



sgv/glm

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr T Nicol

and

Respondent
The Chief Constable of
Thames Valley Police

Held at Reading on 11, 12, 13, 14, 15, 18 and 19 January 2016 (Hearing)
20 January 2016 (In chambers)

Representation **Claimant:** Mr N Shah, lay representative
Respondent: Ms K Gore, counsel

Employment Judge **Members:** Mr D Gregory
Mr S G Vowles Mrs A Brown

UNANIMOUS RESERVED JUDGMENT

Evidence

1. The Tribunal heard evidence on oath and read documents provided by the parties and determined as follows.

Direct Race Discrimination – section 13 Equality Act 2010

2. The Claimant was not subject to direct race discrimination. This complaint fails and is dismissed.

Race Harassment – section 26 Equality Act 2010

3. The Claimant was not subject to race harassment. This complaint fails and is dismissed.

Race Victimisation - section 27 Equality Act 2010

4. The Claimant was not subject to race victimisation. This complaint fails and is dismissed.

Protected Disclosure Detriment – section 47B Employment Rights Act 1996

5. The Claimant was not subject to protected disclosure detriment. This complaint fails and is dismissed.

Reasons

6. This judgment was reserved and written reasons are attached.

REASONS

SUBMISSIONS

- 1 Claimant On 28 September 2014 the Claimant presented complaints of race discrimination, protected disclosure detriment and disability discrimination to the Employment Tribunal. The complaint of disability discrimination was later withdrawn by the Claimant.
- 2 At the start of the hearing the Claimant clarified the protected characteristic of race in his case as “Ethnicity and culture – Caribbean and colour”.
- 3 Respondent The Respondent presented a response on 10 November 2014. All claims were resisted.

ISSUES

- 4 The claims were clarified at a Preliminary Hearing held on 28 September 2015 and an agreed list of issues was produced at the start of the hearing.
- 5 During the course of the hearing:
 - 5.1 the Claimant conceded that the misconduct hearing held on 20 August 2014 at which the Claimant was dismissed was covered by judicial immunity and there was no need to call the dismissing officer for cross-examination;
 - 5.2 the Claimant abandoned his reliance upon the actual comparators at paragraph 12 of the agreed list of issues and relied only upon a hypothetical comparator; and
 - 5.3 the Respondent abandoned its defence of judicial immunity in respect of the misconduct meeting on 6 August 2013.

PRELIMINARY MATTERS

- 6 The start of the hearing was delayed by one day due to the replacement of one of the Tribunal lay members.

EVIDENCE

- 7 The Tribunal heard evidence on oath from the Claimant Mr Troy Nicol (former Police Constable).
- 8 The Tribunal also heard evidence on oath on behalf of the Respondent from Mr Neil Misselbrook (Police Sergeant), Mr John McDonald (Police Inspector), Mr Leroy Townsend (former Deputy Commander), Mr Michael Meeks (Investigating Officer) and Mrs Kathryn Saunderson (HR Business Partner). It also read the witness statement of Ms Laura Nicholson (Assistant Chief Constable) whose evidence was not challenged.
- 9 The Tribunal also read documents in a bundle provided by the parties. The paperwork was extensive, amounting to over 2200 pages in 6 lever-arch files.
- 10 From the evidence heard and read the Tribunal made the following findings of fact.

FINDINGS OF FACT

Background

- 11 The Claimant served as a police constable with Thames Valley Police from 21 July 2003 until dismissal on 20 August 2014.
- 12 From November 2003 until April 2006, the Claimant was stationed at Slough Police Station. He was moved from Slough to High Wycombe Police Station in July 2006.
- 13 On 28 March 2007 the Claimant was convicted of assaulting a member of the public and on 27 September 2007 was dismissed from the force because of this conviction. On appeal at Reading Crown Court the conviction was quashed and the Claimant was reinstated as a police constable on 2 March 2009 with full pay and pension for the period between dismissal and reinstatement. He was then stationed at Windsor Police Station from July 2009 to January 2010 and then at Maidenhead Police Station from January 2010 to May 2011.
- 14 In June 2011 the Claimant was assigned to Patrol Team 2 (9 police constables in the Windsor and Maidenhead local police area) and was stationed at Maidenhead Police Station under the supervision of Police Sergeant Misselbrook. The next level of management was Inspector McDonald and above him, Chief Inspector Townsend.
- 15 It was clear that, from the very start of their relationship, the Claimant mistrusted Police Sergeant Misselbrook and Inspector McDonald. This was due, at least in part, to the Claimant's previous experiences having been

prosecuted, convicted and dismissed in 2007, events which involved a complaint and investigation by members of Thames Valley Police. It was also in part because he saw Police Sergeant Misselbrook's management style as oppressive and bullying.

Performance Issues

- 16 In December 2011, Police Sergeant Misselbrook completed a mid-year review as part of the Claimant's Performance Development Review (PDR). It included the following:

Review Date 06/12/2011

Reason for review: Mid-year review

Troy joined Team 2 at Maidenhead in June 2011 having been cleared as fit for reactive shift duties, following a period from April to June with the PHT supervised by PS GIABANNI. It is appropriate to mention that although Troy has 8 years service however his employment history means that it would be unfair to judge him as a fully experienced shift officer of this length of service. For that reason I am judging against standards I would expect from an officer shortly out of his probation.

TEAMWORK: This is not one of Troy's strengths and needs development. Integration with members of the team is low. Troy appears to get along with his colleagues on a professional level alone when he has to. Troy will locate himself in the secondary report writing room or even in an out of the way office. His ability or want to get involved with his crew mates is low and on more than one occasion I have observed him on his own on Lilo, not getting involved in pairing up or interacting with his colleagues...

Part 2... This has been raised with me on more than one occasion when Troy fail to answer point-to-points from other people. There has also been an apparent reluctance to self generate enquiries at an incident where he is double crewed waiting for instruction from his crew mates.

MOTIVATION: This is not visibly displayed by Troy. An incident occurred 1079 23/11 where two calls were placed over the radio for an uncommitted unit for attendance to an immediate assault in progress. After no replies, Troy was deployed via radio directly by me who was aware he was uncommitted but not volunteering. It transpired Troy was within approx. 0.5km of the incident and not committed. There is the impression that he does not listen to the radio, which is not good enough. Troy's attendance to incidents and investigations taken on is average for Team 2 performance indicators. However, I consciously double crew him to engage him with his colleagues/allocating him

investigations. This artificially inflates that figure. It should not be necessary for Troy's supervisor to be so 'intrusive'.

DEALING WITH PUBLIC: Numerous encounters with people have resulted in comment/complaints regarding poor service/attitude. These have been seen first hand by myself on foot patrol to door staff (Maidenhead Town Centre towards door staff), from people who were stop searched (following rape allegation), from an off duty PCSO, dealing with a solicitor in custody and recently in attending a victim of a burglary. Some of these have been dealt with informally by me however others have resulted in local resolution as part of Per41 report. My discussion with Inspector McDonald suggests that Local Resolution may not be appropriate for any further complaints of this nature as the frequency of them is becoming too much to continue to deal with by Local Resolution as whatever advice has been offered is not affecting his behaviour.

INVESTIGATION: Troy's statements on the whole have been good. Investigations have been good. There have however been learning points. In 3899347/11 slow action resulted in the loss of CCTV evidence as it wasn't seized early enough. There are basic expectations that must be achieved. Troy is aware of these. This has come about again in relation to 3955551/11 & 3955602/11 in which two burglaries were inadequately dealt with. As a result a short term objective (Action Plan) has been generated. Troy completes individual tasks at request to an acceptable standard. Troy has completed a two month period on SDU dealing with jobs independently, where he has shown an understanding of process and developed, in a controlled environment dealing with victims and a limited number of incidents a day.

LEARNING/DEVELOPMENT: Not everything can be learnt by attending a training course. Much of the role of constable has to be achieved through experiential learning. To this end officers have to put themselves forward and base their decisions on a clear rationale. To this end based on the NDMM an officer can clearly show why they have managed to come to a decision and can consciously know why they have performed an action/precluded another. This is ever evolving and is based on the information that is to hand at the time. When speaking to Troy in relation to Restorative Disposals in order to develop his approach he showed himself to be extremely defensive and closed to observation, questions were asked to check understanding of the background and process, then explaining best practice and reasons why.

Part 4... However, Troy closes down and is difficult to get the message across to. If this is my impression as his supervisor, with greater

experience of dealing with Troy, then it is unsurprising that other's impressions of him are adversely effected. This is especially relevant to those who Troy sees as lesser in service than himself. Troy has an objective now in relation to initial attendance at burglaries target date by 08/02/12.

This report has also been discussed with Inspector McDonald, who has spoken to Troy in an informal meeting earlier in the year , together with Sgt Godsmark, has also locally resolved complaints with Troy, and has been informed of another to be resolved.

- 17 The Claimant was aggrieved at this report which he saw as unjustified criticism and in particular he did not approve of the action plan regarding burglaries.
- 18 From January to September 2012 Police Sergeant Misselbrook was seconded to the Olympics. During this period the Claimant's supervisor was Acting Police Sergeant Hindley whose contribution to the Claimant's PDR included the following:

It has been a difficult start for Troy and he accepts his part in these difficulties, each of his highlighted issues will now be addressed.

Teamwork – Troy has shown tremendous improvement with his team, this has been noticed by the team who regularly comment upon the improvements seen.

Apprehension – Troy has grown in confidence over the last 3 month period requiring less direction and regularly completes incidents on his own and has the confidence to ask advice if he is unsure, a difficult balance considering where he was just three months ago.

Radio – Troy regularly shouts up without prompting and assists colleagues, volunteering to complete statements/enquiries to further investigations.

Barriers to Learning – Troy can get hung up on small details but has really put effort into what is expected of him, this is reflected in his action plan re burglary packs which on review has achieved an exceeded status. Troy's nature is to challenge and he is transferring this from a negative to a positive aptitude resulting in good investigational work.

Attitude/complaints – These have dried up with no complaints received in last 3 months and his challenging and inquisitive approach tweaked such that his 'customers' have a better understanding of what he is trying to achieve with his questioning.

Troy has obviously improved dramatically since his interim review and to encourage this development the overall rating will now be shown as achieved, ATT there is no reason to set further objectives but to work further on improving his previous interim review.

- 19 In September 2012 the Claimant met with Chief Inspector Townsend and requested a move to another team because he was not getting on with Police Sergeant Misselbrook. He repeated the request to Inspector McDonald in October 2012. Both senior officers refused the request because they took the view that the Claimant was simply being managed by Sergeant Misselbrook which he did not like, but there was no genuine complaint about Sergeant Misselbrook's behaviour.
- 20 Police Sergeant Misselbrook returned from his secondment in October 2012 and resumed his supervision of Team 2, including the Claimant.
- 21 On 11 December 2012 Police Sergeant Misselbrook had a meeting with the Claimant after complaints by two members of the team that he was not pulling his weight. Police Sergeant Misselbrook prepared a performance table for all members of Team 2 and noted that the number of incidents attended and arrests and detections by the Claimant fell well below those of other members of the team. For example, during the preceding 7 months, he had performed 3 arrests whereas the average arrest rate for the team was 22 during the same period. The Claimant objected to being judged on his arrest and detection rates but Police Sergeant Misselbrook said that if there was no significant improvement, it would be reflected in his PDR grading in future. He was told that his performance would be reviewed monthly.

Disciplinary Issues and Grievances

- 22 On 24 December 2012 the Claimant did not attend for duty at 14.00 hours and attended later after being called in. The shift had been changed from 18.00 hours to a 14.00 hours start. The Claimant stated that he thought that the shift started at the original time of 18.00 hours. There then followed a dispute between the Claimant and Police Sergeant Misselbrook as to the change of duty start times and notifications which gave rise to later disciplinary action against the Claimant which is referred to below.
- 23 On 5 January 2013 the Claimant was placed on recuperative duties because of a shoulder injury.
- 24 On 14 January 2013 Police Sergeant Misselbrook was seconded to a temporary post at Windsor as an Acting Inspector until June 2013. During this period Acting Police Sergeant Berryman supervised Team 2.
- 25 On 12 February 2013 the Claimant was driving to work when he observed what appeared to be a body, wrapped in a sheet, lying in the road. He contacted the

police station to report the matter but did not remain at the scene. This resulted in disciplinary action which is referred to below.

- 26 In April 2013 an investigation was conducted by Mr Meeks at the Professional Standards Department (PSD) in respect of the Claimant's conduct in failing to attend on time for duty on 24 December 2012 and failing to remain at the scene of the suspected body in the road on 12 February 2013.
- 27 On 17 June 2013 Police Sergeant Misselbrook returned to Team 2 at the end of his temporary posting to Windsor.
- 28 On 10 July 2013 the Claimant emailed a grievance to Chief Inspector Townsend. The Respondent accepted, and the Tribunal found, that this was a protected act within the meaning of section 27 Equality Act 2010 and a protected disclosure within the meaning of section 43B Employment Rights Act 1996. It was mostly a complaint about Police Sergeant Misselbrook's management and criticism of the Claimant, and the action plan, and the conduct of Inspector McDonald towards him. It included the following:

My grievance is with Sgt. 4940 Neil Misselbrook from Maidenhead Police Station. I have tried to withdraw from conflict and have asked verbally to be moved to another shift away from him in the past. Reasons are as follows. Sgt. Misselbrook has been on my case since I returned to shift. ...

I believe the way I am being treated is because of the colour of my skin is different, my face doesn't fit. I feel this is racially motivated bullying for constructive dismissal.

"Quote" Gordon ALLPORT the five elements of prejudice, first one being avoidance and the last being extermination.

My career is important to me and want to progress. However under Sgt. Misslebrooks' command I'm led to feel held back. I have had enough of keeping quiet and am speaking out here for now.

I respectfully request for not to remain on this shift. I feel it's effecting my career and health through no fault of my own. I have tried to withdraw without conflict and as mentioned earlier kept my head down, but Sgt. Misselbrook keeps coming after me.

In light of the circumstances Sgt. Misselbrook has a personal vendetta and dislike I cannot understand.

In all where other Sergeants who have covered a shift or two on Team 2 there has not been any issues. Insp McDonald is also aware of this. And throws back at me about things that have happened in the past. In

so many words that I am the villain and should be grateful for Sgt. Misselbrook. And that I will not be moved to another shift.

I have been consoling in a Sergeant of how I'm being treated by Sgt. Misselbrook.

No one else has been present during the above mentioned meetings except two. 04/10/12 and 02/07/13.

- 29 On 17 July 2013 a formal written complaint was received from Ms EB (a member of the public) regarding the Claimant's conduct and lack of action and interest in respect of her request for police assistance in connection with nuisance telephone calls over an extended period. This matter was referred to the PSD and resulted in disciplinary action which is referred to below.
- 30 On 6 August 2013 the Claimant attended a misconduct meeting chaired by Chief Inspector Townsend. The Claimant attended accompanied by his Police Federation representative, PC Mark McIntyre. The notice of finding and outcome was sent to the Claimant on 8 August 2013 and it included the following:

Misconduct Proceedings Notice of Finding and Outcome

Officer: PC 5185 Troy NICOL

Date: 6 August 2013

At: 12.00 hrs

Before a Misconduct Meeting comprising:- Chief Inspector Townsend (Deputy Commander RBWM), Chris Bovington-Cox (PSD), Nicole Beauchamp (PSD), Mark McIntyre (Police Federation), Carly Small (Minutes).

Chair: Chief Inspector Townsend

Decisions on finding and disciplinary action

<i>Breach Alleged</i>	<i>Finding</i>	<i>Disciplinary action imposed (if breach proved)</i>
<p><i>1. <u>Duties and Responsibilities/ Honesty and Integrity-LST</u></i> <i>On 24 December 2012 you failed to attend for duty at the appointed time without a reasonable excuse .</i> <i>Having received due warning of the duty change on 24/12/2012 you denied receiving such notification.</i></p>	<p><i>Proven Misconduct</i></p>	<p><i>Written Warning</i></p>

<p>2. <u>Honesty and Integrity</u> On 29th December 2012 to avoid the necessity of taking time off you booked on duty at 1400 hours and off duty at 0200 on 24th December 2012 when in fact you did not arrive for that duty until after 1515 hours.</p>	<p>Not proven</p>	
<p>3. <u>Duties and Responsibilities</u> On 12th February 2013 you reported to Police seeing an object on the A40 road between Gerrards Cross and Beaconsfield which you believed to be a body in a white sheet. You failed in your duty as a Police Officer in that you did not stop and deal with the object.</p>	<p>Proven Misconduct</p>	<p>Final Written Warning</p>

I confirm that the finding and disciplinary action on the above alleged breach are correctly recorded. I also confirm that the officer's personal record was seen and considered before the decision was reached on the disciplinary action to be imposed.

Signed:

Leroy Townsend (Chair) Date 6th August 2013"

- 31 On 13 August 2013 the Claimant had a meeting with Inspector McDonald about complaints which had been made against the Claimant by members of the public. Inspector McDonald imposed an action plan on the Claimant which included the requirement to wear body worn video equipment. The purpose was to enable him to record encounters with the public and assist in resolving any complaints in the future.
- 32 On 22 August 2013 the Claimant went absent on sick leave and did not return to duty after this date.
- 33 On 27 August 2013 the Claimant submitted a written grievance (dated 13 August 2013) which included the following:

Institutional racism

Equality has not been achieved, discrimination has not ended and the force appears to have a policy of "cover-up and containment" that punishes officers who complain of racism. The force tried to destroy

me and it appears lessons are still to be learnt since the murder of Stephen Lawrence in 1993 and the Macpherson report. I believe from these disproportionate punishments of late that the force is trying to discredit and intimidate me into silence. I am meant to be the future. I ticked all of those diversity boxes. The Secret policeman came out in 2003 when I joined the force going through police college. This shattered any illusions the police had banished racism from the ranks. I saw many BME officers leave at stage two after seeing that programme. Which leads me to say that Insp 1269 McDonald is middle aged, old fashioned and has a high level of the canteen culture. My being quiet and minding my own business, interpreted as my being the villain. Insp McDonald and Sgt 4940 Misselbrook are both on a personal and racist vendetta. I feel Insp McDonald discriminates against me and instigates complaints to PSD. Both Sgt Misselbrook and Insp McDonald speak to me and treat me differently from my Caucasian colleagues. Officers on the team whom are not of the same skin tint as I who receive complaints are dealt with quickly and not referred to PSD as mine are.

Resolution/Outcome Sought - Please detail the outcome you are seeking for your grievance.

I wish to be moved away from these senior officers. Working under their command is affecting my health. They are working to their own agenda and are not allowing me to move on and progress my career. I feel this is institutional racism because of my skin tint. Insp McDonald has on occasions verbally reminds me of the unpleasant experience I have had with the force in the past. An experience I have worked hard to overcome and put behind me. Insp McDonald states I'm to blame for this experience by twisting subject matter. I have tried to revolve this situation withdrawing without conflict to no avail. My grievance has gone past sitting down to amicably resolve.

- 34 On 6 December 2013 Inspector Emily Roberts investigated the Claimant's grievances and on 6 February 2014 a grievance meeting was held chaired by Chief Inspector Townsend. The grievances were not upheld.
- 35 The Claimant appealed against the outcome of the grievance and at a grievance appeal meeting chaired by Superintendent Kate Ford on 4 April 2014 the grievance appeal was not upheld.
- 36 In the meantime the Claimant had sought to appeal against the outcome of the misconduct meeting held on 6 August 2013 but the appeal was rejected as having been submitted 6 months out of time. In his evidence the Claimant claimed that he had not received the outcome of the misconduct meeting or notice of his right to appeal. The Tribunal found, however, that there was

sufficient documentary evidence to show that he had been informed of these matters in writing on 8 August 2013.

- 37 Also in the meantime, Mr Meeks had produced an investigation report into the complaint made by Ms EB and recommended that matter be referred for disciplinary action.
- 38 On 20 August 2014 the complaint by Ms EB was the subject of a misconduct hearing heard by Assistant Chief Constable Laura Nicholson. The hearing was conducted under the Police (Conduct) Regulations 2012 and constituted proceedings which are covered by judicial immunity. The Claimant was represented by Mr Nic Lobbenberg, QC. At the end of the hearing, the Claimant was found guilty of breaching the standards of professional behaviour by failing to be diligent in the exercise of his duties and responsibilities and behaving in a manner that discredited the police service and undermined public confidence in it. He was summarily dismissed from the service.
- 39 The Claimant appealed against his dismissal and a Police Appeals Tribunal (again, conducted under the Police (Conduct) Regulations 2012) was held on 31 March 2015. On 6 May 2015, the appeal was unsuccessful.

Employment Tribunal Proceedings

- 40 On 28 September 2014 the Claimant presented his claim to the Employment Tribunal.
- 41 On 10 November 2014 the Respondent presented a response to the claim.
- 42 Those are the background facts.

RELEVANT LAW

Discrimination Burden of Proof – section 136 Equality Act 2010

- 43 Equality Act 2010

Section 136

(1) This section applies to any proceedings relating to a contravention of this Act.

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

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

- 44 There is guidance from the Court of Appeal in Madarassy v Nomura International plc [2007] IRLR 246. The burden of proof does not shift to the employer simply on the Claimant establishing a difference in status and a difference in treatment. Those bare facts only indicate a possibility of discrimination, they are not without more sufficient material from which a Tribunal could conclude that on the balance of probabilities the Respondent had committed an unlawful act of discrimination. The Claimant must show in support of the allegations of discrimination a difference in status, a difference in treatment and the reason for the differential treatment.
- 45 If the burden of proof does shift to the Respondent, in Igen v Wong [2005] IRLR 258 the Court of Appeal said that it is then for the Respondent to prove that he did not commit or is not to be treated as having committed the act of discrimination. Since the facts necessary to prove an explanation would normally be in the possession of the Respondent, a Tribunal would normally expect cogent evidence to discharge that burden of proof and to prove that the treatment was in no sense whatsoever on the prohibited ground.

Employees and Applicants – section 39 Equality Act 2010

46 Equality Act 2010

Section 39

...

(2) An employer (A) must not discriminate against an employee of A's (B) –

(a) as to B's terms of employment;

(b) in the way A affords access, or by not affording access, to opportunities for promotion, transfer, training or for receiving any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

...

(4) An employer (A) must not victimise an employee of A's (B) –

(e) as to B's terms of employment;

(f) in the way A affords access, or by not affording access, to opportunities for promotion, transfer, training or for receiving any other benefit, facility or service;

(g) by dismissing B;

(h) by subjecting B to any other detriment.

Employees and Applicants: harassment – section 40 Equality Act 2010

47 Equality Act 2010

Section 40

...

(2) An employer (A) must not, in relation to employment by A, harass a person (B) –

(a) who is an employee of A's;

(b) ...

Direct Discrimination – section 13 Equality Act 2010

48 Equality Act 2010

Section 13

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

Section 23

(1) On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case.

Harassment - section 26 Equality Act 2010

49 Equality Act 2010

Section 26

(1) A person (A) harasses another (B) if -

(a) A engages in unwanted conduct related to a related protected characteristic, and

(b) The conduct has the purpose or effect of –

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

- (2) *in deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –*
- (i) *the perception of B;*
 - (ii) *the other circumstances of the case;*
 - (iii) *whether it is reasonable for the conduct to have that effect.*

Victimisation - section 27 Equality Act 2010

50 Equality Act 2010

Section 27

(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

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

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

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

Protected Disclosure Detriment - section 47B Employment Rights Act 1996

51 Employment Rights Act 1996

Section 47B

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

...

(2) ... this section does not apply where –

- (a) the worker is an employee, and*
- (b) the detriment in question amounts to dismissal within the meaning of Part X.*

Time Limits - section 123 Equality Act 2010

52 Equality Act 2010

Section 123

(1) *subject to sections 140A and 140B, proceedings on a complaint within section 120 may not be brought after the end of-*

(c) *the period of 3 months starting with the date of the act to which the complaint relates, or*

(d) *such other period as the employment Tribunal thinks just and equitable.*

...

(2) *For the purposes of this section –*

(a) *conduct extending over a period is to be treated as done at the end of the period;*

(b) *failure to do something is to be treated as occurring when the person in question decided on it.*

Time Limits - section 48 Employment Rights Act 1996

53 Employment Rights Act 1996

Section 48

(3) *An employment Tribunal shall not consider a complaint under this section unless it is presented –*

(a) *before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or*

(b) *within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.*

DECISION

Findings on the factual allegations

54 At the start of the hearing, the parties produced an agreed list of issues. The Claimant relied on the following acts **(1)–(11)** in respect of his claims:

- 55 **(1) In or around December 2012, Mr McDonald decided to treat an incident of lateness as a misconduct issue ('the lateness issue').**
- 56 Inspector McDonald explained the reasons why he decided to treat the incident of lateness as a misconduct issue in his statement dated 25 January 2013 as follows:

At 22.15hrs on Thursday 27th December 2012, straight after briefing, I held a meeting with Troy in the Patrol Inspector's office at Maidenhead. This was as a result of a conversation I had with PS Misselbrook, and subsequent email, regarding Troy's failure to attend at the start of his duty on Christmas Eve.

I started the meeting by making reference to the ongoing antagonism from Troy towards PS Misselbrook over issues relating to Troy's performance, however that would be dealt with separately and that I was more concerned with issues of misconduct. I informed him that I was aware that he did not attend work on Christmas Eve and had to be called at home to come in. I asked him why he did not turn up.

He maintained the account that he gave PS Misselbrook previously, namely that the last duty sheet he was working from was dated the end of November. I asked him if he received the change of duty email that the rest of the shift received and he replied 'NO'. I explained that the email is sent automatically and he maintained that he did not receive it. He stated that if PS Misselbrook was telling the truth he would have told me that Troy tried to find it when PS Misselbrook was there but couldn't. I confirmed that PS Misselbrook did tell me that.

In writing this statement at 1015hrs 5/1/13, I recall (but not noted in my PNB) that Troy asked me if I was aware that there had been problems at Slough with people not knowing their duties for Christmas. I informed him that was the same issue as Maidenhead, namely that the duties changed back and forth before a final decision was made, but not that officers had failed to receive a notification. I explained that we all have an obligation to check our duties and relying on a printout a month old was not acceptable, plus the second page on DMS clearly shows all upcoming duty changes so can be viewed daily when booking on and off. I also pointed out that the changes had affected the whole team and was the subject of frustration and discussion between them.

He then started to talk about the general issues surrounding his supervision by PS Misselbrook but I cut him short by saying words to the effect of 'I'M AWARE OF THE SITUATION BETWEEN YOU AND NEIL SO I'M ASKING MYSELF TO GIVE YOU THE CHANCE TO SAY 'SORRY BOSS, I FUCKED UP AND FORGOT MY SHIFT START

TIME' AND WE COULD DEAL WITH THAT PROPORTIONATELY VIA PDR'

I then specifically asked 'DID YOU RECEIVE THAT EMAIL?' He replied 'NO'.

I then informed him that I would investigate the sending of the email and that we would speak again. I ended the meeting at 22.20hrs. The whole meeting took only 5 minutes.

I immediately recorded notes of the meeting in my Pocket Note Book, serial number C25395 on pages 11-14.

My intention in holding the meeting was to give Troy the opportunity of admitting a mistake, if that was what it was. If he had I would then have addressed the issue of why he felt unable to do so initially. However, he steadfastly maintained that 'DUTIES MESSED UP'.

I subsequently contacted DMS Admin Support by email to establish when the duty change and email were sent. As a result of what I was told I contacted DS Burleigh of PSD to have Troy's email examined to track what happened to it."

- 57 The Tribunal accepted Inspector McDonald's explanation for treating this as a misconduct matter and referring it to PSD. It was clear that if the Claimant had accepted that he had made a mistake and arrived late due to forgetting about the email change of duty times then the matter would have been taken no further by either PS Misselbrook or Inspector McDonald. However he had argued with PS Misselbrook and denied receiving the email notification of change and placed the blame on the duties section.
- 58 **(2) Sometime between late 2102 and mid 2013, Mr Misselbrook instructed the Claimant that he was not to pass his cases to other Sergeants for review but must instead pass all his cases to Mr Misselbrook for review.**
- 59 Police Sergeant Misselbrook explained that he would complete a docket check with each PC on his team, including the Claimant, on a monthly basis. He would look through the Crime Management Computer System ("CEDAR") which showed the ongoing investigations and was used to set up and update investigative actions. It was an opportunity to discuss the investigation plan with officers, quality assure lines of enquiry, and assist them in managing their workload and file incidents. In this respect, the Claimant was treated no differently to any other PC on Team 2. It was consistent with Police Sergeant Misselbrook's management style. This complaint arose out of an incident in November 2012 when the Claimant had asked another police sergeant to review three of his cases. The matter was referred back to Police Sergeant

Misselbrook who informed the Claimant that he should submit the paperwork through him. In an email dated 22 November 2012, he wrote:

Troy

You need to submit the paperwork through to me. I will check through it, then I will submit it to the REC and mark it up on CEDAR as filed.

No other sergeant needs to be involved in reviewing the work as I am your paperwork supervisor and it should come through me. You should not be bypassing that.

Please do as I have said in the previous email and on CEDAR and place the paperwork through to me (in the top tray in the sergeant's office).

- 60 The Tribunal accepted the explanation for the requirement to pass cases through to Police Sergeant Misselbrook and not through other sergeants.
- 61 **(3) In or around February 2013, Mr McDonald decided to treat the Claimant's call in February 2013 to the Police Enquiries Centre regarding an object in the road as a misconduct issue ('the Police Enquiries Centre issue').**
- 62 Inspector McDonald explained the circumstances of this matter in an email to the PSD dated 17 February 2013 as follows:

In short PC Nicol was on his way to a training course and reported an object in the road on the A40 at Gerrards Cross that cars were swerving around to avoid. He described it as 'looking like a body wrapped in a sheet'. He then failed to remain at the scene and continued on his way to his training course.

PS 1493 Gilson (patrol Sergeant for the relevant area) rang him and challenged his failure to remain thus:

"When I called him I introduced myself and asked him what he had seen. He pretty much explained what the log said i.e. he was driving along the road when he saw a white sheet on the side of the road and that vehicles were swerving to avoid hitting it. He went on to say that when he past it, it looked like there was a body wrapped up inside the sheeting. I asked him if he stopped to check it out to which he said no cause he was on his way into work. I then explained that we have a duty of care and the first thing we do is preserve life. He then questioned who I was so again I said my rank and name. He could not provide me with an explanation as to why he didn't stop so I ran through the 5 steps of an investigation Preserving life, securing the scene, preserving evidence etc...

As I was explaining this the phone cut out now I have given him the benefit of doubt and thought this was through bad reception. I didn't try to get back as I wanted to supervise the incident he had called in."

Upon attendance by officers it transpired it was a bundle of bed linen. PS Gilson subsequently complained to me about it when I was next on duty.

Tonight, after serving the aforementioned Reg 15 notice I challenged Troy regarding this new complaint. He initially denied remembering the incident then asked what basis the complaint was on. When I explained 'neglect of duty' he asked for clarification that if an officer saw something off duty and failed to act, then he was in neglect of duty? I then explained the obligations placed on Police Officers on or off duty.

I asked PS Gilson to ascertain exactly what the location was like. The officers who attended the incident state that the location was the A40 between the Bellhouse hotel and the Bull hotel. Whilst there are no pavements at that location it is a very wide, straight length of road and placing your private vehicle to the nearside with hazards on to protect the scene wouldn't be especially onerous. The officers additionally stated that they totally understood why the officer called it in, because it did look like a wrapped body.

I don't think PC Nicol had a reasonable explanation and I think it is a very basic expectation for any officer to 'stick around' when discovering something they think is a dead body. I therefore think he is in neglect of duty.

For PSD consideration of severity and possibly to be dealt with concurrent to the existing matter.

- 63 The Tribunal accepted Inspector McDonald's reasons for referring the matter to PSD.
- 64 **(4) In or around 4 April 2013, Mr Meeks decided that the Claimant had a case to answer in respect of the lateness issue and Police Enquiries Centre issue.**
- 65 The Tribunal took account of Mr Meek's reasons for deciding that the Claimant had a case to answer in respect of the lateness issue. It was set out in his report dated 4 April 2013, as follows:

The officer failed to attend for duty at the appointed time without reasonable excuse. It is alleged that the officer lied to both his Sergeant and Inspector about the reason why he had not reported for

duty, despite being given due warning by email on the 29th November 2012. He also booked on duty, on that day at 1400hrs, having arrived for duty at 1515hrs therefore avoiding having to take Time off in Lieu (TOIL).

A/Insp Misselbrook, prior to 2013, was a reactive shift Sergeant supervising a team of six officers including PC Nicol at Maidenhead. On the lead up to Christmas 2012 duties were changed for officers a number of times and as a result there were a lot of complaints amongst the shifts which lead C/Inspector Lee Townsend attending a briefing to explain why the duty changes were necessary.

On Monday 24th December, PC Nicol did not attend for his duty which commenced at 1400hrs. At 1420 A/Insp Misselbrook called his home and spoke with PC Nicol who stated he thought the duty was to start at 1800hrs. A/Insp Misselbrook advised him he should have been on duty at 1400 and to attend the station immediately and report to him on arrival.

A/Insp Misselbrook eventually spoke to PC Nicol later who showed him a duties print from and said to A/Insp Misselbrook "See that's my duties printed, don't try and put this on me". A/Insp Misselbrook pointed out PC Nicol would have received an automatic email regarding the duty change but PC Nicol refused to accept this and intimated it was a mistake by the duties department.

PC Nicol was extremely argumentative and defensive and A/Insp Misselbrook made a note in his PNB of the encounter. Further resources were required at an incident a short while later and A/Insp Misselbrook found PC Nicol in the secondary report writing room at Maidenhead and requested he crew with another officer and go to the incident. PC Troy became argumentative and A/Insp Misselbrook had to be very blunt to make sure he attended. A/Insp Misselbrook recorded the matter in his Pocket Note Book and later informed Insp McDonald and confirmed in an email to him. It was A/Insp Misselbrook's view that PC Nicol fought his every attempt to supervise him effectively.

FINDINGS:

DS Burleigh shows that the change of duty notification was sent to PC Nicol on the 29th November 2012, opened and forwarded to his home and personal email. It appears that PC Nicol has forgotten or ignored it and it has ended up in his junk mail folder. On the balance of probability PC Nicol has opened the email at work realised its content and sent it to his home for future reference, however it has been automatically placed in the Junk mail folder and PC Nicol has ignored it

and forgotten about it. I do not believe he has deliberately ignored this change of duty as in his words it was to advantage to start and finish earlier.

RECOMMENDATIONS:

1. Duties and responsibilities

I find that PC Nicol did receive the change of duty notification of which he was aware as he forwarded it to his personal email address. I find this allegation substantiated.

66 The Tribunal accepted Mr Meeks' reasons for deciding that the Claimant had a case to answer in respect of the lateness issue.

67 **(5) On 6 August 2013, the Claimant was issued with a written warning in respect of the lateness issue at a Misconduct Meeting.**

68 The Tribunal took account of Chief Inspector Townsend's reasons for finding that the Claimant was guilty of lateness and awarding a written warning as set out in 'Reasons for finding' dated 6 August 2013 as follows:

1. Duties and Responsibilities/Honesty and Integrity

On 24 December 2012 you failed to attend for duty at the appointed time without a reasonable excuse. ~~Having received due warning of the duty change on 24/12/2012 you denied receiving such notification.~~

In relation to breach No. 1, specifically relating to the duty and responsibility breach, I find the case against PC Nicol proven – he was not diligent in the exercise of his duties and responsibilities.

In the case presented by professional standards and within the evidence provided, there is compelling evidence that PC Nicol breached the standards of professional conduct/behaviour expected in this matter.

He is a very experienced police officer who understands the duties placed upon him as a police officer and within police regulations. He received due warning about his change of duties. He had been sent a notifying email from the duties team in relation to the duty change. He had even forwarded this to his home address email account some time before the actual duty. The remainder of his team all reported for duty at the required time on the day in question. PC Nicol accepts that he had previously sent duty change emails to his home address to remind him and his wife of duty changes. He failed to attend duty on the day in question and having done so refused to accept that he had received

such a notification. There was further evidence presented in relation to breach No. 1 that PC Nicol had displayed a lack of integrity and honesty when challenged by both his Sergeant and Inspector about this duty change notification. This was an aggravating factor, coupled with the inappropriate manner in which he responded to his supervisors and inspector who had a duty to investigate. I have given PC Nicol the benefit of the doubt in relation to the allegation that he acted dishonestly and without integrity in this specific matter but warned him that I was close to finding against him here.”

- 69 The Tribunal accepted Chief Inspector Townsend’s reasons for the finding and the award. It also noted that at the hearing on 6 August 2013, the Claimant’s Police Federation representative, PC MacIntyre, confirmed that the Claimant admitted the allegation “*in its entirety*”.
- 70 **(6) On 6 August 2013, the Claimant was issued with a final written warning in respect of the Police Enquiries Centre issue at a Misconduct Meeting.**
- 71 Chief Inspector Townsend explained the reasons for his finding and the award of a final written warning as follows:

3. *Duties and Responsibilities*

On 12th February 2013 you reported to police seeing an object on the A40 road between Gerrards Cross and Beaconsfield which you believed to be a body in a white sheet. You failed in your duty as a Police Officer in that you did not stop and deal with the object.”

3) In relation to breach No. 3 relating to the duty and responsibility breach, I find the case against PC Nicol proven, he was not diligent in the exercise of his duties and responsibilities.

In the case presented by professional standards, and by the evidence provided, there is compelling evidence that PC Nicol significantly breached the standards of professional conduct/behaviour expected and highlighted in police regulations.

As an experienced officer who understands the standards of professional conduct I find that he was neglectful in his responsibility to act diligently in this case. He understands there is a need to preserve life, protect people from harm and investigate crime. The primary role of a police officer is to save and protect life.

Taking into account all the factors in this case, it is clear that an objective and independent member of the public would have expected a police officer to take positive steps to protect & preserve life and to

protect the scene of a potential crime. It is my considered judgement that there was a significant failure by PC Nicol to exercise due diligence, consideration and care in dealing with this incident.

PC Nicol failed in his responsibility to exercise reasonable care to prevent loss of life or loss or damage to the property of others in this incident when identifying what he thought to be a body in a sheet. This initiated a sequence of events where police officers were dispatched to the scene on 'immediate response'. This in itself raises the risk to officer and public safety and the responding officers were acting on the belief that there was indeed a body on a public highway. PC Nicol left the scene and made no attempt to protect it. He neglected his duty by failing to remain and to attempt to protect the scene appropriately. There were ample opportunities, taking due care and a dynamic risk assessment, for him to attempt to protect the scene, alert road users to the risks posed by the object and report his observations to the responding officers. When the first officers arrived on the scene they also report that the object looked like a body wrapped in material.

- 72 Those reasons were set out in the misconduct proceedings "Reasons for finding" which were sent to the Claimant. The Tribunal also noted that the Claimant's Police Federation representative, PC MacIntyre, confirmed during the misconduct meeting on 6 August 2013 that the Claimant admitted this charge.
- 73 The Tribunal accepted the reasoning of Chief Inspector Townsend regarding his decision making.
- 74 **(7) In or around August 2013, Mr Misselbrook instructed the Claimant that he should wear a body worn video.**
- 75 The Tribunal found that it was not Police Sergeant Misselbrook who ordered the Claimant to wear body worn video (BWV) but Inspector McDonald. He explained his reasoning to the Claimant during their meeting on 13 August 2013. The Claimant had been the subject of several complaints from members of the public regarding his conduct which was alleged to have been rude and oppressive. Inspector McDonald considered that BWV, which was available to all police officers, should be worn by the Claimant so that he could record interactions with members of the public and it would assist in resolving any dispute as to the manner in which he had conducted himself. It was part of an action plan imposed by Inspector McDonald. It was explained to the Claimant as follows:

JM: Body worn video is not mandatory, it's expected. I expect you to do it. The reason I expect you to wear it is because all the conversations like this and you're saying 'I wasn't oppressive' and they are later saying you were oppressive we've got a video to look at. At

the very least it's probably just still going to be a local resolution job if it's just a rudeness type thing, but we can have a look at it, and we can have a discussion, and we could help you and say, 'actually Troy, you might have seen it from this point of view, but actually looking at it, it does look a bit strong.' Or you look at it and go, 'actually it was alright.' I think body worn video will serve not only to protect you but also will serve as a learning tool, if it turns out that actually you have been a little bit rude, alright? Because then at least we can look at it. It might be that you don't [talking over each other].

TN: Whatever I think is rude, I just call it being assertive, and when people don't like it they complain.

JM: Troy, you're missing the point again.

TN: Sorry.

JM: The point is if we do have that situation when you're saying 'I'm not being rude, I'm just being assertive' and the Claimant is saying 'no he was being rude' we can look at the video. Yeah? Then you might see and say there's nothing wrong with that, you were just being assertive, and we will say, 'well no actually Troy, it was a bit rude', or I'll say, 'no you're right Troy', but we've got a toll to work with, which is a video."

- 76 The Tribunal accepted Inspector McDonald's reasons for requiring the Claimant to wear BWV. In his evidence, Inspector McDonald confirmed that he encouraged all other officers to wear BWV although the Claimant, as part of the action plan, was the only one who was ordered to do so. There were however good and well documented reasons for him being required to do so.
- 77 **(8) From around January 2013, Mr Misselbrook required the Claimant to do front line duties despite Occupational Health advice that he should not engage in confrontational duties following a shoulder injury.**
- 78 The Tribunal found that Police Sergeant Misselbrook did review the Claimant's lower than average arrest rate and detection rate in December 2012 as mentioned above. He was the subject of an informal action plan to improve arrest and detection rate as part of his frontline duties. This was, however, before the Claimant reported his shoulder injury in January 2013 and before he was put on recuperative/non-confrontational duties following occupational health reports dated 11 February 2013 and 7 March 2013. Before the occupational health reports were produced, Police Sergeant Misselbrook left on temporary posting to Windsor. During this period the Claimant was supervised by Acting Police Sergeant Berryman who noted that the Claimant had to be reminded to risk assess incidents before he deployed to them. In respect of two incidents which the Claimant attended on 29 June 2013 and 26 July 2013,

where he complained that he should not have been involved because of his restricted non-confrontational duties, the Tribunal noted that he had in fact himself volunteered to attend those incidents. There was also evidence that on at least one occasion, on 16 August 2013, Police Sergeant Misselbrook also advised the Claimant to risk assess any incident he attended as he had a responsibility to bring himself back to full fitness and to recuperate.

79 **(9) In or around 6 February 2014, Mr McDonald decided to treat the Claimant's alleged dereliction of duty in respect of Miss B's case as a misconduct issue ('the conduct of Miss B's case').**

80 Ms EB made a formal written complaint against the Claimant on 17 July 2013.

81 Inspector Macdonald was the Claimant's second line manager and had a responsibility for dealing with complaints by members of the public against members of his teams. He said that upon researching the issue of the Claimant's failure to investigate Ms EB's complaints of harassment, there was clear evidence that this was a deliberate act by the Claimant and not unintentional. He thought that the Claimant had decided not to address Ms EB's concerns and then misled her about the steps he was taking to investigate the matter. Therefore, he decided that the matter should be referred to PSD to be dealt with. He himself took no further action in respect of the matter.

82 The Tribunal had no reason to doubt Inspector McDonald's reasons for escalating the matter to the PSD in view of the formal complaint by Ms EB.

83 **(10) In or around 13 March 2014, Mr Meeks decided that the Claimant had case to answer in respect of the conduct of Miss B's case.**

84 On 13 March 2014, Mr Meeks produced an investigation report in accordance with his role as a PSD investigation officer. The findings section of his report read as follows:

Ms EB made a legitimate complaint of Harassing/Nuisance calls made to her parents address where she had been living. These calls had been going on for about 6 years intermittently. PC Nicol was asked to meet with her and investigate her complaint.

This he did and advised her correctly to make contact with her service provider for further help. He then proceeded to try to recruit her as an informant as he realised she had previously had criminal connections and in fact when as far as discussing this with the Source Handling Manager. However had PC Nicol checked he would have found that over the years Ms EB had been subject to a number of harassment issues from various suspects.

The following day Ms EB was notified that her service provider, BT, had identified the number of suspect the caller and provided these details to the Authorities Bureau.

PC Nicol was then provided with these details but because they were not in the form of a statement declined to investigate further and filed the matter without recording it on the Cedar Crime Recording system. He informed Ms EB of this and as a result she complained.

PC Gabriel was allocated the investigation, identified the offender and dealt with him by way of Fixed Penalty Notice. This matter was crimed, ref LC4293984/13 on the 23rd July 2013 just over 3 weeks after the initial report by Ms EB.

Ms EB complained that PC Nicol having realised her background, spent more time trying to recruit her as an informant rather than investigating her complaint. PC Nicol admits trying to recruit her as an informant.

It would appear that completely independent of this interaction, PS Barnikel was trying to find a wanted person who had been previously linked to Ms EB and asked PC Allen to contact her. This she did however it convinced Ms EB that PC Nicol was only interested in getting information from her and had asked a colleague to do this on his behalf, this was incorrect.

Recommendations:

I find the allegation of Neglect of Duty substantiated.

- 85 The Tribunal found that this was a well-reasoned finding made in accordance with Mr Meek's role, and preceded by a detailed analysis of the evidence which had been collected in support of it.
- 86 **(11) On 20 August 2014, the Claimant was dismissed following a Misconduct Hearing regarding the conduct of Miss B's case.**
- 87 See below for the Tribunal's decision on this issue which was covered by judicial immunity.

Findings on the heads of claim

- 88 In the agreed list of issues, the Claimant referred to the factual allegations above **(1)-(11)** and claimed that each one was an act of direct discrimination and of harassment because of his race.
- 89 In respect of those acts which occurred on or after 10 July 2013 he claimed that they were also acts of victimisation and/or detriment as a result of a

protected act / protected disclosure. The Respondent conceded that the grievances lodged on 10 July 2013 and 27 August 2013 were protected acts and protected disclosures.

- 90 The Tribunal considered each event individually and collectively. Each event occurred as described above. The Tribunal found that there was a plausible non-discriminatory reason for the treatment referred to in each event. All the events described above were well documented, properly investigated, including the taking of formal witness statements where necessary, and dealt with in accordance with the Respondent's policies and procedures.
- 91 The Claimant mistrusted Thames Valley Police generally and Police Sergeant Misselbrook and Inspector McDonald in particular. The Tribunal found that he clearly had an aversion to being supervised and this was exacerbated by Police Sergeant Misselbrook's management style which involved close and at times meticulous supervision. There was no evidence, however, that he supervised the Claimant any differently than the other police officers in his team because of the Claimant's race. Where the Claimant was more closely supervised, it was because of his performance and numerous complaints against him from members of the public and his police colleagues.
- 92 Police Sergeant Misselbrook and Inspector McDonald considered, with good cause, that the Claimant was underperforming, on occasions was neglectful of his duties, and had received a disproportionate number of complaints from members of the public regarding incivility towards them.
- 93 The Respondent pointed out that the Claimant had a history of under-performance and behavioural problems stretching back to 2005/2006.
- 94 As noted above, the Claimant's probationary period was extended by three months.
- 95 On 24 March 2005 it was reported as follows:

The following issues have been raised and are supported by Sgt Spencer latest review on Troy

Communication between Supervisors, colleagues, and members of the public.

Criticism.

Carrying out lawful orders

Prejudices (civilian members of staff).

Disregard of advice.

Ignoring issues hoping they go away.

Puts blame on every one else and not himself.

These are all highlighted in Sgt Spencer's report.

Attached is a similar report from Sgt Rob Kightley written in August of last year of a very similar vein pointing to the same issues.

- 96 His PDR report of 31 March 2006, completed by his supervisor at that time (not Police Sergeant Misselbrook or Inspector McDonald), included the following:

I am aware from my own observations that Troy is often inconsiderate of other people's feelings. He will treat other officers with a degree of contempt at times and cannot see anything wrong with doing so. As stated, there are issues relating to Troy's interactions with members of the public, which are being addressed appropriately.

Investigation – In this field, Troy's efforts for someone of his service is poor. As stated previous, he has dealt with 29 offences, bottom of the shift. He has arrested 21 people resulting in seven charges. Taking the intervention of CIDT away, I cannot see how any officer can deal with so little in one year reporting period.

Troy deals with domestic issues as part of his role on a daily basis. Sometimes I have to question where his thought process lies. I have had to deal with complaints from disgruntled MOPs [members of the public] regarding his conduct.

Throughout the reporting period, I have dealt with (personally) two complaints about PC Nicol's alleged incivility towards members of the public.

I am aware of two other complaints about incivility and both of these are directed towards female members of the public or agency employees of TVP.

- 97 Additionally, again as mentioned above, in July 2006 the Claimant was transferred to High Wycombe following two complaints by members of the public.
- 98 It follows that the Claimant's conduct and complaints regarding his behaviour when under the supervision of Police Sergeant Misselbrook and Inspector McDonald were not isolated or untypical. They had been identified and documented by his supervisors back in 2005/2006.
- 99 The Tribunal accepted the Respondent's assertion that on the Claimant's return to police service in 2009 he had been allocated to Team 2 (eventually joining the team in 2011) at least in part because Police Sergeant Misselbrook and Inspector McDonald were known for good man management and close supervision. It was expected that they would provide the Claimant with the support and supervision required to return to front line police duties.

- 100 It was not the case, as alleged by the Claimant, that they had a grudge against him and were out to get him. The Respondent pointed to numerous occasions when Police Sergeant Misselbrook and Inspector McDonald did not escalate complaints regarding the Claimant to PSD and on occasions defended him. Reference was made to a complaint of incivility in September 2011; a complaint from an off duty PCSO in October 2011; a complaint of rudeness from a duty solicitor in January 2012; a complaint of neglect of duty in May 2013; a complaint from a first aid trainer in June 2013; a complaint from the mother of a nurse to whom the Claimant had offered a lift in June 2013; and a complaint of incivility from a jogger in July 2013. These were not escalated and were either dealt with by local resolution or without any formal action. These matters could have been escalated had the supervisors wished to do so.
- 101 The Tribunal could find no evidence upon which it could make a finding, or base an inference, of racial motive or bias for the Respondent's treatment of the Claimant. There was simply no such evidence. Nor was there any evidence that his treatment had been influenced or motivated by the protected acts/protected disclosures.
- 102 The Claimant's case was based upon his perception, unsupported by any evidence, that the Respondent was guilty of "institutional racism" as stated in his grievance of 27 August 2013. He also alleged a "personal and racist vendetta" by Police Sergeant Misselbrook and Inspector McDonald. He was unable however to point to any evidence to support such allegations.
- 103 The investigation report by Inspector Emily Roberts dated 6 December 2013 included the following:

PC Nicol has not offered any evidence of racism in writing or verbally. He was asked during the grievance meeting if he can provide any to which he replied he had none. ...

PC Nicol did not offer any evidence of racism during the grievance meeting but states this is how he feels. ...

Despite asking for evidence of why PC Nicol felt that his supervisors were racists and why he felt that he had been treated differently, he could not elaborate on this. Both individuals have been working in a difficult and complex situation with PC Nicol's behaviour and verbal communication with them. ...

Allegations of racial discrimination by Inspector McDonald and PS Misselbrook have not been found. PC Nicol has suggested that as his line manager had challenged him on his performance that this was institutional racism. However looking at the action plans and PDRs, the actions taken are appropriate, reasonable and necessary.

104 The Tribunal found that because there was no evidence whatsoever of any direct race discrimination, racial harassment, victimisation or protected disclosure detriment, the burden of proof had not shifted to the Respondent. Even had it done so, the Respondent's witnesses had provided cogent evidence, described in detail above, to show that the treatment of the Claimant was in no sense whatsoever on any prohibited ground.

Judicial immunity

105 The Tribunal concluded that the misconduct hearing on 20 August 2014 was conducted under the provisions of the Police (Conduct) Regulations 2012. Neither the misconduct proceedings nor the decision to dismiss the Claimant were within the jurisdiction of this Tribunal because they were the subject of judicial immunity in accordance with the decision of the Court of Appeal in Heath v Commissioner of Police of the Metropolis [2005] ICR 329, a decision which was applied by the Employment Appeal Tribunal in P v Commissioner of Police of the Metropolis [2014] UKEAT/0449/13/JOJ.

106 In paragraph **(11)** of the list of issues, the Claimant alleged that the dismissal was an act of direct race discrimination, race harassment, victimisation and/or detriment as a result of a protected disclosure. The Tribunal took account of the reasoning of Mr Justice Langstaff in P v Commissioner of Police of the Metropolis at paragraph 28 as follows:

I return, though, to the principal reason for dismissing the appeal. The difficulty in the path of the Claimant here is that critically she does not seek simply to say that the decision as to dismissal was wrong, but that it was made in such a way or for such reason as to amount as to an act of discrimination and/or harassment against her. This, as I have observed, and as the Judge recognised, is an attack upon the integrity of the panel, in respect of which the disciplinary board is immune from suit.

107 The same complaint was made in this case and the Tribunal determined that it had no jurisdiction to consider this complaint because of judicial immunity.

Summary

108 In view of the above, the Tribunal concluded that all the Claimant's claims must fail and be dismissed.

109 The Respondent submitted that all the Claimant's claims had been presented out of time, that there was no continuing act, and that there were no grounds for the time limit to be extended.

110 It appeared to the Tribunal that all the claims over which the Tribunal had jurisdiction had been presented out of time. However, in view of the Tribunal's

decisions above, and the failure of all claims on a substantive basis, it was not necessary for the Tribunal to consider the time limit issues.

.....
Employment Judge Vowles

2016

Sent to the parties on

.....

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for the Secretary to the Tribunals