



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Ms C Muntean**

v

**The Chief Constable of West  
Midlands Police**

Heard at: **Birmingham**

On: **6, 7, 10-14, 17-21 July 2017**

Before: **Employment Judge Perry**

Members: **Mr P Zealander  
Mr PJ Simpson**

### Appearances

For the Claimant: **Ms A Del Priore (counsel)**

For the Respondent: **Mr A Rathmell (counsel)**

## JUDGMENT

The unanimous judgment of the tribunal is that:-

- 1 There was no contravention of part 5 of the Equality Act 2010 and the claimant was not subjected to discrimination based on the protected characteristic of race in contravention of s.13 (direct discrimination) and s.27 (victimisation) Equality Act 2010. Those complaints are dismissed.
- 2 The Claimant was not subjected to a detriment done on the ground that she made a protected disclosure (ss.47B & 48 Employment Act 1996 (as amended)). That complaint is also dismissed.

## REASONS

*References in square brackets below are unless the context suggests otherwise to the page of the bundle or if they follow a case reference, a document reference, or a witness' initials, to the paragraph number of that authority or document (e.g. [ET1/8.2]). References in round brackets are to the paragraph of these reasons.*

### BACKGROUND AND THE ISSUES

- 1 This is a claim that was presented on 22 September 2016 and includes complaints of race discrimination (the claimant, describes herself as Romanian), victimisation and detrimental treatment done on the ground that she made a protected disclosure (a whistleblowing detriment complaint).
- 2 Some 17 acts of less favourable treatment and detriment were initially relied upon spanning the period 1 July 2015 to 22 September 2016 (the latter being the date the claimant's claim form was presented [1-33]). Not all are relied upon as acts of detriment for the whistleblowing detriment claim. The acts of less favourable treatment and detriment were identified as a result of case management preceding this hearing. A list of issues was provided at the outset of this this hearing and revised as the claim progressed. The final version of list of issues is appended hereto showing the claims that continue to be pursued and those withdrawn.
- 3 A sole Protected Act was relied upon for the s.27 Equality Act 2010 (EqA) victimisation complaint; a claim the Claimant presented to the Employment Tribunal in 2013 (and the internal complaints that led to it) alleging race discrimination in respect of proceedings brought against her pursuant to Reg. 13 of the Police Regulations 2003



[13-14] (the “First ET Claim”). The respondent accepted this was a protected act for the purposes of s.27 EqA.

4 The parties agreed a memorandum of understanding as to the facts and matters raised in the Claimant’s First ET Claim and the outcome of it as follows:-

- “1. *In 2013, the Claimant brought Tribunal proceedings against the Respondent, alleging race discrimination (direct discrimination, indirect discrimination and harassment). In summary, the Claimant alleged that she had been subjected to unlawful discrimination and harassment during her probationary service, both in terms of treatment of her by her supervisors, and in terms of the manner in which the Regulation 12 and Regulation 13 (Police Regulations 2003) processes were managed.*
2. *The Respondent entered a defence to the Claimant’s claim, denying that it had discriminated against her or harassed her on grounds of her race and expressed an intention to defend the entirety of her claim.*
3. *The parties later compromised (without admission of liability) the Claimant’s Tribunal claim. The Respondent:*
  - a. *Acknowledged the treatment that the Claimant had received in relation to her probationary period, and the anxiety that this may have caused her.*
  - b. *Indicated that there was no intention on the part of any member of the Force to cause the Claimant distress in the administration of the probationary period arrangements.*
  - c. *Committed to reviewing Force application of Regulation 12 and Regulation 13 of the Police Regulations 2003, confirming that representatives from the Force and the Police Federation would meet to discuss the policy and to make any appropriate amendments agreed in accordance with Police Regulations.*
  - d. *Ensure that advice was given, where appropriate, to colleagues involved in the case where specific learning issues had been identified.*
  - e. *Confirmed her as a substantive police officer.”*

5 The sole protected disclosure relied upon is a Near Miss incident report that was made by the claimant on 10 February 2016 (see (73) following). The claimant relies upon s. 43B(1)(b) and (d) Employment Rights Act 1996 (as amended) (ERA); breach of a legal obligation and health and safety. The respondent conceded during closing submissions that a protected disclosure was made, (it accepts that information was relayed), but not that the disclosure is capable of constituting a disclosure for the purposes of Part IVA ERA. It is accepted that all the alleged perpetrators had knowledge of the Protect Act and all save for Insp. Churchill of the Protect Disclosure.

6 As to the direct discrimination complaints whilst a hypothetical comparator is argued in each instance actual comparators are also argued in a number of instances. At the outset Mr Rathmell raised an issue as to the characteristics of comparators being omitted.

7 A timing point is raised by the respondent concerning complaints prior to 23 April 2016:-



- 7.1 As to the direct discrimination/victimisation complaints prior to that date they must constitute conduct extending over a period or the claimant will need to show it is just and equitable to extend time (s.123 EqA).
- 7.2 In the case of the whistleblowing detriment complaints, they must constitute acts extending over a period or the claimant will need to show it was not reasonably practicable to bring the claim in time and that she did so within a further reasonable period (s.48 ERA).

## **THE EVIDENCE**

- 8 The two lever-arch file bundle of documents was agreed. Following additions made to it by agreement it totalled some 607 pages although the bundle was actually longer than that might appear given the insertion at several points of pages numbered xx A, B, C etc.
- 9 In addition to the list of issues and memorandum of understanding we also had before us a Chronology, cast list and witness statements from the following witnesses whose statements were taken as read and were cross examined:-
  - 9.1 the claimant, Police Constable ('PC') (Coralia) Simina Muntean [SM], who at the time of the matters before us worked on Response Team "C" at Wolverhampton Local Policing Unit (LPU),
  - 9.2 Inspector (Insp.) Steve Grange [SG], PC Muntean's Police Federation Representative during a formal Unsatisfactory Performance Procedure (UPP) that post-dated the matters before us but who had been advising her in that background before that,
  - 9.3 Mr Peter Harkness [PH], a former PC who was a Police Federation representative and from 2014 to 2016 was the Federation's lead health and safety representative,
  - 9.4 Sergeant (Sgt.) James Proffitt [JP], one of PC Muntean's three direct supervisors on Response Team C and who worked at Wolverhampton LPU at the time of the matters that concern us.
  - 9.5 Sgt. Sukhwinder Sarai [SS] another of PC Muntean's three direct supervisors at Wolverhampton LPU.
  - 9.6 PC Laura Tweedie [LT] C's supervision at Wolverhampton LPU. During some of the events that concern us she was a Temporary Sergeant (T/Sgt.) on Response Team C and thus one of PC Muntean's supervisors.
  - 9.7 Insp. Tracey McElroy-Baker [TMB] at the time of the matters that concern us was initially was a Sergeant on Response Team C and thus one of PC Muntean's supervisors. During the time that concerns us she was also a Temporary Inspector (T/Insp.) supervising Sgts. Proffitt, Sarai and T/Sgt. Tweedie at Wolverhampton LPU.
  - 9.8 Acting Sgt. (A/Sgt.) Andrew Hedge, the Tactical Intelligence Team Supervisor within the Respondent's Intelligence Department. He is qualified to the rank of Sgt. but it was unclear to us if that was his substantive role. Notwithstanding that we refer to him to avoid discourtesy as A/Sgt.
  - 9.9 Insp. Sallie Churchill [SC] the predecessor of Insp. McElroy-Baker as second level supervisor of Response Team C, Wolverhampton LPU, and
  - 9.10 Nicole Earp [NE], one of the respondent's Line Manager Advisors and Human Resources support for Sgt. Proffitt during PC Muntean's Informal UPP.



- 10 At the start of the hearing Ms del Priore applied for permission to call Mr Harkness. His statement was forwarded to the Respondent only two days or so before the hearing was due to commence. No objection was raised by Mr Rathmell; he indicated he would address any issues in cross examination.
- 11 Both representatives lodged closing submissions and orally elaborated upon them. We do not relay all the authorities they have referred us to in our summary of the Law below; they are set out in detail in their submissions.
- 12 We indicated we would address liability only. PC Muntean gave evidence first. During her evidence, a question arose concerning the issue of 'single crewing'; PC Muntean and then both representatives were asked if any records existed concerning PC Muntean's crewing. PC Muntean indicated that her Pocketbooks would include that detail. Having questioned why her Pocketbook entries had not been provided for many of the incidents that she referred to PC Muntean sought from the respondent access to her Pocketbooks. It agreed and on a reading day the Tribunal held mid-way through the hearing she had access to the same. Despite that PC Muntean did not seek copies of additional Pocketbook entries be added to the bundle.

## **OUR FINDINGS OF FACT**

*We make the following primary findings of fact on the balance of probabilities and from the information before us. We do not attempt to resolve every disputed issue that has emerged during this hearing. That is not our role. What follow are our findings relevant to the issues in the claim.*

- 13 PC Muntean joined the Respondent as a Student Police Officer on 19 October 2009 and served at Birmingham East LPU.
- 14 Following the compromise of the First ET Claim PC Muntean was posted to Wolverhampton LPU [14]. That posting took effect from 15 April 2013. She was initially posted to a city centre Neighbourhood Team and supervised by Sgt. Clare Fox. From 5 February 2014, she was posted to Response Team "C" which was then based at Wednesfield Police Station [LT/7]. By the time of the matters that concern us Response Team "C" had moved to Bilston Street Police Station which is in the heart of Wolverhampton City Centre. PC Muntean was initially supervised by Sgts. Jones, Sarai and Herbert. They in turn reported to Insp. Churchill.
- 15 PC Muntean makes no complaint about events or those individuals until the posting to Wolverhampton LPU of Sgt. Proffitt on 3 February 2015. PC Muntean asserts [SM/5] it was then *"I began to notice a difference in treatment towards me. I began to feel that Sgt. Proffitt was actively keeping 'a tag' on me"*.
- 16 The final contextual issues we need to relay for our purposes at this point are that in April 2015 Sgt. Proffitt told us he was asked to line manage PC Muntean [JP/18]. In June 2015 Sgt. McElroy-Baker, as she was then, transferred to Response Team C [TMB/9] and Sgt. Jones retired [SM/6]. The sergeants at that time were Sgts. Proffitt, Sarai and McElroy-Baker although Sgt. McElroy-Baker would also act up as a T/Insp. when Insp Churchill was on annual leave or on courses [LT/9]. In July 2015 PC Tweedie also began to act up as the role of Sergeant [LT/9]. In April 2016 Sgt. McElroy-Baker took command of Response Team C as a T/Insp. in succession to Insp. Churchill. Insp. Churchill remained at Bilston Street and covered her absences and holidays.
- 17 Thus, during the period that concerns us PC Muntean was based at Bilston Street Police Station in Wolverhampton, was supervised by Sgts. Proffitt, Sarai, and initially McElroy-Baker and latterly by T/Sgt. Tweedie. They in turn reported until April 2016 to Insp. Churchill and thereafter (and in her absence prior to that time) T/Insp. McElroy-Baker.



## The Log Entries

- 18 Many of the incidents to which we are about to turn formed part of a log of events (the “Log”) [116-121] that Sgt. Proffitt started to keep on 29 September 2015; i.e. almost 6 months after the first of the incidents included in it (14 April 2015). The Log was later referred to in an informal performance management process (“the Informal UPP”) that was commenced against PC Muntean in the late spring of 2016. The Log was duplicated and expanded upon in a further version concerning the events concluding on 26 April 2016 [252-256].
- 19 On 14 April, 14 & 15 June 2015 three incidents occurred that were the subject of entries by Sgt. Proffitt in his Pocketbook. They respectively related to a domestic dispute between a mother and son, where PC Muntean was alleged to have made a comment using the term “Dickhead”, an incident concerning alleged comments made to a victim of rape by PC Muntean and a professional discussion between PC Muntean and Sgt. Proffitt on 15 June concerning a number of matters including that of the day before.
- 20 As to the “Dickhead” comment, PC Muntean was alleged to have said in response to request from the son to stop treating him like a dickhead to have allegedly told him to stop behaving like a dickhead. She states she responded by stating by stating “stop acting like one”. Irrespective of which form of words were used in our judgment, the issue that was subsequently raised with her by her supervisors was that they had considered that unprofessional because PC Muntean had inflamed the situation. When that was put to PC Muntean in cross examination she stated was a lie. This was an example in our judgment of PC Muntean’s failure to grasp the issue that was raised by the respondent. It was not a question whether she had used the words alleged or not, but her failure to perceive that the words she stated (and thus accepted) she had used were inflammatory and that she failed to acknowledge that, either at the time of the incident or, having subsequently had an opportunity to reflect upon the same. Instead, PC Muntean appeared to focus on an argument over what words were used and not their possible effects. As will be seen from what follows that exemplifies many (but not all) of the incidents that form the basis for the Log.
- 21 In relation to the incident on 14 June PC Muntean was alleged to have stated in the presence of rape victim that PC Muntean dealing with the incident would mean that she was late finishing her duty and that she needed to get home on time (for childcare reasons). In PC Muntean’s statement [SM/36(ii)] she denied that she had made the comment attributed to her. Before us she accepted she had made the comment but not in the victim’s presence. That was disputed by Sgt. Sarai who told us he was present, witnessed the incident, took her into another room to speak to her about the remarks and when there asked her to reflect on her behaviour from the witnesses’ perspective [SS/14]. Given PC Muntean’s version of events has changed between her statement and the Tribunal Hearing we give it less weight and thus prefer that of Sgt. Sarai.
- 22 Sgt. Proffitt considered the incident of 14 June 2015 serious enough to not only warrant him making a Pocketbook entry [131-133] but to make PC Muntean sign his note of the same. The Pocketbook entry records that PC Muntean stated that she accepted that she could at times be direct and might be perceived as abrupt but that she stated this was a Romanian cultural behaviour [131]. We record at this point that the assertion this was a Romanian cultural behaviour was also repeated before us by Ms Del Priore and Insp. Grange (when he was referred to PC Muntean’s abruptness in his witness statement [SG/18]). No objective or expert or other evidence was led to support this assertion. We find this was a stereotypical assumption for which the only basis was an assertion by PC Muntean and Insp. Grange.



- 23 The Pocketbook entry of 15 June 2015 records that Sgt. Proffitt identified her behaviour as a potential cause of friction and for that matter, complaints, and that he expected her to reflect on, and improve her behaviour.

### **The Incident on 1 July 2015**

- 24 The first complaint chronologically within the list of issues that remains a “live one” relates to an incident on 1 July 2015 where PC Muntean is alleged to have challenged members of the Intelligence Team in an aggressive, rude and defensive manner regarding a query they had raised relating to a crime log that she had completed. PC Muntean accepted that A/Sgt. Hedge, who was the supervisor of the Intelligence Team, sought from her the name of her supervisor. A/Sgt. Hedge told us he spoke to Sgt. Proffitt to complain about her behaviour. As a result, we find Sgt. Proffitt and A/Sgt. Hedge met with PC Muntean on 2 July 2015 to discuss the events of the previous day. PC Muntean was alleged to have repeatedly interrupted and interjected whilst Sgt. Proffitt and A/Sgt. Hedge were speaking. Both events (1 & 2 July 2015) formed part of the Log [117 & 253].
- 25 We find that having received a query via email concerning an intelligence report that PC Muntean had lodged, PC Muntean went to the intelligence department and sought to clarify the basis for that query. She asserts that she was concerned the query of her intelligence report was based on a stereotypical assumption by the respondent; the intelligence report had included the surname “Hill” and the intelligence department had queried whether the name should be “Gill”. PC Muntean suggests that “Gill” is an Asian sounding surname and thus that was a stereotypical assumption that the subject of the report should have been Asian. She did not refer us to a copy of the email.
- 26 The respondent indicates the query was sent to PC Muntean because having checked its records there was no record of an individual with the surname “Hill” at that address whereas there was a record of an individual whose surname was “Gill”. It thus wanted to check if this was a ‘typo’ to ensure an intelligence report was not linked to the wrong individual. We accept that was the reason for seeking clarification and find that was a legitimate reason to clarify the contents of the intelligence report.
- 27 A/Sgt. Hedge told us that when PC Muntean first entered the Intelligence Department she was very abrupt and rude in the way that she spoke to one of the intelligence team, DC Mullins. He told us he felt the need to step in and challenge her behaviour. He told us he explained the rationale behind DC Mullins’ request for clarification (see **(Error! Reference source not found.)**) to PC Muntean and her response was “I’m a police officer, I don’t make mistakes, and I research things before I submit them”. [AH/11]. A/Sgt. Hedge continued with his version of the events of 1 July in this way:-
- “[AH/12] ... The Claimant continued to talk to DC Mullins in what I considered an argumentative, defensive and rude manner that was completely unconstructive in trying to resolve the issues at hand with the log. ...*
- [AH/13] ... Regardless of how much I and DC Mullins tried to explain to the Claimant the rationale for returning the log, she would not listen and appeared either unable or unwilling to try and understand why we needed the details. ...”*
- 28 A/Sgt. Hedge told us that after PC Muntean left the other member of the intelligence team, Melissa Faithful, who was a civilian analyst, told him that she was offended by some of the comments she had made, Ms Faithful had inferred that PC Muntean was asserting that Police Officers made fewer mistakes than civilian staff and had interpreted that as PC Muntean stating civilian staff were inferior to police officers; she saw that as a lack of courtesy and respect for her as an intelligence professional.



- 29 Within the list of issues PC Muntean asserted that the respondent questioned her honesty and integrity and criticised her in relation to her submission of the intelligence report. This was originally pursued as a complaint against Sgt. Proffitt and A/Sgt. Hedge but in closing, the direct discrimination complaint and complaint naming A/Sgt. Hedge were withdrawn. PC Muntean did not assert her honesty and integrity
- 30 PC Muntean did not pursue before us a specific allegation that Sgt. Proffitt questioned her honesty and integrity and so the only aspect of this complaint that remains was if Sgt. Proffitt victimised her by criticising her in relation to her submission of the intelligence report, but we also need to address the inclusion of the incident in the log and its use in the respondent's subsequent informal UPP process against PC Muntean. The questioning of PC Muntean's honesty and integrity however is also relevant as background to A/Sgt. Hedge's alleged rationale for his complaint to Sgt. Proffitt and so we need to touch upon this.
- 31 It was put to A/Sgt. Hedge that he was on friendly terms with Sgt. Proffitt or in the alternative that he respected him and thus having been asked to provide a written record by Sgt. Proffitt of the incident that this was an instance of Sgt. Proffitt seeking to unjustifiably raise an issue against PC Muntean that should not have been raised, for him to solicit negative feedback and/or address a spent issue.
- 32 A/Sgt. Hedge told us that immediately after the incident he started to prepare an email detailing PC Muntean's unacceptable behaviour. We find that indicates how he viewed her actions. That that was his view of her actions at the time is also supported by A/Sgt. Hedge asking PC Muntean for the name of her supervisor while she was still present. That he did so was not disputed. We find for those reasons that his view of events and his desire to speak to her supervisor about the events of that day was not manufactured by or at the behest of Sgt. Proffitt but was A/Sgt. Hedge's genuine view of PC Muntean's actions at the time.
- 33 A/Sgt. Hedge also told us he had previously been line managed by Sgt. Proffitt and he did not like the way that Sgt. Proffitt treated his team. As we state above given A/Sgt. Hedge had determined to address PC Muntean's behaviour with her line manager before he was aware who she reported to lead us to conclude that his initial response could not have been influenced by his previous dealings with Sgt. Proffitt. On the basis he complained she had not announced herself to him and his team and thus he had to ask her for the details of her supervisor, nor in our judgment could his view have been based on any view of PC Muntean relayed to him by the respondent's staff
- 34 Instead of sending the email we refer to at (32) A/Sgt. Hedge told us he went to see Sgt. Proffitt. He did not explain why he did that instead of sending the email. As a result, of their discussion Sgt. Proffitt and A/Sgt. Hedge decided that they should speak to PC Muntean about the incident and they met with her on 2 July. As to the events of 2 July A/Sgt. Hedge described them in this way:-

*"[AH/15] I fully explained the issues and concerns to the Claimant. However, the Claimant still stated that she did not accept the reasons for the log being returned. I explained that this was beside the point and the issues at hand were not her concerns or views regarding the log, but rather her actions and behaviour she used when trying to resolve such issues. The Claimant kept on interjecting and speaking over me. I explained the issues that I found unacceptable and ultimately, the Claimant did accept that her behaviour was unacceptable and offered to come into the office and apologise to the staff. I explained that this was unnecessary and was happy now that she had been made aware of her behaviour and the way it had affected the Intelligence Department staff."*



- 35 Sgt. Proffitt's Pocketbook entries of 1 & 2 July [134-7] record that he warned PC Muntean that that type of behaviour was not acceptable, referred to an discussion he and Sgt. Jones had had with PC Muntean on 15 June 2015 [130-3] about a number of matters that had followed the incident on 14 June 2015 where that he again had asked her to sign the Pocketbook entry (that we refer to (21 to 23) see log [116 & 252]) and repeated that further incidents would lead to consideration by him of a formal development plan against her [136-7].
- 36 A/Sgt. Hedge told us that Sgt. Proffitt subsequently requested that he record those events via an email which he did on 3 July 2015 [138-139].
- 37 PC Muntean acknowledged in the meeting with Sgt. Proffitt and A/Sgt. Hedge that if Ms Faithful had been offended it warranted an apology from her and she offered to give that. That was declined by A/Sgt. Hedge; he said he would pass on her apology to Ms Faithful. Notwithstanding that offer of an apology PC Muntean did not accept before us that it was justified for Ms Faithful to have been offended.
- 38 In her witness statement PC Muntean [SM/12] states that she was criticised. Whilst the respondent's concerns were something PC Muntean did not wish to hear, the question for us is whether that criticism was warranted and if so was it was relayed in a constructive (rather than a destructive) manner. PC Muntean does not elaborate on that other than to imply that criticism was unwarranted, nor does she relay why she took issue with the manner and/or tone in which it was said. This is just one of many examples where PC Muntean states she was criticised without giving the detail how she says it was unwarranted or why the manner or way in which that feedback was given was destructive.
- 39 In our judgment, and irrespective of how PC Muntean perceived she been treated, her failure to identify that her behaviour potentially caused offence during the incident, or having had time to reflect on the same, after the incident (given she considered it was not justified for Ms Faithful to have been offended) is in our judgment the very matter that the respondent was seeking to address with her (see the extract from [AH/15] at (27)). PC Muntean's sense of grievance and her view that the respondent had reached a stereotypical assumption in our judgment obscured her perception of events and led her to conclude without justification that her integrity was being questioned by the intelligence department rather than them legitimately asking if she had mis-spelt a name.
- 40 Nor in our view was this an example of Sgt. Proffitt unjustifiably seeking to identify and then adopt unwarranted and/or trivial matters to justify the subsequent Informal UPP. We find that the incident was not trivial as is indicated not just by Sgt. Proffitt's view but by A/Sgt. Hedge's view at the time. He had raised with Sgt. Proffitt of his own motion the way PC Muntean had reacted and had offended a civilian present. Having been alerted to a concern, Sgt. Proffitt raised it with PC Muntean at, indicated that that type of behaviour was not acceptable, the reasons why that was so, and the consequences that might flow in case of repeat. That that was his view is reinforced by Sgt. Proffitt asking PC Muntean to sign his pocketbook entry. In our judgment, that he sought that she sign his pocketbook entry, adds weight to his expectation that she reflect on her behaviour and amend it. We find that even had the incident on 1 July been of itself trivial we find that PC Muntean's failure to accept the view and feedback given by Sgt. Proffitt and A/Sgt. Hedge would have warranted a note being made in her Pocketbook and the Log.
- 41 We find that whilst Sgt. Proffitt asked A/Sgt. Hedge to provide an email recording events we find that this was not because Sgt. Proffitt was seeking to solicit negative feedback in relation to unwarranted or trivial matters, but because Sgt. Proffitt was concerned about PC Muntean's failure to reflect, accept feedback and to challenge his





view. This was not the first example of that type of behaviour that Sgt. Proffitt had cause to speak to PC Muntean about.

- 42 Irrespective of whether the earlier complaint was justified, which in our view it was, Sgt. Proffitt having sought that PC Muntean amend her behaviour, her having failed to do (as evidenced by this example), entitled him as a supervisor to conclude that PC Muntean had not accepted his perception of events, and that being so there might be a further recurrence. We find, that being so, he was entitled to ensure that this was recorded in the event of yet further recurrences.
- 43 We find this was an example where the respondent having raised development issues with PC Muntean, she not only refused to accept the view of her supervisor but also that of A/Sgt. Hedge and unjustifiably perceived these as critical of her. We find it was legitimate for the respondent to raise these and to seek to evidence them in the event of a repeat of the behaviour given her reaction to those issues. We find that Sgt Proffitt's actions which include the holding of the initial meeting, the view he held at it, him seeking the email from A/Sgt. Hedge and him recording this in the Log were in no sense motivated by the First ET claim but because that was his legitimate and genuinely held view as to the required and proper response to those matters.

### **The Log Entries (continuation 1)**

- 44 On 28 & 29 September 2015 two further incidents occurred that were used as part of the Log [117-118, 253-254]. The incident of 28 September 2015 concerns an allegation that PC Muntean had complained in allegedly an aggressive and angry manner in respect of the 'non-criming' of a domestic assault, and that she then proceeded to criticise Sgt. Proffitt in front of colleagues. The respondent's contemporaneous computer record of the incident was before us (WebOASIS) [140-145].
- 45 PC Muntean also made a Pocketbook entry regarding this incident [146-152]. That records that Sgt. Proffitt was unhappy about PC Muntean asking him to update her log and that he responded in a raised voice without understanding what she was seeking and when he did understand what she was seeking he criticised her for disclosing that the witness had retracted her statement. PC Muntean's note which is all in the same hand concludes with her signing off duty at 17:00 although it records the incident occurred at 15:40.
- 46 Sgt. Proffitt's Pocketbook entry was also before us for both incidents [154-159] as was that of Sgt. McElroy-Baker (as she then was) [161-163] although that related solely to their discussion on 29 September.
- 47 Sgt. McElroy-Baker (like Sgt. Proffitt) was challenged about Sgt. Proffitt's notebook entry of the meeting on 28 September. It was put to Sgt. McElroy-Baker that Sgt. Proffitt's version of the incident was highly dramatised and unbalanced, and rather it was simply an instance of a PC asking a supervisor for help. Sgt. Proffitt's version was that PC Muntean entered in an angry and hostile manner and expected him to drop everything to assist her. Sgt. McElroy-Baker told us PC Muntean had spoken to her as she had felt unable to speak to Sgt. Proffitt and that Sgt. McElroy-Baker instructed PC Muntean to speak to A/Sgt. Tweedie, as Sgt. McElroy-Baker was in the middle of something that could not be interrupted. It is unclear if PC Muntean did so but Sgt. McElroy-Baker relayed that she subsequently heard PC Muntean speaking on the phone in a raised voice in an unprofessional manner. As a result, she told us A/Sgt. Tweedie left the Sergeant's office to calm PC Muntean down. Sgt. McElroy-Baker told us that PC Muntean had behaved in that way before her on other occasions. A/Sgt. Tweedie made no reference to that incident in her statement nor do our notes record that she was challenged specifically about it.



- 48 The incident of 29 September 2015 concerns a meeting to discuss the events of the previous day between PC Muntean and Sgts. Proffitt and McElroy-Baker where PC Muntean was alleged to have been dismissive and defensive to the feedback provided to her. Sgt. McElroy-Baker [TMB/10] stated that was her first personal experience of dealing with PC Muntean (we took that to mean as a supervisor) and it records it became apparent to her that PC Muntean was not prepared to accept feedback or criticism. She states PC Muntean inferred from their discussion that she was being instructed not to record matters. Sgt. McElroy-Baker states that she explained to PC Muntean that was not the case and she was merely trying to advise her on how and where she recorded her work. At the heart of Sgt. McElroy-Baker's complaint about PC Muntean's behaviour is that PC Muntean did not accept the feedback that Sgts. McElroy-Baker or Proffitt were trying to give her, the conversation went round in circles and PC Muntean continually interrupted both her and Sgt. Proffitt.
- 49 On 29 September Sgt. Proffitt started to write up the Log using his Pocketbook entries [JP/25, 39 & 40].

### **The Complaint concerning the allocation of Police Vehicles**

- 50 In November 2015 PC Muntean passed a course that meant she was permitted to drive "high powered" police vehicles. She initially alleged (although this was subsequently withdrawn) that from November 2015 Sgt. Sarai frequently deployed her to low-powered vehicles without sirens when PC Muntean was qualified to drive 'blues and twos'.
- 51 PC Muntean had failed that driving course on two previous occasions. Insp. Churchill told us the feedback from instructors on the course was that PC Muntean had undertaken dangerous manoeuvres and had failed because she was not listening to the feedback provided by the instructors. Insp. Churchill stated PC Muntean refused to accept this, suggesting her instructor was racist and that he didn't like her. Insp. Churchill told us that she and Sgt. Jones sat down with PC Muntean and went through the feedback form with her and as an ex-traffic officer, Sgt. Jones explained where she had gone wrong. PC Muntean insisted she was right and there was nothing wrong with her driving. PC Muntean was allowed to undertake the course again. Insp. Churchill told us beforehand she told PC Muntean to listen to the instructors and take on board what they told her. Following PC Muntean failing the second course Insp. Churchill told us the feedback received was that she failed for the same reasons. Insp. Churchill told us that she and Sgt. Jones again went through the feedback with PC Muntean and tried to discuss where she had gone wrong and again PC Muntean failed to accept that it was her fault, instead stating that her first instructor must have told her second instructor about her and that they were both racist.
- 52 When those matters were put to PC Muntean she stated that Insp. Churchill was lying. The Employment Judge explained to her that if an allegation was made by a party that an individual was lying (irrespective of whether that individual was a serving police officer) if that allegation was not proved that it could damage the credibility of the maker of the assertion. The Employment Judge asked PC Muntean if she wished to persist with that assertion, or to retract it. PC Muntean maintained the assertion and indeed repeated it.
- 53 Insp. Churchill told us that in her time with West Midlands Police Service she had not known of an officer having three attempts at the course as each attempt cost in the region of £1,500. We find that was not so because she accepted there may have been exceptions to that in her evidence. Irrespective, of that being so if that was the only instance of a third attempt the point is still validly made that it was highly unusual for that to occur.



- 54 Insp. Churchill told us she rang the driving school to find out how close PC Muntean was to passing and found that she was, in her words *“if only she would listen and take on board the advice the instructors were giving her, remedying her driving accordingly”*. Insp Churchill persuaded her supervisor Supt. Fraser to agree to a third course which PC Muntean passed.
- 55 Whilst PC Muntean denies that version of events. In our judgment those matters are relevant given they demonstrate pre-existing behaviours about which the respondent subsequently complains, and those examples predate when Sgt. Proffitt joined C response (Sgt. Jones was in post).
- 56 PC Muntean also initially complained that she had been consistently single-crewed, save for one occasion in Spring 2016, when she was crewed with PC (8237) Evans.
- 57 The respondent’s position was that from approximately May 2015 onwards it had a default policy that officers would be single crewed unless there was an operational need [498] and that essentially double crews would consist of Taser trained officers and/or a senior officer and student officer. We were told that at any point between 16 and 19 vehicles were available. Two were retained for Sgts. and the Insp. so that number reduced in practice to between 14 and 17. The respondent’s policies relay the numbers of double crewed vehicles to be deployed on each shift. That was dependent on the type of shift, number of vehicles available and the staffing compliment for that shift (minimum 16 and maximum 24 (although Insp. Churchill told us she managed 26 PCs)). That varied between a minimum of 2 and maximum of 6 double crewed vehicles per shift.
- 58 PC Muntean accepted she was neither Taser trained nor a student. We asked her to point to where she identified that similarly qualified officers were doubled crewed and she had not. Following the conclusion of her evidence PC Muntean reviewed her old Pocketbooks (see (12)) and this aspect of the claim was withdrawn.

### **The Log Entries (continuation 2)**

- 59 On 17 January 2016, PC Muntean was spoken to by Insp. Churchill regarding her apparent reluctance to receive, accept or act on feedback, and that she allegedly unnecessarily challenged her supervisors [118, 254].
- 60 On 21 January 2016, an entry was placed in PC Muntean’s Pocketbook when she claimant parked in a workplace disabled bay. In her statement, PC Muntean made clear that she did this on more than one occasion. Her rationale for that was there was no requirement for its use at that time by any disabled person, it did not need to be available for visitors or other professionals given its location and she only parked in it when no other parking bays were vacant.
- 61 The record in the Log is dated 21 January [118 & 255]. The entry in Sgt. McElroy-Baker’s Pocketbook was dated 27 January 2016 [204-6]. That was because a discussion took place on 27 January 2016 between PC Muntean and Sgt. McElroy-Baker that we address at (64) following. This was initially pursued as a complaint of direct discrimination and victimisation complaint. The alleged perpetrators were Sgts. McElroy-Baker and Proffitt.
- 62 PC Muntean provided photographs showing similar instances [485-495A] but she accepted that these photographs were all taken after the time span of events that concern us. Sgt. McElroy-Baker stated [TMB/13] she had never had cause to endorse the Pocketbooks of officers in C Response for parking in the disabled bay because no one had done so to her knowledge. PC Muntean did not refer us to a copy of the entry in her Pocketbook nor did she lead evidence of instances when others had parked in the same bay(s), how those examples could have come to the attention of Sgts.



- McElroy-Baker and Proffitt (or indeed other C Response supervisors) and showing that no action was taken against the drivers concerned.
- 63 There was thus no evidence led before us that such instances had come to the attention of the supervisors of C Response and they took no action. When they were asked each of the C Response supervisors stated that had such matters come to their attention they would have actioned this. The complaint was not pursued.
- 64 As to the discussion we refer to above between PC Muntean and Sgt. McElroy-Baker on 27 January 2016 Sgt. McElroy-Baker's version of events [TMB/13] was that PC Muntean had been told the previous week by Sgt. Proffitt not to park in the disabled bay in the rear yard at Bilston Street Police Station (that discussion was not in dispute as this refers to Issue 4 – the placing an entry in PC Muntean's Pocketbook on 21 January 2016, concerning her parking in a workplace disabled bay). Sgt. McElroy-Baker asserts PC Muntean had again been seen parking in the bay and when she asked PC Muntean why she had done this PC Muntean stated that there were no spaces. Sgt. Sarai had apparently checked and found that there were 3 spaces available.
- 65 Sgt. McElroy-Baker stated she endorsed PC Muntean's Pocketbook because she had already been verbally warned just a week earlier by Sgt. Proffitt, Sgt. McElroy-Baker felt that was a proportionate progression and it also ensured that the matter was formally recorded. Sgt. McElroy-Baker told us she warned PC Muntean if she did so again, she would make a formal report to the Senior Leadership Team. PC Muntean was alleged to have become argumentative stating that there were often no spaces in the rear yard. Sgt. McElroy-Baker states she informed PC Muntean that if she was unable to find a parking space again she was to inform a supervisor but PC Muntean did not approach her after that time to say that she had been unable to find a parking space.
- 66 Sgt. McElroy-Baker's Pocketbook entry records that *"I find PC Muntean to be very argumentative whenever she is advised about anything, She has been warned about this by Insp Churchill on 17-1-16 and she still continues to do it"*. [206]
- 67 Sgt. McElroy-Baker told us she had never had cause to park in the disabled bay and Sgt. McElroy-Baker and the other officers who were asked all stated that whilst parking spaces were restricted for private vehicles in the rear yard at Bilston Street they had not known there to be no spaces for marked police vehicles (for which a certain number of spaces had been allocated).
- 68 Sgt. McElroy-Baker asserted that PC Muntean's actions demonstrated that she had little regard for authority. We find that is so.
- 69 On 25 January 2016, a complaint was logged on the respondent's "Rate Your Local Police" website [198-201]. Such reports can be logged by any member of the public who has had recent dealings with the police service. The complaint concerned an incident on 21 January 2016 where PC Muntean had been single crewed and had followed a male prisoner in custody upstairs whilst he got changed following his arrest. The complainant felt that this was unprofessional and degrading. The complaint was referred by the responsible officer, Temporary Chief Inspector (T/CI) Tracey Packham to Sgt. McElroy-Baker. Sgt. McElroy-Baker asked PC Muntean for a report in relation to the incident and in turn Sgt. McElroy-Baker replied to T/CI Packham [194-197].
- 70 Sgt. McElroy-Baker told us [TMB/12] that she had concluded that PC Muntean had completed a thorough primary investigation but on 26 January 2016 spoke to PC Muntean to give her advice about how to address such matters in the future because whilst PC Muntean had been single crewed, at the time the prisoner in custody went upstairs to get dressed other male officers were present at the address and it would



have been more appropriate for one of them to have accompanied the prisoner rather than PC Muntean. Sgt. McElroy-Baker told us PC Muntean had not been prepared to accept her feedback. Sgt. McElroy-Baker provided a copy of her Pocketbook entry [205-206] and that incident was used as part of the Log [118, 254].

- 71 PC Muntean's complaint was that she was "admonished" for the events concerned and then was dismissive, argumentative and appeared to disregard feedback [189-203 & 205-206]. In her witness statement [SM/36(x)] she told us *"the offender in question was wearing pyjama shorts at the point of his arrest, and asked to go upstairs to get changed prior to transport to custody. I looked in the direction of my male colleagues, who did not react to the offender going upstairs. Due to concerns for everyone's safety, I followed him upstairs, but by no means did I watch him get changed. Despite the complaint made on the "Rate Our Police" website, the offender made no complaint himself and later admitted the offence. My actions were later deemed to have been correct by Chief Inspector Packham. PS Proffitt was not present when Acting Inspector McElroy-Baker brought the complaint to my attention and so I do not know how he can maintain that I was dismissive."*
- 72 PC Muntean asserts in her claim form that T/CI Packham had deemed her actions correct. Sgt. McElroy-Baker told us she spoke to T/CI Packham to ask her specifically if she had said that to PC Muntean, T/CI Packham had denied that she had said this to PC Muntean and seemed surprised by her asking.

### **The 'Near Miss' Incident on 10 February 2016**

- 73 It was accepted the lodging of the health and safety 'Near Miss' form by PC Muntean on 10 February 2016 [214-216] was a protected (qualifying) disclosure. The Near Miss form related to PC Muntean's concern about her being instructed to attend a female patient awaiting a mental health assessment at New Cross Hospital, Wolverhampton, A&E department.
- 74 It is striking that not one of the officers concerned provides Pocketbook entries for this incident.
- 75 PC Muntean again initially complained that she was "criticised" for submitting the Near Miss form by Sgt. Sarai and Insp. Churchill. That complaint (Issue 7) is solely now pursued as victimisation but was as initially also pursued as direct discrimination and as a whistleblowing detriment.
- 76 There was a protocol in place between the respondent and other agencies essentially requiring this. PC Muntean's complaint was that she was instructed to attend as a lone officer without support and this contravened an internal email of 18 January 2016 [185-188] that had identified health and safety risks concerning the lack of coverage of the respondent's communications system in parts of that department at the time and which had stated that officers should not be required to attend the A&E department alone. We understand that issue has now been addressed by the issue of mobile telephones to officers.
- 77 It is common ground that a Near Miss does not require an officer or member of the public to have suffered harm, that would be dealt with in another way; the Near Miss form is used to identify matters where an officer identifies a risk or potential risk to ensure harm and the risk of harm is minimised.
- 78 Mr Harkness stated that in the evening of the day the Near Miss form was lodged he attended Bilston Street Police Station with another Police Federation representative, Sgt. Teague, with a view to addressing C Response at their night briefing, that is the briefing before they went out on patrol for the night shift. Mr Harkness told us that Insp. Churchill had sanctioned that meeting as a 'closed-door' meeting, that is between the



Police Federation representatives and PCs only; thus, any supervisors, that is Sergeants and Inspectors would not be present. PC Tweedie was acting up as a Sgt. at the time and she told us that Sgt. Teague knew she was there (as a PC) and made no objection.

79 There is a stark contrast between PC Muntean' version of events, that of Mr Harkness and that of Insp. Churchill following the lodging of the Near Miss form by PC Muntean. Mr Harkness told us that he and Sgt. Teague spoke to Insp. Churchill in her office to inform her of the Near Miss, to ascertain how that was to be investigated and her plans to minimise the risks to her team's personal safety. His evidence was in direct conflict with that Insp. Churchill. We return to that conflict of evidence in a moment. We address first the background to events and the respective weight we give to their evidence.

80 Mr Harkness told us in relation to the night briefing that he recalled [PH/6]:-

*"... stressing the importance of not attending A&E single crewed and that those that do so are not only placing themselves at great risk, but others around them. During the address, police officers informed me that single crewing was a huge concern for them, but they felt that this was being seen as the only way to address the number of incidents that were being reported. Some police officers stated they had attended A&E single crewed but had not submitted a Near Miss report."*

81 PC Tweedie told us that no mention was made of attending New Cross Hospital's A&E department at the night briefing. PC Muntean in her statement referred to the closed-door meeting relating to deployments at incidents. She made no reference to attending the A&E department single crewed being discussed. Thus, whilst they both referred to health and safety issues being discussed, principally these regarded the use of call buttons to identify an officer's attendance at a scene (code 6), neither PC Muntean nor PC Tweedie made any mention of Mr Harkness stressing the importance of not attending New Cross Hospital's A&E department single crewed.

82 The significance of officers attending the A&E department single crewed is its link to the Near Miss report by PC Muntean.

83 We find Mr Harkness's version of the closed-door meeting is thus at odds with both PCs. Tweedie and Muntean.

84 Mr Harkness told us he and Sgt. Teague had a subsequent meeting with Insp Churchill. He told us [PH/7]:-

*"I cannot recall the whole conversation but we did speak about PC Muntean's Near Miss report" and "there were two comments that the Inspector made that stuck in my mind. The first being: 'I'm annoyed she didn't feel like she could speak to me Pete.' I remember saying to Inspector Churchill that a Near Miss is not a negative thing and should be seen as an essential tool of assessing how safe our policies are. I also informed her that PC Muntean spoke very highly of her. The second comment was: 'How do I deal with this now?' "*

85 He accepted in cross examination that his use of speech marks around those two comments indicated they were direct quotes. He maintained that view despite accepting he had not made a note of the meeting and that he could not recall the date or relay the words he used to tell Insp. Churchill of PC Muntean's submission of the Near Miss form.

86 PC Muntean also told us Sgt. Sarai called her followed by Insp Churchill and that both said to her that she should have told them at the time if she was not happy.



- 87 Sgt. Sarai in his evidence accepted he was aware of the Near Miss form but could not recall how he became aware of it. He stated he did not discuss it or its contents with PC Muntean. He also accepted he was aware of the wider safety concern concerning single crewed attendances at the A&E department and that it was being investigated. He told us he had assessed the risks involved before sending PC Muntean (and did so each time an officer was sent there) and essentially that was a fundamental part of his role. Thus, again there is a direct conflict of evidence.
- 88 Insp. Churchill stated no conversation took place with Mr Harkness and that she was not aware of the Near Miss form until she became aware of PC Muntean's claim form. When this was put to PC Muntean she asserted that Insp Churchill was lying, and that Insp. Churchill's evidence was absolutely shocking and grossly untrue. We again explained to PC Muntean that if she made such an assertion and did not prove that to be so that may lead to an adverse credibility finding against her. We asked her if she understood that and if so if she maintained that assertion. We are satisfied she did understand that and she repeated that Insp Churchill was lying.
- 89 It was also put to PC Muntean that her comments were unfair as she did not know if Insp Churchill was aware of the Near Miss form or not. PC Muntean replied that she spoke to Insp. Churchill as did Mr Harkness, and he had informed her of his conversation with Insp. Churchill that evening. Neither PC Muntean nor Mr Harkness refer in their statements to Mr Harkness having told PC Muntean that evening that he had spoken to Insp. Churchill. The first mention of that was when PC Muntean gave that evidence in cross examination.
- 90 PC Muntean's oral relaying that Mr Harkness told her that evening of the discussion with Insp. Churchill is a significant piece of evidence. It goes some way to corroborating that his discussion with Insp. Churchill occurred, and that is in direct dispute with Insp. Churchill's evidence.
- 91 Both PC Muntean and Mr Harkness were serving police officers at the time and thus well used to preparing statements for use at trial. They either understood (or should have understood) the significance of giving an account that addressed relevant matters. Evidence of corroboration being one of them. It would have been a simple matter for either or both to have done so either in supplementary questions (given the late inclusion of Mr Harkness's statement) or given we had been provided a social media exchange between PC Muntean and Mr Harkness earlier that day [216A-H] to have referred to the relevant part of that social media exchange in their statements. They did not.
- 92 If PC Muntean had been criticised by either Insp. Churchill or Sgt. Sarai we would have expected her to have raised that as a grievance or at least relayed that that had occurred to Mr Harkness. It would after all have been a potential act of detriment. She was a person who spoke her mind and the Police Federation were already involved. She did not.
- 93 Similarly, if Insp. Churchill had criticised PC Muntean when speaking with Mr Harkness we would have expected Mr Harkness to have raised it as a grievance on her behalf or at least made a Pocketbook entries (or a personal note). He did not do so.
- 94 Nor did PC Muntean relay the detail of the alleged criticism by Insp. Churchill or Sgt. Sarai of her. She did not set out what words were used, the tone and/or manner; she merely stated she was later questioned by them both in relation to the submission of Near Miss form and its content and having not discussing it with them beforehand [SM/23].
- 95 Finally, when it was suggested to PC Muntean that she was exaggerating about the effects of her submitting the Near Miss form PC Muntean repeated it was because she



- had submitted the Near Miss form that she was “admonished” for not speaking Insp. Churchill or Sgt. Sarai (before she did so). When challenged why she considered that she had been criticised the Employment Judge’s note was that PC Muntean stated she had not been criticised for submitting it but that she felt she was criticised for submitting the form.
- 96 PC Muntean and Mr Harkness failed to explain why, if the criticisms of PC Muntean were made as alleged, that neither she nor Mr Harkness (who was a Police Federation representative concerned with health and safety and thus fully versed on the need to ensure detriments ensued to officers reporting Near Misses) that no grievance or complaint was made nor why neither made a contemporaneous note in support of their account, exchanges between them in relation to other matters having been provided. That, and the failure of both to relay that Mr Harkness told PC Muntean of his discussion with Insp. Churchill that evening (which if accepted means that both failed to give a full account of matters in their statements, PC Muntean having expanded upon matters orally which are not addressed by Mr Harkness now), reflect negatively on the weight we give to the accounts of both Mr Harkness and PC Muntean.
- 97 Mr Harkness’s version of the night meeting shortly before the events in question were not relayed by PCs Tweedie or Muntean and the detail Mr Harkness gives of what was said to Churchill is also lacking, in contrast to the detail he gives concerning other less relevant matters. His version of the subsequent meeting is fundamentally at odds with that of Insp. Churchill. Those matters cast further doubt in our judgment on the weight we should give to his account.
- 98 We were told Mr Harkness was called principally to address the question of Insp. Churchill’s knowledge of the Protected Disclosure. Mr Harkness told us he had been asked to provide his statement by Insp. Grange a week or two before he signed it and whilst he commented on Insp. Churchill’s knowledge he had not read her statement. Nor did he refer to the exchange of messages he had with PC Muntean [216A-H] until this was addressed by supplementary questions. Nor was any substantive explanation given why he had not been called earlier.
- 99 Further, despite Sgt. Teague remaining a Police Federation representative, no explanation was provided why he had not given a statement in relation to these crucial matters. Insp. Churchill told us these issues having been raised during the hearing she spoke to him before she gave evidence and he had no recollection of the alleged discussion with her. He was not called to refute that. Nor was any real explanation given why Mr Harkness provided a statement so late in the day; oversight appearing to be the only explanation before us.
- 100 In the absence of any Pocketbook entries we conclude that PC Muntean changed her account. We thus prefer the version of Insp. Churchill, Sgt. Sarai, Sgt. Tweedie and PC Muntean to that of Mr Harkness where they are odds and the evidence of Insp. Churchill, Sgts. Sarai and Tweedie to that of PC Muntean where they are at odds with her account and PC Muntean’s account is not (as here) supported by other evidence.
- 101 Following the submission of the Near Miss form PC Muntean alleges she was treated differently (in a cold manner) by Sgt. Sarai and Insp. Churchill and specifically that they avoided eye contact and spoke to her coldly. That complaint (Issue 8) is solely now pursued as whistleblowing detriment but was initially also pursued as direct discrimination and victimisation.
- 102 PC Muntean accepted she had not led any evidence of her being treated coldly or by them avoiding eye contact. She gave no examples of when or how that difference in treatment was stated to have occurred. The respondent’s witnesses deny that was so. In the absence of specific examples being led by PC Muntean that could be put to the





respondent's witnesses we find the evidence before us is that those events did not occur as alleged by her.

- 103 Despite PC Muntean having accepted that Sgt. Proffitt was not on duty at the time, (her text/social media messages with Mr Harkness (the Police Federation health and safety representative) refer (see [216E])). Despite that Sgt. Proffitt was named by her as a perpetrator of incidents by virtue of that protected disclosure. Whilst Sgt. Sarai potentially would have been the subject of an investigation for sending her to the A&E department and thus had a reason for subjecting her to detrimental treatment it was suggested Sgt. Proffitt also had such a motive because he had given similar instructions in the past to the instruction PC Muntean complained about (and continued to do so), that her report showed he was engaging in bad practice(s) and/or that he was concerned that an investigation generally could ensue that would cast doubt on his actions and could be detrimental to his career.
- 104 We find the evidence before us does not support that either Sgts. Proffitt or Sarai were concerned about the effect the Near Miss report had on them personally. Whilst both were asked if there was such an investigation neither Sgts. Sarai Nor Proffitt were aware of one and they both continued to send officers to the A&E department single crewed. Indeed, they both initially maintained before us that the internal email of 18 January 2016 (see (76)) allowed them to do so subject to carrying out a risk assessment. When the wording of the internal email of 18 January 2016 was pointed out to Sgt Proffitt he accepted he did not have that discretion. In our judgment, that only dawned on him when it was pointed out by Ms del Priore. We accept he was truthful in that regard.
- 105 PC Muntean's text/social media messages relay that she did not have a problem with her other supervisors, only Sgt. Proffitt. That suggests there was an issue prior to the Near Miss form. Sgt. Proffitt's evidence indicates that was so; he was keeping the Log because of the concerns he had, it was not in dispute that PC Muntean had also had notes made in her Pocketbook and Sgt. Proffitt, Sgt. McElroy-Baker and Insp. Churchill also had issued words of advice to PC Muntean by the time of the Near Miss form.

### **The Log Entries (continuation 3)**

- 106 On 17 March and 15 April 2016 two further incidents were referred to in the Log. On 17 March 2016, PC Muntean was alleged, in her words, to have inadequately and inappropriately dealt with an investigation into a road traffic collision (RTC) that occurred on 16 March 2016 and then declined to accept any feedback provided to her [226E to 229]
- 107 PC Muntean had stopped of her own accord whilst driving past the RTC. The driver of the vehicle at fault having failed to stop PC Muntean advised the victim that the incident needed to be self-reported. Sgt Sarai told us [SS/22] that one of the passengers in the car was the daughter of a serving police officer and that officer wished to make a complaint about the way the incident had been handled. Amongst other matters it was alleged PC Muntean failed to get out of her vehicle despite having been at the scene for several minutes. Copies of the respondent's Web OASIS logs were before us [224-226H].
- 108 Sgt. Sarai contacted one of the passengers [227-229] and he told us that he considered that PC Muntean had been negligent in her duties because she had failed to ask questions and had she done so it would have become apparent that an RTC investigation report should have been commenced because an injury has been sustained. He concluded PC Muntean did very little by way of enquiries or otherwise, she did not get out of her vehicle, failed to seize the vehicle licence plate left behind by the offending vehicle or broadcast via her airwave radio an observations message.



- 109 Sgt. Sarai accompanied by A/Sgt. Tweedie spoke to PC Muntean. He told us when he asked her to reflect on events she became defensive, and having informed her that in his view she had acted negligently she spoke over him, stated continually that she would not do anything differently in the future and that Sgt. Sarai had only come to the view he had because the complainant was a Police Officer. Sgt Sarai in cross examination told us he persuaded the complainant not to pursue a complaint on the basis he discussed other options with the complainant; specifically, that advice was to be given to PC Muntean as there were other matters he was concerned about regarding PC Muntean.
- 110 On 15 April 2016 PC Muntean was alleged to have made unprofessional comments in the presence of the victim of a sexual offence (this was referred elsewhere as an ABE interview of historic rape victim [118-119 & 254]). A copy of the respondent's Web OASIS logs concerning the victim of a sexual offence were before us [230-241].
- 111 The next incident recorded in the Log [119, 255] was also initially argued as one of the complaints (Issue 5) namely on 16 April 2016 PC Muntean was threatened with prosecution for parking in a public disabled bay by Sgts. McElroy-Baker and Proffitt. That was disputed by Sgt. McElroy-Baker.
- 112 During her oral evidence, PC Muntean accepted she had parked her marked police vehicle in a public disabled parking bay to buy cakes from a shop and that the public disabled parking bay was on the street on which stood the head office of a major regional newspaper. The cake shop was said to be approximately a 5-minute walk from the police station so in any event there was no necessity for to park there. It transpires PC Muntean regularly bought cakes for colleagues essentially as a forfeit as she was sometimes late for the start of shift briefing. It was not clear if this was such an incident.
- 113 We find that the respondent was entitled to consider that PC Muntean parking her marked police vehicle a risk to its reputation. PC Muntean told us she had seen the disabled bay sign after she had parked but decided not to move the vehicle. That suggests either a failure to identify that reputation risk or a disregard for it.
- 114 PC Muntean also accepted that at no point had she been threatened with prosecution as this issued alleged. Accordingly, that complaint was withdrawn by her. We find that PC Muntean was told that she would be issued with a fixed penalty notice. T/Sgt. Tweedie's Pocketbook entry [241A] appears to refer to that sanction, that PC Muntean had admitted the offence and that she had been warned for parking in disabled bays, albeit in the Police Station car park, previously. That admission in our judgment shows that PC Muntean was prepared to disregard previous instructions.
- 115 What had not been considered by PC Muntean's supervisors was if the Police Service still had the power to issue fixed penalty notices, given the recent transfer to Local Authority Civil Enforcement Officers of certain matters. So, when that was identified consideration was given to passing the issue to the Local Authority but on reflection the respondent identified that too represented a similar risk to its It thus considered exercising other powers it had that would prevented those matters coming into the public domain. Ultimately it decided not to.
- 116 On 21 April 2016, less than a week after the public disabled parking bay incident PC Muntean parked a marked police car outside the rear car park fire exit at Bilston Street Police Station (Log [119, 255]). T/Sgt. Tweedie apparently asked her to move the vehicle. PC Muntean is alleged to have responded stating that it was not causing an obstruction. Allegedly colleagues intervened to request PC Muntean to follow A/Sgt. Tweedie's instructions. She did so. PC Muntean states she did so virtually straight away. The respondent suggests that there were other car parking spaces available but PC Muntean had chosen not to park in them.



- 117 For the purposes of the chronology we record at this point that any acts prior to 23 April 2016 are potentially out of time.
- 118 On 26 April 2016, PC Muntean arrested a male member of the public under s.136 Mental Health Act 1983. We were told by Sgt. Proffitt [JP/48] that the detainee had apparently initially been violent but calmed down on his arrest and there was a protocol in place that dictated that any person arrested under s. 136 was to be moved to a place of safety straight away so a formal health assessment could be conducted. He told us that in incidents of that sort officers more often than not were required to remain with the detainee until the detainee had been transferred into the care and control of mental health professionals, and that in turn was dependent on a number of matters including but not limited to, the availability of mental health doctors and the patient's behaviour.
- 119 Sgt. Proffitt told us that within moments of making the arrest, and prior to the detainee being placed onto the awaiting ambulance, PC Muntean, asked him to arrange for her to be relieved. He told us despite him explaining the contents of a local agreement to her regarding the provision of relief officers, PC Muntean repeated her request numerous times over a 45-minute period despite there still being no change in circumstances. He told us that was a further example of PC Muntean failing to heed his advice and explanation.
- 120 Three further incidents were recorded in the Log; during April 2016 A/Sgt Tweedie speaking to PC Muntean about not taking her break at the designated times. [119, 255], on 26 April A/Sgt Tweedie speaking to PC Muntean about her High Visibility stab vest [119, 255] and another incident that was recorded in the Log (but not the Further Log) namely on 30 April 2016 during a night shift Sgt. Sarai challenging her about her wearing her long black (standard issue) car coat rather than her high visibility jacket [120].

### **The commencement of the informal UPP**

- 121 Insp. Churchill did not cease to be in day to day charge of C Response until 24 April 2016 (although Insp. Churchill told us around that time she took some leave so Sgt. McElroy-Baker may have taken up day to day control earlier than that given Insp. Churchill covered for T/Insp. McElroy-Baker's leave and other absences). Given there is some ambiguity over when that was we will henceforth refer to her as T/Insp. McElroy-Baker.
- 122 We find based on the accounts of T/Insp. McElroy-Baker [TMB/14-17] and Sgt. Proffitt [JP/45] that sometime in April 2016 Sgt. Proffitt approached T/Insp. McElroy-Baker to discuss placing PC Muntean on an informal development plan. We find that it was more likely than not that having occurred in early April that T/Insp. McElroy-Baker was still a sergeant at the time.
- 123 We find because of that discussion T/Insp. McElroy-Baker decided to seek the advice of Insp. Churchill. They told us that at the end of April 2016 they discussed PC Muntean parking the marked police vehicle in the public disabled bay and it was decided against issuing PC Muntean with a Fixed Penalty Ticket.
- 124 Insp. Churchill told us T/Insp. McElroy-Baker sought her advice on this issue, T/Insp. McElroy-Baker initially had suggested that PC Muntean should be issued with a fixed penalty notice for this offence. The panel enquired if the Police still had the power to do so given the civil enforcement regime. The oral evidence we heard was not clear cut but T/Insp. McElroy-Baker accepted in her statement that the respondent did not have the power to do so, that it would have to have been issued by the Local Authority and that gave rise to the reputational risk the respondent was concerned about. Insp. Churchill told us she did not feel that it was in the best interests of the respondent or



- PC Muntean for the matter to be passed to the Local Authority; the press might become aware of that and that the best course of action was to move to an informal UPP Development Plan.
- 125 Insp. Churchill told us her rationale for that decision was that the unofficial words of advice she and PC Muntean's supervisors had given to PC Muntean in relation to parking in disabled spots had been disregarded. We heard T/Insp. McElroy-Baker agreed that was the best course of action and as a result it was decided to place PC Muntean on the informal UPP [SC/25]. T/Insp. McElroy-Baker put it this way "*...Inspector Churchill noted that the Claimant was not prepared to abide by the rules and had not listened to previous feedback as regards parking in disabled bays, and therefore it was decided that it was now absolutely necessary to commence an informal Development Plan...*" [TMB/17].
- 126 Whilst there were a number of other incidents around that time we accept based on the evidence Insp. Churchill and T/Insp. McElroy-Baker gave the reason they decided on that course was PC Muntean's attitude and behaviour issues as exemplified by parking in the public disabled bay on 16 April 2016. Neither Insp. Churchill nor T/Insp. McElroy-Baker refer directly to the further parking incident on 21 April 2016, or the other incidents in their rationale. In our judgment those other incidents merely reinforced the view that Insp. Churchill and T/Insp. McElroy-Baker came to; that PC Muntean had demonstrated a disregard of the concerns previously identified in the earlier unofficial words of advice.
- 127 Sgt. Proffitt told us that having spoken to T/Insp. McElroy-Baker he then spoke to Mrs Earp [NE/14]. She told us that on or around the 28 April 2016 she met with Sgt. Proffitt at Wolverhampton Police Station to discuss PC Muntean's performance. That meeting may of course have been arranged in advance so does not assist with dating precisely when T/Insp. McElroy-Baker as she is now and Sgt. Proffitt discussed placing PC Muntean on the informal UPP. We find on balance that it followed T/Insp. McElroy-Baker seeking advice from Insp. Churchill.
- 128 Mrs Earp [NE/14] told us that on 28 April 2016 Sgt. Proffitt forwarded the Log to her [246-256]. She told us his performance concerns related to PC Muntean's attitude and behaviour not her abilities as an officer. That that was his view was repeated by Mrs Earp in the initial Informal UPP meeting on 6 May 2016; her note of that meeting records that [265] (and see (138)). Mrs Earp told us that she advised Sgt. Proffitt of the Informal UPP process, that she was satisfied as an experienced HR advisor that there was sufficient evidence to instigate the informal stage and advised him to draft an informal Development Plan using the Police Professional Framework, Force Values and Code of Ethics as a guide. She told us it was not uncommon for the respondent to undertake an Informal UPP [NE/21].
- 129 On 1 May 2016, Sgt. Proffitt sent to Mrs Earp two emails, the first attaching his draft informal Development Plan ("the Plan") with the Log, albeit Mrs Earp refers to the log as that at [246-256] in her statement [JP/54 & NE/16] and the second relaying his attempts to inform PC Muntean of the time and date for the initial meeting [257].
- 130 Mrs Earp told us she was not aware at this point that PC Muntean had submitted a Near Miss Form and not become aware of that until after the respondent received the ET claim. [NE/15]. That was not challenged. Mrs Earp appeared to us to be a frank and credible witness. We accept her evidence that was so.
- 131 On 30 April 2016 PC Muntean told us she was called into a meeting with Sgt. Proffitt and T/Insp. McElroy-Baker to be informed of Sgt. Proffitt's decision to place her on the Informal UPP (a development plan) instead of giving her a ticket for the parking offence. She asserts that "*... Sgt. Proffitt had begun this witch-hunt more or less as*



*soon as he became my supervisor and that this monitoring had heightened after I made the disclosure regarding the Near Miss incident at the hospital. I was never formally made aware of this monitoring of me which led to me question his intentions here.” [SM/28]*

- 132 T/Insp. McElroy-Baker told us that it was on 1 May 2016 [TMB/20], that she and Sgt. Proffitt met with PC Muntean. Sgt. Proffitt also stated this was on or around 1 May 2016 [JP/54]. The Log supports PC Muntean’s account [120]. The Log records PC Muntean complained that she was informed of the Informal UPP process at the end of her last shift before commencing a four-day period of rest days, and the initial meeting was scheduled to be her first day back. If she is right and had four clear rest days that means the meeting would have taken place on the 1 May. That may just be an issue about the start and end dates of a shift and given what we say in the following paragraphs about the adequacy of notice, we do not find it is necessary to resolve that dispute.
- 133 Whilst PC Muntean complains that notice of the first Informal UPP meeting was short, and that she spent her rest days preparing, she did not tell us what that preparation entailed. She had not been presented with the Log at that point. She stated at different points that the Police Regulations required 14 days’ notice to be given. Although at the meeting she complained she had not been given 7 days’ notice [263 para 4]. She states that when she challenged this she was told not to tell supervisors how to do their jobs. She told us she felt ambushed by the whole process.
- 134 Save in that notice was given to her to allow her to be accompanied by a Police Federation representative it was unclear to us why notice was required at all, the examples the respondent wished to refer to were not given to her until the Informal UPP Initial Meeting on 6 May. Mrs Earp’s note of the Initial Informal UPP Meeting 6 May meeting [265] also records that whilst PC Muntean raised that she felt she had not had enough time to prepare she was reminded that she had had ample opportunity to request that the meeting be arranged and had not sought to do so [265-6]. Nor do Mrs Earp’s notes record that PC Muntean’s Police Federation representative PC Turner made any complaint at the initial UPP Meeting about short notice. At one point PC Muntean appeared to suggest that her complaint was that she had not been permitted to conduct her own investigation of events. The problem with that suggestion is that essentially the issue the respondent had with PC Muntean related to her attitude, and PC Muntean was or should have been aware of that as an issue. PC Muntean had also been told that her supervisors had issues concerning her behaviour on several occasions; she had signed a note endorsed in a Pocketbook to that effect to highlight their significance.
- 135 No complaint was made before us that PC Muntean was placed on the Informal UPP without having had the right to make representations first about that decision. Her line managers had already determined to place her on the informal UPP.
- 136 PC Muntean accepted that she became upset and angry during that meeting and that she called Sgt. Proffitt a “bully boy”. T/Insp. McElroy-Baker told us that at first PC Muntean was calm but as she tried to explain to PC Muntean what was going to happen, PC Muntean’s demeanour changed, she stated PC Muntean’s face contorted in anger and she began remonstrating with her hands, refusing to sit down. T/Insp. McElroy-Baker alleges PC Muntean started screaming, shouting that it was “bullshit”, that she was going to “sue the West Midlands Police” and that every time T/Insp. McElroy-Baker tried to say something to her, PC Muntean would scream that she should not speak to her. She alleges PC Muntean was very angry and had no control of her emotions but further that she was alarmed by PC Muntean’s behaviour and she felt very threatened. She stated PC Muntean stormed out of her office and continued to



shout in the open office where other officers were working. T/Insp. McElroy-Baker told us she had no choice but to leave a Post-It note near PC Muntean's desk so that she was aware of the date and time of the meeting. T/Insp. McElroy-Baker's account of that meeting concludes [TMB/20] *"I have 23 years' service in the police, 17 years as a supervisor. I have never experienced such an aggressive outburst of emotion from an officer in reaction to placing them on a development plan (I have done this several times before). The incident left me physically very shaken and upset. I was so surprised by the thrust of her outburst."*

- 137 PC Muntean states that this was the first time she was aware Sgt. Proffitt was monitoring her and keeping the Log [116-121]. She alleges he was actively looking for opportunities to document her attitude and took things said by her out of context.

### **The Initial Meeting of held on 6 May 2016 [263-266]**

- 138 This meeting was chaired by Sgt. Proffitt who was accompanied by Mrs Earp; PC Muntean was accompanied by a Police Federation representative, PC Turner. Mrs Earp told us [NE/19] that she again told PC Muntean that there were no questions as to her operational competence indeed to the contrary she told us she told PC Muntean that her supervisors were very complimentary regarding her role as a Response Officer. That was not challenged. Mrs Earp states that she told PC Muntean that being a Police Officer had two parts, an operational element but a behavioural/attitude element, and that PC Muntean's behaviour and attitude was letting her down. She told us that but that her supervisors were confident that she could improve this and be an all-round well performing officer. Mrs Earp's view was that PC Muntean looked disinterested and dismissive of what Sgt. Proffitt was saying to her and she told PC Muntean of that at the meeting. She told us that throughout the meeting PC Muntean failed to engage eye contact with Sgt. Proffitt opting instead to look out of the window with her arms folded suggesting that she did not want to engage in the process.
- 139 Mrs Earp told us PC Muntean's expressed view was that she did not believe that she should be placed on the Informal UPP. Mrs Earp's note of the meeting indicated that PC Muntean maintained that she was not rude and if others felt that she was, that was their perception [265 para 6] and in that context PC Turner on her behalf went on to state that her attitude and behaviour might be a result of her cultural background [266 para. 2] That was a repeat of the points made by PC Muntean to Sgt. Proffitt on 15 June 2015 [Log - 116 & Pocketbook - 131] where she accepted her manner was direct and abrupt and stated that was Romanian cultural behaviour (see (22)).
- 140 Following the Informal UPP initial meeting Sgt. Proffitt forwarded a copy of the Development Plan to PC Muntean, PC Turner, Mrs Earp, Sgt. Sarai, T/Sgt. Tweedie and Insp McElroy-Baker on 10 May [267]. The Development Plan appears to have been a standard form document that already included a template in blank for four meetings, the initial meeting and three reviews albeit the dates of the three reviews had been inserted [268-272]. As the reviews occurred Sgt. Proffitt added his notes of each of the review meetings to the Development Plan.
- 141 There was a dispute before us whether PCs Muntean and Turner were provided with the Log and/or the issues raised in it at the initial informal UPP meeting. Sgt. Proffitt told us he printed off couple of copies and handed one over. An email from PC Turner to Sgt. Proffitt of 18 May 2015 [287] sought a copy. PC Muntean also now complains that she was not given an opportunity to respond to the issues raised.
- 142 We find that a copy of the Log was not provided to PCs Muntean and Turner until 21 May when Sgt. Proffitt responded to PCs Turner and Muntean [287]. However, we also find those issues were relayed at length at the initial UPP meeting and PC Muntean given an opportunity to comment on the same. We address that at (165.1).



- 143 The objectives for the Development Plan were:-
- 143.1 *“Building relationships will all line supervisors and peers by communicating with them in a manner that would encourage a harmonious working environment*
  - 143.2 *To listen carefully and ask questions to clarify understanding. Do not challenge unnecessarily*
  - 143.3 *To develop a communication style ... that is both professional and understood .... Do not interrupt supervisors when they are speaking ...*
  - 143.4 *Be able to remain calm and professional under pressure by recognising conflict and taking measures to diffuse situations as opposed to escalation*
  - 143.5 *Do not allow your personal opinions to negatively influence your approach to dealing with calls for service”*
- 144 PC Muntean took a number of issues with the Development Plan stating amongst other matters that it was very vague and general, a number of the objectives set were not specific and thus were not objectively measurable and as a result she felt that it would be difficult for her to show that she was doing what was required of her. She stated those defects gave her no confidence that she would be judged objectively and fairly [SM/29].

### **The first review of the informal UPP on 15 June 2016**

- 145 Mrs Earp’s personal note of this meeting [343] records that Sgt. Proffitt had told her there had been a “distinct and marked change in PC Muntean’s behaviour” since the initial Informal UPP meeting and she had presented a more “diligent and professional approach to her work”. He referred to three occasions where supervision had raised issues, but that PC Muntean had been receptive to the feedback and had acted upon it. He referred to two pieces of feedback from Insp McElroy-Baker one relating to asking PC Muntean in future to provide photos she had taken of vehicles parked in the rear yard to her as opposed to Inspector Thomas-West (a former line manager of PC Muntean). PC Muntean told us the photographs she took that were in the bundle post-dated the commencement of this claim. Accordingly, they could not have been the photos sent to Inspector Thomas-West. Secondly, Insp McElroy-Baker raised a positive piece of feedback from T/Sgt. Tweedie regarding an issue with the service desk.
- 146 Sgt. Proffitt concluded the meeting by stating that there had been a significant improvement in PC Muntean’s performance over that month and he hoped that would continue it was a step in the right direction to her completing the Development Plan. Those matters were relayed in more detail in the revised Development Plan [345-349] (specifically [347]) that Sgt. Proffitt forwarded to PC Muntean, PC Turner, Mrs Earp and Insp McElroy-Baker at 11:48 that day (15 June) [344].
- 147 Mrs Earp stated [NE/21] she was encouraged by the improvement and believed PC Muntean had taken on board the feedback. PC Muntean told us the reason for this perceived improvement was that she had stopped most contact with supervision and didn’t enter her supervisors’ office [343] & [SM/41].

### **The second review of the informal UPP on 6 July 2016**

- 148 This meeting was also conducted by Sgt. Proffitt accompanied by Mrs Earp but PC Muntean was not accompanied by a Police Federation Representative, he was unavailable but PC Muntean said she was happy to go ahead without him being present. Again, Mrs Earp took a personal note [350-1].



- 149 The Plan [355-6], which was signed by PC Muntean and Sgt. Proffitt, recorded PC Muntean had *“continued to maintain positive progress in meeting the objectives [of the Plan] ...”* and had *“... continued to maintain an improved professional approach to her work, and continues to demonstrate an improved willingness to follow direction of supervision without debate.”* It recorded supervisors had challenged PC Muntean on two occasions, once concerning her voicing her dissatisfaction over the referendum result and posting inappropriate remarks on social media that were described as *“of a provocative political nature”* and another raised by T/Sgt. Tweedie in relation to use of the use by PC Muntean of two large clips to secure her hair. The Plan recorded that *“on each of these occasions [the claimant] had been receptive to feedback and acted on the advice provided.”* and PC Muntean had *“... made positive steps to achieving the set objectives”* [355].
- 150 Based on what Sgt. Proffitt recorded on the revised Development Plan following that meeting it appeared to us that PC Muntean had grounds to hope that the informal UPP would have been completed by the final meeting that was scheduled for 5 August 2016.
- 151 However, in her witness statement PC Muntean states [SM/41] *“I believe that this was due to the fact that I had stopped most contact with supervision and avoided people around me to the point that I started to become a recluse. I became less enthusiastic to come into work every day due to this treatment of me. There was a significant change in my personality which appeared to be more than welcomed by supervision.”*

#### **The Log Entries (continuation 4)**

- 152 On 4 August 2016, the day prior the third review of the Informal UPP Sgt. Sarai and T/Sgt. Tweedie spoke to PC Muntean concerning a number of matters [371C-D]. The log records that “some” of the matters identified “above” [371A following] were raised and also identified points raised in emails sent from four officers about PC Muntean’s behaviour and attitude, other officers wishing to raise PC Muntean’s attitude with the Sgts. and PC Muntean’s time keeping. That log recorded PC Muntean’s responses to each of those issues. We find this was done to ensure PC Muntean had advance notice of those issues before the third review of the Informal UPP.

#### **The third review of the Informal UPP on 5 August 2016.**

- 153 Again, this meeting was conducted by Sgt. Proffitt accompanied by Mrs Earp. PC Muntean was accompanied by PC Turner. Mrs Earp again took a personal note [373-375].
- 154 The revised Development Plan which was signed by both parties that day [382-384] records that Sgt. Proffitt indicated that since the last review meeting in July 2016 that PC Muntean’s behaviour had slipped and that a number of incidents had occurred whereby supervision had had cause to challenge her regarding her behaviour. Further, that this was not merely with her supervisors but some of the incidents had been raised by police colleagues in other departments. He stated the incidents included (im)politeness, unprofessional behaviour towards her peers, interrupting supervisors when they been providing advice and direction and a general decline in PC Muntean’s attitude. He identified specifically nine points in the revised Development Plan:-
- on 16 July 2016 PC Muntean had allegedly interrupted supervision and had unnecessarily challenged direction,
  - on 25 July 2016, PC Muntean had allegedly displayed an unprofessional attitude in that she openly vented her frustrations regarding her perception that she was being given inferior work that others did not want to do,





- on five occasions in July PC Muntean had allegedly been late for work,
  - on 26 July 2016, PC Muntean allegedly displayed incivility towards two colleagues on the Investigation Team, (see (173))
  - on 25 July 2016, PC Muntean allegedly dealt with a 15-year-old girl who had mental health issues in an inappropriate manner. (The date of the incident was 24 July and the complaint 25 July 2016), (see (172))
  - on 27 July 2016, PC Muntean had allegedly been aggressive, rude and unprofessional when working with colleagues,
  - on 27 July 2016, PC Muntean was allegedly argumentative towards Sgt. Sarai and,
  - on 28 July 2016, an officer allegedly expressed frustration on behalf of the team with the behaviour of PC Muntean and her general attitude.
- 155 One positive entry was made in the review, relating to an incident on 3 August 2016 when PC Muntean had dealt with the report of a sexual assault on a child. PC Muntean was identified as someone who produced detailed work, who did not shy away from talking to children, who was clearly passionate about doing a good job, and who could not be faulted for trying hard (see email from DC Mark Roughton of the respondent's Child Abuse and Investigation Unit [367]).
- 156 For the most part those matters are relayed in a further log (the Further Log) two versions of which were before us [370-1] which related to the period 25 to 28 July 2016 and [371A-F] 24 July to 13 October 2016. Although the latter version includes a number of revisions, particularly to the date of the first incident, an additional note concerning PC Natalie Holt on the first page and some revisions to the record of the incident on 28 July on the second page.
- 157 Four of those incidents are argued as specific complaints by PC Muntean. We address them in turn.
- 158 On 26 July 2016 PC Muntean alleges she was criticised by Sgt. Sarai for producing a statement which was *'too detailed'* (Issue 12). That is now argued as Victimisation and whistleblowing detriment only.
- 158.1 This relates to an incident where PC Muntean had sought advice from Sgt. Sarai concerning the best means to obtain evidence from the 11-year-old victim of an alleged sexual touching.
- 158.2 PC Muntean states [SM/44(i)] that Sgt. Sarai advised her to complete the interview using an 'MG15' - contemporaneous notes form which she had only completed when dealing with road traffic collisions. He states [SS/33] that the information should be obtained using six questions (when, where, who, what, why and how) to eliminate problems that might affect the likelihood of a prosecution being successful. It is not in dispute that PC Muntean obtained a detailed statement from the victim, PC Muntean states the victim 'opened up' to her. Sgt. Sarai stated PC Muntean returned with a document that he felt was too detailed, PC Muntean having asked more than 20 questions and he advised PC Muntean accordingly. Sgt. Sarai states PC Muntean was taken aback by his advice PC Muntean reacted negatively to that feedback, initially refusing to accept the advice and talked over him.
- 158.3 Subsequently, 3 August 2016, that interview was the subject of the positive feedback from DC Mark Roughton [367] that we refer to at (155)). PC Muntean thus suggests that is an example where a positive was turned into a negative.



- 158.4 We find that was not so. Sgt. Sarai had already fed back to PC Muntean that best practice dictated a small number of open questions should be asked. That arose because PC Muntean had sought advice from him and she had not followed that advice. PC Muntean suggested there were good reasons for that and that she had videoed the interview hence reducing any risks to a potential successful prosecution.
- 158.5 The way PC Muntean deals with this in her statement [SM/44(i)], is again merely to refer to being criticised without addressing the detail of the criticism other than that she disagreed with it. Whilst DC Roughton's subsequent note commended PC Muntean it also suggests that Sgt. Sarai's concern as feedback to PC Muntean that the questions being far more expansive than was the norm was a legitimate issue. Accordingly, in the absence of PC Muntean relaying why she states his feedback went beyond words of advice, we find Sgt. Sarai was seeking to guide her as to best practice to avoid a prosecution being jeopardised and that it was right for him to do so.
- 158.6 Those matters however, do not detract from the issue which was the subject of the log entry namely PC Muntean's reaction to the feedback given to her by Sgt. Sarai. PC Muntean again led no evidence in that regard. That being so we accept Sgt. Sarai's version of events and find she reacted negatively to his words of advice and find that that warranted that issue being raised both in the log and in the context of the informal UPP. In our judgment, the feedback given by Sgt. Sarai was no sense influenced by the "Near Miss" or her earlier claim but because he was trying to relay to her best practice.
- 159 On 27 July 2016, PC Muntean alleges she was ordered to deal with a repeat offender via a voluntary interview, she complied but voiced her disagreement and was criticised for doing so (Issue 13). This appears to be relayed at [SM/44(ii)]. That is now argued as Victimisation and whistleblowing detriment only.
- 159.1 The background to this incident is that on either 26 or 27 July there was a dispute between PCs Muntean and Guest whether a suspect should have been arrested, that was escalated to Sgt. Sarai. PC Guest is recorded in the Further Log [371B] as having complained that PC Muntean was aggressive, rude, unprofessional and embarrassing in front of an injured party.
- 159.2 PC Muntean stated [SM/44(ii)] that she believed that the suspect should have been arrested but instead she was instructed to obtain an admission and to record this in her Pocketbook. She stated that she later informed PS Sarai that she believed the wrong instruction had been given and was criticised for her conduct and accused of seeking to blame other people for her bad decisions.
- 159.3 Sgt. Sarai's version [SS/34] was that following the incident, he explained to PC Muntean that she had not provided all the information/evidence known at the time and if she had done so the advice he gave would have been different. He complained that the discussion became heated and that PC Muntean would often cut across him. However, he also stated that later in the day he had a sensible conversation with PC Muntean in which she accepted she was wrong and if she had given the complete information at the time, then the outcome would have been different. That accords with the Further Log [371B] which records that the heated discussion took place in the Sergeants' Office and Sgt. Proffitt and T/Sgt. Tweedie were also present.
- 159.4 The only Pocketbook entries we have for that discussion were those of T/Sgt. Tweedie [366E]. That records the complaint from PC Guest and that Sgt. Sarai spoke to PC Muntean to record that she had failed to give him full details, and



that when he spoke to PC Muntean, she was aggressive, argumentative and cut across him before accepting she was wrong and apologising. Neither T/Sgt. Tweedie nor Sgt. Proffitt made mention of this in their statements. This was also addressed at point 7 of the informal UPP meeting on 5 August 2016 [383].

- 159.5 PC Muntean accepted that she had disagreed with the instruction given to her and it was also common ground that she was spoken to about the incident. In our judgment, this issue places into sharp focus what was at the heart of the informal UPP; whilst there was an issue whether the suspect should have been arrested and PC Muntean's failure to relay full information, the Pocketbook entry and Further Log indicate that PC Muntean had accepted these issues and apologised in relation to them. The issue raised in informal UPP meeting on 5 August 2016 was cross referenced to the heading "working with others". We find the principal issue the respondent was seeking to address in relation to this incident in the Informal UPP was the failure of PC Muntean to communicate and her behaviour.
- 159.6 We find the respondent's focus (and its feedback) concerned PC Muntean's behaviour/response to substantive issues being raised, rather than the substantive issue itself and was in no way whatsoever influenced by the Near Miss or the First ET claim.
- 160 The above examples in our judgment have a common theme; an issue arose involving PC Muntean, feedback was given and PC Muntean's principal focus thereafter was on whether she was right or wrong in relation to the substantive issue, and not the way her responses might be perceived or their consequences for the situation (see (20)). Many of the examples given in the Log and Further Log do not relate to PC Muntean's "policing decisions" and in our judgment her policing decisions were not the principal focus of the informal UPP. In our judgment, she had little or no insight into that distinction.
- 161 On 28 July 2016 PC Muntean alleges she was criticised by Sgt. Sarai [SS/35] in an open forum for 'non-criming' an incident and was told to answer 'Yes, Sarge' and 'No, Sarge' when spoken to (Issue 14). This is relayed at [SM/44(iii)]. That is now argued as Victimisation and whistleblowing detriment only. In her witness statement [SM/42(vi) (we infer this given para. 45 is stated to adopt the same numbering and para. 45(vi) is the paragraph that refers)] she refers to this incident having occurred on 27 July not 28 July.
- 161.1 Sgt. Sarai's version of events [SS/35] was that on 28 July 2016 PC Muntean dealt with a Domestic Abuse incident which involved a High-Risk Female complainant (Log 2796 of 28 July 2016 [366A-C]). He states PC Muntean had incorrectly non-crimed this incident because in his view it clearly contained evidence of coercive control. He told us he was concerned that PC Muntean had failed to identify this serious offence. Whilst giving advice to PC Muntean he states she became argumentative and refused to listen and in order to make progress and to control her responses he told PC Muntean that she should respond with "yes" and "no" answers. He accepted the reason for doing so was borne out of the frustration that she was not willing to listen to him or give him the opportunity to explain without interruption. He states PC Muntean was then told to return to the complainant and obtain a statement, the matter was "crimed" and the offender subsequently arrested.
- 161.2 This incident was not referred to in the Log, Further Log or Informal UPP. No Pocketbook entries were provided. PC Muntean did not explain who was present when the incident occurred or give detail as to why she perceived that as criticism – she refers merely to being criticised in an open forum [SM/44(iii)]



(and she gives no additional detail in 42(vi) or 45(vi) how that was perceived as criticism). In one of her answers in cross examination she stated “*I like to answer back and say what I think. He refused to listen.*” That being an indication of her general view and given our findings on other incidents we find in the absence of detail we find it was more likely that not that Sgt. Sarai having attempted to give words of instruction or advice that PC Muntean argued with Sgt. Sarai, interrupted him and as a result he instructed her to respond as he did. If that was an open forum as she states (and we find it was not because neither PC Muntean nor Sgt. Sarai led details of who was present and where and when this occurred) it would have been inappropriate for PC Muntean to argue with Sgt. Sarai.

- 161.3 Irrespective of whether the incident occurred in an open forum (that is in front of others) it was not appropriate for Sgt. Sarai to become frustrated. However, it does not follow that because he did so he criticised her. PC Muntean provided no detail of how or why she perceived the instructions to her were criticism and given our findings elsewhere that she perceived any non-positive feedback as criticism we find Sgt. Sarai instead gave words of advice. Further, we find that in the circumstances Sgt. Sarai’s instruction to respond with “yes” and “no” answers was an appropriate response where a junior officer argued and interrupted her supervisor (a more senior officer) and he wished to relay to her instructions.
- 161.4 In any event we find that Sgt. Sarai’s behaviour was in no sense influenced by the “Near Miss” or the First ET Claim; instead it was the response he as a supervisor would have made to any junior officer where he perceived that words of advice needed to be given, the junior officer having failed to identify a crime and where having sought to give that advice the junior officer argued and interrupted him.
- 162 In late July/early August 2016 PC Muntean asserts that PC Clark made the comment ‘standard’ in response to an announcement in a night shift briefing that a group of Eastern Europeans were going to sleep rough in Queen’s Square, Wolverhampton in support of a charity. She asserts that ranking officers present failed to challenge PC Clark about that remark (Issue 15) and that constitutes Direct Discrimination, Victimisation and a whistleblowing detriment.
- 162.1 PC Muntean put this in this way in her statement [SM/44(iv)]:-

*“I recall working on a night shift however I cannot recall the date. I had been briefed that a large group of Eastern Europeans were going to be sleeping rough in Queens Square to raise awareness and money for charity. PC Clark made the comment ‘standard’ in reference to the group being formed of Eastern Europeans which was made in open forum. I believe that the comment made by PC Clark was intended as an inappropriate joke and I did not believe that there was an intention to offend me in any way by this however I was not approached as to whether this comment upset me at all. I was surprised by supervision’s actions in not challenging this whatsoever especially when made in my presence. Their failure to challenge troubled me as I have no doubt that had such a derogatory comment been made about someone from another minority ethnic group then this would not have gone unchallenged. I was troubled that for some reason Eastern Europeans (people of my ethnicity) were seen as inferior and unworthy of support and that derogatory comments could be made about them and these comments would go unchallenged.”*



- 162.2 T/Sgt. Tweedie [LT/25] Insp. Churchill [SC/30/31] and Sgt. Sarai [SS/36] all address this issue. We were also referred to the Further Log [371B] and T/Sgt. Tweedie's Pocketbook entries [366F/G]. T/Sgt. Tweedie told us she was at the night shift briefing and that PC Clark made the comment "standard" and the majority of the shift laughed including PC Muntean. She went on to say that PC Muntean had in fact turned around and said "racist" to PC Clark, before bursting out laughing. She told us PC Muntean did not make any complaint at the time and was seen leaving the parade room with PC Clark, and they were laughing and joking together. She states PC Muntean did not make her Supervisors aware of how she felt about the comment.
- 162.3 PC Muntean accepted she had laughed but argues PC Clark should have been told in the meeting that comment was inappropriate.
- 162.4 T/Sgt. Tweedie stated in her witness statement that she did not challenge the comment at the time because PC Muntean did not seem to be alarmed or insulted but if PC Muntean had been she would have spoken to PC Clark.
- 162.5 T/Sgt. Tweedie told us that she made a note of the comment, and produced her Pocketbook entries [366F/G], and that she subsequently spoke to PC Clark to give him words of advice. Her evidence was that PC Clark was upset it was perceived as racist and that he stated he did not make the comment in a racial context, but that it was "standard" for homeless people to sleep rough and this was nothing new.
- 162.6 Whilst PC Muntean stated orally that nothing was said to PC Clark by any of the senior officers present, she accepted she did not check with him afterwards stating he would have told me if he had been spoken to. We find it was an assumption on PC Muntean's part that PC Clark was not spoken to.
- 162.7 Whilst Insp. Churchill and Sgt. Sarai state they have no recollection of the comment or those present laughing they both state that was because they were in the far parts of the room. That may also be explained by the meeting apparently being in the process of breaking up. We note in that regard PC Muntean's evidence was in parts vague as to events not even recalling the day. We accept given PC Muntean gives no account to indicate how she states they knew of the comment and did nothing, that it is more likely than not that they did not hear it.
- 162.8 We find that PC Muntean did not perceive the comment was made as a racist one; it was made by a friend of hers and PC Muntean accepted she had laughed at the comment. We also accept that it was when PC Muntean said the word 'racist' that T/Sgt. Tweedie perceived that it could possibly have been such but by that time we find the meeting was breaking up and it was not possible for her to say anything in open forum. We find that she spoke afterwards to PC Clark to administer words of advice.
- 162.9 We find that T/Sgt. Tweedie's failure to admonish PC Clark in the meeting was in no way whatsoever motivated by the protected act or protected disclosure. Nor in our judgment was T/Sgt. Tweedie's response (or lack of it) motivated by race or PC Muntean's nationality; we find T/Sgt. Tweedie would not have behaved any differently had a comment in similar terms been made irrespective of PC Muntean's nationality, nor was it done because of her having made a protected act or disclosure. Her behaviour was determined by how she perceived events at the time and the circumstances of the meeting breaking up and that it was not addressed by her immediately in no sense because of race is supported by her giving words of advice to PC Clark after the event.



### **PC Muntean's complaints how the Informal UPP was conducted**

- 163 PC Muntean makes a number of complaints about the way the informal UPP was conducted. Firstly, (Issue 9) she asserts that from 6 May 2016 to the commencement of this claim on 22 September 2016 (and beyond) she was placed on the informal UPP the objectives of which were vague, lacking in sufficient specificity and/or were not objectively measurable, and that gave rise to a disadvantage regarding her demonstrating that she had met them [SM/29]. This complaint is argued as victimisation and whistleblowing detriment only.
- 163.1 As we state above (160) the fundamental concerns the respondent was seeking to address in the Informal UPP was PC Muntean's interactions with colleagues and members of the public and/or PC Muntean's response to feedback given relating to those interactions. These issues had diverse manifestations and given they related to PC Muntean's behaviour were thus difficult to measure.
- 163.2 The respondent had however identified the examples in the Log and Further Log and her supervisors fed back those examples to PC Muntean as and when they occurred to enable her to identify from those examples the matters that were causes of concern.
- 163.3 The criticisms PC Muntean now makes in this complaint were not made by her Police Federation representative at the time and had he or she had an issue with them being capable of objective assessment either she or her representative should have said so. Indeed, we find that matters appeared to be progressing well and PC Muntean taking on board and amending her behaviour to reflect the feedback she was given, until the four-day period between 25 and 28 July although there were incidents concerning PC Muntean allegedly attending late in July and an earlier incident on 16 July where PC Muntean allegedly sought to pass a prisoner in custody to T/Sgt. Ali to pass on to the night shift four hours before the end of her shift because an interpreter and solicitor needed to be arranged [382].
- 163.4 The respondent had for some time raised PC Muntean's lateness (her parking in the public disabled bay was to visit a cake shop to buy cakes as an apology for being late). Regarding the incident on 16 July the prisoner in custody was Romanian and thus we were concerned to identify if his treatment had any bearing on the complaint. From the evidence before us it did not. PC Muntean was principally eager to pass on the incident to someone else to deal with so she could leave at the end of her shift. We find this was more concerned with her childcare concerns that the custody prisoner's nationality. Thus, we find that her lateness and the incident on 16 July did not indicate any change in either party's position for better or worse at that stage.
- 163.5 We find that PC Muntean had sufficient detail to explain the respondent's concerns such that she could amend her behaviour and indeed she did so.
- 163.6 In any event we find these matters were in no sense addressed in the way they were because of the First ET Claim or due to PC Muntean raising the Near Miss but out of a genuine concern relating to the PC Muntean's interactions with colleagues and members of the public and PC Muntean's response to feedback. Nor did the respondent set out to identify objectives that were vague, lacking in specifics and/or not objectively measurable because of the First ET Claim or due to PC Muntean raising the Near Miss, in so far as they were not as objective or clear as ideally might have been wished we find that was due to the nature of the complaints at the heart of the Informal UPP, namely PC Muntean's interactions with others and/or her reaction to feedback.



164 PC Muntean also states (Issue 10) that the 20 allegations laid against her during the informal UPP (that is from 6 May 2016) were unsubstantiated, embellished in order to paint her in a negative light, untrue and/or stale. Again, these are argued now as victimisation and whistleblowing detriment only.

164.1 As to stale matters being raised we were concerned that some of the matters raised in the Log were around 12 months old at the start of the informal UPP. We accept however these were identified as examples of the concerns the respondent had, and were raised because PC Muntean had not taken on the feedback given at the time and indeed in some instances had not accepted it as valid and in some instances argued with superiors when it was fed back.

164.2 Sgt. Proffitt at the initial Informal UPP meeting stated that he wished to raise with PC Muntean the incidents that had arisen over the past few months as examples of matters the respondent relied upon, although he had other examples going back longer. We find that during the review stage of the Informal UPP, that is following the initial meeting at which the issues and concerns were identified by the respondent and examples given, all the incidents that were subsequently raised were incidents that arose while the informal UPP was ongoing and were thus not stale. We find PC Muntean was thus judged by reference to her conduct during the Informal UPP and not her prior conduct as is evidenced by the improvement recorded at the first and second review meetings of the informal UPP.

164.3 Whilst some of the behaviour complained of by the respondent was trivial, that misses the point, the issue the respondent was concerned about was that this reflected PC Muntean's attitude, some of the issues were substantive, had continue to occur despite them being raised previously and viewed cumulatively the respondent was entitled to consider those issues needed to be addressed.

164.4 We address unsubstantiated, embellished and untrue together. We were concerned as we state above that there were instances where Sgt. Proffitt or the other sergeants could have sought (negative) feedback concerning PC Muntean. One such instance is the incident concerning A/Sgt. Hedge on 1 July 2015 (see (24 following)). Another where PC Brown went into the sergeants' room on 28 July 2016 to complain about PC Muntean apparently speaking on behalf of the other members of C Response [371B] as referred to in the Further Log.

164.5 We were also concerned therefore that matters were raised before us by Sgt. Proffitt that were not in the Log. If they were significant enough to have been a cause of concern they should have been in the Log. Two refer:-

*"On 13 June 2015, I received a memorandum from PC Williams in relation to an incident involving the Claimant, as she dealt with a High Risk Child Sexual Exploitation victim. PC Williams commented that in his day-to-day dealings with the Claimant, he found her to be totally disrespectful of supervisory officers on the team and she regularly ignores orders and requests. He goes on to comment that the Claimant can be rude to members of the public and on several occasions other officers have had to step in to prevent matters escalating where they would not do so if this officer was not present [121A-B]. PC Williams wrote the memorandum of his own volition and presented this to me explaining that he and fellow colleagues (who he didn't name) were becoming increasingly frustrated with the Claimant's behaviour (behaviours as detailed in the memo). PC Williams is one of the officers who requested not to work with the Claimant." [JP/29]*



and

*“On 9 October 2015, I received an email from PC Anna Wood in relation to an incident concerning the Claimant [168-170]. I understand that on the same date while in company with PC Glasgow the Claimant attended a call for service relating to an intoxicated female who had been found in the street being abusive towards passers-by and threatening to commit suicide.*

*The Claimant has made contact with PC Wood who works as part of the dedicated Mental Health Triage Team. This Team is made up of police officers and medical professionals. The purpose of the Claimant’s call to PC Wood was to enquire as to whether the female she was dealing with had never come to the attention of Mental Health Services and to seek guidance as to how she should deal with the incident given the suggestion that the female may be suffering from a mental health illness.*

*PC Wood advised the Claimant accordingly, the explicit advice being not to detain the female under s136 Mental Health Act as this was not appropriate in this instance. Despite seeking advice from PC Wood the female was detained under s136 Mental Health Act. When challenged regarding this, the Claimant stated that she had not detained the female under this power but rather her colleague PC Glasgow had done so.”*  
[JP/42-44]

- 164.6 The first example predates the log entries albeit only by a few days, but its omission could be explained by the Log being started 6 months or so after the first incident in it. Any such starting point is by its nature arbitrary. The fact that one such incident was only a day before the first is thus odd but explicable by the retrospective nature of the Log. The second incident occurred within the first month of the Log being started and no explanation was given why it was not included or why it is included now. We find in the absence of such an explanation it was an attempt to elaborate.
- 164.7 Notwithstanding that however each of the incidents about which a log entry was made was not disputed as having occurred; what PC Muntean disputes is the respondent’s perception and portrayal of events. However, there was no dispute that each log item was raised in advance of the Informal UPP meetings as the logs evidence and thus the respondent had made PC Muntean aware of those concerns.
- 164.8 As to whether those concerns were genuine we find they were. For example, the parking in the Public Disabled Bay gave rise to a reputational risk to the respondent. Yet it was a repeat of a disregard for similar instructions previously concerning parking in the police station car park. Many incidents were supported by third parties outside of PC Muntean’s supervisors, such as the “Dickhead” comment, the incident on 21 January 2016 concerning the arrest of the male prisoner who had to change from his pyjama shorts (see (69) following), that concerning A/Sgt. Hedge on 1 July 2015 along with the complaint concerning the RTC on 16 March 2016. What they related to were instances that did occur and behaviour on the part of PC Muntean that the respondent was genuinely concerned about and entitled to be concerned about as supported by the raising of matters by third parties.
- 165 Further PC Muntean asserts that from 6 May 2016 and at each UPP review the respondent refused to allow her to answer the allegations laid against her and/or





defend herself in relation to them (Issue 11). She also argues that from 5 August 2016 on she was prevented from responding to, or defending herself in relation to the further allegations raised at that meeting (Issue 17). Both Issues 11 & 17 are argued now as victimisation and whistleblowing detriment only.

- 165.1 Firstly, that is contrary to the express words of the Development Plan; it makes clear that PC Muntean was expected to provide evidence of the required level of performance and that she had a personal responsibility to do demonstrate an improvement in her performance [378]. What a document may say and what happens in practice may of course diverge so we do not take that at face value.
- 165.2 That the content of the Development Plan was a fair reflection of what happened in practice is supported by Mrs Earp's note of the Initial UPP Meeting on 6 May; that indicated that Sgt Proffitt relayed the instances of poor performance and PC Muntean's responses [264-266]. Mrs Earp's evidence was that she told PC Muntean that the process was not meant to be adversarial, but instead a two-way discussion between her and supervision with the focus being on improvement.
- 165.3 PC Muntean further accepted before us that she had been given an opportunity to respond to those allegations at the Informal UPP review meetings but that she also had the opportunity to (and did so) at the supervision meetings recorded in the logs in which those events were first raised.
- 165.4 We find that not only were the allegations raised in feedback and at the informal UPP meetings but PC Muntean was given an opportunity to respond to the allegations at the Informal UPP and she did so.
- 165.5 Throughout the Informal UPP process PC Muntean was represented by the Police Federation and she had the opportunity to take advice. She was accompanied by a representative at each meeting. Had her representatives considered that she had been prevented from defending herself we have no hesitation in concluding that the Police Federation would have raised that matter with Sgt Proffitt or Mrs Earp's supervisors. We were referred to no such complaint from PC Muntean, PC Turner or Insp. Grange.
- 165.6 We were also reminded by Mr Rathmell that even had PC Muntean been prevented from responding as alleged there was nothing to stop her or her Federation representative(s) from making written submissions in relation to the development plan, the log(s) (once they had been received), issues discussed during those meetings; her collating her own evidence in relation to incidents, positive feedback and/or the objectives/competencies. Mr Rathmell referred us to the evidence of Mrs Earp that PC Muntean did not want to engage constructively with the informal UPP. In her personal note of the meeting on the 5 August Mrs Earp recorded [373] "*SM stated that she did not want to say anything as they had already made their mind up about where this was going.*". PC Muntean did however go on to comment.
- 165.7 PC Muntean also specifically accepted before us that at the subsequent meeting on 5 August she had responded to the allegations. When we sought clarity from her given that was so what her complaint was. She told us she was not being listened to; she did not say that she was not given an opportunity to respond despite that being what Issue 17 alleges. The basis of what she told us orally was her complaint is very different in substance to what PC Muntean pursued in Issue 17. We find that she was permitted to respond at the meeting of 5 August and it follows given her evidence is at odds with her stated case on



in relation to that issue that she was permitted to respond at the other Informal UPP meetings as well.

165.8 Those matters being so we find that Mrs Earp's note was a fair reflection of the meeting of 6 May and that is what occurred.

165.9 For those reasons we find PC Muntean was not treated in the way she alleged in Issues 11 & 17.

### **Sgt. Proffitt's decision to extend the informal UPP**

166 The revised Development Plan records that Sgt. Proffitt decided to extend the informal UPP by 3 months and gave 3 further review dates [376]. PC Muntean argues that the allegations that underlay that decision were flawed and/or unfair (for the reasons pleaded [ET1/18] which in turn refers back to [ET1/15]) (Issue 16).

167 As we state above Sgt. Proffitt told us [JP/85] that at the meeting on 5 August 2016 he explained that PC Muntean's performance had dipped, and referred to a number of incidents (we address these above see (154) to (162)) where not only her supervisors had had to challenge her behaviour but that staff from other departments had reported instances as well. Sgt. Proffitt stated that initially PC Muntean would not engage in the meeting, before subsequently doing so. He concluded on balance that she had not met the objectives of the Plan due to the decline in her attitude over the preceding month. However, because she had shown an improvement over the first 2 months of the Informal UPP, he decided that rather than escalate her performance to a formal UPP, to instead extend the Informal UPP for a further 3 months to give her further time to meet the objectives.

168 Mrs Earp told us [NE/24] that accorded with her advice to Sgt. Proffitt. Her rationale for that advice was that for two months of the three-month review period PC Muntean had shown that she could meet the objectives set and her performance had improved however PC Muntean had failed to show that this could be maintained into and throughout the third month. She stated it was hoped that by extending the Development Plan for a further three months as opposed to escalating it to a formal process it would give PC Muntean sufficient time to show that she could not only meet the objectives set but that this could be maintained.

169 PC Muntean suggests there was a wide-ranging conspiracy against her and complains that the respondent was actively seeking negative feedback, colleagues proffered adverse comments about her and positive comments had an adverse spin placed upon them. She refers to the reference in the Further Log to PC Brown complaining about PC Muntean purportedly on behalf of members of Response Team C [371E], comments solicited by Sgt. Proffitt only concerning incidents that impacted negatively on PC Muntean (the incidents concerning PC Tibbitts and DC Owen (see (172)), PCs Marson and Hopkins (see (173)) and that concerning A/Sgt. Hedge (see (24)) and even where positive feedback was provided sought to give a negative "spin" on it, citing the example of DC Roughton's email (see (158.3)).

170 Whilst we accept, Sgt. Sarai took a different view to DC Roughton. Sgt. Sarai's comments to PC Muntean not only pre-dated the receipt of DC Roughton's email, furthermore, DC Roughton's email also implied that the issue Sgt. Sarai had identified was a valid concern but that PC Muntean should not be criticised for doing what she did. In addition, the first and second informal UPP review meetings made clear PC Muntean's performance had improved. Further, the respondent did record and take into account positive feedback received; Sgt. Proffitt specifically referred to DC Roughton's email.



- 171 Thus for PC Muntean's assertion to hold as a valid the conspiracy had to go beyond not just Response Team C and the respondent's HR department, but to colleagues outside Response Team C who had expressed their concerns about PC Muntean but also to members of the public.
- 172 As to the concerns extending beyond Response Team C one such matter concerned a 15-year-old girl with Mental Health issues [371A] and related to the complaints we refer touch upon above (see (169)) made about PC Muntean by PC Tibbitts and DC Owen [368 & 369].
- 172.1 PC Tibbitts complained that she heard shouting coming from inside the ID suite. On entering, she found an officer restraining a female who upon enquiry, was said to suffer from autism. We heard from PC Muntean that she was concerned that because the individual's detention had not been authorised she was no provision of food and drink had been made for the individual.
- 172.2 DC Owen who was from the violent crime team conducted a voluntary interview with the individual. She complained that PC Muntean had interjected a number of occasions and in her view, had antagonised the situation. PC Tibbitts stated that in her view PC Muntean was also aggravating the situation. Both officers indicated that PC Muntean had stated she had been spat upon by the individual and that in DC Owen's view the individual appeared to be highly volatile, ranging from being extremely aggressive to extremely emotional but stated that the way to address this would be for her to have been appeased.
- 173 A second such example of a concern being raised from individuals outside Response Team C that was addressed on 5 August was that from PCs Emma Marson and Daniel Hopkins of the investigations team [363-366].
- 173.1 Both PCs Marson and Hopkins forwarded emails to Sgt. Sarai and T/Sgt. Tweedie on 25 July 2016 following an incident on the 24 July. The substance of the complaint was twofold. Firstly, that when the case was being passed to them there were issues with the handover paperwork and whilst PC Marson stated she would not have been concerned about that had PC Muntean provided a verbal handover, PC Muntean did not and when PC Marson asked for this she alleged PC Muntean became very aggressive, uncooperative and responded stating *"I don't have time for that. I'm already late I need to see my daughter. I need to eat"*.
- 173.2 PC Marson commented that she was "gobsmacked" that an officer would speak to another colleague like this and go out of the way to be obstructive and unhelpful. She added that she had a student officer with her and so that had been said and done in front of someone who PC Marson was trying to make a good impression on. PC Marson relayed that the student had apparently asked if officers were really like that. PC Hopkins sent an email in similar terms.
- 174 There were in addition historically a number of complaints from or involving members of the public (see (20), (21) and (69) and one from a serving officer concerning a member of his family (see (106)). Those complaints whilst historic, repeat a common theme; namely the behaviour PC Muntean demonstrated and her reaction to feedback, irrespective whether this was intended to be constructive or destructive.
- 175 Further, one of the examples about which we heard predates Sgt. Proffitt moving to Response Team C. It concerned the driving course see (50 following and 198 following). Whilst that too may be said to be stale it is relevant in our view because it demonstrates that this was an issue predating and thus extending beyond the influence of Sgt. Proffitt moving to Response Team C.



176 In our judgment neither Sgt. Proffitt nor his colleagues were part of a conspiracy, he and his colleagues had a genuine belief that PC Muntean's behaviour and her lack of perception of that behaviour, her failure to heed feedback, whether she considered it was justified or not, and her negative reaction to that feedback needed to be addressed and based on the evidence we heard that view was warranted. The Informal UPP in our judgment was a proportionate response to that concern as was its extension, rather than its escalation or conclusion. We say that because for two of the three months of the Informal UPP there had been a marked improvement in PC Muntean's behaviour, and as we state at (149) it was not in dispute PC Muntean had "... made positive steps to achieving the set objectives" [355]. Thus, whilst PC Muntean had shown that she could meet the objectives over the first couple of months of the Informal UPP, the incidents over the period 16-28 July 2016 cast doubt on whether she had acquired the necessary insight of her behaviour and its consequences to maintain that improvement and as a result Sgt. Proffitt was entitled to extend the same. The issue appears to have been embodied in our judgment by Mrs Earp. She told us [NE/24]

*"... The Claimant commented that she was not listened to and that supervision will never change her – "I am, who I am". I attempted to explain that nobody wished to change the Claimant, but that we all have to be mindful that when we come into work we are the face of the Force and in some respects that we have to modify our behaviour. If the Claimant had continued to demonstrate the improvement in her performance throughout the third month of the review period I would have advised Sgt. Proffitt that the plan should be concluded at the informal stage. ..."*

177 That view is further supported in that for the most part before us PC Muntean did not seek to dispute the way she reacted to instances being raised by her supervisors, her challenges in the main were to the substantive complaint from which the initial feedback stemmed. In her witness statement [SM/31] she stated, "*I am aware that my personality is very strong*", which she related to her nationality.

178 At its heart, the issue the respondent was seeking to address concerned the need to give and responses from PC Muntean to feedback and her assertion that she was not listened to. In our judgment, the probable cause of the conflict emanates from the view expressed in PC Muntean's witness statement and repeated orally before us that she had no issue with feedback if she agreed that her position was wrong, the issue arose where she disagreed, "*I would have had no issue with being put on a development plan if there was something to develop*" [SM/53]. Mr Rathmell states in his skeleton [12] "*That is a problematic view for any junior officer to have, and in this case it is straightforwardly unreasonable. It bears out her supervisors' concerns.*"

179 That in turn gave rise to PC Muntean's complaints that she was criticised. The way her supervisors describe the incidents where she states she was being criticised is that they were giving words of advice. At face value words of advice are given to aid improvements in performance and/or to identify problems. It is only where that is undertaken in a negative way or unjustifiably that an issue arises. Within PC Muntean's witness statement counted 19 references to either criticism or derivatives of that word within her statement. The respondent accepts and indeed it is the respondent's case that it was seeking to provide feedback to PC Muntean, but that each time she reacted negatively to it, and both the way in which she reacted and the breadth and depth of the challenges that she made to the same were in essence the issue that the respondent sought to address with PC Muntean within the informal UPP.

180 Within PC Muntean's witness statement she gave no detail of how or why she states that that "criticism" was unwarranted either in respect of the way in which it was



presented, or as to its substance. One of those examples is the instance on 1 July 2015 concerning A/Sgt. Hedge. PC Muntean alleged she had been accused of supplying false information. The issue that the respondent sought to address with her subsequently was the manner in which PC Muntean addressed A/Sgt. Hedge and his colleagues. PC Muntean accepted that she had not intended to cause offence to Mr Hedge or his colleagues. That being so, she did not address why it was not appropriate therefore for Sgt. Proffitt and A/Sgt. Hedge to raise that with her or give any detail about the manner in which that was done as justifying her complaint.

- 181 PC Muntean having consistently alleged in her statement that she had been criticised we find that she did not relay why she considered that so. That leads us to conclude she did not perceive a difference between warranted and unjustified feedback or the way that was provided. In our judgment that casts doubt on what she perceived as criticism. We conclude that she perceived any form of feedback, positive or negative, as criticism, whether justified or not. That absence of an evidential basis to support her assertion that she was criticised and the lack of judgment on her part of the difference between warranted and unjustified feedback or the way it was provided lead us to conclude that she was not on balance criticised as she alleged.

### **Subsequent Events**

- 182 PC Muntean commenced Early Conciliation via ACAS on 22 July 2016. That concluded on 22 August 2016.
- 183 PC Muntean alleges [SM/7] around August/September 2016 (having corrected the date stated in her witness statement) that she decided to speak with Sgt. Sarai and T/Sgt. Tweedie to find out why she was consistently being single-crewed. Sgt. Sarai informed her that *"no-one wants to work with you, no-one in the team, because of your unpredictable behaviour"* (Issue 2).
- 184 Sgt. Sarai accepted [SS/19] he had said to PC Muntean that a number of officers were coming into the supervisors' office telling the sergeants that *"... they could not work with the Claimant, as they found the Claimant to be rude, abrupt and opinionated and generally difficult to work with"*. He could not recall the date.
- 185 Whilst no complaint is made by PC Muntean against Sgt. Proffitt he also stated [JP/20 & 21] that *"... several officers on the team who have approached supervision and expressed preference not to work / be crewed with the Claimant. This was briefly discussed with the Claimant during one of her performance review meeting during the informal UPP stage, however I steered away from identifying officers as I was concerned that this may lead to ill feeling between the Claimant and others ... "*
- 186 The notes of the review meeting on 5 August 2016 also reflect that [372 para 4] and record that PC Muntean stated she had been told that in supervision [375 para. 2]
- 187 PC Muntean's original complaint as to the frequency with which she was single crewed was not pursued as a live issue by the conclusion of the hearing. Based on the evidence before us we find there were other reasons why that was so. It was agreed that PC Muntean raised being single crewed as frequently as she was an issue for PC Muntean at the time and we find she raised that issue with her supervisors.
- 188 We find that neither Sgts. Sarai nor Proffitt appeared to us to be individuals who would allow complaints from fellow officers to influence their management decisions nor were they portrayed by the other witnesses in that way; we find they were both strong minded individuals. We thus scrutinised whether that issue was a genuine one and why they would make those comments to PC Muntean for any reason other than malice. Having considered the evidence before us we find those comments were the genuinely held views of colleagues; PC Muntean was perceived by them as difficult to



work with. We relay above our findings concerning the incidents where officers not only from C response but other teams had raised issues with PC Muntean's supervisors about her. Those examples we relay above support that view. Further, we find that neither Sgts. Sarai nor Proffitt raising those points was malicious or in any sense motivated by the protected act or protected disclosure. We find that her supervisors addressed that issue with PC Muntean for the reasons given in the note of the informal UPP meeting on 5 August; her behaviour was affecting her performance which necessarily included her interaction with colleagues, it was thus a supervision issue and needed to be addressed.

- 189 On 22 September 2016, PC Muntean presented her claim to the tribunal [1-33].
- 190 The treatment of PC Muntean after 22 September 2016 was not before us. At an earlier case management hearing it was suggested a further claim would be issued. As at the start of this final merits hearing no further claim had been brought. As a result, evidence was not led in detail as to subsequent events. Save in two respects we do not need to address them.
- 190.1 We considered the contents of the Fourth Review Meeting of the informal UPP on 23 September 2016 due to its proximity to the presentation of the claim. It was chaired by Sgt. Sarai; Sgt. Proffitt was on annual leave. Mrs Earp accompanied Sgt. Sarai. Mrs Earp told us [NE/27] the meeting was short, as Sgt. Sarai had only one incident to raise. She told us Sgt. Sarai had stated that there had been a marked improvement during period since the last review meeting. The note of the meeting she prepared reflects that [401]. Sgt. Sarai concurred that he only had one issue to raise but as to the improvement put it more bluntly [SS/39]; PC Muntean "... *had shown she could follow direction of supervision without debate or needless resistance*". Mrs Earp told us she was not clear if she was aware of the claim at the meeting on 23 September or for that matter when she became aware PC Muntean had referred her complaints to ACAS for early conciliation.
- 190.2 We also record that the Fifth Review Meeting for the informal UPP took place on 24 October 2016, the minute of which was before us [410-415]. On 25 October 2016 Sgt. Proffitt emailed the updated Plan to PC Muntean and PC Turner [418-429]. On 2 December 2016, the Final UPP Review Meeting took place [433-435].

## **Credibility**

- 191 On a number of occasions during the hearing PC Muntean recanted from assertions made in her statement or changed her account to address substantive matters not previously raised:-
- 191.1 As to Issue 5 (now withdrawn) which was a complaint of direct discrimination and victimisation on the basis that PC Muntean was threatened with prosecution for parking in a public disabled bay PC Muntean accepted during cross examination that at no point had she been threatened with prosecution; it was suggested that at best she had been told that she would be issued with a fixed penalty notice and she accepted that.
- 191.2 PC Muntean also asserted as an act of both direct discrimination and victimisation that she had frequently been deployed to low powered vehicles when she was qualified to drive "blues and twos". She argued that despite the respondent's policy indicating that single crewing would be the norm, the respondent having relayed that taser trained officers were more likely to be double crewed (PC Muntean was not taser trained) and evidence being included as to the numbers of double crewed vehicles being available for each



type of shift. Under cross examination PC Muntean expressly maintained that there was only one instance in the material period where she had been double crewed. During a second reading day that was scheduled mid-way through the trial and after she had finished her cross-examination PC Muntean took advantage of the Tribunal's suggestion to inspect her Pocketbooks. Whilst copies of the Pocketbooks were not provided to the Tribunal PC Muntean indicated that the number of double crewed instances had increased to approximately half a dozen over the period. Given she also failed to provide detail of how other colleagues in the same circumstances were treated the allegation was withdrawn. Given that allegation was withdrawn the Tribunal did not need to decide on the number of instances this occurred but that is an instance of PC Muntean expressly maintaining under cross examination a version of events that she later recanted from.

- 191.3 In her witness statement PC Muntean stated how she perceived a link between her Romanian nationality and the acts of discrimination she complains of (see (22) & (139)). At [SM/56] she indicated that she previously raised concerns about her treatment as a person from Eastern Europe. In cross examination PC Muntean denied that she had raised this, that it had been brought up by others and she had never thought about it.
- 191.4 In relation to the incident on 14 June 2015 concerning alleged comments made in the presence of the rape victim in her witness statement [SM/36(ii)] PC Muntean denied that she had made the comment attributed to her. Before us she accepted she had made the comment but not in the victim's presence. Whilst that revised account was disputed by Sgt. Sarai, PC Muntean's own account changed (see (21) following).
- 191.5 In relation to the Near Miss incident PC Muntean asserted that Insp Churchill was lying in relation to the alleged conversation with Mr Harkness despite our warning. The basis for that assertion was apparently a conversation they had that neither PC Muntean nor Mr Harkness referred in their statements to Mr Harkness having told PC Muntean that evening that he had spoken to Churchill. The first mention of that was when PC Muntean gave that evidence in cross examination when it was put to her the assumption underlying that was unfair as no basis for it was given. That was a significant piece of evidence which would have gone some way to corroborating Mr Harkness' discussion with Insp Churchill occurred. We found that PC Muntean changed her account.
- 192 Given PC Muntean's version of events has changed not just on one issue but a considerable number and in relation to substantive aspects of some of those issues, some of which she had expressly maintained only to withdraw them later, in the absence of supporting evidence or we give her evidence less weight.
- 193 PC Muntean having initially made an allegation the Insp. Churchill lied, notwithstanding the warning in the regard (see (88)) expressly maintained that allegation. In the absence of her proving that allegation we find that also adversely affects her credibility.
- 194 We find the incident on 21 January 2016 concerning PC Muntean parking in a workplace disabled bay and the allegation concerning her being consistently single-crewed are examples where PC Muntean made an allegation, did not lead evidence in her witness statement or annex supporting documents such as her Pocketbook to support those allegations, only to later withdraw the claim. When asked why such evidence had not been led, PC Muntean indicated she intended to relay orally in more depth the information and had she relayed everything in full her witness statement would have been several hundred pages long. That did not address why given her



- obligation to disclose (or seek disclosure of relevant documents) she had not checked these before making the allegation.
- 195 Looking at matters in the round we find that PC Muntean was prepared to jump to the conclusion that matters were discriminatory without reflecting on the same before doing so. That arose in our judgment from her perception of events and her absence of self-awareness. The first incident that formed the subject of the log, namely that of 14 April 2015 (see (20)) the so called “Dickhead” comment, in our judgment exemplifies PC Muntean’s failure to grasp the issues that were being raised by the respondent. The concern held was not solely if she had used the word “dickhead” to describe a member of the public, on her own account she had used the word “dickhead”. The respondent’s issue was firstly that in the context of the incident this was likely to inflame situation instead of diffusing it and secondly that she failed to perceive that this was inflammatory either at the time of the incident or having reflected upon the same. That in our judgment is a striking lack of self-awareness for a serving police officer where one of the fundamentals of the role is perception of risk to the public, colleagues and themselves.
- 196 However, in our judgment matters go further than that; PC Muntean was prepared to pursue allegations based on her perception notwithstanding evidence that she had that suggested otherwise. She asserted that due to her lodging the Near Miss she was humiliated and publicly exposed to criticism to enact reprisals against PC Muntean. Despite PC Muntean having accepted that Sgt. Proffitt was on annual leave at the time of this incident, (see her text/social media messages with Mr Harkness (the Police Federation health and safety representative) at [216E]) and notwithstanding him not having been named as a perpetrator, the suggestion was put to Sgt. Proffitt during cross examination, that he had been *“humiliated and publicly exposed for poor health and safety practice”*, and PC Muntean linked her subsequent line management and *“her fate being sealed”* to the lodging of that Near Miss form [SM/61]. When asked the basis for this assertion she stated she had no doubt now that the way she was treated by Sgt. Proffitt was because of the Near Miss form. Whilst that was clearly her opinion, she gave no evidential basis for that. In the absence of an evidential basis being given by her for that we find this was a baseless attempt to link him to her whistleblowing claim.
- 197 However, that concern extends yet further still. Under cross-examination PC Muntean stated that of the 500 people she worked with over the past seven years the majority were dishonest and two-faced. She subsequently maintained that assertion, expanding on it slightly stating that everyone was dishonest in the police.
- 198 Another example was in relation to the driving course (see (50) following). PC Muntean indicated that she failed because she was too confident, that the manoeuvres were not dangerous and because the instructor was a racist. When it was put to her that Insp. Churchill had given feedback to PC Muntean from the instructors that she failed because she had undertaken dangerous manoeuvres and was not listening to the feedback PC Muntean stated that Insp. Churchill was lying. The Employment Judge explained to her that if an allegation was made in tribunal that another individual was lying (irrespective of whether that individual was a serving police officer or not) if that was not proved that it could damage the credibility of the maker of the assertion. The Employment Judge asked PC Muntean if she wished to persist with that assertion, or to retract it. PC Muntean maintained the same and indeed repeated it.
- 199 Whilst we have not been provided with a copy of the feedback from either driving course and merely have Insp. Churchill’s evidence in that regard we accept given the weight of evidence from not only PC Muntean’s supervisors but a number of individuals across different teams that PC Muntean reacted negatively to feedback. The real issue





- however is that instead of reflecting on her own culpability she sought to cast blame on others and when doing so was too ready to make highly detrimental allegations about others without any support for the same. Further, she sought to challenge the respondent's witnesses' behaviour at meetings without relaying the detail in her account.
- 200 PC Muntean was also referred in cross examination to an exchange via either text message or social media with where PC Muntean relayed to her a Police Federation representative that Sgt. Sarai had asked to see her Pocketbook [435]. The text/social media exchange relayed that she told him *"I said I already gave it to admin but it is in my bag"*. She was also asked by Mr Rathmell if she had ever told a lie to a supervisor. PC Muntean responded stating that she handed in all her Pocketbooks as soon as they were completed and therefore this had merely been an assumption on her part. We asked her when she had identified that the notebook was in her bag and how long after that had she corrected the error and volunteered the notebook to him. She indicated she had not.
- 201 Whilst we are very conscious PC Muntean is a serving police officer we reluctantly conclude that this was an attempt by PC Muntean to mislead her supervisor Sergeant Sarai.
- 202 As we say above A/Sgt. Hedge was commendably blunt and honest; he made clear that whilst he did not approve of Sgt. Proffitt's management style, Sgt. Proffitt's response to the events of 1 July 2015 (see (24) following) was correct and that words of advice and an entry in PC Muntean's Pocketbook were warranted.
- 203 Whilst both Insp. Grange and PC Muntean told us that Insp. Grange was involved in providing advice and support during the Informal UPP he did not attend any of the informal UPP meetings. Despite him being a senior officer, who should thus be familiar with the rules of evidence, he sought to relay what he understood to have occurred at meetings despite him not being there and without indicating matters that may have allowed us to give weight to that such as when that had been relayed to him (see [SG/9]). Accordingly, we place no weight on his account of meetings at which he was not present.
- 204 We also found Mr Harkness's version of the closed-door meeting on 10 February 2016 was at odds with that of PCs Tweedie and Muntean and his account of the subsequent meeting with Insp. Churchill at odds with hers. In relation to the latter he failed to relay in his statement highly relevant evidence that would have supported that assertion, a matter that was only raised by PC Muntean in cross examination. Accordingly, we place little weight on his account where it is unsupported.
- 205 Whilst we found Sgt Proffitt to have sought to elaborate on his view of one incident before us, that was not addressed at the time (164.6) he was a frank and otherwise consistent witness whose general account was supported by the other witnesses and the documentary evidence. We have no doubt that he, like Sgt Sarai had a forthright management style.
- 206 The accounts of Sgt Sarai, Insp. McElroy-Baker, Insp. Churchill and PC Tweedie were overall, consistent with each other and supported by the other witnesses and the documentary evidence save that Insp. Churchill overstated the rarity of third attempts at the driving course (see (53)). We address Mrs Earp at (130).



## THE LAW

In addition to the cases we refer to below we were also referred to several additional authorities. As the principles, they embody are referred to within the representatives closing submissions we do not propose to repeat those principles here. They included *Anya v University of Oxford* [2001] IRLR 377 CA, *Ahsan v Watt* [2008] IRLR 243 HL, *Reynolds v CLFIS (UK) Ltd* [2015] ICR 1010, *Chief Constable of the Greater Manchester Police v Bailey* 2017 EWCA Civ 425, *Chief Constable of Cumbria v McGlennon* [2002] ICR 1156 EAT, *Eiger Securities LLP v Korshunova* [2017] ICR 561, *Commissioner of Police of the Metropolis v Hendricks* [2003] ICR 530, *Panayiotou v Kernaghan* [2014] ICR D23, UKEAT/0436/13, and *Bahl v Law Society* [2004] IRLR 799.

- 207 This claim relates to two forms of prohibited conduct pursuant to the EqA, Direct Discrimination (s.13) and Victimisation (s.27); and a Whistleblowing Detriment pursuant to Part IVA ERA.
- 208 Section 39 EqA imposes a duty upon an employer not to discriminate against or victimise an employee in any of the ways described therein. By virtue of s. 42 EqA, headed “Police Officers”, the holding of the office of constable is to be treated as employment for the purposes of Part 5 EqA in respect of any act done in relation to a constable or his/her appointment to the office of constable.
- 209 By virtue of s.43KA ERA the provisions of Part IVA apply to police constables and references to employers and employee are to be construed accordingly.

## The Equality Act Complaints

### **Direct Discrimination (s.13 EqA) & Victimisation (s.27 EqA)**

- 210 A person (the alleged perpetrator) discriminates against another (the complainant) if, because of a protected characteristic, the alleged perpetrator treats the complainant less favourably than the alleged perpetrator treats or would treat others.
- 211 The reference to “less favourable treatment” means a comparison is required between the complainant and a real or fictional individual created for that purpose (a comparator). There must be no material difference between the circumstances of the complainant and comparator.
- 212 Victimisation occurs where the alleged perpetrator subjects the complainant to a detriment because the complainant does a protected act, or the alleged perpetrator believes that the complainant has done, or may do a protected act. Victimisation does not fall within the heading of “discrimination” within the EqA, but instead is dealt with differently.
- 213 Both sections use the term “because (of)”. No change of approach was intended in the change from the pre EqA wording (“on the grounds of”) to “because of”<sup>1</sup>.
- 214 The fundamental question in a direct discrimination case is: what were the reasons or grounds for the treatment? The answer to that question is dependent on the facts and context but normally gives rise to two types of case<sup>2</sup>; in the first, the grounds for the alleged perpetrator’s action can be found in the ‘criterion’ itself, in the second, it is necessary to consider the alleged perpetrator’s mental processes which will include his motivation, even if this benign<sup>3</sup>.
- 215 An example of the first type of case is where an owner of premises puts up a sign saying, ‘no blacks admitted’; race is, necessarily, the reason why that person is

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<sup>1</sup> *Interserve FM Ltd v Tuleikyte* [2017] UKEAT 0267/16 at [15]

<sup>2</sup> Underhill P (as he then was) in *Amnesty International v Ahmed* [2009] IRLR 884 at [35]

<sup>3</sup> *Amnesty* [34] and see third para of Lord Nicholls’ judgment in *Nagarajan v London Regional Transport* [1999] IRLR 572 HL. The difference is explained by Lady Hale in *Governing Body of JFS* [2009] UKSC 15 [2010] 2 AC 728 at [64] and *Amnesty* at [32]



excluded<sup>4</sup>. If the criterion is based on the protected characteristic or its application is the reason for the treatment complained of, there is no need to look further; by establishing the reason for the detrimental treatment (in this example, race), the complainant shows at one and the same time that s/he is less favourably treated than the comparator<sup>5</sup>.

- 216 The second case concerns complaints that are not of themselves discriminatory but where the alleged perpetrator did the act because of a conscious or unconscious discriminatory motivation.
- 217 Complaints of discrimination rarely deal with complaints that exist in isolation from others. So, in the same way that one cannot understand a scene in act 3 of a play without first having understood what has happened in acts 1 and 2, to understand if a protected characteristic was a ground for less favourable treatment, the total picture must be looked at. Thus, where there are allegations of discrimination over a substantial period, looking at the individual incidents in isolation from one another should be avoided as it omits a consideration of the wider picture<sup>6</sup>.
- 218 The protected characteristic need not be the sole or even principal reason for the treatment so long as it has significantly influenced the reason for the treatment; a 'significant' influence is one that is more than trivial<sup>7</sup>.
- 219 As to victimisation the definition in the EqA is materially different from the pre-EqA wording. Prior to the EqA the Tribunal was required to determine whether the claimant was less favourably treated than a real or hypothetical comparator by reason of carrying out the protected act, and there was a greater focus on the reason for the behaviour of the person who victimised the complainant "*by reason that*"<sup>8</sup>.
- 220 It is now necessary when considering a Victimisation claim to identify if a protected act was done (or there is a suspicion that a protected act had been or may be done), if so, whether the claimant was subjected to a detriment; and, if so, whether that was done that the perpetrator subjected the complainant to that detriment because the complainant did a protected act<sup>9</sup>.

### **The burden of proof (s. 136 EqA)**

- 221 A protected characteristic and a difference in treatment alone merely indicate a possibility of discrimination. They are not sufficient material so the Tribunal "*could conclude*" on the balance of probabilities, the respondent had committed an act of discrimination. There needs to be '*something more*'<sup>10</sup>.
- 222 Because it is rare to find clear evidence of discrimination if there are facts from which the Tribunal could decide, in the absence of any other explanation, that the alleged perpetrator discriminated against the complainant, the Tribunal must hold that occurred unless the alleged perpetrator shows that s/he did not contravene the provision. That involves a two-stage analysis of the evidence.

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<sup>4</sup> [Amnesty](#) at [33]

<sup>5</sup> Elias P (as he then was) in [Islington v Ladele](#) [2009] IRLR 154 EAT at [30]

<sup>6</sup> [London Borough of Ealing v Rihal](#) [2004] IRLR 642 CA applied in [Laing v Manchester City Council](#) [2006] IRLR 748 by Elias LJ (as he subsequently became) at [59] and endorsed in [Madarassy v Nomura International](#) [2007] IRLR 246 CA

<sup>7</sup> [Nagarajan](#) as applied in [Igen v Wong](#) [2005] IRLR 258 CA at [37]

<sup>8</sup> see [Nagarajan](#), which concerned s. 2 Race Relations Act 1976 which provided that victimisation was a form of discrimination

<sup>9</sup> Langstaff P in [A v Chief Constable of West Midlands Police](#) UKEAT/0313/14 at [20]

<sup>10</sup> [Madarassy](#) at [56] approving the CA in [Igen v Wong](#)



- 223 At the first stage, it is not for the complainant to prove facts to ‘shift’ the burden to respondent, but those facts must be before the Tribunal by the end of the hearing<sup>11</sup>. However, the respondent can attempt to show at the first stage that the acts complained about never happened; that, if they did, they were not less favourable treatment of the claimant; that the comparators chosen by the claimant or the situations with which comparisons are made are not truly like the claimant or the situation of the claimant; or that, even if there has been less favourable treatment of the claimant, it was not on the protected ground. The only factor that shall not “... *form part of the material from which inferences may be drawn at the first stage is ‘the absence of an adequate explanation’ from the respondent.*”<sup>12</sup>.
- 224 The Tribunal can also move straight to the second stage of the test, the “*reason why*” question, and consider whether the respondent has proven that the treatment was not on the proscribed ground without considering the first stage of the test. If the respondent does so, the claim fails and the claimant is not prejudiced by this<sup>13</sup>. An example where that might be appropriate is where the claimant seeks to compare his treatment with that of a hypothetical comparator; the question whether there is a hypothetical comparator is often inextricably linked to the issue of the explanation for the treatment<sup>14</sup>.
- 225 The burden of proof however has no role in a case “*where the tribunal is in a position to make positive findings on the evidence one way or the other*”<sup>15</sup>.

### **The Whistleblowing Detriment Complaint**

- 226 Workers have the right to complain of being subjected to a detriment, other than dismissal, on the ground that they had made a protected disclosure<sup>16</sup>. From 25 June 2013<sup>17</sup> a ‘*qualifying disclosure*’ now means (so far as is relevant to us here) “... *any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following:-*

... (b) *that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, ....*

(d) *that the health or safety of any individual has been, is being or is likely to be endangered, ...”*

- 227 The definition of ‘*qualifying disclosure*’ has both a subjective and an objective element. The subjective element is that the worker must believe that the information disclosed tends to show one of the six matters listed in sub-section (1). The objective element is that that belief must be reasonable based on their knowledge and expertise<sup>18</sup>. A belief may be reasonable even if it is wrong<sup>19</sup>.

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<sup>11</sup> *Efobi v Royal Mail Group Ltd* UKEAT/0203/16 and *The Commissioner of Police of the Metropolis v Denby* UKEAT/0314/16.

<sup>12</sup> Mummery LJ in *Madarassy* [69-72] CA approving the approach adopted in *Laing* [2006] IRLR 748 by Elias LJ (as he became)

<sup>13</sup> *Brown v Croydon* [2007] IRLR 259 and *Madarassy* at [81 & 82] both CA

<sup>14</sup> Lord Nicholls in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 at [7-12] cited in *Laing* at [74] approved in *Madarassy* at [81 & 82]

<sup>15</sup> Lord Hope in *Hewage v Grampian Health Board* [2012] UKSC 37, [2012] ICR 1054 [32/1065H]

<sup>16</sup> s. 43B(1) Employment Rights Act 1996 (ERA)

<sup>17</sup> amended by s. 17 Enterprise and Regulatory Reform Act 2013 (amendment underlined)

<sup>18</sup> *Korashi v Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4 EAT

<sup>19</sup> *Babula v Waltham Forest College* [2007] ICR 1026 (*albeit on the unamended definition in s.43B(1)*)



- 228 “Likely” means more probable than not. It requires more than a possibility or risk<sup>20</sup>.
- 229 The revised definition of ‘qualifying disclosure’ was considered by the CA prior to submissions being made in this claim<sup>21</sup>. The CA concluded<sup>22</sup> that where the disclosure relates to a breach of the worker’s own contract of employment (or where the interest in question is personal in character) there still may be factors that make it reasonable to regard the disclosure as being in the public interest as well as in the personal interest of the worker. It gave the example of doctors’ hours. That question is one to be answered by the Tribunal on a consideration of all the circumstances, but the CA gave a list of relevant factors that may help.
- 230 The respondent accepts information was disclosed to it via the “Near Miss” form [as per ss. 43C to 43H] and thus if there was a ‘qualifying disclosure’ it was a “protected disclosure” it denies that the claimant,
- 230.1 held a reasonable belief that the disclosure of information tend[ed] to show that the respondent failed, to comply with the obligations relayed in (b) and (d),
- 230.2 held a reasonable belief that her disclosure was made in the public interest and/or
- 230.3 suffered a detriment on the ground that she made the disclosure.
- 231 The burden is on the claimant to prove his/her case on the balance of probabilities. However, if the claimant can discharge the burden that is on her in relation to the other questions, the onus is then on the employer to show the ground on which any detriment was in no sense whatsoever done (given the onus is then on the employer) on the ground the claimant made a protected disclosure<sup>23</sup>.
- 232 The Tribunal should approach that task in the following way<sup>24</sup>:-
- “40. ... ‘there must be a causal connection between the protected act and the respondent’s acts or omissions to act.’ ...”
41. ... Once an employer satisfies the Tribunal that he has acted for a particular reason - here, to remedy a dysfunctional situation - that necessarily discharges the burden of showing that the proscribed reason played no part in it. It is only if the Tribunal considers that the reason given is false (whether consciously or unconsciously) or that the Tribunal is being given something less than the whole story that it is legitimate to infer discrimination in accordance with the Igen principles. Here the Tribunal was satisfied ... the Employer had acted in order to resolve the dysfunctional situation. I see no basis for going behind that finding which is essentially one of fact for the Employment Tribunal.”

## **Timing**

- 233 Complaints of discrimination/whistleblowing must be brought before the end of 3 months starting with the date of the act complained of, or if the conduct/act extends over a period, the end/last day of that period. The Tribunal has a discretion to hear complaints outside that time but only if, for complaints of discrimination it considers it is

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<sup>20</sup> [Kraus v Penna Plc](#) [2004] IRLR 260. Whilst [Kraus](#) was reversed by CA in [Babula](#) (citation below), it was not on this point.

<sup>21</sup> [Chesterton Global Ltd v Nurmohamed](#) [2017] EWCA Civ 314

<sup>22</sup> per Underhill LJ [37]

<sup>23</sup> s. 48(2) ERA

<sup>24</sup> Elias LJ in [NHS Manchester v Fecitt](#) [2012] IRLR 64 (CA)



just and equitable to do so<sup>25</sup>, and for the whistleblowing detriment complaint, if is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months within such further period as the Tribunal considers reasonable<sup>26</sup>.

## OUR FURTHER FINDINGS & CONCLUSIONS

*We have made specific findings in relation to the relevant factual matters above. Having done so we then stepped back and looked at matters in the round. What follow are our further findings and conclusions that emanate from that.*

- 234 We found regarding the two acts of direct discrimination that remain, Issues 2 & 15, that as to the first (Issue 2) Sgt. Sarai had raised with PC Muntean that colleagues could not work with her, as they found her to be rude, abrupt and opinionated and generally difficult to work with. We found this was raised as a supervision issue, her behaviour was affecting her performance which necessarily included her interaction with colleagues (see (183) to (187)). As to the second (Issue 15) T/Sgt. Tweedie's failure to admonish PC Clark in the meeting was determined by how she perceived events at the time and the circumstances of the meeting breaking up and her rationale for behaving in the way she did was supported by her giving words of advice to PC Clark after the event (see (162)).
- 235 As to the whistleblowing detriment and victimisation complaints essentially the argument advanced by PC Muntean is that her line managers having discovered the existence of the First ET Claim (which constitutes a Protected Act), they consciously or subconsciously sought to manage her out of the police service because she had previously challenged the respondent by bringing the First ET Claim and/or because she made the protected disclosure. Alternatively, that by virtue of her confrontational and challenging personality which she argued was inextricably interlinked to her race (her Romanian nationality) that marked her out as a troublemaker again needed to be consciously or subconsciously "managed out" of the respondent.
- 236 Both Issues 2 & 15 continue to be pursued as victimisation and whistleblowing detriments in addition to direct discrimination. As to Issue 2, we determined that raising the comments from colleagues about her were done because her behaviour was affecting her working relationship, it was thus a supervision issue and in no sense motivated by the protected act or protected disclosure. As to Issue 15, T/Sgt. Tweedie's failure to admonish PC Clark in the meeting was in no way whatsoever motivated by the protected act or protected disclosure. Nor in our judgment was T/Sgt. Tweedie's response (or lack of it) motivated by race or PC Muntean's nationality; we found T/Sgt. Tweedie would not have behaved any differently had a comment in similar terms been made irrespective of PC Muntean's nationality. T/Sgt. Tweedie's behaviour was determined by how she perceived events at the time and the circumstances of the meeting breaking up and that it was not addressed by her immediately in no sense because of race was supported by her giving words of advice to PC Clark after the event (see (183) to (187) and (162) respectively).
- 237 Whilst the rationale PC Muntean attributes to the respondent for its decision to place her on an informal UPP (see (235)) and the way it went about that was not put directly to Sgt. Proffitt. One of the difficulties with the first proposition in PC Muntean's rationale for the respondent's actions is that Issue 6 was a matter that was not only raised by one of PC Muntean's supervisors, Sgt. Proffitt, but also by A/Sgt. Hedge. That along with several incidents that were raised by individuals both outside the respondent's

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<sup>25</sup> s. 123 EqA

<sup>26</sup> s. 48(3) & (4) ERA.



organisation and inside it, outside PC Muntean's direct line management mean that in order for PC Muntean's assertion to succeed means the various perpetrators were acting in concert. PC Muntean failing to dispute that these events occurred and the support from a wide range of third parties in our judgment supported the view they were not acting in concert.

238 As to the Near Miss incident [Issue 7] we did not accept the account of the events of PC Muntean, nor that of Mr Harkness. Further, we found that neither Sgts. Proffitt nor Sarai appeared concerned as to the adverse effects the Near Miss Report would have had on them and thus do not support the rationale attributed to them by PC Muntean for them acting in the way they did.

239 We found that PC Muntean led no specific examples of the cold treatment or lack of eye contact she relied upon [issue 8] (see (102)).

240 As to the Informal UPP [Issues 9 - 11, 16 & 17]:-

240.1 Before we turn to the specific allegations Ms del Priore put in cross examination to the Respondent's witnesses we turn to her submissions that the concerns about PC Muntean's behaviour should have been referred to the person designated as the Appropriate Authority under the respondent's conduct and performance procedures to consider what action, if any, was required, under those procedures, instead of PC Muntean's direct supervisors.

240.2 The Home Office Guidance provides [2.115] that where an allegation is made against the conduct of a police officer or special constable, that does not involve a complaint, a recordable conduct matter or a death or serious injury (see [2.87]), the matter will be dealt with under the Conduct Regulations. However, in the same way as described in [2.96], the appropriate authority must formally assess whether the conduct alleged, if proved, would amount to misconduct or gross misconduct.

240.3 Ms del Priore suggested that in this case a severity assessment, independent (of her supervisors' involvement) should have been carried out and if appropriate, an investigation could have been ordered. It was put that PC Muntean's supervisors wanted to keep control of the process to themselves so they could manage PC Muntean out of the police service by ensuring the Informal UPP failed and by escalating it to a formal UPP. Ms del Priore also took issue with those issues being categorised as performance rather than conduct for the same reasons.

240.4 We can find no reference to the former in PC Muntean's pleading, the list of issues or the matters led in her witness evidence. We find that no reference is required to the Appropriate Authority until at least the formal stage in either the conduct and/or performance procedures. If all matters, no matter how trivial, were referred to the Appropriate Authority, the Appropriate Authority be potentially swamped with work. Further, we find that in the circumstances in this case an objective observer would potentially have viewed that as heavy handed, disproportionate and unjustified.

240.5 Within the Home Office Guidance, Misconduct is defined [2.124]. as "*a breach of the Standards of Professional Behaviour (see Chapter 1)*". Gross Misconduct [2.125]. as "*a breach of the Standards of Professional Behaviour so serious that dismissal would be justified*". Chapter 1, The Guidance on Standards of Professional Behaviour state amongst other matters:-

*"1.1. The standards of professional behaviour, as reflected in the Code of Ethics, are a statement of the expectations that the police and the*



*public have of how police officers should behave. They are not intended to describe every situation but rather to set a framework which everyone can easily understand. They enable everybody to know what type of conduct by a police officer is acceptable and what is unacceptable. The standards should be read and applied having regard to the Code of Ethics.*

...

*1.4. A breach of the Code of Ethics will not always involve misconduct or require formal action under the Conduct Regulations.*

...

*1.7. Where these standards of professional behaviour are being applied in any decision or misconduct meeting/hearing, they shall be applied in a reasonable, transparent, objective, proportionate and fair manner. Due regard shall be paid to the nature and circumstances of a police officer's conduct, including whether his or her actions or omissions were reasonable at the time of the conduct under scrutiny."*

- 240.6 Thus, we interpret the Guidance on Standards of Professional Behaviour as requiring any action taken by the respondent to be proportionate. That is supported by what Insp. Grange told us [SG/5-7):-

*"... Most minor performance issues are dealt with in an informal manner by way of management interventions such as words of advice. More serious matters tend to be dealt with by way of the Police Performance and Conduct Regulations.*

*If and when a police officer is subject to a formal UPP process then this tends to be overly bureaucratic and the approach adopted is inconsistent as it very much depends on what supervision deems unsatisfactory performance and this varies from individual to individual. There are many instances where a police officer may have exhibited behaviour that might perhaps warrant the UPP process however has been simply tolerated and ignored.*

- 240.7 We found that the Informal UPP was commenced only after various informal words of advice had been given identifying the behaviour the respondent was concerned about, some of which included PC Muntean being asked to sign Pocketbook entries indicating the degree of the respondent's concerns (see (22) & (135)). We find the informal words of advice had not in her supervisors' view had the desired effect and a number of complaints occurred, a number from third parties (see (126)) and culminating in her parking in a Public Disabled Bay in a marked police car which was a repetition of similar incidents her supervisors had raised.
- 240.8 Whilst some of these allegations were trivial, and some were historic, in our judgment collectively the respondent was entitled to view them as evidence of a pattern of behaviour, an unreasonable failure/refusal to follow reasonable instructions and a refusal to reflect on her behaviour when feedback when given.
- 240.9 That being so advice from HR was sought. Mrs Earp, an experienced HR advisor, told us she suggested the informal UPP route to Sgt. Proffitt (although a development plan had already been canvassed by Insp. Churchill). Having been sent the Log Mrs Earp told us that was the appropriate course in her view.





She did not suggest a formal process be adopted or for that matter the behaviour warranted no action (see (128)).

- 240.10 Based on the evidence we heard we find the Informal UPP was not adopted to avoid oversight of the process but because that was the genuine view as to the appropriate means of addressing of what were after all a series of relatively minor incidents by Mrs Earp, Sgt. Proffitt and for that matter Insp. Churchill and T/Insp. McElroy-Baker.
- 240.11 We find that proportionality requires any action should be addressed at an appropriate level, and that if the action required is categorised as informal that this would normally warrant that action being addressed by an individual's immediate line managers. We find that was a means of redressing a behaviour issue that a reasonable respondent could and would have adopted in the circumstances.
- 240.12 Whilst T/Insp. McElroy-Baker and Sgt. Proffitt had already decided on that course prior to PC Muntean having had an opportunity to make representations for the most part those incidents had been discussed with her when they arose, that was not an issue specifically pursued before us.
- 240.13 If PC Muntean genuinely was concerned about the proportionality of the respondent's actions in going down the Informal UPP route she could and should have raised a grievance about that at the time. That in our judgment would have allowed any issue over the process either not being warranted at all or being retained by her line managers to set her up to fail to have been addressed. It was not, despite her having had Federation assistance throughout. To place that into context PC Muntean accepts she called Sgt. Proffitt a bully boy and did not deny that she said that she stated was going to "sue the West Midlands Police". Having threatened legal action and PC Muntean having had some experience of such matters from the First ET Claim, in our judgment that suggests that PC Muntean nor her Federation representative considered the oversight of the Informal UPP was required and it should have been escalated at the time. We find that whilst PC Muntean may not have agreed with the decision to place her on the Informal UPP indeed she suggested an Informal UPP was not warranted at all. We find the Informal UPP in the circumstances was a proportionate approach.
- 241 For the reasons, we gave above (163) we rejected the assertion the Informal UPP objectives were vague, lacking in sufficient specificity and/or were not objectively measurable, or that gave rise to a disadvantage PC Muntean demonstrating she had met them.
- 242 As to the 20 allegations made in the Informal UPP we found above (164) that they were not stale, and whilst there was an attempt to elaborate in relation to one incident that was not referred to in the Log the examples that were raised all related to incidents that occurred. Whilst PC Muntean disputed the respondent's perception of that behaviour we found that the respondent was genuinely concerned about that behaviour and was entitled to be so as evidenced by the reaction of third parties outside of her direct line managers.
- 243 We found PC Muntean was contrary to what she asserted allowed to respond and had responded to the allegations put to her within the Informal UPP (165). We addressed the four specific complaints PC Muntean raised concerning allegations in the Informal UPP [Issues 12, 13, 14 & 15] at (158), (159), (161) and (162) above and found none of them were in any sense influenced by the "Near Miss" or her earlier claim.



- 244 Further, we found that PC Muntean had not been treated in the way she alleged at Issues 11 and 17 and indeed as to Issue 17 that was contrary to her oral evidence (see (165)).
- 245 We carefully considered the suggestion PC Muntean's supervisors were part of a conspiracy and rejected that view for the reasons we give at (169) – (176).
- 246 As we state above the respondent's view that PC Muntean's behaviour needed to be addressed by more than words of advice or Pocketbook entries in our judgment was both warranted and genuine. The adoption of the Informal UPP, the retention of control of that process by Sgt. Proffitt and the extension of it by 3 months, was not part of a conspiracy or an attempt to set PC Muntean up to fail (as she states was demonstrated by subsequent events). That was supported by the number of the incidents complained about, it being agreed that these occurred and that complaints emanated from some of those incidents (albeit we record that what happened within those incidents and respondent's perceptions of them was in dispute) nor by the range of individuals who raised those incidents. The "complainants" were not just from her supervisors but members of other teams and the public. Whilst for much of the initial Informal UPP period PC Muntean's behaviour improved the incidents over the period 16-28 July meant that Sgt. Proffitt was entitled improvement in her behaviour had not been maintained and to extend the Informal UPP rather than either escalate or close the same [Issue 16] for the reasons we relay at (166) following.
- 247 Accordingly, we found above that with regards to each of the matters that remain live that PC Muntean was either not treated in the way she alleged or that if she was, that treatment was due to the reasons we relay and in each instance, that was in no sense connected to her Nationality, her Romanian heritage, the First ET Claim or the Near Miss.
- 248 We have stepped back from our individual findings and having done so we find that the reason for the Informal UPP was that succinctly identified by Mr Rathmell in paragraph 5 of his closing submission - "*her attitude and behaviour: her personality and the way she responded to instructions and feedback*" essentially PC Muntean's supervisors were attempting to help her to develop professionally, but she was sometimes resistant to advice, argumentative, unnecessarily challenging and disrespectful (e.g. interrupting) – or at least reasonably perceived as being disrespectful. That links into the second proposition, (see (235)) namely PC Muntean's assertion [SM/31]:-
- "I am aware that my personality is very strong and this is simply down to my culture. I believe that the underlying reason behind the informal UPP process was an attempt to change my personality particularly in light of previous comments made to me. I feel that Sgt. Proffitt wishes to put a stop to me standing up for myself or constructively challenging something when I genuinely believe it is important to do so."*
- 249 PC Muntean is expressly seeking to suggest her behaviour is related to the protected Characteristic of Race. Save for her and Insp. Grange making that assertion she has led no evidence expert or otherwise of that. We not only considered if the incidents we list above were in any sense linked to that but also Issues [2 & 15] given their content.
- 250 We found looking both individually and in the round that the actions of PC Muntean's supervisors had nothing whatsoever to do with her Romanian heritage. Whilst she makes an assertion that her behaviour is typical of her protected characteristic we find the respondent would have treated any individual who exhibited that behaviour in the same way such that it cannot be said the treatment stemmed from the characteristic nor has she shown that her behaviour stemmed from her protected characteristic.



- 251 Whilst in some instances we found PC Muntean was not treated in the way she alleged in others we found she was. Where that was so we made the specific findings we summarise above as to the reasons for that treatment (see (234) to (247)). Having made those determinations as to the reason for the treatment complained of we find that looking in the round, neither the First ET Claim against the Chief Constable in 2013 or the filing a Near Miss form on 10 February 2016 were in any sense whatsoever the reason she was treated in the way she was.
- 252 Accordingly, PC Muntean's complaints of direct discrimination, victimisation and detriment having made a protected disclosure are not well founded and are dismissed.

**Employment Judge Perry**  
**4 December 2017**

### ANNEX - LIST OF ISSUES

C = the Claimant. R = the Respondent.

ACTS OF LESS / (UN) FAVOURABLE TREATMENT, UNWANTED CONDUCT & DETRIMENT.						
	Para. ET1 D of C.	Para. Witn.	Statute & Any Applicable Comparator	Treatment	Perpetrator	Date
1.	8.i., 19 & 23.	C 6-8	D ✓ Comparator List A <i>Withdrawn by C</i>	Was C consistently single-crewed, save for one occasion in Spring 2016, when she was crewed with PC 8237 Evans?	Sgt. Proffitt and Sgt. Sarai.	Ongoing from July 2015.
2.	8.i., 19 & 23.	C7	D V W  Hypothetical Comparator	Was C told she is always single-crewed as no-one wants to work with her?	Sgt. Sarai.	Circa Sept 2016.
3.	8.ii., 19 & 23.	C13-14	D ✓ Comparator: PC Cockerton <i>Withdrawn by C</i>	Was C frequently deployed to low-powered vehicles without sirens when C is qualified to drive 'blues and twos'?	Sgt. Sarai.	From Nov 2015 and ongoing.
4.	8.iii., 19 & 23.	C15-16	D ✓ Comparators: <i>Withdrawn by C</i>	Was an entry placed in C's PNB for parking in a workplace disabled bay?	Sgt. McElroy-Baker and Sgt. Proffitt.	21 Jan 2016.



5.	<del>8.iv, 19 &amp; 23.</del>	<del>C24- 27 C34xiii C36xiii</del>	<del>D V Comparators:- Withdrawn by C</del>	<del>Was C threatened with prosecution for parking in a public disabled bay?</del>	<del>Sgt. McElroy- Baker and Sgt. Proffitt.</del>	<del>16 April 2016.</del>
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6.	8.v, 19 & 23.	C9-12	D V <u>only</u>  Hypothetical Comparator	Did R question C's honesty and integrity and criticise her in relation to her submission of an intelligence report referring to a person with an Asian-sounding first name and a British surname?	A/Sgt. — Hedge and Sgt. Proffitt.	1 Jul 2015
7.	8.vi, 19, 22 & 23.	C17-23	V W  Hypothetical Comparator	Was C is criticised for submitting a health and safety Near Miss form following an incident on 10 February 2016?	Sgt. Sarai and Inspector Churchill.	Circa 10 Feb 2016.
8.	8.vi, 19., 22 & 23.	C23	W only  Hypothetical Comparator	Did C's colleagues treat her differently, (in a cold manner)? Particulars: avoided eye contact. Spoke to her coldly. R denies that C was treated in a cold manner by Sgt. Sarai and Inspector Churchill.	Sgt. Sarai and Inspector Churchill.	From 10 Feb 2016 and continuing past 22 Sep 2016.
9.	10, 19, 22 & 23.	C26 C28-31	V W  Hypothetical Comparator	Was C was placed on a development plan further to the informal stage of R's Unsatisfactory Performance Procedure, ('UPP'), the objectives of which were vague, lacking in sufficient specificity and/or were not objectively measurable, entailing disadvantage to C in demonstrating she had met them?	Sgt. McElroy-Baker and Sgt. Proffitt.	From 6 May 2016 and continuing past 22 Sep 2016
10.	11, 12.i. to 12.xx., 19, 22 & 23.	C32 C33-36	V W  Hypothetical Comparator	As part of the informal UPP, 20 allegations were laid against C. Of those, <ul style="list-style-type: none"> <li>• Were some of them unsubstantiated?</li> <li>• Were some embellished in order to paint C in a negative light?</li> <li>• Were some untrue?</li> <li>• Were some stale, having regard to their timing?</li> </ul>	Sgt. Proffitt.	From 6 May 2016 and maintained at each UPP review.
11.	12i. to 12 xx., 19, 22 & 23.	C35-36	V W  Hypothetical Comparator	Did R fail to permit C to answer to the 20 allegations laid against her or to defend herself in relation to them in the course of the UPP?	Sgt. Proffitt.	From 6 May 2016 and maintained at each UPP review.
12.	17.i., 18, 19, 22 & 23.		V W  Hypothetical Comparator	Was C was criticised for producing a statement which was 'too detailed'?	Sgt. Sarai	26 Jul 2016



13.	17.ii., 18, 19, 22 & 23.		V W  Hypothetical Comparator	Was C - ordered to deal with a repeat offender via a voluntary interview? - Did C comply but voice her disagreement with this course of action? Was C was criticised for voicing her disagreement?	Sgt. Sarai	27 Jul 2016
14.	17.iii, 18, 19, 22 & 23.		V W  Hypothetical Comparator	Was C criticised in an open forum for 'non-criming' an incident? Was she told she should just answer 'Yes, Sarge' and 'No, Sarge' when spoken to?	Sgt. Sarai	28 Jul 2016
15.	17.iv., 18, 19, 22 & 23.		D V W  Hypothetical Comparator	Did PC Clark made the comment 'standard' in response to an announcement in a night shift briefing that a group of Eastern Europeans were going to sleep rough in Queens Square in support of charity? If so, did ranking officers present fail to challenge him in the briefing for this remark?	Inspector Churchill; Sgt. Sarai ASgt. Tweedie TSgt. Bradley	Late Jul/early Aug 2016.
16.	15, 18, 19, 22 & 23.	C42- 44.	V W  Hypothetical Comparator	Was the UPP extended in C's case in reliance on further allegations against her? If so, were those allegations flawed or unfair for the reasons pleaded in the ET1 at paragraph 18?	Sgt. Proffitt.	5 August 2016.
17.	18, 19, 22 & 23.	C44- 45	V W  Hypothetical Comparator	Was C prevented from responding to, or defending herself in relation to those further allegations?	Sgt. Proffitt.	5 August 2016 and continuing into time.

**Comparator List A**

1. PC 20914 Rachel HOLMES
2. PC 7197 Nolan OAKLEY
3. PC 0213 Delmar BROWN
4. PC 21880 Thomas CLARK
5. PC 20534 Richard POWELL
6. PC 9013 Donna WESTON
7. PC 7256 Mark PORTER
8. PC 21972 Matthew RAYBOULD
9. PC 0616 Richard FAULKNER
10. PC / ASgt. 20678 Laura TWEEDIE
11. PC 21897 Matthew PHOENIX
12. PC 20025 Ian WILLIAMS
13. PC 20754 Matthew PRESTON
14. PC 5286 Paul TURTON
15. PC 8782 Gail CARTRIDGE
16. PC 9450 Debra GOODE
17. PC 8237 Neil EVANS



- ~~18. PC 20251 Sean COCKERTON~~
- ~~19. PC 0612 Simon LEWIS~~
- ~~20. PC 21186 Jason GUEST~~
- ~~21. PC 6036 WEBB~~
- ~~22. PC 21908 Christopher HAMPTON~~

#### **Direct Race Discrimination.**

- 18. Did R treat C in one or more of the ways alleged at paragraphs 1. to 17. above?
- 19. If so, was C treated less favourably than R treated or would treat the relevant comparators?
- 20. If so, has C proved primary facts from which the Tribunal can properly and fairly conclude that the difference in treatment was because of her protected characteristic of Romanian nationality/ethnicity?
- 21. If so, what is R's explanation?
- 22. Has he proved that the treatment was in no sense whatsoever because of C's protected characteristic?

#### **Victimisation.**

- 23. C relies on her protected act of presenting a claim to the ET in 2013.
- 24. R accepts this was a protected act.
- 25. Did R treat C in one or more of the ways alleged at paragraphs 1. to 17. above?
- 26. Did R subject C to a detriment by the treatment found proved?
- 27. If so, did R subject C to a detriment because of her protected act?

#### **Whistleblowing Detriment.**

- 28. R admits that C submitted a Health & Safety Near Miss Report to him on or about 10 February 2016.
- 29. R admits that C thereby disclosed information.
- 30. In C's reasonable belief, did that disclosure of information tend to show that R failed, is failing or is likely to fail to comply with a legal obligation to which he is subject? R denies this.
- 31. Further and alternatively, did C reasonably believe that her disclosure of information tended to show that the health and safety of any individual has been, is being or is likely to be put at risk? R denies this.
- 32. Did C reasonably believe that her disclosure was made in the public interest? R denies this.
- 33. If the protected disclosure ('pd') is proved, was C, on the ground of the pd, subjected to detriment by R or another worker as alleged at paragraphs 7. to 17. above?

#### **Time/Limitation Issues**

- 34. The claim form was presented on 22 September 2016. Early conciliation notification was received by ACAS on 22 July 2016. The Early Conciliation certificate was issued by e-mail on 22 August 2016. C's complaints under the EA and the ERA in relation to acts which took place before 23 April 2016 are potentially out of time.
- 35. Does C prove there was conduct extending over a period which is to be treated as done at the end of the period?
- 36. Is such conduct accordingly in time?
- 37. Was any complaint presented within such other period as the employment Tribunal considers just and equitable?
- 38. In respect of allegations of whistleblowing detriment found to have occurred before 23 April 2016, was it reasonably practicable to have brought these claims in time?
- 39. If not, were they brought within such further period as the Tribunal considers reasonable?

#### **Remedy**

- 40. If C is successful in any or all of her claims, what level of award for injury to feelings would it be just and equitable to make?
- 41. Is C entitled to interest?
- 42. If so, in what amount?
- 43. Should recommendations should be made under Section 124 of the Equality Act 2010?
- 44. If so, what recommendations should be made?