence of an adequate explanation, that the employer had committed, or was to be treated as having committed, the unlawful act of discrimination against the employee. The second stage, which only came into effect on proof of those facts, required the employer to prove that he did not commit or was not to be treated as having committed the unlawful act, if the complaint is not to be upheld.*

[40] *The issue was revisited by the Court of Appeal in England and Wales In Madarassy v Nomura International plc [2007] EWCA Civ 33 which set out the position as follows (italics added):-*

“56. *The Court in Igen v Wong expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the Tribunal could conclude that the respondent ‘could have’ committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal ‘could conclude’ that on the balance of probabilities, the respondent had committed an unlawful act of discrimination.*

57. *‘Could conclude’ [in the Act] must mean that ‘a reasonable Tribunal could properly conclude’ from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory ‘absence of an adequate explanation’ at this stage (which I shall discuss later), the Tribunal would need to consider all the evidence relevant to the discrimination complaint; for example, evidence as to whether the act complained of occurred at all, evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like as required by [the Act]; and available evidence of the reasons for the differential treatment.*

58. *The absence of an adequate explanation for differential treatment of the complainant is not, however, relevant to whether there is a prima facie case of discrimination by the respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant. The consideration of the Tribunal then moves to the second stage. The burden is on the respondent to prove that he has not committed an act of unlawful discrimination. He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the Tribunal must uphold the discrimination claim.”*

[41] *The Tribunal was satisfied that Ms McKeith had established a prima facie case that she had been directly discriminated against because she had been the primary carer of her disabled daughter (paragraph 147). The Tribunal then found that the*

*Ardoyne Association had not put forward any convincing or coherent explanation for its decision to make Ms McKeith redundant (paragraph 148). It was accepted on the hearing of the appeal that, if this was a case where the burden of proof shifted to the employer, there had not been a sufficient explanation. Accordingly, the challenge was concerned with whether the evidence before the Tribunal was such that a prima facie case of associative direct discrimination had been made out.*

[42] *In this regard the Tribunal set out a number of facts which concerned Ms McKeith having been sent home on previous occasions because of her disabled daughter, Ms Burns' belief that she should be at home with her disabled daughter, the reluctant piecemeal and incomplete nature of discovery, the other two persons who were made redundant at the same time were first re-engaged as volunteers and then rehired, the evasive and unconvincing evidence of the Manager and the non-compliance with statutory dismissal procedures. The Tribunal stated ". If this is not a case where the burden of proof should shift, no such case exists" (paragraph 147).*

[43] *We are satisfied that, as outlined by the Tribunal, there was such evidence of a difference in status, a difference in treatment and a reason for differential treatment that, in the absence of an adequate explanation, a Tribunal could conclude that the employer committed an unlawful act of associative disability discrimination. The burden on the Ardoyne Association was not discharged. It followed that the Tribunal would find disability discrimination.*

[44] *We are not satisfied on any of the appellant's grounds of appeal. The appeal is dismissed."*

## **RELEVANT FINDINGS OF FACT (NUMBERED BY REFERENCE TO THE ALLEGED INCIDENTS SUMMARISED IN PARAGRAPH 12 ABOVE)**

### **Alleged Remarks by Superintendent Haslett - (i)**

24. Superintendent Haslett was appointed as Head of the branch in February 2017 and he remained in that post until December 2018. He and the branch were based in Musgrave Street.
25. The supervising officers of the branch, when Superintendent Haslett was appointed as Head of the branch, comprised the Superintendent himself, one Chief Inspector, two Inspectors and five Sergeants. All of those supervising officers had been male. Two of the five male Sergeants, including the claimant, had previously served in North Belfast.
26. The claimant first alleged that Superintendent Haslett had bullied Sergeant Gawne (one of the five Sergeants) to drive Sergeant Gawne from his post and to replace him with a female Sergeant. He stated that Sergeant Gawne had refused to be bullied by Superintendent Haslett and that Superintendent Haslett had then turned his attention to the claimant.

The claimant asserted in his evidence and maintained in cross-examination that Superintendent Haslett, shortly after being appointed, had said to members of the branch, including the claimant, that he was going to make things difficult for Sergeant Gawne. The claimant stated in cross-examination that Sergeant Gawne had not been present when those remarks were made and that they had been made on more than one occasion, but that Sergeant Gawne would have been made aware of them. The tribunal agrees that if these remarks had been made by a new Superintendent to a small branch, Sergeant Gawne would have heard about them. It is difficult to see how the other members of the branch, including the claimant, would not have told Sergeant Gawne, their colleague, of those remarks; if indeed they had been made.

However, Sergeant Gawne gave no evidence of such remarks having been made. If they had been made, it is difficult to see why he would not have referred to those remarks in his evidence, particularly at paragraph 3 of his witness statement where he dealt specifically with Superintendent Haslett's arrival in the branch and where he referred to being under particular scrutiny within a few weeks of his arrival.

27. The tribunal also notes that the specific allegation; namely that Superintendent Haslett had started to bully Sergeant Gawne and that, when he had been unsuccessful, he had then turned his attention to the claimant, appears nowhere in the lengthy grievance lodged by the claimant on 10 September 2018 and nowhere in his witness statement apparently supporting that grievance and dated 13 December 2018. In that statement, the claimant said that "*over the past 18 months*" – "*He (Superintendent Haslett) has treated me differently to my colleagues*".

In fact, in the witness statement of 13 December 2018, the claimant stated that "*soon after commencing his role, I detected a noticeable change in his attitude and behaviour towards me*". That does not sit easily with the claimant's evidence in chief to this tribunal at paragraph 10 of his witness statement that Superintendent Haslett's behaviour towards the claimant had deteriorated "*once Sergeant Cromie was instated (sic) within the team*". Sergeant Cromie had joined the branch several months after Superintendent Haslett had been appointed as Head of the branch.

The claimant did not raise this specific allegation in his IT1 or in the interlocutory procedure.

28. The claimant alleged in his evidence in chief that he had regularly witnessed Sergeant Gawne and Superintendent Haslett arguing and shouting at each other. He maintained the allegation in cross-examination. Firstly, it seems to the tribunal highly unlikely that Sergeant Gawne, as a Sergeant in a uniformed and disciplined force would have either regularly or at all, shouted at or argued with a Superintendent who had been three ranks above him and who had been in charge of the branch. It is unlikely that this would have been the sort of behaviour indulged in by a Sergeant or the sort of behaviour tolerated by a Superintendent. In any event, Sergeant Gawne had been called by the claimant to provide evidence on his behalf. He had provided a witness statement in place of his evidence in chief, in advance of the hearing, in accordance with Directions. Sergeant Gawne did not refer in that statement to shouting or arguing with Superintendent Haslett. He referred instead to what he described as "*micromanagement*" and to his work

coming under scrutiny by Superintendent Haslett. This tribunal notes that alleged “*micromanagement*” and different management styles are none of this tribunal’s business unless they had been related to gender discrimination or harassment. It also notes that would hardly be unusual for the work of a Sergeant to come under scrutiny by the Superintendent in charge of that Sergeant. The only interest that this tribunal has in the relationship between Superintendent Haslett and the Sergeants within the branch is, in the context of this litigation, if it provides evidence of sexual harassment on the grounds of gender or of gender discrimination. With that in mind, the tribunal notes that Sergeant Gawne did not allege that any of his complaints about Superintendent Haslett’s management style or in relation to Superintendent’s Haslett bringing his work under scrutiny had had anything at all to do with gender or with gender balancing. He did not refer in his evidence in chief to any of the remarks alleged by the claimant to have been made by Superintendent Haslett and which were repeatedly put forward by the claimant as his evidence for suggesting that there had been gender discrimination and gender harassment.

29. In cross-examination, Sergeant Gawne stated that he had had regular discussions or debates with Superintendent Haslett. These had been “constructive” discussions about events requiring policing. Both parties had been “professional”. He stated that these had not been regular and that they had not been full blown arguments.
30. The tribunal notes that the claimant is currently still based in the branch and that he currently works with Sergeant Gawne. The claimant had called Sergeant Gawne to assist him in his claim of alleged gender discrimination and gender harassment. Sergeant Gawne, as a close colleague of the claimant, who had worked in the same branch, would have known the nature of the claimant’s allegations and what the claimant was trying to prove. Despite that, Sergeant Gawne did not suggest at any point in his evidence that Superintendent Haslett had been motivated either by gender or by a desire to achieve gender balancing. The claimant’s allegations of “*regular*” arguments, involving “*shouting*” between Superintendent Haslett and Sergeant Gawne were not supported by Sergeant Gawne, or indeed by anyone else. The tribunal therefore concludes that the claimant’s allegations in this respect were, at best, overblown and exaggerated. There had been professional discussions; not arguments involving shouting. There was no evidence that the alleged “*micromanagement*” and the alleged scrutiny had not been applied elsewhere in the branch and no evidence that it had had anything to do with gender or gender balancing.
31. The claimant alleged that, once it became known in 2017 that Sergeant Ireland was leaving his post in the branch to take up another post within the PSNI, Superintendent Haslett had told members of the branch, including the claimant, Sergeant Ireland, Sergeant Kirk and Constable Hall, that this would present an opportunity for gender balancing. He further alleged that Superintendent Haslett had regularly said to members of the branch that the group of supervisory officers were “*too cock heavy*” and “*too North Belfast male dominated*”.
32. The group of supervising officers in the branch had been at that stage 100% male. The branch had been responsible for detailing overtime for police officers throughout Belfast. That group of police constables at that time had been approximately 26% female. There had obviously been a distinct lack of diversity in that group of supervising officers. It was not in dispute that Superintendent Haslett

had noted that lack of diversity and that he had been concerned about it. It is not unlawful to notice a lack of diversity; particularly when the lack of diversity is quite so obvious. It is similarly not unlawful for a manager such as Superintendent Haslett to conclude that diversity should be improved. Diversity is generally regarded as a good thing. The question is not whether Superintendent Haslett had noticed the lack of diversity or that he had decided that diversity should be improved. The question is whether he did anything unlawful to address that obvious lack of diversity.

33. This had been a relatively robust working environment. There was absolutely no evidence of anyone taking offence or being intimidated in anyway by any of the remarks which had allegedly been made by Superintendent Haslett. The claimant in particular in cross-examination openly accepted that he had not been offended by any of these alleged remarks.
34. The evidence in relation to these remarks is mixed. As indicated above, Sergeant Gawne did not give any evidence in relation to the alleged remarks. Given that he had worked, and that he continues to work, with the claimant in the branch and given that he knew of the nature of the claimant's allegations, the tribunal is surprised that his statement made no mention of any of these alleged remarks. The claimant did not call either Sergeant Ireland or Sergeant Kirk to support his allegation that Superintendent Haslett had told those two officers that Sergeant Ireland's departure would provide an opportunity for gender balancing. They would have been obvious witnesses to support the claimant's allegations in this respect. The only other person whom the claimant alleges had been present when Superintendent Haslett had made the remark about gender balancing was Constable Hall. Constable Hall did give evidence in support of the claimant's case. His evidence was that he had heard the phrase "*North Belfast male dominated*" but he did not state that Superintendent Haslett had told him, Sergeants Ireland and Kirk and the claimant that Sergeant Ireland's departure would be an opportunity for gender balancing. His failure to do so is surprising. He made a point of saying in his statement that:

*"I have been asked to provide this statement specifically in relation to words that I overheard Superintendent Haslett use that related to gender and the make-up of the Sergeant's team within Operational Planning."*

Given the particular remit, his failure to record that Superintendent Haslett had said that Sergeant Ireland's departure would provide an opportunity for gender balancing, coupled with the claimant's failure to call the other two alleged witnesses, Sergeant Kirk and Sergeant Ireland, strongly suggests the Superintendent did not make that alleged remark.

Constable Arthurs did not give any evidence in relation to the remarks alleged to have been made by Superintendent Haslett.

35. As indicated above, Superintendent Haslett accepts openly that he had noticed the obvious lack of diversity in the gender balance of the group of supervising officers in the branch. He could hardly have missed it. He openly accepts that he felt he should promote a cultural of diversity and that the group of supervisory officers should have been more reflective of the constable ranks in Belfast. None of that is either surprising or unlawful.

36. Superintendent Haslett accepts that he used the term *“too cock heavy”* on occasion to describe the situation. As indicated above, the tribunal is content that no-one had been offended or intimidated by this relatively industrial language in the setting and context on which it was used. Superintendent Haslett accepts however that had been an unfortunate choice of words.

Superintendent Haslett does not recall saying *“too North Belfast male dominated”*. That remark would have made no sense. It would have been factually inaccurate. Only two out of the five Sergeants had served in North Belfast. The tribunal can see no reason why Superintendent Haslett, or indeed anyone else, would have drawn attention to a preponderance of North Belfast officers when there had been no such preponderance. It is clear that Superintendent Haslett had noted and had expressed forcefully that the group of supervisory officers had been disproportionately male. Whether that had been expressed as *“too cock heavy”* or *“too male dominated”* does not seem to this tribunal to be of any importance. The fact was that the group of supervisory officers had been disproportionately male, when viewed against the group of constables who had been the recipient of their overtime decisions.

37. As far as the allegations of remarks are concerned, the tribunal concludes, on the balance of probabilities, that Superintendent Haslett did not suggest to the claimant, Sergeant Ireland, Sergeant Kirk and Constable Hall that Sergeant Ireland’s departure would be an opportunity for gender balancing. It seems highly unlikely that Superintendent Haslett would have said such a thing openly in front of Sergeant Ireland and the other sergeants, particularly when he had no method of controlling the intake of new sergeants. It seems even more unlikely that he did so, when Constable Hall did not state in evidence that the remark had been made and when Sergeants Ireland and Kirk were not called by the claimant to give evidence.
38. The tribunal concludes that Superintendent Haslett had stated on more than one occasion that the group of supervisory officers had been *“too cock heavy”* and *“too male dominated”*. No one had reasonably taken offence at these remarks and no one had been intimidated by these remarks. Those remarks had not been made to violate anyone’s dignity. No complaints were made at the time. Some of the language may not have been suitable for use in a cloistered convent, but this had not been a cloistered convent.
39. The tribunal concludes, on the balance of probabilities, that Superintendent Haslett had never made any remark about the group of supervisory officers or of the group of sergeants being *“North Belfast male dominated”*. That remark would have been inaccurate and would have made no sense. Constable Hall alleged in the course of his cross-examination that “two relief sergeants” who would have worked in the branch from time to time had also worked in North Belfast. However, there would appear to have been a number of relief sergeants, at least two of whom had been female. There was no evidence of when or how often any particular relief sergeant had worked in the branch, but it could only have been intermittent. This tribunal is not, in any event, tasked with determining claims of discrimination against individuals who had worked or who had not worked in a particular part of Belfast. That peculiar form of geographical discrimination is not within the jurisdiction of the tribunal.

40. One point in particular should be commented upon by the tribunal. It can be disposed of briefly. Constable Arthurs gave evidence on behalf of the claimant and he referred in some detail to a particular allegation. He alleged that Superintendent Haslett had referred to a female HR employee as “*nurse*” and that the HR employee had referred to Superintendent Haslett as “*doctor*”. Constable Arthurs suggested that he had found this behaviour “*inappropriate*”. The claimant also referred to this allegation. The claimant stated that Superintendent Haslett had been “*extremely friendly*” with the HR employee. It is unclear what the claimant or indeed Constable Arthurs sought to gain by introducing this allegation since it does not appear to have anything at all to do with the claim before the tribunal. However there is a simple explanation to all of this. The HR employee had learnt that Superintendent Haslett had a post-graduate qualification in microbiology and that he had been entitled to the title of “*doctor*”. The HR employee had joked that “*doctors need nurses*” and had referred to Superintendent Haslett thereafter as “*doctor*” and he had referred to her thereafter as “*nurse*”.
41. This had been a private joke and a piece of normal banter which had been instigated by the female HR employee, who had not been offended, intimidated or made to feel in any sense uncomfortable. It had been an entirely innocent matter. Its relevance to the current claim is obscure and it does not appear that the claimant (or anyone else) had been offended or intimidated by it. It is regrettable that the claimant sought to elevate this into something approaching a Benny Hill sketch in a gratuitous attempt to discredit Superintendent Haslett.

#### **Vacancies Created by Sergeant Ireland’s Move and Sergeant McQueen’s Move – (ii)**

42. In early 2017, Sergeant Ireland had been one of the five sergeants employed in the branch. He had applied for another sergeant’s post elsewhere in the PSNI and had been successful.
43. The claimant alleged in his evidence that it had been previously been the practice for such vacancies within the branch to be offered internally amongst members of the branch before they were advertised wider to the District (Belfast). No evidence was offered by the claimant to support this assertion. It was not supported by any of the claimant’s three witnesses. It had been the case that this had been the first occasion on which a sergeant vacancy had occurred since the claimant had been posted to the branch. It is also clear that the claimant, when he had been appointed to his current post in the branch in or about November 2014, had gone through a competency based selection process. That had been a paper based process but nevertheless a competency based process. The claimant went on to say that Superintendent Haslett “*took it upon himself*” to move another sergeant in the branch, Sergeant McQueen, from events planning to replace Sergeant Ireland in emergency planning. The phrase “*took it upon himself*” is peculiar, given that Superintendent Haslett had been in charge of the branch. It can only be read as suggesting that Superintendent Haslett had exceeded his authority.
44. The claimant had clearly raised the filling of the Sergeant’s post in Emergency Planning as a separate head of claim. For example, in his replies to the Respondent’s Notice for Additional Information on 9 September 2019, shortly before the hearing, he provided as an example of sex discrimination:

*“In mid 2017 the claimant was not offered the opportunity to move to either Sergeant Ireland’s or Sergeant McQueen’s position [Tribunal’s emphasis].*

45. In cross-examination, the claimant rapidly resiled from that allegation. He accepted that the decision to fill Sergeant Ireland’s post had had nothing to do with gender. It had been a logical decision. It had been based on Sergeant McQueen’s qualifications and experience in emergency planning. The claimant had not possessed the relevant qualifications or experience and it had made sense to retain the claimant in resources.

He stated in cross-examination, *“I have no issue with Sergeant McQueen being moved to the emergency planning post. It was not a post I felt I was equipped to carry out.”*

46. The fact that the claimant could allege that the decision in relation to the emergency planning post had been an act of sex discrimination right up to the hearing, when that allegation had not only been groundless, but apparently had not even been believed by the claimant, is disturbing. It indicates that the claimant is prepared to make allegations in support of his claim, even when he does not believe them to be true.

47. In any event, the tribunal does not see why such vacancies would have been *“offered internally”* as maintained by the claimant. There was no evidence that that had been the previous practice apart from the unsupported assertion of the claimant. It was not for any grade in the PSNI and, in this case, it had not been for the sergeants in the branch, to determine who filled duties at their grade or to determine who should be appointed to posts at their particular grade. That had been a decision for the Head of the branch; Superintendent Haslett. It was not that he *“took it upon himself”* to move Sergeant McQueen; Superintendent Haslett had made that decision, in consultation with Chief Inspector McAuley, to fill the vacancy and that decision had been part of his responsibilities as Head of the branch. It had not been part of the responsibilities of the claimant or of any of his colleagues.

48. When it was put to the claimant in cross-examination that Superintendent Haslett thought that Sergeant McQueen had been an appropriate choice for the emergency planning role, the claimant appeared initially reluctant to accept that had been correct. He replied that that had been Superintendent Haslett’s “view”. When it was put again to the claimant that Superintendent Haslett had stated that Sergeant McQueen had had extensive experience and working knowledge of the emergency planning role, the claimant accepted that. He stated *“yes I believe that that is a fairly accurate description”*. As indicated above, the claimant then went on to accept that he had not been equipped to carry out the emergency planning role.

On that basis, it is difficult for this tribunal to understand why the claimant had persisted in the allegation that there had been anything wrong in the decision by Superintendent Haslett and Chief Inspector McAuley to move Sergeant McQueen to the post vacated by Sergeant Ireland’s transfer, without first offering the post to the claimant.

Both Sergeant McQueen and the claimant were male. There was no evidence or suggestion by the claimant that he had possessed the relevant training and experience possessed by Sergeant McQueen.

49. Instead, the claimant had alleged that the choice of Sergeant McQueen had nothing to do with Sergeant McQueen's abilities, experience or training. It had instead been a decision by Superintendent Haslett in order to free up Sergeant McQueen's old role in events planning, so that it would be easier for Superintendent Haslett to engineer the appointment of a female sergeant. He argued that in some way that it would be easier to appoint a female sergeant to the role of events planning because less training and fewer qualifications would be required. That argument would only make sense if it were based on the proposition that female sergeants are generally less skilled and less trained than male sergeants. If you "dumbed down" the potential post you would attract more female candidates. This is an unusual proposition and of a type that the tribunal has not heard advanced for several decades. However, it was a proposition put forward by the claimant:

*"I believe that he (Superintendent Haslett) realised that as no essential training and experience was required to carry out this role in Event Planning, unlike my role in Resourcing, it presented a much better opportunity for him to further his policy of gender balancing."*

No evidence was presented to the tribunal to establish that female sergeants are less qualified, less skilled or less experienced than male sergeants or that female sergeants were more likely to be attracted to a post in events planning than to a post in emergency planning or in resources. That seems to be an assumption on the part of the claimant without any statistical or empirical evidence to back it up.

The claimant's argument appears to ignore the fact that at the relevant time the other sergeant involved in events planning had been Sergeant Gawne, a male. It also ignores the fact that the vacancy bulletins had only referred to a generic post of sergeant in the branch. While it had been likely that the successful candidate would be appointed to events planning, that had not been specified in the vacancy bulletin and had not been part of the competition. Applicants would not necessarily have been aware of it.

50. The tribunal concludes that the selection of Sergeant McQueen to replace Sergeant Ireland in emergency planning had been a sensible and rational decision reached by Superintendent Haslett and Chief Inspector McAuley on the basis of Sergeant McQueen's training and experience and not for any other reason. The claimant's argument that it had been part of an elaborate plot to assist in gender balancing by appointing a female sergeant makes no sense at all. Firstly the vacancy created by Sergeant McQueen's move from events planning to emergency planning was to be filled by a competency based appointment process supervised by HR and outside of Superintendent Haslett's control. Secondly, there is absolutely no evidence that advertising a generic vacancy in the branch would have made the appointment of a female sergeant any more or less likely than otherwise.

Thirdly, even if an applicant or applicants, at the time of the application, had realised or anticipated that the appointee would be placed in events planning, there is absolutely no evidence before the tribunal that females would have been more or less qualified for that work; other than the claimant's unsupported assumption that female sergeants were less qualified and experienced than males.

51. The claimant then alleged that the vacant post in events planning should have been offered to him before a sergeant's post had been advertised in the competency based process. He alleges that he had previously made it known that he had been interested in events planning. He stated in cross-examination, and for the first time, that he had made this known to Inspector Ellson in general conversation, on "*several occasions*".
52. The claimant produced no documentary evidence or indeed any corroborative evidence to support this unsupported assertion on his part. He had not identified Inspector Ellson, as the person he had spoken to about moving to events planning, in his statement. It is unclear why he failed to do so.
53. Inspector Ellson did not recall any suggestion on the part of the claimant at any time before the competition that he would have been interested in working in events planning. The tribunal concludes on the balance of probabilities that no such suggestion had been made by the claimant before 2018, long after the appointment of Sergeant Cromie. If it had been made at that time, the claimant would have raised the matter at the time when the competency based competition was being arranged. The tribunal was not referred to any evidence that the claimant had complained at the time and he did not allege that he had done so. Furthermore he did not ask Inspector Ellson, Chief Inspector McAuley or Superintendent Haslett to fill the post vacated in events planning by Sergeant McQueen. If the claimant had wanted to work in events planning, particularly if he had expressed a desire to do so, he would have done so. He would have made his wishes known and would have made his request for a lateral transfer before the competition for a sergeant had commenced.
54. The tribunal notes that the claimant did not allege that he had told Inspector Ellson, "*on several occasions*" or at all, that he wanted to move into events planning in his lengthy and detailed grievance on 10 September 2018. The tribunal also notes that he did not make that allegation in the detailed 7 page statement, which the claimant made, apparently in support of his grievance, on 13 December 2018.
55. The claimant worked at that stage with Sergeant Kirk in resource planning. The claimant had undertaken specialist IT training in that regard. There had been no need to move him from that post for which he had completed the relevant training and in which he had been experienced. If the claimant had been moved, it would have required another sergeant to have already acquired the IT training, or to undertake that training, and then to acquire the necessary experience in relation to resourcing.

The tribunal therefore concludes, on the balance of probabilities, that the decision to not offer the claimant the post in events planning before arranging a competency based competition had been a sensible decision and not a decision which had been in anyway unlawful, or in any way for an improper purpose, such as the claimant's gender or to promote gender balancing.

#### **The Awarding of the Sergeant Vacancy in the Branch in "Events Planning" to Sergeant Cromie (Female) (iii)**

56. A generic sergeant's vacancy in the branch was advertised throughout the Belfast District following the move of Sergeant McQueen to the emergency planning post

previously occupied by Sergeant Ireland. The vacancy was awarded to Sergeant Cromie following a competency based interview and she was posted to events planning. Superintendent Haslett did not sit on the interview panel and took no part in that interview or in the marking process.

57. It is clear that in the run up to this competition Superintendent Haslett had encouraged various sergeants to apply for the vacancy. At least two of the sergeants were female. At least one those sergeants had been male. He has also congratulated another male sergeant who had already applied in the competition. The claimant accepts that Superintendent Haslett and Chief Inspector McAuley would have viewed this post as an important post. It carried responsibility for planning for major sporting events. If an indication of its importance were required, one need only think of the events at Hillsborough in England. They would therefore have wanted to see a wide field of suitable candidates. When the claimant was asked to explain why it had been 'sinister' that Superintendent Haslett had encouraged candidates, he replied "*there was a degree of suspicion – I can only say how I felt – it was a suspicion*".

This appears to be another example where the claimant was prepared to attribute malign motives to normal actions.

58. The application form from Sergeant Cromie had been countersigned by Inspector Ellson. Such a form would normally have been countersigned by the applicant's line manager. Inspector Ellson explained that Sergeant Cromie's line manager, Inspector Hardy, had been on leave and that no-one at inspector rank, other than himself, had been available. Sergeant Cromie had asked him to countersign the application form. That evidence was not rebutted. Sergeant Cromie was not called to give evidence.

It is unclear what point the claimant was seeking to make in this matter in relation to the present claim. However the tribunal accepts the explanation put forward by Inspector Ellson. This does not seem to be anything indicative of gender discrimination or of gender planning. It seems to be the sort of routine administrative short cut which would occur in any organisation.

59. The claimant's argument in relation to this competition is difficult to follow. In his witness statement he alleged that Superintendent Haslett had been "*ultimately responsible for overseeing the process. He selected and appointed the interviewing panel and his position permitted him to directly influence the process which resulted in Sergeant Cromie being appointed to the role within events planning.*" (Tribunal emphasis)
60. However, when pressed in cross-examination, the claimant stated that he was not in fact alleging that any of the interview panel members had been influenced by Superintendent Haslett and that he had no cause to impugn the decision of the interview panel. He also accepted, in cross-examination, that Sergeant Cromie, out of all the candidates, had been the best candidate for the post.
61. The tribunal therefore concludes that there is no complaint before this tribunal about the decision of the interview panel to appoint Sergeant Cromie to the sergeant vacancy. The claimant appeared initially reluctant to say that clearly. However he stated: "*I have no evidence to say anything untoward occurred in the process*" and

when asked directly whether he was alleging that the interview had been a “fix”, he said that he had “no information to substantiate that”. It appears that the absolute height of the claimant’s complaint in this regard appears to have been his belief that Superintendent Haslett had encouraged only female sergeants to apply for this vacancy. He stated that it had been “a big coincidence” that a female sergeant had been successful. Even if his belief that only female sergeants had been encouraged to apply had been correct, it is difficult to see how the claimant had concluded that Superintendent Haslett’s position had enabled him to “directly influence the process”. In any event, the belief was incorrect. Superintendent Haslett had encouraged at least one male sergeant to apply for this vacancy, Sergeant Lee Patton. Furthermore there was no suggestion that male sergeants had been discouraged or prevented from applying in this competition.

62. As indicated above, the tribunal does not accept that he had told Inspector Ellson that he had been interested in events planning. That allegation appears nowhere in the contemporaneous documentation. He did not query this at the time of the competition. The allegation made by the claimant in specific terms that Superintendent Haslett had used his position “to directly influence” the interview process and to directly influence the appointment of Sergeant Cromie is a serious one. Nevertheless, it appears to have been based on nothing more than the claimant’s speculation and was entirely divorced from any evidential basis. It is another example of a serious allegation being made carelessly and on nothing more than a stated “belief”, “perception” or “suspicion”. The claimant knew that the decision of the interview panel had been a fair one. Yet he alleged, in plain terms, in his evidence in chief, that it had been “influenced” by Superintendent Haslett. That was an allegation of serious misconduct against both Superintendent Haslett and the members of the interview panel. It was made without evidence. The claimant, given his occupation and experience, can be taken to know the difference between allegations based on evidence and unsupported speculation.

63. The claimant continued to raise vague allegations about the interview panel in the course of cross-examination on the afternoon of the second day. He stated he “felt” Superintendent Haslett had picked the panel. When asked, if that were correct, whether Superintendent Haslett had picked a panel of anti-male bigots, the claimant stated he had no evidence of that.

When asked to state specifically what he was alleging Superintendent Haslett had done wrong in relation to the interview process, the claimant stated that he had no evidence he had done anything wrong. He just thought it had been “coincidental” that a female had been successful. The fact that a female applicant had been successful appears to have upset the claimant, even though, in cross-examination, he accepted that she had been the best candidate for the post.

64. The claimant then argued that he had been equally as qualified as Sergeant Cromie for the post in events planning but then accepted that he had been more qualified than Sergeant Cromie for his own role in resource planning.

#### **The Issuing of a Second Vacancy Bulletin - (iv)**

65. This was an issue which arose for the first time in the cross-examination of Superintendent Haslett. It had not been raised before by or on behalf of the claimant in his witness statement, his claim form, or in the interlocutory process. It

is entirely unsatisfactory that such an issue was raised at such a late stage and without warning. It resulted in disruption of the tribunal process and should have been entirely avoidable.

66. It necessitated additional oral evidence in chief from Chief Inspector McAuley and the calling of an additional witness from the respondent's HR Department, Mr Brian McCarthy.
67. It would appear from the cross-examination of Superintendent Haslett and indeed from the submissions made on behalf of the claimant that the substance of the claimant's complaint in relation to this point was that a decision had been made by Superintendent Haslett and others to issue a second vacancy notice to facilitate gender balancing within the branch. In an ingenious, but not entirely convincing, mathematical argument, Counsel for the claimant sought to argue that such a decision would have increased the likelihood of the appointment of a female candidate. The tribunal does not see the basis for any such argument. Increasing the field of candidates would be likely to increase the numbers of both female and of male applicants in proportion. Even if such a basis existed, it is difficult to see how any of this could legitimately be construed as a detriment to the claimant. He remained in his post, unaffected by the competition and had not asked for a lateral transfer to events planning before, during, or immediately after the competition for the sergeant's vacancy. The mathematical argument advanced by the claimant was in any event based on the unproven assumption that one in four sergeants (both male and female sergeants) had emergency planning training. Furthermore, there was no evidence that anyone involved in the decision to issue the second vacancy bulletin had formulated the mathematical theory advanced in the course of the hearing by Counsel or that they had considered anything other than the desirability of attracting a wide field of candidates. This is a direct sex discrimination claim not an indirect sex discrimination claim, so contorted mathematical theories based on unproven assumptions have limited value.
68. In any event, the initial vacancy bulletin for the vacant sergeant's post in the branch had a closing date of 11 May 2017. That vacancy bulletin required a certain commitment period ie a certain period of service that appointees were required to commit to the new role. That clashed with existing commitment periods that potential applicants would have had in their then current roles.
69. The initial vacancy bulletin produced 11 applicants. One of those applicants was excluded as ineligible because he/she was not serving within Belfast. Two were ineligible through central commitment periods (standard commitment periods following promotions etc) and a further two applicants were considered ineligible through local commitment periods (commitment periods peculiar to particular posts). It would appear that at least one of the eligible applicants had been a female sergeant. It was not alleged by the claimant that the eligible candidates had been exclusively male. It would appear from the documentation that several male applicants and only one female applicant had been declared ineligible. The claimant does not appear to argue that relaxing the commitment period criterion would have benefited only female applicants. In the absence of any evidence of disproportionate gender impact, the tribunal assumes it would have benefited both genders equally. Again, the tribunal reminds itself that this is not an indirect sex discrimination claim.

70. There had been a discussion between Chief Inspector McAuley, Superintendent Haslett and the HR Department concerning the possibility of waiving or adjusting the necessary commitment period to increase the number of applications. It is, as indicated above, entirely unclear how the claimant alleges that such a decision would have had anything to do with gender or how it could reasonably have been perceived to have produced an increased likelihood of female applicants or a female appointee. Again, as indicated above, even if these arguments had some basis in fact and logic, it is difficult to see how any of this could reasonably be construed as being detrimental to the claimant who had not asked for a lateral transfer to events planning and who would, in any event, have been entirely unaffected by the result. He would have remained, and did remain, in his existing post doing the same work.
71. The tribunal also notes that a male sergeant applicant who had applied outside the time limit in response to the first vacancy bulletin, had been allowed to take part in the competition. That does not suggest a conspiracy to disadvantage or to discourage male applicants.
72. In response to the first vacancy bulletin, almost half of the applicants had been ruled out and it had been reasonable to assume that several other potential applicants simply did not apply because of commitment periods or perhaps only because of local commitment periods. It had been entirely proper for the local management ie Superintendent Haslett, Chief Inspector McAuley and the HR Department to issue a second vacancy bulletin with an adjusted commitment period in order to attempt to increase the number of applicants. This had been an important post which involved the planning for major sporting events within the Belfast District and it had therefore been reasonable to ensure that the widest pool of candidates could be attracted. Superintendent Haslett stated that he wished *“to increase the pool of the best candidates for this role”*. Mr McCarthy from HR confirmed that the issue of commitment periods had been raised even before the first vacancy bulletin had been issued and that *“senior management had wanted as large a pool of candidates as possible”*. He further confirmed that the second vacancy bulletin had not been issued to promote diversity.

Chief Inspector McAuley stated that the role of sergeant in the branch was regarded as *“pivotal”*. The branch had been seen as the *“engine room”* of the Belfast district. It required applications from the best sergeants in Belfast. The decision to relax the commitment period criterion and to reissue the vacancy bulletin had not been based on gender or to promote diversity. The tribunal accepts that this is correct.

73. There was no evidence that any of this had anything at all to do with gender or with gender balancing. There was no evidence that it had caused any detriment to the claimant or that it could even have affected him.

**That Superintendent Haslett and Inspector Ellson had attempted to reduce the Roles and Responsibilities of the Claimant – (v)**

74. The claimant alleged that once Sergeant Cromie had been appointed to the branch and given the responsibility for sporting events, Superintendent Haslett’s behaviour towards him had deteriorated. The claimant alleged that it had become *“demeaning and almost mocking”*. The claimant had failed to give many examples of this *“demeaning”* and *“almost mocking”* behaviour and had failed to explain why this

change in attitude had allegedly occurred after the appointment of a female sergeant and not before that appointment. The claimant persisted throughout the hearing in arguing that the reason behind Superintendent Haslett's attitude had been a desire to achieve gender balancing. It is therefore odd that this alleged change in attitude occurred only after the appointment of a female sergeant and not before. As noted above, this is also entirely inconsistent with the position adopted by the claimant in his grievance and in his supporting statement to the grievance. In that grievance statement he alleged that Superintendent Haslett had changed his attitude to the claimant shortly after his appointment as Superintendent in the branch; not some months later, when Sergeant Cromie had been appointed to the branch.

75. The claimant alleged that on 5 October 2017, Superintendent Haslett had been the Silver Commander responsible for an "*international football match in Windsor Park*". The Superintendent had been relatively new to the area of work. It had been one of his first duties as a Silver Commander at such an event. He had queried why both the claimant and a constable had been on duty in the control room. The claimant alleges that this query was another example of a campaign of harassment to force him from his post as a male. He had received no further duties of this type after 5 October 2017.
76. Chief Inspector McAuley said that Sergeant Cromie had been the sergeant in charge of sporting events and that such duties fell to her. The claimant accepted that Sergeant Cromie had been recently appointed as the lead planner for those events. However he felt it was all "*slightly unfair*".
77. When asked what this had to do with gender, the claimant simply repeated that he had been challenged on 5 October 2017. When pressed again to explain why this had been related to gender, the claimant referred to his perception and belief that he had been challenged and then excluded from these duties because of an ongoing campaign by Superintendent Haslett. He was reluctant to address the point that Sergeant Cromie had recently been appointed as the lead planner for sporting events, and therefore had been the person who would naturally undertake these duties. When specifically challenged that this had been the reason why she had performed these duties thereafter, he stated "*I accept that.*" It therefore does not appear that the claimant, at that point at least, was persisting in his complaint that he had not performed that particular duty since October 2017 because of a campaign of harassment.
78. It is clear that Superintendent Haslett, as the overall commander on the day, had been entitled to query the fact that two officers had been in the control room. It is equally clear that, having received an answer, he had been satisfied. The claimant accepted in cross-examination that Superintendent Haslett had been entitled to raise the query.
79. The allegation by the claimant in this respect is wholly fanciful and groundless. It is difficult to understand why the claimant had advanced this incident as evidence "of a campaign to force me from my post because of my gender" and why the time of the tribunal has been wasted in this manner. There had been a simple query by Superintendent Haslett which had been answered to his satisfaction. Thereafter Sergeant Cromie, as the lead planner for sporting events, had performed these duties. There was no evidence on which a reasonable tribunal could infer that this

had anything to do with gender or gender balancing.

80. The claimant also alleged that, on 3 November 2017 at an away day for the branch held at the University of Ulster, Superintendent Haslett had stated in the hearing of those present, that many aspects of the claimant's role, particularly those relating to the detailing of overtime for sergeants, were unnecessary and could be carried out by a constable.

Superintendent Haslett's evidence was that it had been Chief Inspector McAuley who had originally raised the issue about the detailing of sergeant's duties and that the point had been made that if it did not require an inspector to detail overtime for inspectors, (a constable had been responsible for this duty) then it would not require a sergeant to detail overtime for other sergeants. Superintendent Haslett stated that this had been discussed openly in the context of an away day and had not been intended to belittle or demean anyone but to use resources more efficiently. It also appears that Chief Superintendent Roberts had also advanced the view that detailing of overtime could be done by civilian staff.

In any event, this suggestion was not implemented. Even if it had been, it would have applied to all sergeants, including Sergeant Cromie, who was female. The claimant accepted that the suggestion had been tried elsewhere. In his view, "*it was great in theory*", but it had not worked. The claimant may have had his own views on the "*civilianisation*" of posts, but it is extremely difficult to regard discussion of such a suggestion, which had not been unique to this branch, as an attempt to "*belittle*" or "*undermine*" the claimant.

The claimant alleged that the term "*cock heavy*" had been used by Superintendent Haslett during that planning day. No-one else supports that allegation. He denies it. It seems unlikely that such a remark would have been used by Superintendent Haslett in front of the Chief Superintendent in this context. On balance, the tribunal concludes that the remark was not made on that day.

81. It emerged in the course of cross-examination that the claimant was adamant that he did not detail his own overtime. When pressed further, he indicated that his overtime had been detailed by Sergeant Kirk (who worked in the same office as the claimant) and occasionally by police constables within the branch who were subordinate to both the claimant and Sergeant Kirk. It also emerged that the claimant detailed overtime for Sergeant Kirk. It was the sort of circular arrangement which would naturally draw attention from supervising officers. It does not appear to the tribunal that there had been anything wrong in these matters being discussed. If it had been good enough for inspectors for overtime to be detailed by constables, it had been good enough for sergeants.

The complaint, like many others advanced by the claimant, indicate a degree of over-sensitivity.

#### **That the Claimant had been excluded from lunch-time breaks – (vi)**

82. The claimant presented no evidence in relation to this matter. This complaint was not mentioned in the claimant's witness statement – his evidence in chief. Again the tribunal wonders why this complaint had been advanced in his IT1 and in the interlocutory process and then not advanced in the claimant's evidence in chief or

during the hearing. It appears to have been added as a 'make weight' and then forgotten about. It was not mentioned in his detailed grievance on 10 September 2018. It was not mentioned in his statement of 13 December 2018.

**That Superintendent Haslett had ignored, overlooked and bypassed the Claimant in relation to financial matters and meetings – (vii)**

83. There were two sergeants at the relevant times in the resource part of the branch. They were the claimant and Sergeant Kirk. Both were male. In essence, the claimant's allegation is that Superintendent Haslett spoke more often to Sergeant Kirk than he did to him and that Superintendent Haslett felt that Sergeant Kirk had been more knowledgeable than the claimant in relation to these matters. Since both sergeants were male, it is difficult to understand the point that the claimant is seeking to make in relation to gender and to gender balancing and why the time of the tribunal has again been taken up with this complaint.
84. The claimant accepted in cross-examination that he had no evidence in his statement in relation to specific incidents where he had not been included in a decision on a particular date in relation to a particular matter. He accepted that his complaint in this regard was largely based on a general perception or belief, without detail; a surprising proposition from a police officer of significant experience. He stated that this "*came from Sergeant Kirk*" who would, according to the claimant, have regularly told him that he had been excluded. The claimant can be taken to know the difference between hearsay, particularly vague undetailed hearsay, and direct evidence. Yet he did not call Sergeant Kirk to give evidence on his behalf; if necessary, on foot of a Witness Attendance Order.

A great deal of the claimant's evidence in this hearing was restricted to repeating that his complaints were based on his "*belief*" or his "*perception*".

85. The claimant alleges that Superintendent Haslett had told him that Sergeant Kirk had been his "*go to guy*" when it came to financial matters. The claimant stated that he had found this comment hurtful. Again, since Sergeant Kirk had been a male, it is difficult to see where this allegation is going in relation to the current claims. Even if Superintendent Haslett had conducted a campaign against the claimant, as he alleges, it is difficult to see why the campaign would have been directed against the claimant and not also against Sergeant Kirk if the motivation, again as argued by the claimant, had been gender or gender balancing.

There were weekly pace setter meetings within the branch which had been organised by Superintendent Haslett. They included supervising officers and could also include civilian employees from finance and HR. The claimant alleges that on 10 January 2018, before such a meeting, Sergeant Kirk had been invited to attend a finance meeting with Superintendent Haslett. The claimant alleges that he had been excluded from that meeting. He further alleges that this had been part of a campaign to undermine his position and to drive him out so females could be appointed. There was no evidence that both sergeants in resourcing, ie both the claimant and Sergeant Kirk, had been required at this particular meeting. The claimant's concern appears to have been that he had previously raised a complaint and that he should therefore have been invited to every meeting. That does not make sense. It was for Superintendent Haslett to decide if he needed two sergeants or only one sergeant at a particular meeting, and, if so, which sergeant.

In any event, Sergeant Kirk was a male. The claimant accepted that this particular incident had had nothing to do with gender.

The claimant further alleges that on 22 January 2018 Superintendent Haslett had spoken to Sergeant Kirk *“in a whispered voice”* and that he had been intentionally excluding the claimant from that conversation. It may perhaps have been that, in an office containing more than one person, Superintendent Haslett was trying to avoid disturbing or distracting others, including the claimant, from their work. This had been a conversation about funding for additional patrols. It had had nothing to do with gender or gender balancing. When Sergeant Kirk then went sick, the claimant was asked to take over this work. Superintendent Haslett did not ask a female sergeant or a female civilian worker to take over this work. None of this suggests gender discrimination, gender harassment or gender balancing.

Again the claimant has demonstrated only his over-sensitivity and his ability to attribute malign motives to entirely normal events.

86. The claimant alleges that on 14 February 2018, at another weekly pace setter meeting, Sergeant Kirk had not been present. Superintendent Haslett had asked the civilian employee from PSNI finance to provide a financial update. The claimant regarded this as an attempt to *“undermine and embarrass me”*. There was no evidence to support this allegation. It is difficult to see how asking a finance official to give a presentation on financial matters could have undermined or embarrassed the claimant. There was no allegation from the claimant that he had been prevented from speaking during this meeting. The height of his complaint in this regard appears to be that the finance official was asked to give his presentation first. This seems to be yet another occasion where the claimant has chosen to misinterpret an entirely normal event. If Superintendent Haslett had really been trying to drive out the claimant (and not any other male) to bring in a female sergeant, this incident would have been a fairly half-hearted effort on his part.
87. The claimant alleges that on 26 March 2018 he complained to Inspector Ellson about his roles and responsibilities and alleged that his role had been diminished to such an extent that he no longer had sufficient work. The claimant alleges that on further occasions he had noticed that his work had diminished.
88. Inspector Ellson stated in cross-examination that he had never been told that the claimant had been short of work. He stated that if he had been told this he could have found plenty of work for the claimant to have done. There does not appear to be any contemporaneous documentation relating to any such complaint by the claimant.

In fact, the claimant does not appear to have stated in the course of his year-end review for 1 April 2017 to 31 March 2018 that he had been underemployed; much less underemployed deliberately. The line manager, Inspector Ellson stated *“Given the changing nature of the resourcing picture across Belfast, this has been a challenging year.”* (Tribunal emphasis)

In the in-year review for the same year, the claimant stated:

*“Through a process of regular supervision and engagement with staff in the Ops resourcing office I have managed to ensure the effective delivery of*

*policing across the city to meet the increasing demands.”*

*[Tribunal emphasis]*

89. The tribunal, on the balance of probabilities, concludes that the claimant had not been left short of work.
90. The claimant stated that he approached Superintendent Haslett on 13 November 2017 to complain about these issues and that he had stated that he was being excluded.
91. Superintendent Haslett stated in evidence that he had been surprised by the issues raised by the claimant on 13 November 2017. He accepted that Sergeant Kirk had been, up to that point, his lead for financial issues within the branch and that Sergeant Kirk would have had regular discussions with him in relation to that area. That had been daily business and not to the exclusion of the claimant.
92. The tribunal will deal in more detail with the meeting of 13 November 2017 at a later point in this decision.
93. The claimant alleged that Superintendent Haslett had wanted to reduce the number of sergeants in the branch to force the claimant out of his job, in order to achieve gender balancing. However, it is clear that Superintendent Haslett had argued for the retention of the five sergeants posts when a review of those posts had been ordered by Chief Superintendent Roberts.
94. It is clear that Superintendent Haslett told the claimant that others had raised questions about the claimant attending the gym within working hours. He did not stop the claimant using the gym. He did not discipline the claimant. He simply told him that others had noticed and had commented on his practice of going to the gym during working hours.

#### **That Superintendent Haslett had unduly Scrutinised the Claimant in relation to his Overtime Earnings- (viii)**

95. It is clear from the evidence of Superintendent Haslett, Chief Inspector McAuley, Inspector Ellson and Chief Superintendent Roberts that they had felt significant concern at the levels of overtime being earned within the PSNI and in particular significant concern at the numbers of officers who had been detailed to cover events within Belfast. The Assistant Chief Constable received a monthly report showing the amounts of overtime earned by the top earning officers in the PSNI. Members of the branch were frequently represented within that list and the claimant appeared particularly frequently. The claimant accepted in cross-examination that he “*now*” was aware that the Assistant Chief Constable had raised concerns about the overtime earned by him and that he had not raised concerns about Sergeant Cromie who the claimant had been putting forward as a comparator. The claimant confirmed that he was not alleging that the Assistant Chief Constable had been motivated by gender or by a desire to promote gender balancing. The claimant accepted that there had been a perception of unfairness in relation to the allocation of overtime. Some of those responsible for allocating overtime in Belfast had been among the highest overtime earners. Other police officers felt that they had been treated unfairly. He further accepted in cross-examination that it had been “*legitimate*” to raise this issue with him. He stated that his only concern had

been the way it had been raised with him – *“but it was just the way I was challenged”*.

96. Chief Superintendent Roberts, had been concerned that *“too much resource”* ie too many police officers, were being detailed to work overtime to cover events within Belfast. He had worked to reduce that amount of overtime. That overtime bill for the year of 2016/2017 had been reduced from £7.55 million to £6.41 million in 2018/2019.
97. The Assistant Chief Constable had raised the issue of excessive overtime within the branch and, in particular, the overtime worked by the claimant, with Chief Superintendent Roberts who had raised this issue with Superintendent Haslett and had directed him to ensure increased scrutiny in this regard.
98. In the full year to December 2017, the claimant had worked 1,020 hours overtime, Sergeant Gawne had worked 835 hours overtime, Sergeant Cromie had worked 642 hours overtime, Sergeant McQueen had worked 483 hours, Sergeant Kirk 428 hours and Sergeant Ireland 137 hours. In the year 2016/2017, the claimant appeared in the top 15 overtime earners in nine out of the twelve monthly reports.

Further figures in relation to the period between 1 September 2017 and 30 June 2018 were also produced. It was an overtime report for the five sergeants in the branch. It showed that, in this period, the claimant had worked almost 840 hours overtime. Sergeant Gawne had worked 795 hours and Sergeant Cromie 601 hours. The claimant had worked approximately 240 more hours' overtime than Sergeant Cromie.

99. The claimant referred in cross-examination to a small number of officers who had worked more overtime than he had. However these were not sergeants who had been responsible for the allocation of overtime. There was, in any event, no evidence that their own line management had not spoken to them about their overtime. They also appear to have been front line officers. They had not worked in the branch and had not been the responsibility of Superintendent Haslett.
100. Superintendent Haslett and Chief Inspector McAuley had spoken to each of the five sergeants in the branch about the concerns expressed by the Assistant Chief Constable. The position did not change following those initial discussions. Eventually both Sergeant Gawne and the claimant were spoken to individually about their overtime by Superintendent Haslett and Chief Inspector McAuley. In cross-examination, the claimant accepted that Sergeant Gawne had also been spoken to about his overtime. The claimant had not been singled out.
101. The claimant was first challenged about his overtime on 18 December 2017 when Inspector Ellson called him to his office. Inspector Ellson told the claimant that Superintendent Haslett had queried his overtime earnings and that he had been instructed to monitor those earnings. The claimant was challenged again on 29 January 2018 when he was asked to attend Superintendent Haslett's office. Superintendent Haslett and Chief Inspector McAuley were both there. They queried his overtime. The claimant alleges that the discussion had been hostile and intimidatory and that he had been ambushed. The evidence from Superintendent Haslett and Chief Inspector McAuley is entirely different. Both were clear that the claimant had reacted angrily to his overtime being challenged and that he had

become aggressive and almost insolent.

In cross-examination, the claimant accepted that Superintendent Haslett and Chief Inspector McAuley had been correct to raise the issue. His only complaint was the *“format”* of the meeting. He referred to being interviewed by *“both”* Superintendent Haslett and by Chief Inspector McAuley. He stated that he should have been interviewed by one person and not by two. He referred to the *“door being closed”*. He stated that he felt *“sick”* at what he regarded as accusations. He denied that he had become *“aggressive”*; he stated instead that he had become *“defensive”* and that he had *“challenged”* Superintendent Haslett.

102. The tribunal prefers the evidence of Superintendent Haslett and Chief Inspector McAuley in relation to this meeting. They had been obliged to raise the claimant’s overtime. They could hardly have told the Assistant Chief Constable that they were not prepared to do so. There was nothing wrong in the two officers speaking to the claimant. Having observed the claimant, it seems highly unlikely that he had felt *“intimidated”* by such a meeting. Furthermore, when discussing pay, it would not be unusual in any employment situation for the door to be closed. The claimant also accepted in cross-examination that he had become *“defensive”* and that he had *“challenged”* the Superintendent. There might be very little difference between being *“aggressive”* and being *“defensive”* and *“challenging”* Superintendent Haslett.
103. A new policy was introduced on 20 April 2018 by which Inspector Ellson had to authorise any overtime to be worked by the sergeants in the branch. It had applied to the entire Belfast district and not just to the branch. It affected all sergeants, whether male or female, and not just the claimant. The claimant alleges that his overtime had *“plummeted”* thereafter. He stated that he felt this had been *“disproportionate”*. However, any reduction simply reflects the fact that he had previously been a high earner.

The claimant in cross-examination then went on, in the course of his cross-examination, to complain that working high levels of overtime had affected his welfare. He stated that he had not wanted to work high levels of overtime. He complained that no-one had raised welfare issues with him. He cannot complain simultaneously of too much overtime and too little overtime. It is somewhat contradictory. It is therefore difficult to understand the point the claimant was trying to make; particularly in the context of a claim of gender discrimination and harassment.

104. The tribunal concludes that the arrangement whereby Sergeant Kirk allocated overtime to the claimant and the claimant allocated overtime to Sergeant Kirk, interspersed with constables, who had been subordinate to both, allocating some overtime to both, had been a procedure which had been bound to attract attention, given the amount of money that was being earned and given the frequency with which the claimant appeared in the list of top earners scrutinised on a monthly basis by the Assistant Chief Constable. It had added to a general perception of unfairness in relation to the allocation of overtime. The tribunal sees no reason to infer that this had had anything at all to do with the claimant’s gender or anything at all to do with gender balancing.

105. The claimant alleged throughout the hearing that Sergeant Cromie had earned “*equitable*” levels of overtime throughout the relevant periods. He produced no evidence to this effect. The tribunal was drawn specifically to the figures for the year to December 2017 which indicated that the claimant had earned 1020 hours overtime and Sergeant Cromie had earned only 642 hours. The tribunal therefore concludes that the claimant had throughout the relevant periods been consistently a high earner of overtime, as indicated by Superintendent Haslett, Chief Inspector McAuley and Inspector Ellson. Sergeant Cromie had not worked as much overtime and the Assistant Chief Constable had not referred to her overtime. The figures produced by the respondent have not been challenged by the claimant and the claimant has had sufficient time within which to prepare any rebuttal.

The claimant, at one point in his cross-examination, sought to argue that for a period in 2018, Sergeant Cromie had been injured and therefore unavailable for overtime. That is irrelevant. The reason why Sergeant Cromie did not do as much overtime as the claimant does not matter. The fact is that she did less overtime than the claimant and therefore the ACC had not complained about her overtime. The claimant then complained that after this period Sergeant Cromie had told him that she had not been subject to as much scrutiny in relation to overtime as he had been. The claimant produced no evidence to support this complaint. In particular, he did not call Sergeant Cromie to give evidence. Again, the claimant can be taken to know the difference between hearsay evidence and direct evidence.

106. The introduction of the new policy whereby Inspector Ellson had to authorise overtime earned by sergeants within the branch appears to be a sensible procedure and again cannot reasonably be regarded as anything to do with gender or gender balancing. Inspector Ellson would have had to approve overtime work by Sergeant Cromie in exactly the same way as he had to approve overtime worked by the claimant.
107. It is also clear that two sergeants had been spoken to by Superintendent Haslett and Chief Inspector McAuley in relation to the levels of overtime they earned. They were the claimant and Sergeant Gawne. It is notable, that although Sergeant Gawne had been called by the claimant to give evidence on his behalf, he did not raise any complaint about the scrutiny of his overtime and he did not make any allegation that any such scrutiny had been due in any way to gender or gender balancing.
108. The claimant stated that the scrutiny of his overtime had “been part and parcel of the treatment of me to force me from the branch to recruit more female officers”. The tribunal does not accept that that had been true. Increased scrutiny of everyone’s overtime had been inevitable. It had also been inevitable that high earners would attract particular scrutiny. It had nothing to do with any campaign to force the claimant, or Sergeant Gawne, out of the branch.
109. The tribunal concludes that Superintendent Haslett and Chief Superintendent Roberts had both been entitled, if not obliged, to be concerned about the levels of overtime earned within the branch, particularly when that branch had been the branch responsible for allocating overtime within the Belfast District. It simply had looked wrong that the claimant had consistently been one of the high earners when he had been responsible for allocating that overtime and when he had not been a frontline officer. It is also, to this tribunal, slightly concerning that a system had

operated for some time whereby the two sergeants in the resource part of the branch allocated overtime to each other and to others without any need for authorisation or particular scrutiny. The new policy had been long overdue.

**That Superintendent Haslett, had stated to the Claimant in from of the other Sergeants that he would make a good trainer – (ix)**

110. This incident occurred on 14 February 2018 during a weekly pace setter meeting. The claimant had been present at that meeting along with Sergeant Cromie, Inspector Ellson and other members of the branch. Sergeant Kirk had not been present at that meeting. In the course of that meeting there had been a conversation relating to a vacancy within District Training. The claimant alleges that Superintendent Haslett stated:

*“That would be a good job for you Mickey, you would make a good trainer.”*

The claimant alleges that he was shocked and hurt by this comment and had felt extremely embarrassed and humiliated. He stated that it was evident that Superintendent Haslett had been intent on *“bullying me from my post”*.

111. There was no evidence before the tribunal that a training job was, or could be, regarded as a demeaning post or a post of lesser value. Indeed the unrebutted evidence from Superintendent Haslett had been that this would have been regarded as a relatively prestigious post. It is difficult for the tribunal to understand the claimant’s stated reaction to this remark. A suggestion that he would make a good trainer does not appear to this tribunal to be, of itself, capable of being reasonably regarded as demeaning or humiliating. There was nothing in the context in which that suggestion had been made to indicate that it has been meant as an insult.

112. Superintendent Haslett did not recall making this remark. Inspector Ellson did recall the remark which he described as an *“attempt at humour”*. Inspector Ellson stated that nobody present found it funny. He also recalled that the claimant had informed him that he felt the remark had been aimed at undermining him and potentially ousting him from the branch. Inspector Ellson stated that he felt it was a poor attempt at a joke. No complaint had been lodged by the claimant at that time.

113. As indicated above, it is difficult to understand the claimant’s stated reaction to this remark. On balance, we conclude the remark, however phrased, had been made in the context of a friendly meeting amongst colleagues. It could not reasonably have been treated as a demeaning or insulting remark.

**That Superintendent Haslett had avoided contact with the Claimant when he sought to complain about his treatment – (x)**

114. This allegation has to be considered against the background of a relatively small branch where there clearly had been regular contact between the superintendent, the chief inspector, the inspectors and the sergeants. There had been weekly pacesetter meetings which had been instigated by Superintendent Haslett, at which all those officers had attended to discuss the work of the branch. The claimant accepted that he had always been invited to those pacesetter meetings and indeed that he had usually attended. Given the ongoing work of the branch and given the regularity and detail of those pacesetter meetings, the allegation that

Superintendent Haslett had sought to avoid the claimant has little merit.

115. It is difficult to extract the relevant incidents from the long list of incidents put forward by the claimant in support of his claim. However the claimant alleges that he had been particularly upset after the away day for the branch at the University of Ulster on 3 November 2017 which has been discussed earlier in this decision. He states and it is accepted by the respondent that he arranged a meeting with Superintendent Haslett on 13 November 2017, shortly after that away day, to inform Superintendent Haslett that he had been upset and that he had felt demeaned by the away day. Superintendent Haslett accepted that it had been clear the claimant had stated on that date that he had felt overlooked in relation to financial matters and that the purpose of the meeting on 13 November 2017 had been for him to voice concerns about that in particular and also about the away day at the University of Ulster.
116. The claimant alleged that Superintendent Haslett had stated that he wondered why there had been five sergeants in the branch. Superintendent Haslett stated and the tribunal accepts that Chief Superintendent Roberts had asked that all the superintendents in the Belfast district review their sergeants' posts and that they should consider whether those posts were necessary. Superintendent Haslett stated "*this was raised by my boss to me – all superintendents in Belfast were told to review their sergeants' posts.*" It is not alleged by the claimant that Superintendent Haslett had referred specifically to the claimant's post. The tribunal accepts that Superintendent Haslett had been "*repeatedly challenged*" by Chief Superintendent Roberts to consider whether all his sergeants' posts were necessary. The tribunal also notes that five sergeants' posts remain in the branch and that the claimant remains in post.
117. Before that meeting on 13 November 2017, Superintendent Haslett accepted that Sergeant Kirk, the other sergeant in resources, would have provided him with the vast majority of the financial information that he required. Superintendent Haslett stated that he had been "*genuinely surprised*" that the claimant had felt offended or demeaned. Superintendent Haslett stated that until that meeting he did not realise the extent of the claimant's skill set and that following that meeting he "*resolved to make him feel more included*".
118. It is clear that Superintendent Haslett had initially felt that Sergeant Kirk (a male) had been the lead in financial matters and that he had received more information from Sergeant Kirk than from the claimant (a male). It is also clear that the situation had been clarified at this meeting. It is difficult to see how this could have had anything to do with gender discrimination or gender harassment.
119. The claimant also alleged that in the course of that meeting on 13 November 2017 Superintendent Haslett had remarked about him going to the gym. However that appears to have been no more than Superintendent Haslett indicating to the claimant that other members of staff had commented on the claimant's practice of going to the gym in working hours on a regular basis. Superintendent Haslett stated that "*this was a line repeated to me by others*". He stated "*I had in the mind the reputation of the branch*" and further stated "*it is not the case that every sergeant had the time and opportunity to go to the gym.*"

There was no evidence that any female officer or female civilian worker had also used the gym on a frequent basis and that she had not been spoken to by Superintendent Haslett. There was no evidence that this incident had been in any way unusual or that it had had anything to do with gender.

120. The other incident which might possibly relate to this heading occurred on 10 January 2018 and has already been dealt with in this decision. In that meeting between Superintendent Haslett and Sergeant Kirk which had occurred before a weekly pacesetter meeting at which the claimant attended, the claimant's states that he had felt excluded. Superintendent Haslett stated that he would have had regular meetings with either one or with both of the two sergeants in resources in relation to financial matters. There had been no requirement upon him to involve both sergeants or any particular sergeant in relation to particular queries. He stated that there had been "*plenty of one to one meetings with the claimant without Sergeant Kirk being there.*" He stated "*this would have been a frequent occasion.*"

Again, the tribunal concludes that this had had nothing at all to do with gender.

121. The next possible incident which might relate to this heading occurred on 22 January 2018. Again that matter has been dealt with elsewhere in this decision. On that date the claimant alleges that he had been ignored and that Superintendent Haslett had talked to Sergeant Kirk in a whispered tone. Superintendent Haslett stated that he did not recall this particular incident. It had been a very busy district and a "*very busy environment*" he stated "*I would have approached staff directly without the need for a committee meeting.*"

Again, the tribunal concludes that this had had nothing to do with gender.

122. The next possible incident which might fall under this heading occurred on 14 February 2018. It had been a pacesetter meeting. Again this incident has been dealt with elsewhere in this decision under a different heading.

123. Superintendent Haslett had chaired that meeting at which all the supervisors had been present with the exception of Sergeant Kirk who had been absent for some reason which has not been the subject of any allegation. The claimant alleged that a civilian employee from the finance branch had been asked to give a presentation." It is not clear from the claimant's evidence whether he was alleging that he had not been allowed to speak and it does not appear to be the case that he is alleging that was the case. It seems that the height of his allegation is that a civilian employee from the finance branch had been asked to make a presentation. Superintendent Haslett made it plain and the tribunal accepts that that had been the normal practice. A civilian employee from the HR Department and a civilian employee from the finance branch had routinely attended these meetings. It had been the practice that there used to be two sets of figures ie one provided by the finance branch and one provided by Sergeant Kirk. Those two sets of figures often did not agree and were "*often at odds with each other.*" Superintendent Haslett stated that "*we decided to use the figures from finance.*"

The tribunal concludes that it was perfectly normal for someone from finance branch to be asked to give a presentation on finance and it is difficult for the tribunal to see how the claimant draws from that fact that Superintendent Haslett had been seeking to avoid him.

124. The next possible incident which might fall within this heading occurred on 19 February 2018. Following a discussion with a Superintendent Mallon, the claimant sought a meeting with Superintendent Haslett. This had been a number of days after the previous pacesetter meeting. As for the other incidents, this has been dealt with separately under this decision under a different heading.

It is clear from the evidence that Superintendent Haslett and of the claimant that the claimant had sought a meeting, that that meeting had been initially agreed, and that Superintendent Haslett had then later telephoned the claimant to indicate that he was not able to meet him on that day because of other commitments. The claimant saw Superintendent Haslett in his office when he left and concluded that he had been avoiding the claimant. Superintendent Haslett stated that his diary had been full and that at this stage he could not recall why on a particular day in February 2018 he had not been available. As indicated above, the tribunal cannot see the grounds for the claimant's allegations in this respect.

125. The next possible incident under this heading occurred on 2 March 2018. That had been a "*clear the air meeting*" which had been arranged between the claimant and Superintendent Haslett at which a Federation representative had attended. Superintendent Haslett stated that at the end of that meeting he had shaken hands with the claimant and the claimant does not dispute that recollection. Superintendent Haslett also recollected that the Federation representative had thanked him at the conclusion of the meeting and had stated that not many Superintendents would have agreed to meet the claimant in such circumstances with a Federation representative present. The tribunal notes that no Federation representative was called to give evidence and on the balance of probabilities accepts Superintendent Haslett's recollection as correct.

It is also clear that even though the claimant had had a Federation representative present and even though this had been a pre-arranged meeting, the claimant at no point in the course of this meeting raised the issue of either his gender, Sergeant Cromie's gender or any allegation in relation to gender balancing. When challenged on that point the claimant stated that he did not want to inflame things by raising those issues at that point. The tribunal does not accept that explanation. This obviously had already been a tense situation. A Federation representative had been called and had been present. A clear the air meeting had arranged. There is little point in a "*clear the air meeting*" if the air is not cleared.

126. The next possible incident which might fall within this heading occurred on 26 March 2018. On that date, the claimant alleged that he had met Inspector Ellson and that he complained of having no work to do at that point. It is clear that Superintendent Haslett had not been made aware of this statement, if it had indeed occurred, it is also clear that Inspector Ellson had not been told of the claimant being left without work. Inspector Ellson made it plain to the tribunal that if he had been told of that he would have found plenty of work for the claimant to have done.

Given the content of the end of year review and the in-year review referred to earlier, the tribunal concludes the claimant had not told Inspector Ellson, or anyone else, that he had been short of work.

127. The next incident which might fall within this heading occurred on 6 April 2018. On that date the claimant alleges that Superintendent Haslett came into the sergeant's office and had been reluctant to engage in conversation with the claimant. That is a remarkably vague allegation. Superintendent Haslett stated that he did not recall the incident. He stated that if this incident had occurred he may have been looking for particular information from a particular officer. He stated "*all my interactions with staff did not require a committee meeting.*"

The tribunal does not accept the evidence of the claimant. There is nothing in this to suggest gender discrimination or harassment.

**That in August/September 2018, Superintendent Haslett refused to allow a change in the claimant's line management. – (xi)**

128. This incident arose when on 29 August 2018, following the claimant's return to work (from a period of sick leave), the claimant met with Chief Inspector McAuley to request a change of line manager. The claimant stated to Chief Inspector McAuley that he was submitting a grievance against Inspector Ellson and that a change of line manager would be best for both parties. The claimant stated that on 6 September 2018 he received an email from Chief Inspector McAuley advising him that Superintendent Haslett had refused his request to change line manager. The claimant alleged that this was a further example of a bullying and harassment campaign on the part of Superintendent Haslett to force him from his post to promote gender balancing.
129. Chief Inspector McAuley recalled the incident on 29 August 2018 when the claimant sought a change in line management. He confirmed that he had spoken to Superintendent Haslett about it and that Superintendent Haslett had rejected the request. Chief Inspector McAuley stated that this decision had not been connected to gender in any way.
130. Superintendent Haslett stated that he had not agreed with the claimant's request to have his line manager changed. Inspector Ellson, at the relevant times, had been responsible for resourcing within the branch and the other inspector, Inspector Hughes, had been responsible for events planning. If the claimant's line manager had been changed, then the claimant, as a sergeant responsible for resourcing, would have reported to Inspector Hughes who had been responsible for events planning, and not to Inspector Ellson who had been responsible for resourcing. The move would have made no sense and would have disrupted the working of the branch. He would have been working to a line manager who would not have been responsible for his work. It would not have been "*cohesive*".
131. The tribunal accepts the reasoning of Superintendent Haslett in this regard. There is absolutely no evidence that this common sense and rational decision had been related in any way to gender or indeed to gender balancing.

**That on 19 February 2018, Superintendent Haslett had refused to meet with the Claimant to discuss issues between them – (xii)**

132. That appears to relate back to (x).

**That Superintendent Haslett had overturned the Claimant's Decision in relation to an internal matter concerning a rest day for a particular Sergeant.**

133. It was the unrebutted evidence of the respondent that this had been the only complaint that a management decision made by the claimant had been overturned by Superintendent Haslett.
134. On 21 September 2018, a request was received from Inspector Garrett, (a male Inspector Garrett) requesting that a Sergeant Gillian Millar (female) be permitted to move rest days in order to avoid her reporting sick following a minor medical procedure. The claimant reviewed the application and refused it. He took the view that this would have resulted in additional costs. The claimant informed Inspector Garrett that he was unable to facilitate the request.
135. On Tuesday 25 September 2018 the claimant received an email from Inspector Ellson indicating that Superintendent Haslett was keen to facilitate this request. The claimant alleged that this had been done to undermine him and to afford preferential treatment to Sergeant Millar on the grounds of her gender.
136. The tribunal accepts the evidence of Superintendent Haslett that this decision had been made in the best interests of Sergeant Millar and that it did not represent any additional costs. Given that this was the only incident in which the claimant alleges that a management decision of his had been overturned by Superintendent Haslett, it is difficult to see why the claimant has reacted in the manner in which he has reacted.

**The Claimant had been served with a Regulation 16 (Disciplinary) Notice – (xiv)**

137. This complaint appears to relate to an investigation into alleged misogynistic comments made by the claimant in relation to female members of the branch and to other female colleagues. The matter had been raised by Inspector Ellson to Superintendent Haslett and Chief Inspector McAuley on 29 March 2018. That matter was ultimately dealt with by Superintendent Murdie.
138. Among the issues raised in these allegations was the allegation that the claimant had addressed female staff within the office in pejorative terms such as “*monkeys*”, “*idiots*”, “*muppets*”, and “*useless cunt*”. It was alleged that he had made anti-female comments, and, that he had alleged females were not capable and that he had referred to cramps. One female constable had alleged that the claimant had said to her; “*I have lots of work for you unless you have to go home too with a wee cramp*”. Some female members of staff had complained of his “*aggressive*” and “*demeaning*” tone.
139. It is clear that the investigation had been ultimately discontinued because the complainants refused or failed to follow through with formal statements. However the matters raised by the complainants had been sufficiently serious to justify the issuing of a Regulation 16 Notice and sufficiently serious to justify an investigation. It is clear that, up to this hearing, the claimant had argued that the decision to investigate the complaints had been unfair. However the claimant accepted in cross-examination, without any pressure, that the only issue in relation to the Regulation 16 Notice was that he had been “repositioned” to Woodbourne, rather than to another station, before the investigation had concluded.

The claimant accepted that, given the complaints, an investigation and a Regulation 16 Notice had been required. He also accepted that repositioning had been required. His only complaint, during the hearing, was about the choice of Woodbourne rather than some other station.

The tribunal notes that the claimant had stated in his witness statement that the repositioning had reflected *“a presumption of guilt”* and he complained of *“the absence of any evidence of wrongdoing”*. It is therefore clear that the claimant had been challenging the investigation process and the repositioning, and not just the choice of Woodbourne, right up to his cross-examination. The agreed factual issues included *“why was the claimant served with a Regulation 16 Notice?”* *“Who made the complaints leading to this Notice?”* and *“Were those complaints genuine?”*

Although the claimant openly accepted in cross-examination that an investigation had been required and that a repositioning had been required (but not to Woodbourne), it seems that he reached those conclusions at a very late stage in these proceedings. Up to that point, he had challenged the need for any investigation and the need for any repositioning in both the interlocutory process and in the grievance process. That is concerning and inconsistent with his acceptance before the tribunal that both an investigation and repositioning had been required.

It is clear that detailed verbal complaints had been made about the claimant's attitude to female police officers and to female civilian workers. Seven people had been spoken to by Inspector Murphy.

There are absolutely no grounds on which the tribunal could conclude that the Regulation 16 Notice had had anything to do with the claimant's gender or anything to do with a gender balancing exercise.

**That Inspector Ellson should have spoken to the claimant about the issues on which the Regulation 16 Notice were based – (xv)**

140. The height of this complaint appears to be that the claimant should have been notified at an earlier stage of the nature of the complaints against the claimant. That has nothing to do with gender. The claimant received the Regulation 16 Notice in the proper way.

**That Inspector Ellson had told him that there was no complaint against him – (xvi)**

141. The claimant appears to have asserted in his witness statement that Inspector Ellson had stated during an IPR meeting with him on 24 May 2018 that there had been no complaint. There had at that stage been no formal complaint because the inspector had been authorised to discontinue the matter.

142. There does not appear to be any ground to uphold this complaint.

**That pending the outcome of the Disciplinary Investigation in relation to Regulation 16 Notice, the Claimant had been temporarily moved to Woodbourne Station – (xvii)**

143. Given the nature of the complaints and the obvious need for an investigation, the decision to transfer the claimant to another location pending the outcome of that investigation had been an entirely proper one. That is now accepted by the claimant.
144. The claimant appears to allege that the choice of Woodbourne Station, as opposed to some other location, had been to disadvantage him and that it was a further example of a campaign of harassment against him. He alleged in evidence that he had not done this sort of thing for “20 years”. It was put to Superintendent Haslett in cross-examination that that had been done to “punish” the claimant.
145. It is clear from the evidence of Superintendent Haslett that there had been at least one vacant sergeant’s post in Woodbourne Station. The claimant sought to argue that because that post had been temporarily filled by a constable acting up to that rank, there had been no further need for a sergeant. That argument simply does not hold any water. It would be common for vacancies at any rank to be temporarily filled on an “acting up” basis. That does not mean that the vacancy ceases to exist.
146. Superintendent Haslett had provided a list of vacant sergeant posts. The post in Woodbourne had been regarded as the most pressing but there is no evidence that Woodbourne had been selected for anything other than operational reasons.

**The Claimant’s firearm had been removed and incorrect procedure had followed (xviii)**

147. The claimant, when faced with a transfer on a temporary basis to Woodbourne Station, pending the outcome of the investigation into his Regulation 16 Notice, immediately went on sick leave. No medical evidence has been produced to this tribunal about the basis of that sick leave. However the tribunal notes that the claimant stated that he returned from sick leave as soon as he approached the imposition of half pay. His return to duty does not appear to have coincided with, or resulted from, any improvement in his health.
148. Since the claimant was alleging stress as the reason for his sick leave, the issue of the retention of his personal protection weapon was raised. The claimant voluntarily surrendered his firearm when going on sick leave.
149. The claimant alleged in his witness statement that Superintendent Haslett “*had held an FAP whilst I off and had seized my firearm.*” That was the firearm that the claimant had voluntarily surrendered when he had gone on sick leave with stress. The claimant further alleged that Superintendent Haslett had contacted the FAP “*on his own*” and that he had failed to invite his line manager, federation representative or the claimant.
150. Superintendent Haslett took the view that where a police officer voluntarily surrenders their firearm on health grounds, that constituted grounds to examine the suitability of the officer to have access to firearms and ammunition. The claimant in this case had voluntarily surrendered his firearm and ammunition. Superintendent Haslett took the view that in that case, there had been little point in inviting the claimant or his line manager (with whom he was in dispute) to a formal meeting to discuss what he regarded as an inevitable conclusion ie that the firearm would be retained pending a suitability report from the OHW. That OHW

assessment was conducted and the firearm returned in due course to the claimant following his return from sick leave.

151. While the procedure was not followed in strict terms by Superintendent Haslett in this regard, his view appears to have been a reasonable one. An OHW assessment was going to be carried out and requiring a formal FAP hearing in that regard, where the firearm had been voluntarily surrendered, would have appeared to be a pointless waste of time. It would have required the claimant to attend while on sick leave and to deal with the line manager with whom he had been in dispute. Nothing would have been added or gained by such a meeting, except possibly a further complaint.
152. In any event, the tribunal can find no grounds to conclude that this issue had had anything to do with gender or gender balancing.

**Following the claimant's return from his temporary move to Woodbourne Station, the Claimant's responsibilities had been redistributed. (xix)**

153. It is difficult to see how the claimant could legitimately complain of his duties being redistributed during his absence following his temporary assignment to Woodbourne Station and his decision to go on sick leave. In his grievance he complained that his work had been given to a female colleague. In his IT1 he complained that his work duties "*have been redistributed to a female work colleague*".
154. The claimant returned to the branch after Superintendent Haslett had transferred elsewhere. It can therefore be assumed that Superintendent Haslett is not being accused of redistributing the claimant's duties thereafter.

**That Inspector Garrett (female) had been moved to the branch on a sideways welfare transfer to fill a vacancy at Inspector level. (xx)**

155. As with many of the complaints raised by the claimant in this litigation, it is difficult to see what detriment to the claimant is being alleged, even if the complaint were correct in its entirety. During the brief period when Inspector Garrett had been in the branch, she had not been the claimant's line manager. That had been Inspector Ellson. He had no complaints about her conduct towards him.
156. When the claimant was asked in cross-examination what the welfare transfer of Inspector Garrett to the branch had to do with gender, he alleged for the first time that he knew that Inspector Garrett had already received a welfare transfer and had been working in the Custody Suite in Musgrave Street. According to the claimant, there had therefore been no need for a further welfare transfer to the branch. It is unclear how this related to his claim before this tribunal.
157. In response to further questions, the claimant further refined his answer to state that he has spoken to "someone" about this. He could not remember to whom he had spoken. He could not remember what he had been told but he had been left with the impression that Inspector Garrett had already received a welfare transfer to Belfast and that a welfare transfer to the branch had therefore been unnecessary. It had all been part of "*gender balancing*".

158. The evidence was clear and unrebutted by anything other than the claimant's "*belie*" and vague recollections about speaking to someone about something. Inspector Garrett had previously been based in Larne and Ballymoney. She had also "hot desked" from time to time in the Belfast district, and on occasions in Musgrave Street. She had been in various locations in Belfast on temporary welfare transfers, including in Musgrave Street, before she received her welfare transfer to the branch.
159. When Inspector Garrett moved on after a brief period, she had been replaced by a male inspector. The claimant does not complain about the appointment of the male inspector. That appointment is not alleged to be part of 'gender balancing'.
160. There is nothing in this complaint that could relate to gender or gender discrimination.

## DECISION

161. Article 63A of the Order provides that the normal burden of proof will shift to the respondent if, on the facts before the tribunal, a reasonable tribunal could infer that there has been unlawful discrimination or unlawful harassment on the ground of gender. There must be prima facie evidence of such discrimination or harassment before the burden of proof shifts from the claimant to the respondent.
162. The case put forward by the claimant is based on one central premise; that Superintendent Haslett had been concerned about the lack of diversity in the supervisory ranks in the branch, and that he wanted to increase the number of female police officers in those ranks. On the basis of that premise, the claimant alleges that there had been a campaign to force him out of his post to enable a vacancy to be created which would then be filled by a female officer.
163. Superintendent Haslett was cross-examined about his views on diversity. He openly accepted that he had noted the lack of diversity in the supervisory ranks. He could hardly have failed to notice it. He also openly accepted that he had commented on that lack of diversity. The exact terminology used by him in doing so is not important. There was no evidence, in the particular environment in which those remarks had been made, that anyone had been offended or intimidated by any particular form of words. The claimant in particular accepted that he had not been offended or intimidated.
164. It seemed at one point in the hearing that the argument was going to be made that noticing a lack of diversity was wrong in itself and that diversity in relation to gender was somehow a bad thing. It is important for the tribunal to remember that Superintendent Haslett, and the organisation which had employed both him and the claimant openly advocated diversity and that is not a bad thing and it is not unlawful. A senior manager, such as Superintendent Haslett, is supposed to be able to spot a lack of diversity in his part of an organisation and is supposed to be concerned about it.
165. The claimant, in pursuing his argument that there had been a campaign of discrimination and harassment to drive him out to promote a policy of "*gender balancing*" has referred to a large number of alleged incidents. He alleges that that large number of alleged incidents demonstrated that campaign. Some of these

alleged incidents, put forward by the claimant to support his allegation of the campaign, such as the alleged lack of lunch breaks, the allegation that he had been denied the emergency planning post to promote gender balancing, and the allegation that the Regulation 16 Notice had been issued as part of the campaign, were initially made, then pursued, and then ultimately abandoned before or during the hearing.

166. The central allegation of a campaign to drive the claimant out of his post in the branch in order to create a vacancy (and it could only have created one such vacancy) for a female sergeant suffers two major difficulties. Firstly the claimant has not been able to explain why he, uniquely, has been the only target of such a campaign. He has not disputed that originally the other four sergeants had all been male and he has not disputed that ultimately three of the other four sergeants had been male. The claimant, in his witness statement sought to allege that Sergeant Gawne had been first targeted by Superintendent Haslett as part of this campaign. He alleged that when this tactic on the part of Superintendent Haslett had failed, Superintendent Haslett had turned his attention to the claimant. That is not an allegation made in his grievance. It is not allegation made in his IT1. It is not an allegation made in his replies in the interlocutory procedure. It is not an allegation made by Sergeant Gawne in his evidence to this tribunal. That is an allegation made by the claimant in his witness statement, apparently for the first time in this litigation. The tribunal does not accept that this allegation is true. Equally, the tribunal does not accept the further allegation made by the claimant that Superintendent Haslett had told the branch that he was going to make things difficult for Sergeant Gawne. That is not an allegation supported by anyone else; notably not by Sergeant Gawne. It was not an allegation made in the claimant's grievance, his IT1, or in the interlocutory procedure. The late and unsupported allegations made by the claimant in relation to Superintendent Haslett's treatment of Sergeant Gawne were untrue and appear to have been no more than an attempt to explain why his allegation of a campaign on the basis of a gender balancing process was targeted against the claimant uniquely amongst a group of male sergeants. Secondly, another major difficulty for this central argument is that the claimant has remained in post. He still is a sergeant in the branch occupying the same role and performing the same duties. His allegation is therefore of a remarkably ineffective campaign on the part of Superintendent Haslett and others.
167. The tribunal has reached detailed findings above in relation to the many allegations put forward by the claimant. The tribunal does not intend to repeat and to parse each of those findings at this stage in the decision.
168. However the tribunal has concluded, as indicated above, that Superintendent Haslett did use the phrases "*too cock heavy*" and "*too male dominated*" when referring to the supervisory ranks in the branch and in particular to the five sergeants within the branch. That reflected nothing other than that Superintendent Haslett had noticed an obvious lack of diversity in the branch. He had been doing what he had been supposed to do, although he might have expressed it in less colourful terms. There is nothing in that which suggests gender harassment or discrimination and nothing in that in which a reasonable tribunal could properly infer that had occurred.

169. The claimant accepted, somewhat belatedly, that he had not been equipped for a lateral transfer to Sergeant Ireland's post. The tribunal has concluded that he had not expressed any interest in events planning in 2017 and that it would have made no sense at that stage to have moved him to the events planning post, from a post in which he had been both qualified and experienced. It is also a nonsense to suggest, without any supporting evidence, that a post in events planning would have attracted more female applicants than any other sergeant's post in the branch; particularly when the competency based competition had been expressly for a generic sergeant's post in the branch and had not been linked to any particular post. It is also a nonsense to suggest, without evidence, that in 2017 female sergeants were somehow less qualified or less experienced or less able than male sergeants. It is also a nonsense to suggest that the vacancy bulletin had been reissued for any reason other than to maximise the field of candidates or to suggest that a machiavellian mathematical calculation had been used by Superintendent Haslett, Chief Inspector McAuley, and the HR Department of the respondent to attract proportionately more female candidates than male candidates.
170. The claimant appeared to be particularly exercised by the fact that Superintendent Haslett had encouraged two female sergeants to apply for the vacant post within the branch. Superintendent Haslett did not seek to deny that he had done so. However it is clear that he had also encouraged one male sergeant to apply and that he had also spoken to another male sergeant who had already applied for the post. It is also clear that one male sergeant had been allowed to progress his application even though his application had technically been late. It is a nonsense to suggest that the competition had in any way been rigged or pre-determined to favour female candidates. It is also a nonsense to suggest that, even if this had been true, it would have impacted in any way upon the claimant.
171. There is also no evidence that Superintendent Haslett had "*influenced*" the result of the competency based competition. It had been a serious allegation on the part of the claimant to suggest that Superintendent Haslett had done so and also to suggest that the interview panel had in some way allowed itself to be "*influenced*". There is nothing about this competency based competition which could allow a reasonable tribunal to infer that either sex discrimination or harassment had occurred.
172. The incident in Windsor Park on 5 October 2017 had been entirely innocent. Superintendent Haslett had been relatively new to his post as Head of the branch. He had been relatively new to this particular activity; being a Silver Commander of a major sporting event. He had had serious responsibilities in that regard. Anyone in such a situation would have asked questions as he went along. In this case he had asked a question, got an answer and had been satisfied. It is difficult to understand the claimant's obvious outrage at such a question being asked. It is also difficult to understand the claimant's argument that the fact that he had not performed any similar duties since supported his allegation of a campaign of harassment. He accepted, in cross-examination but not before, that Sergeant Cromie had been appointed as the lead planner for such events and that it would have been natural for her to have undertaken those duties.
173. The claimant's various complaints about the role of sergeants detailing overtime and the fact that Superintendent Haslett had at certain points queried the number of sergeants in the branch are equally groundless. It is clear that

Superintendent Haslett had ultimately argued for the retention of five sergeants' posts with the branch. It is equally clear that Superintendent Haslett had been told by the Chief Superintendent to keep the number of sergeants under review and to challenge the number of sergeants within his area of responsibility. That had been an instruction to all superintendents within the District. It had had nothing to do with the claimant personally and absolutely nothing to do with gender or gender balancing.

174. There was no evidence that Superintendent Haslett had overlooked or bypassed the claimant in relation to finance as an act of sex discrimination or an act of harassment. The claimant alleged that he had been bypassed in favour of another male ie Sergeant Kirk. Superintendent Haslett accepted openly that he had felt, initially, that Sergeant Kirk had been better skilled in finance than the claimant. When the claimant had explained the situation to him Superintendent Haslett had openly resolved to involve the claimant more often. That did not involve a promise or a binding commitment not to speak to Sergeant Kirk on his own or a binding promise or commitment to involve the claimant in each and every discussion in relation to finance. That would have been an absolute nonsense. The fact that the claimant viewed any attempt by Superintendent Haslett to speak to Sergeant Kirk on his own, about any matter, as an act of harassment demonstrates nothing other than the claimant's extreme over-sensitivity.
175. It is clear that Superintendent Haslett made an off the cuff remark that the claimant would make a good trainer. That had occurred in the context of a meeting of supervisory ranks in the branch when a vacancy at the District trainer level had been discussed. This post had been a prestige post. The suggestion by Superintendent Haslett had not been that the claimant would make a good part-time lollipop man. It had been a suggestion that the claimant had been capable of fulfilling a prestige post. In any event the claimant had not been forced to apply for that post. This had been a one-off remark and the claimant appears to have overreacted to it. The tribunal notes the Chief Inspector McAuley describes this as a joke that no-one found funny. It is difficult for the tribunal to understand that evidence. The tribunal accepts and prefers the evidence of Superintendent Haslett.
176. The claimant had obviously been a consistently high earner of overtime. That had attracted the attention of the Assistant Chief Constable. The attention of the Assistant Chief Constable had been directed at, as far as Superintendent Haslett had been concerned, the claimant and Sergeant Gawne. The claimant and Sergeant Gawne had been spoken to in relation to their overtime. Sergeant Gawne accepted this and did not regard it as some sort of unlawful campaign. It is also clear that Sergeant Cromie had not earned as much overtime and had not attracted the Assistant Chief Constable's attention. It is also clear that the claimant had not been intimidated by either Superintendent Haslett or by Chief Inspector McAuley in this regard. The claimant had not been a frontline police officer. He had also been part of the branch responsible for allocating overtime within the Belfast District. There had been an obvious perception of unfairness in relation to the allocation of that overtime. The practice by which the claimant allocated overtime to Sergeant Kirk, Sergeant Kirk allocated overtime to the claimant and that both were allocated overtime by constables, who had been subordinate to both, was an arrangement which had been bound to attract attention. None of this had anything whatsoever to do with gender or with gender balancing.

177. It is clear that Superintendent Haslett had made an effort to engage with the claimant. Superintendent Haslett had not been the claimant's direct line manager. Nevertheless he had met regularly and frequently with the claimant. There had been weekly pacesetter meetings. There had been other meetings. He had met with the claimant and with the claimant's Federation representative to discuss the claimant's concerns. The tribunal accepts Superintendent Haslett's evidence that not many superintendents would have responded in such a way in relation to an aggrieved sergeant. There was simply no evidence that Superintendent Haslett had avoided the claimant.
178. The claimant made a great deal about Superintendent Haslett mentioning to him that he had used the gym frequently at work. The claimant had not been disciplined formally or informally about this matter. He had not been told not to use the gym. His use of the gym had not been monitored or restricted. He had simply been told that his colleagues had commented upon his practice of going to the gym frequently. There is again absolutely nothing in this normal exchange between a manager and employee that could justify any inference of unlawful discrimination or harassment.
179. Similarly, the claimant throughout this litigation alleged that the issuing of the Regulation 16 Notice and his repositioning pending the investigation had been unlawful acts of harassment or discrimination. In the course of his cross-examination, the claimant appears to have abandoned that argument. Nevertheless the fact that he chose to make those allegations in the first place is concerning. It is absolutely clear that complaints had been made about his attitude to female subordinates. It is absolutely clear that Inspector Murphy had interviewed those individuals and that specific allegations had been made. Those individuals, for whatever reason, did not follow through with formal statements. None of that detracts from the obvious necessity for the respondent to have investigated those complaints and the obvious necessity for the respondent to have repositioned the claimant pending the outcome of the investigation. None of that had had anything to do with gender or gender balancing.
180. The claimant, in the course of the hearing, concentrated on the choice of Woodbourne as the police station to which the claimant had, on paper at least, been repositioned. He had regarded this station as a "*punishment*". No evidence, apart from the claimant's unsupported assertion, has been produced to the tribunal to support the allegation that Woodbourne is regarded as a punishment posting. It was a station which was relatively close to the claimant's current station. It did not involve excessive travelling or relocation. It had been a station where at least one sergeant's post had been vacant. The allegation made by the claimant that the fact that an acting up constable had been temporarily filling that vacant post was sufficient to mean that the post did not need to be filled was groundless. The respondent has been clear that Woodbourne Station had been regarded as a "*priority*". There are no grounds for this tribunal to reasonably infer that the choice of Woodbourne had been motivated either by gender or by gender balancing.
181. The claimant also alleged that his failure to change his line manager had in some way been part of this campaign. As indicated above, that refusal by Superintendent Haslett had been logical and had in fact been the only decision which rationally could have been open to the superintendent. There is nothing to suggest that that had anything to do with gender or gender balancing.

182. The claimant also alleges that the FAP procedure was part of an unlawful campaign of harassment and discrimination. At best, his allegations showed that there had been a technical breach of that procedure. That technical breach of procedure had saved the claimant from a meeting with Inspector Ellson, with whom he had been in dispute, during a period of sick leave on the ground of stress. The short cut undertaken by Superintendent Haslett had been to the claimant's advantage and had nothing to do with gender or gender balancing. It had been inevitable that an OHW assessment would have been required. It would also been inevitable that on his return to duty his firearm would have been returned and it was so returned.
183. The claimant's allegations in relation to the redistribution of his work during his absence on sick leave makes no sense whatsoever. He appears to be suggesting that his duties should have been distributed during his period of absence only to male officers. The redistribution of such duties in his absence, could have had nothing to do with the claimant. After he returned to duty, Superintendent Haslett had already been relocated and it cannot be suggested on the part of the claimant that he had continued his campaign of harassment from his new post in relation to the claimant's duties within the branch.

## **SUMMARY**

184. The claimant's many allegations, taken individually, or taken collectively, failed to disclose any grounds on which a reasonable tribunal could properly infer sex discrimination or harassment. Even if such grounds had existed, and even if the burden of proof had shifted, the tribunal is satisfied that in respect of every allegation, singly or collectively, the respondent has properly explained those incidents and properly rebutted any allegation of unlawful discrimination or harassment.
185. The claims made by the claimant are therefore all dismissed.

**Vice President:**

**Date and place of hearing:** 14, 15, 16 and 17 October 2019, Belfast.

**Date decision recorded in register and issued to parties:**