



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Mr I Miller

- (1) The Commissioner of the City of London Police
- (2) Mr Paul Betts
- (3) Mr James Thompson

Heard at: London Central Employment Tribunal

On: 1, 2, 3, 4, 5, 8, 9 July 2024 (11, 12 July, 30 September in chambers)

Before: Employment Judge Adkin
Ms P. Breslin
Ms S. Plummer

Representations

For the Claimant: In person

For the Respondent: Ms L. Chudleigh, Counsel

JUDGMENT

- (1) The following complaints are dismissed under rule 52 of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013, Schedule 1 ("the Rules") upon withdrawal by the Claimant:
 - a. All allegations against the Third Respondent Mr James Thompson;
 - b. Alleged protected disclosure detriments 4 and 5 (relating to First and Second Respondents).
- (2) Remaining complaints of detriment because of making protected disclosures pursuant to section 48 of the Employment Rights Act 1996 ("ERA") brought against First and Second Respondents are dismissed because:
 - a. detriments 1, 2 and 3 are out of time, not part of a continuing act and there is no extension of time on a "not reasonably practicable" basis;

- b. Detriments 6 – 14 inclusive are not well founded.

REASONS

The Claims

1. By the presentation of two different claim forms on 27 February 2023 and 28 July 2023 the Claimant brought complaints of protected disclosure detriment pursuant to section 48 of the Employment Rights Act 1996.
2. The alleged protected disclosures were made by the Claimant in August and September 2019 leading on his case to 14 separate instances of alleged detriment treatment because of protected disclosures in the period September 2021 – April 2023.

Evidence

3. The Tribunal received an agreed hearing bundle of 1,118 pages (to which quite a number of documents were added during the course of the hearing, largely by agreement).
4. We also received an agreed witness bundle containing the following witness statements in support of the Claimant's claim:
 - 4.1. The Claimant himself;
 - 4.2. Witness Statement and supplementary witness statement of Peter FitzGerald, previously Special Superintendent in the First Respondent;
 - 4.3. Matthew J Green (the Claimant did not call him and simply relied on the written statement), previously Special Sergeant. in the First Respondent.
5. The bundle contained the following statements in support of the Respondent's case:
 - 5.1. James Phipson (main and supplementary statements), previously Special Commander;
 - 5.2. Alistair Sutherland; previously Assistant Commissioner;
 - 5.3. Ian Dyson, previously Commissioner;
 - 5.4. Claire Cresswell, Chief Inspector;

- 5.5. Paul Betts, Second Respondent, Assistant Commissioner for Operations and Security;
- 5.6. Umer Khan, Commander;
- 5.7. Kelly Glazebrook, HR Director;
- 5.8. Philip Nastri, Chief Inspector of the Special Constabulary unit;
- 5.9. James Thomson, Third Respondent, Deputy Chair of the City of London Police Authority Board, previously Chair;
- 5.10. Angela McLaren (not called as a witness), Commissioner.

Dates

6. The Claimant freely admitted to the Tribunal in his oral evidence that he was not very good with dates. We do not find that this was deliberate, but it is fair to record that piecing together the chronology of his allegations has been made more difficult by inaccuracy with dates, which varied from errors of a few days or a month to in the case of one allegation two years. We acknowledge the point made by the Respondents that the effect of one of these inaccuracies was to make alleged detriments appear significantly closer in time to protected disclosures than was in fact the case.

Findings of Fact

7. Our findings of fact have been made on the balance of probabilities, based on the oral evidence of the witness statements, the contemporaneous documentation and what in the judgement of the Tribunal is inherently likely. There are a number of points in dispute. Some of the matters disputed between the parties we have not tried to resolve since they are not essential for our decision on the Claimant's complaints.
8. We have referred to the various protagonists in this case by standard titles Mr, Ms, Dr, etc rather than police ranks. No disrespect is intended by this. One of the features of this case, and a central allegation raised by the Claimant is that different individuals have held different ranks at different times following promotion or demotion. Some individuals have left police ranks altogether during the material period. Given this it is easier to describe ranks where this is relevant to the narrative and use non-police titles when referring to the individual.

Claimant

9. The Claimant was and remains a "special" officer in the First Respondent Police Force. He is a volunteer and unpaid for this work, which he has done since 2002.
10. Apart from the Claimant's work for the First Respondent, he is a chartered accountant and has a busy commercial career, which has included board level

roles. That career the Claimant says requires him to work in the region of 12-14 hours a day.

11. At times material to this claim he had initially held the rank of Special Commander, which is a senior role. As of March 2023 the Claimant was demoted from Special Commander to Special Constable. That demotion was as part of wider restructure in which a number of senior roles were removed from the structure altogether affecting a number of other individuals. This did not represent a disciplinary sanction in any case. The Claimant's contention as part of his claim is that this was a detriment suffered by him because of making protected disclosures.

First Respondent

12. The First Respondent police force covers the City of London, including regular policing of the geographic area of the City of London as well as economic crime.
13. The First Respondent has a leadership role nationally within police work in relation to fraud.
14. The First Respondent has very approximately 1,500 officers and staff, of whom a little less than 1,000 are regular (salaried) police officers and approximately 50 are special officers, who are unpaid volunteers. The body of Special Constables within the Force is known as the City of London Special Constabulary ("**CLSC**").
15. The First Respondent aims for special officers to carry out a minimum of 200 hours of duties a year although it is not possible for every individual to do this.

Second Respondent

16. The Second Respondent Mr Paul Betts joined the City of London Police on 4 January 2022. He was appointed to the role of Assistant Commissioner for Operations and Security. This was as part of a new Chief Officer Team, as one of two Assistant Commissioners. His previous experience in policing included being the Head of Change for Sussex and Surrey Police.

Third Respondent

17. The Third Respondent Mr James Thompson was elected Chair of the City of London Police Authority Board ("PAB") in 2020, having been Deputy Chair for the previous three years and sat on the PAB since 2015. On 8 May 2024 Mr Thompson reverted to being Deputy Chair.
18. By way of background the Third Respondent worked as a Special Constable between 2002 – 2015 and worked with the Claimant. It is common ground that one time the Claimant and Third Respondent had a close working relationship.
19. The Claimant withdrew his claim against the Third Respondent during the course of the Tribunal hearing.

PAB

20. The Court of Common Council of the City of London Corporation is the police authority for the City of London Police under the City of London Police Act 1839.
21. The Court of Common Council delegates all its powers as police authority to the City of London Police Authority Board ("**PAB**"). The only exception to that is the appointment of the Commissioner of the City of London Police, which requires approval of the Court of Common Council.

Claimant's secondment

22. In 2016 Claimant ceased his role as Chief Officer in the First Respondent City of London Police and started a four year secondment at the College of Policing. He retained the rank of Special Commander but had no management responsibilities within the First Respondent from that point onward. He nevertheless attended to perform operational duties such as patrolling.
23. On 1 November 2016 Mr James Phipson became Chief Officer of the Special Constabulary. Mr Phipson had the rank of Special Commander, which was the same rank as the Claimant.
24. According to the Claimant's witness Peter Fitzgerald, at some point after he stepped down in 2016, the Claimant began to make it clear that he was becoming increasingly unhappy at Mr Phipson's leadership of the CLSC. It was the Claimant's belief that his successor Mr Phipson was failing properly to manage the CLSC, with the result that the CLSC's performance was deteriorating and the positive work that had been done under the Claimant's own leadership risked being undone. It is not the role of this Tribunal to evaluate whether this was a fair critique. We did not doubt that this was the Claimant's view.
25. In 2020 the Claimant's role at the College of Policing came to an end prematurely, following an alleged unprofessional and threatening communication made by two trustees of the Association of Special Officers. This was picked up in a "reflective practice review process" the following year in August 2021 as an opportunity for the Claimant to reflect on his behaviour in which he apologised and accepted that he could have handled matters better. This was merely a note on file and is expressly set out not to be a misconduct sanction.

HAC

26. The First Respondent maintains a detachment of officers ("the HAC detachment") to the Honorary Artillery Company ("HAC"). The HAC is a charitable trust which supports the HAC Regiment, which is a unit of the Army Reserve.
27. The HAC detachment has a history going back to 1919. It was originally attached to the Metropolitan Police. In recent years it transferred to the First Respondent.

28. Part of the planning for celebration of the Centenary of the HAC detachment led to the first of the two alleged protected disclosures which form part of the Claimant's claim.

Silver statuette

29. The Commander of the HAC detachment was Special Superintendent Peter FitzGerald. Mr FitzGerald was the budget holder for the HAC detachment, and responsible for making decisions respect of large items of expenditure. Mr Phipson had been his predecessor in this role in the period 2008 – 2016.
30. During 2018 there was preparatory discussion of events to celebrate the HAC detachment's Centenary. Mr FitzGerald formed a Centenary Committee to plan these events. The chair of that committee was Sgt Edwards (Dr Sylvie Edwards), who was long term partner of Jeremy Wall who was a Special Inspector and Mr FitzGerald's deputy within the HAC. The centrepiece of events in 2019 was to be a Centenary Dinner. One of the plans to commemorate the centenary was that there should be an item of silverware depicting a police officer to be presented to the HAC to join various other items of silverware of a military nature which form part of HAC's collection.
31. Mr FitzGerald says that his idea was to use a female model for this Silver statuette which tied in with one hundred years of women in policing and would demonstrate diversity. There is no contemporaneous documentary evidence from the time of events in 2018 or 2019, nor any indication that Mr Phipson was aware of this idea at the time. Mr FitzGerald did give that account in his narrative account of matters relating to the silver statuette written 4 years later in August 2022 which is exhibited to his witness statement to the Tribunal as Appendix 2. By that stage there was a dispute.
32. On 17 January 2019, Jeremy Wall a Special Inspector sent Mr FitzGerald a quotation from a silversmith, Richard Parson, for the statuette of £6,747.50 plus VAT.
33. In February 2019 Mr FitzGerald had an email exchange with the Regimental Colonel of the HAC in which he expressed some doubts about the cost of the statuette, and on 7 February 2019 pondered whether a lower cost "off-the-shelf" item might be more realistic.

HAC M&C committee 4.3.19

34. On 4 March 2019 there was a meeting of the HAC Membership & Communications Committee, which was principally attended by military personnel, but which Mr Fitzgerald attended in his capacity of Commander of the HAC detachment. He appears to have been the only representative of the City of London Police at that committee meeting. Mr Sean Crane, Chief Executive of the HAC was present.
35. Item 6 in the minutes of that meeting dealt with the Special Constabulary Centenary Dinner Funding. It was agreed that £10,000 expenditure should be

approved as a subsidy to the Centenary Dinner. Relevant to the present claim the minute contains the following:

“It was agreed the funding request for the Centenary Dinner subsidy and the costs of commissioning the Flag should be supported in full. However, it was considered appropriate at this stage to:

- i) invite the membership to donate towards the commissioning of the commemorative silverware with the Court being asked to consider making up the shortfall.
- ii) ...”

36. The decisions taken under that item were as follows:

Decisions:

a. The Committee agreed that up to £10k be provided to subsidise the SC Det’s Centenary Dinner and commissioning of the new Det. flag.

b. That PF prepare asap a vision document for circulation to the membership seeking Donations towards the costs of commissioning the commemorative silverware.

Action: PF

[emphasis added]

PF in the minute denoted Peter FitzGerald.

37. It is unclear to us whether or not a vision document was ever produced by Mr FitzGerald.

Mr Phipson’s involvement

38. Mr Phipson become involved in the commemorative silverware project. On 21 March 2019 Mr Phipson wrote to Mr Wall on seven different assorted matters, which included:

“3) I think I have the statue sorted (funding and production)”

39. Five days later Mr Phipson wrote to Mr Wall and Mr FitzGerald on 26 March 2019 as follows:

“Police Figurine underway.... I’ll update you as soon as there is news.”

40. The following day Mr Phipson wrote to Richard Parsons, a member of the HAC who was a silversmith, on 27 March 2019 by email as follows:

Dear Richard,

I have spoken to the Detachment Commander (Peter FitzGerald) and am delighted to be able to respond that the Detachment would like to proceed with the silver statuette. They are raising funds at present, and will be consulting with the company on any balance (thank you for your assistance in this regard, and I'd be very grateful if you could remind me of the details of the precedent we will be asking them to emulate!)

Please let me know when you want to take the photographs you mentioned and I will make myself available. Feel free to e-mail or call me at this address or on

The Claimant did not see that communication when he became involved in this matter, but he did see an email of 13 June in which Mr Phipson referred to it.

41. It was Mr Phipson's uncontested evidence that HAC had an extensive collection of silverware and that Mr Parsons had produced silverware for the HAC to commemorate previous occasions although not particularly the police detachment.
42. On 17 April 2019 Richard Parsons the silversmith emailed Sean Crane, Chief Executive of HAC, Mark Wright, HAC and Mr Phipson in an email entitled "Silver Police Statuette 2019 – The Copper" with a photograph of Mr Phipson explaining that the silver model would be structured based on this image and about the materials that would be used. He signs off "I look forward to your comments."
43. Mr Phipson forwarded this to Peter FitzGerald and Jeremy Wall on 23 April, in an email which contained:

"Can you reply to Richard directly on whether you are happy to proceed with his proposed pose? ...

...

Also, you may want to let him/me know where we are with funding"
44. Mr Wall replied 5 minutes later

"Hi James

Didn't you have some funding streams, and a plan around the HAC filling the void?"
45. Mr Wall did not express surprise at the proposal but had in mind that Mr Phipson's earlier belief that he had funding sorted.

46. In an email to Mr Fitzgerald and Mr Wall [and another name redacted] on 26 April 2019 Mr Phipson began to distance himself from the responsibility to raise funding and to communicate with Mr Parsons the silversmith:

On the subject of the Silver Policeman project, I feel I should make clear that this is not, and cannot be, my project...

My sole involvement so far has been to pass on comments made by Richard Parsons that the HAC may top-up the funding if they are approached, and to “model” for the statuette. However, I cannot approach the HAC for funding as this needs to be done by the Trustee, particularly if it involves an appeal to the Court or one of its committees. I think such an approach must be made by Peter as the DC as soon as possible.

Additionally, someone from the Detachment needs to formally instruct Richard to proceed (again, I don't think it's appropriate for me to do this. Whoever has been dealing with Richard so far (and I assume has agreed the overall cost and payment terms) ought to do this... Richard needs the go ahead from the Detachment (not me) and whoever is running this will need to get going on raising whatever is needed.

I have lots of ideas around fund-raising, and am happy to help/contribute and ultimately donate, but this is not my project and the funding of this needs to be owned and dealt with by the Detachment and whoever they place in charge of this. I want to make sure that expectations are crystal clear... Not only would it not be appropriate for me to be in charge of this, I simply don't have the time!

Happy to help, but it is not appropriate or possible for me to run with this I'm afraid!

47. Despite this clear handing of responsibility back to Mr FitzGerald and Mr Wall to communicate with the silversmith, it seems that neither of them took any effective action.
48. Mr FitzGerald says that he was extremely busy in his professional life during the material period in 2019. He is an employed barrister. He was engaged in a fraud trial at the Crown Court at Southwark which had commenced in January 2019 and which did not conclude until April 2019. After that he was involved in urgent proceedings before the Court of Appeal in which the prosecution sought to have the trial judge's terminatory ruling overturned. The appeal was allowed in June 2019, from which point he was engaged in preparations for the retrial at the Central Criminal Court, which was not listed until October 2019. He was simultaneously acting in a corruption case which required his frequent attendance at a criminal court in Zagreb, Croatia, and was frequently overseas or travelling. His evidence to the Tribunal, both in written and oral form was that he expected Mr Wall to deputise for him in matters relating to the centenary celebrations, including the statuette project.

49. On 12 June 2019 Mr Parson sent an email of update to Mr Wall, with Mr FitzGerald, Mr Phipson and Sean Crane, Chief Executive of HAC in copy with the work to date on the silver statuette, and the cost to date of £2,000 plus VAT, citing the email of instruction from Mr Phipson dated 27 March 2019.
50. Mr Wall responded querying how the project had become so advanced, given that in a telephone conversation in late May not much progress had been made or costs incurred and he asked for further work to be put on hold. In this email he posited that there might have been a separate City of London Special Constabulary commission based on Mr Phipson's instructions. While we are conscious that we have not have benefit of hearing Mr Wall's evidence or explanation, his position in this email seems somewhat disingenuous since he had been party to emails relation to the silver statuette for nearly 3 months.
51. This was six weeks after Mr Phipson had made it clear that he was not taking responsibility for either the instruction or the silversmith nor principal responsibility for fundraising (although he was happy to be involved with the latter and to personally donate).
52. The following day, 13 June, Mr Phipson responded privately to Mr Wall, Mr FitzGerald, Mark Wright and another (with Mr Parsons and Mr Crane removed)

This e-mail is a gross misrepresentation of the position, and I assume you did not discuss this with Peter before you sent it.

You, Peter and myself have variously discussed the statuette at length. There is a great deal of correspondence supporting this (some of which I have attached), most pertinent of which is as follows:

1. 21/3/19 I met Richard Parson at Gen Barons' farewell drinks, and he confirmed to me that he could make a figurine and that he thought we would get support from the court. I sent you an e-mail that night confirming this and we spoke about it by telephone the following day.
2. 26/3/19 After discussions with you and Peter, and agreeing that you wished to proceed, I wrote to both you and Peter to confirm that the figurine was "underway"
3. 27/3/19 At Peter's request, I wrote to Richard authorising him to proceed (I state this in the e-mail)
4. 23/4/19 I sent an e-mail to you and Peter asking you to respond directly to Richard and confirm funding arrangements with him. I attached correspondence between Richard and Mark.
5. 26/4/19 I wrote to you and Peter again, confirming that whilst I was happy to help, the project (and it's funding) was your remit
6. 16/5/19 - I copied my e-mail of 26/4/19 to you and Peter, asking for a response;

7. 20/5/19 I sent a further chaser to Peter, asking him to contact Richard, and forwarding an e-mail from Richard confirming that "work is proceeding". I also e-mailed Richard to say that I had asked you or Peter to contact him in regard to funding.

8. 21/5/19 Peter replied saying he was "confused". I replied the same day confirming that Richard was "going ahead" and that he or you need to "get a grip on this"

9. 31/5/19 I chased Peter again asking him to confirm the position with Richard asap.

10. 11/6/19 I spoke to Peter at length following Richard's e-mail. I summarised the above, made clear to Peter the position and that costs had been incurred, and we discussed how best to resolve it. There was never any doubt that this is an HAC project and Peter agreed: a) that I would find out from Richard exactly how much cost he has incurred, and will incur to complete the project (now done in Richard's recent e-mail); b) Peter further agreed that this should proceed, and we would discuss an appropriate solution. We were due to discuss this today, or as soon as Richard confirmed the costs, and Peter gave me his Croatian contact number for this purpose.

I suggest you retract your e-mail (below) immediately. We will discuss the **other ramifications** of your e-mail in due course.

[emphasis added]

Claimant becomes HAC treasurer July 2019

53. On or around 24 July 2019 Peter FitzGerald and Jeremy Wall asked the Claimant to become Treasurer of HAC Detachment. It was around this time that he became involved in the question of the Silver Statuette purchase and saw the chain of emails, including Mr Phipson's account of events in email of 13 June 2019.
54. Messrs Fitzgerald and Wall represented this to the Claimant as an unauthorised purchase. The Claimant admitted that he could not say that either of his two colleagues actually suggested that this was fraud, but came to the conclusion himself that it was fraud and referred in his oral evidence to the Tribunal to the code of ethics of chartered accountants in Scotland.
55. On 9 August 2019 David Freeman, the Court and Membership Secretary of the HAC emailed the Claimant, Mr Fitzgerald, Mr Crane and a couple of others to say:

For information, arrived on my desk this morning is Richard Parsons's invoice for the police statuette of £6,700 + VAT = total £8,040.

I will hold this until early next week awaiting confirmation:

a. That the cost of the statuette is/is not to be covered by the additional £9,630 granted by the Court (to subsidise the centenary dinner and commission two flags)

b. On which Fixed Asset register/inventory the statuette will be registered.

Unless alternative funding is identified the Parson's invoice will have to be paid by the Company and the relevant expense deducted from the available grant(s)

56. Mr FitzGerald responded the same day:

"I had understood that this was to be funded partly by the Company and partly by funds raised by James Phipson, who had agreed to raise sponsorship for it. Is that not right?"

It's a bit of a shock to discover that we might have to pay for all (or indeed any!) of it, as its construction wasn't authorised by the Detachment, and the cost amounts to almost all of the Detachment's annual grant (a particular blow given Sean's [Crane] email noting that our grant for last year has now lapsed)."

57. We find on the balance of probabilities that Mr Phipson's email of 13 June quoted above which explained the circumstances from Mr Phipson's perspective found its way to the Claimant before he made any disclosures since the Claimant referred in his Paper 1 to Mr Phipson threatening "ramifications", which is a clear reference to the final line of this email which contains that word.

HAC management response

58. David Freeman, Court and Membership secretary of the HAC, confirmed on 12 August 2019:

"At the Management Meeting this morning Sean confirmed that the Company will cover Richard Parson's invoice for the SC's Centenary statuette from the Legacies Fund initially."

59. On 12 August 2019 Mr Crane wrote in response by way of further,:

"To follow on from this. James Phipson has agreed to raise money towards the cost of the statuette (he has suggested that he has raised north of £1000 already) and the Company will cover the cost up front (and thereafter the delta) from the legacies fund. This is done on the basis that notwithstanding the confusion in the commissioning process (for the absence of doubt the Company was not involved at all) there was, in the end, a silver statuette

produced that someone had to pay for to commemorate an occasion that we should all be proud of.

60. The Tribunal notes that the HAC agreed to cover the cost, subject to some contribution from Mr Phipson's fundraising. Mr Crane the Chief Executive of the HAC characterised the situation as "confusion in the commissioning process". He did not describe it as fraud or anything close to fraud.
61. The Claimant Mr Miller responded that afternoon:
- "We should meet to discuss the lessons to be learned from this. The system of internal control has clearly failed in this case and if we want to avoid audit scrutiny and criticism we should work out how to close the gaps in our systems and yours. The legal position is that whoever ordered the statuette is responsible for the debt. If someone ordered goods or services for the HAC or the Detachment without authority we need to understand how that happened and how controls can be improved to prevent it happening again. I'm happy to help contribute to the solution if you think that would help."
62. Mr Crane responded by providing the Minute of the Membership & Communications Committee Meeting held on 4 March 2019 at which he and Mr FitzGerald among others had been present, which is quoted above in the narrative. It ought to have been clear to the Claimant from that document that the idea of commemorative silverware had been approved in principle by senior figures on the committee with Mr FitzGerald to take responsibility for a vision document with the idea that members should donate toward the cost but that the HAC Court would be invited to make up the shortfall.

Claimant ignores Mr Phipson's suggestion to discuss

63. In a short email on 19 August 2019 following on from the Claimant's email of 12 August to which Mr Phipson had been copied, Mr Phipson wrote to the Claimant:

"You should probably give me a call about this before you contact Sean!"

64. The Claimant did not take up this opportunity to discuss the matter with Mr Phipson.

Alleged protected disclosure: silver statuette/fraud

65. It is not in dispute that on a date in August 2019 the Claimant had a meeting with Assistant Commissioner Alistair Sutherland.
66. As to the precise date, the Claimant's witness statement stated that this was on 2 August 2019. In his oral evidence he suggested it might be 22 August 2019, which would fit better with his contention that it was late August. This is one of a number of dates which the Claimant recorded inaccurately. The

Respondent did not provide a precise date. We find that the discussion took place on or around 22 August 2019. The precise date is not important.

67. Mr Sutherland was Assistant Commissioner in the period April 2016 – November 2021, which point he left to go to the British Transport Police.
68. The Claimant and Mr Sutherland had a positive working relationship and got on well. They had shared interest in international policing.
69. Mr Sutherland had no prior knowledge of the silver statuette. The Claimant told him about that he believed that the money for the statuette was spent without the permission of other members of the HAC.
70. We find that the Claimant did mention the possibility of fraud in similar terms to those used by him in the paper provided on 4 September 2019 quoted below.
71. Also in this discussion in August there was a discussion about the performance of the Special Constabulary. We find that each of them had a slightly different agenda. The Claimant had a concern about performance and in particular Mr Phipps' performance as chief officer, concerns which he says Mr Sutherland shared.
72. Mr Sutherland says was thinking ahead to a change programme that he was running. This slight difference of emphasis recollection of matters in a discussion which took place nearly 5 years ago is not important for present purposes. The outcome of this conversation was that the Claimant offered to provide Mr Sutherland with data relating to the performance of the special constabulary which Mr Sutherland indicated that he was happy to accept.

Alleged protected disclosure – written follow up – 4 Sept 2019

73. Following on from their conversation in August, on 4 September 2019 the Claimant submitted two papers to Mr Sutherland by email.

Paper 1: statuette

74. The first paper provided on 4 September 2019, "Statuette for the HAC Centenary" related to his complaints about the commissioning of a statuette for the HAC centenary. This was just over two sides of A4. The narrative provided in the paper began in March 2019. In the paper it was alleged that HAC detachment head Peter FitzGerald had told Mr Phipson that the statuette was unaffordable even if the latter raised half the funding. Nevertheless, he alleged, Mr Phipson (who had no authority to do so) purportedly gave authorisation to the silversmith (also a HAC member) and responded angrily to Mr Wall's suggestion that authorisation had not been given.
75. The Claimant asserted in the paper that as of June 2019:

"At this stage, work on the statuette is continuing without the approval or knowledge of the Detachment."

76. In making that statement the Claimant disregarded the content of Mr Phipson's email of 13 June 2019 which we find he had seen. In that email Mr Phipson set out the sequence of communications between himself and Messrs Wall and FitzGerald about the commissioning of the statuette, which made clear that from Mr Phipson's perspective Mr FitzGerald had requested that Mr Phipson authorised the silversmith and was in email communication with Messrs Wall and FitzGerald on the topic of them taking over the procurement process in April, May and June 2019.
77. The content of the paper was one-sided, designed to show Mr Phipson in a bad light and omitted relevant wider context which would have given the full picture.
78. The Claimant concluded:
- “My concern is that this action may represent fraud by misrepresentation or fraud by abuse of position at worst, and a serious breach of the Code of Ethics at best. James's aggressive defence of his decision, and his pressurising subordinates in the Special Constabulary to cover a cost that should legally be his, compounds the situation in my view. This is seen by members of the Detachment as a vanity project in which James used the funds of the HAC and/or the Detachment to have a statuette of himself made in silver. The impact on morale has been obvious.”
79. The covering email suggested that this was a “breach of internal control” and reiterated the allegation that it “may represent fraud by misrepresentation or abuse of position, as well as breaches of the Code of Ethics”.

Paper 2: CLSC performance

80. Following on from the conversation in August the second paper provided on 4 September 2019, “Performance of The Special Constabulary and the “Police Reserve” Project” provided information which the Claimant says was requested by Mr Sutherland in relation to the performance of the Special Constabulary.
81. This paper was five pages in length containing narrative and data presented in tabulated and graphic form. The picture presented by the Claimant was of declining performance in the CLSC. For example he suggested that the percentage of special Constabulary officers doing their minimum duty hours on a monthly basis had declined from 71% in 2015 to 36% in 2019.
82. There was no reference in this paper to a breach of legal obligation.

Referral to PSD

83. Mr Sutherland referred the Claimant's papers 1 and 2 to the PSD (Professional Standards Directorate), where it was dealt with by Clare Creswell.

Paper 3

84. A third paper, dated 9 September 2019, was provided by the Claimant to Mr Sutherland.
85. We were not provided with a covering email but the parties did not dispute that this was the date it was sent by the Claimant.
86. This was a paper of five pages of close type with a series of criticisms of Mr Phipson's leadership, arranged into five sections. At section 1.4 was the following:

1.4 Failure to Pay Council Tax Rebate

The CLSC is entitled to pay an annual rebate for Council Tax for those officers living in a London Borough. That grant is funded by the MPS Police Authority. It is worth £160 per year for every SC officer who does 200 hours of duty in the financial year, or who comes very close. The Corporation took the decision in 2014 to pay all SC Officers who met the criteria, and to pay for those living outside a London Borough from Corporation funds.

James decided to cancel grant payments, and when queried stated that it was to save money. That answer missed the point that the largest part of the cost by far was reclaimable from MOPAC. The decision was never announced, so individual officers were left wondering why it had been dropped when the MPS and BTP still pay it annually. CLSC officers are losing £150 a year and an incentive to do at least the minimum number of hours annually.

As the financial cost was minimal, officers suspect that the reason for non-payment was that it would show how few officers are meeting the minimum hours requirement. If that is the case, then hard-working officers who should be getting the same, externally funded benefit as is paid to the Met and BTP SC officers, are losing out so the management team can save face.

87. There was a dispute between the parties about who it was that took the decision that special officers would no longer receive a council tax rebate. It seems that the sums were no longer recovered from MOPAC (Mayor's Office for Policing and Crime) after the financial year 2014/2015. It is unclear why that happened. Initially a council tax rebate was paid internally by the First Respondent. This was during the Claimant's term as the chief officer.
88. When Mr Phipson was chief officer the senior management team decided against continuing this because it was costly and had tax implications. He denies that this had anything to do concealing poor performance.

Mr Phipson's awareness of Claimant's disclosure

89. Mr Phipson says that he became aware "in around September 2019" of the Claimant's complaint regarding the commissioning of the statuette. At that time he understood the complaint was that the statuette had been commissioned without approval but not that there was an accusation of fraud.
90. Mr Phipson understood in general terms that the Claimant had concerns about the performance of the Special Constabulary, but was not privy to specific statements made on that topic by the Claimant to Mr Sutherland.

"Friction"

91. On Mr Phipson's account, there was a history of the Claimant failing to follow direct instructions from officers who were junior to him in rank but from whom he should have accepted instructions on day-to-day operational matters, since the Claimant no longer had a supervisory role in operational matters. This relates to the period after Mr Phipson had taken over as Chief Officer. The Claimant does not accept this criticism.
92. The Tribunal finds on the balance of probabilities that there was friction caused by the Claimant's reluctance to follow the tasking given to him by other officers. The following evidence supports that conclusion.
93. On 29 August 2019 Chris Fisher-Wight, a Special Superintendent sent to Mr Phipson a copy of a WhatsApp exchange between himself and another colleague Steve M [we take it this is Special Sgt Steve Morgan] in which both officers were complaining about the Claimant's attitude to being given tasks he disagreed with. Steve M described the Claimant pushing back against being allocated a licensing check and threatening to cancel attendance because he disagreed with "taskings". Part of the complaint was that the Claimant said that other officers should not tell him what to do. The discussion between the two officers was to the effect that the Claimant did not understand that he was not a "Commander" when he was attending a shift to be a driver and that he needed to follow directions of a special or regular supervisor. In that exchange Mr Fisher-Wight provided reassurance to the other officer that they had full support in giving taskings to the Claimant, and if he experienced problems he should let him know. We note that this email predated Mr Phipson being aware of the Claimant's first alleged protected disclosure.
94. On 13 May 2020 John O'Clee (a Special Inspector) wrote to Mr Fisher-Wight mentioning that the Claimant was requesting to do particular duty that fell outside of current special Constabulary tasking, with the result that Mr Fisher-Wight wrote to the Claimant directly to clarify.
95. One of the regular themes according to the Respondent was that the Claimant had a preference for driving duties rather than foot patrol. The following month on 15 June 2020 Mr Fisher-Wight wrote to the Claimant as follows:

"I have been informed that you took a van out on duty last Thursday, despite myself and Sx informing you that should only

happen with either mine or SX's prior approval. I have spoken to SX who has confirmed that no authority was given nor would it be.

I am disappointed to see this.

Please note, and I reiterate that no vehicle should be taken on patrol without mine, James's or SX approval, for clarity this includes offering to take one out to the relevant Group Inps or Supervisor. We are still operating under the CV19 protocols put in place by GX

Of course should it be a direct unprompted request by the Group, that would also be permitted.

I hope that the above is clear, but should you have any questions, please do not hesitate to contact me.

The Claimant responded to Mr Fisher-Wight a few minutes later in relation to the vehicles, before broadening out to some general criticisms of the performance of the Special Constabulary.

96. The Claimant highlights that no stage was he taken down a disciplinary or misconduct route in relation to these matters.
97. We considered but reject the possibility that these were simply manufactured by Mr Phipson or junior officers acting on his instruction. We find that these were genuine operational difficulties caused by the Claimant's conduct.

Email exchange: Claimant and Mr Phipson

98. Returning to the chronology of events on 9 September 2019 Mr Phipson wrote to the Claimant, about his conduct in attending to carry out special duties:

"I am writing again in regard to the procedure for you to undertake duties in the City.

I understand that on Friday 30th August you attended the late-turn duty, without checking first with the UPD SC SLT as agreed. You then declined to attend the main briefing, despite being asked to do so by the duty Special Sergeant, and proceeded to patrol at your own discretion in CP130. There have been other similar issues.

This is not acceptable and is causing concerns at various levels."

99. The Claimant responded to Mr Phipson the following day with an email, copying (Chief Superintendent) Glenn Maleary, with four pages of close type in which he raised a variety of problems he saw in the Special Constabulary. This email

to the Senior Officer of the Special Constabulary was condescending, disrespectful and lecturing in tone. The first paragraph read:

“I am very surprised you don't have the courtesy to call me and ascertain the facts before emailing and copying Glen. I'll put that down to inexperience. I am acutely aware that you run a business with only seven employees and do not have large company experience or management training. I also believe that the last time you did a response duty was around 2006/7, so I can understand that you don't have a very clear view on what happens in the Special Constabulary. I've ascertained that the AC [Assistant Commissioner] is away this week, but I have asked for a meeting with him to express my concern over your email and the general performance of the CLSC and PSVs.”

100. Mr Phipson responded on 12 September 2019 with a curt but professional email suggesting that the Claimant's reply had obfuscated Mr Phipson's appropriate and lawful instruction. He characterised the Claimant's email to him not unreasonably as “highly aggressive and personal” and asked him to return to his seconded [i.e. college of police] duties and not to return to other duties within the City of London until the issue of the Claimant's tasking and adherence to lawful instructions had been resolved.

101. The Claimant responded few minutes later:

“You started this by making an attack on me when you didn't even know the facts. You can't complain when the tables are turned.

I am booked for duty this evening and I will do it. I have also been specifically tasked on Op [REDACTED] and I fully intend to do that. I won't take orders from you and I suggest you get the AC or the Commissioner to tell me I'm not allowed to do duty in the City.”

102. An hour later the Claimant sent a further email to Mr Phipson telling him he did not believe that Mr Phipson had authority to restrict his duties.

Phipson's communication with Commissioner Dyson

103. On 12 September 2019 there was a telephone conversation between Mr Phipson and Ian Dyson, the Commissioner. In a follow up email from Mr Phipson to Mr Dyson he reported that matters had come to a head with the Claimant. In that email sent at 14:58 Mr Phipson wrote about Mr Miller:

“The most recent exchange concerns his ongoing refusal to be tasked in accordance with the Force's priorities and patrol strategy, and him choosing to self-brief and patrol in a vehicle as he sees fit. This seriously compromises both our ability to support UPD, and our chain of command. I have attached an e-mail (“FW:Ian”) whereby the duty Special Sergeant (SM) notified Sp Ch Sup Fisher Wight (CFW) of a typical issue on 29/8/19. This incident resulted in concerns being raised across UPD, and

contact between the AC, Chris FW and myself on how the SCs are briefed and tasked. After liaising with Ch Sup Maleary and wrote to Mr Miller, triggering a typical response (“Duties in the City”). This exchange has been repeated on **several occasions over the past few years**, usually resulting in compliance for a few weeks, before the issues resume. On this occasion, Mr Miller has sent an additional e-mail today (“Attachment Agreement”) making it clear that he does not consider it necessary to report to me in any capacity regarding his ongoing activity in the City.

Mr Miller consumes a significant amount of the time and energy of the CLSC SLT and its other supervisors. He is compromising our ability to support the force’s priorities, my command, and that of my team. He fundamentally disagrees with the changes I have introduced, and does not believe in the use of volunteers or the Reserve Strategy (as he makes clear in both attached e-mail exchanges). He has consistently sniped, undermined and compromised our efforts, spreading dissent to subordinates and probationers, within the wider force, and further afield. His activity has poisoned relationships with certain individuals (triggering unwarranted grievances) and also threatens relationships with key partners (HAC, College, Home Office and University of Northampton – who oversee our pilot). Despite liaising with PSD and HR regularly on this issue I had hoped not to have to involve you or to initiate any formal process in the certainty that the consequent recriminations will consume my time and energy, and threaten progress on the Reserve Strategy.

Some of the performance issues raised by Mr Miller have some validity, most are not, and most are misleading, erroneous or untrue. He is experienced and I respect his opinion, albeit we have very different views on the solution. Suffice it to say that he is not fully informed; most of his comments are anecdotal; and he is clearly frustrated that he is no longer in command.”

[emphasis added]

104. We find that Mr Phipson was trying to be balanced in this summary, including acknowledging that the Claimant had some valid concerns. The Tribunal accepts that this email reflected a genuine concern on the part of Mr Phipson that difficulties had been reported about the Claimant for several years.
105. In conclusion Mr Phipson asked that Mr Dyson clarify that the Claimant was on secondment and that he was not permitted to engage in activity without authorisation and that he should obey and adhere to appropriate lawful directions from Mr Phipson or any regular or special supervisor. He asked that no duty should be undertaken until it had been resolved.

Claimant's email to James Thomson

106. The Claimant emailed James Thompson Chair of the City of London Police Authority Board on 24 September 2019 in which he noted that Ian Dyson had in a "friendly" way raised that Mr Phipson had complained about the Claimant "interfering" in the Special Constabulary.
107. In this email he was critical of Mr Phipson. He denigrated his commercial experience running a 7 person company and his lack of leadership experience and relevant police leadership training. He wrote:
- "I think the PSD [Professional Standards directorate] enquiry into the statuette issue (which I think is fraud) may fix this. If James survives that I would be amazed, and the original complaint is (that group does not include me) may well refer it to the IOPC [Independent Office for Police Conduct]"
108. In view of this communication among others, the Tribunal understands why some of the senior officers at the First Respondent formed the impression that the Claimant was actively seeking the removal of his successor from the role of head of the Special Constabulary.

Review of Special Constabulary

109. On 9 October 2019 Mr Sutherland sent terms of reference to Commander Evans regarding a review of the Special Constabulary.

Creswell investigation

110. On 10 October 2019 [Detective Chief Inspector] Claire Creswell of the Professional Standards Directorate produced a report of two pages of close type on the complaints raised by the Claimant on 9 September 2019.
111. Ms Creswell responded to Mr Sutherland in an email dated 16 October 2019. She had considered what the Claimant had said as well as what Mr Phipson had said in response. She wrote:

I have reviewed the information and still believe this to be a management and performance issue. the individuals are clearly in conflict there is not a clear line management or strategic direction in relation to whether Ian miller has any role within the CLSC.

With regards to the statue it is clear that James has kept all information and that he legitimately ordered the statute in good faith. If James is arranging payment and this is agreed with the HAC detachment then I do not believe that there is outstanding actions with this regard. It seems that there is a clear performance issue with Peter Fitzgerald in terms of poor management of the HAC specials and also his failure to inform James that he had attended a HAC committee meeting in March where he had agreed to assist with funding the statue.

This is minuted and undeniable. I think that Peter should be line managed with this regards and perhaps dealt with under the UPP process.

I confirm that I have not identified any conduct in this case that requires assessment by PSD. Should you disagree I am of course happy to discuss. whilst regulations could potentially be served if James and the other officers counter alleging were pushed for exact details, I feel this ultimately comes down to a personality clash and a breakdown of clear management structure. Particular that there are alliances to either Ian or James that are splitting the CLSC. I cannot see this resolving whilst Ian is still so heavily involved in the force SC.

112. A communication in similar terms and a similar conclusion were communicated to Angela Rogers a Detective Superintendent, Head of Professional Standards Department on 15 November 2019.
113. We heard oral evidence from Ms Creswell. It seems to the Tribunal that based on the information available to her at the time, that the conclusion set out above was open to her on the evidence, in particular that at root there was a personality clash between Mr Miller the Claimant and James Phipson; that there were alliances among various officers to these two individuals and this was causing a breakdown in clear management structure.
114. The Claimant was notified about the outcome of this investigation by Ms Rogers. In relation to the statuette she said, "no behaviour has been identified that would reach the threshold for misconduct". In relation to the performance reports she said this was not a matter for PSD, however AC Sutherland had commissioned a capability assessment review to capture and cover concerns around performance and effectiveness.

Review of Special Constabulary – December 2019

115. In December 2019 Commander Dai Evans produced a document entitled "City of London Police Special Constabulary Review", which together with appendices was 16 or so pages long. He explicitly flagged up a recommendation that there should be one Chief Officer, which was clearly an allusion to the situation in which there were two officers within the Special Constabulary with the rank of Commander. He wrote:

"The current staffing model and structure of CLSC is creating internal tensions that detract from the delivery of their volunteer hours. The active presence of two equal rank Chief Officers creates opportunities for ambiguity and variation of direction and should be considered with urgency. Incumbent upon the Senior Leadership Team of the CLSC is the requirement for meaningful visibility to the wider CLSC group."

Claimant's email to AC Sutherland

116. The Claimant wrote to Alistair Sutherland on 21 May 2020 reiterating concerns about the leadership of SC and performance focusing on among other things on the number of hours being performed by special constables.

Sector policing and the use of vehicles

117. In an email dated 11 September 2020, Chris Fisher-Wight sent to the Claimant among others a communication which appear to be designed to dispel various rumours. It introduced a "Sector Policing" model which was to answer a concern from the community about officers not being visible. The approach was to divide the City into two sectors (East and West) to focus resources and to move away from a situation where the majority of officers were in vehicles, in favour of a greater number of officers on foot.

James Phipson chaser & complaint email

118. On 1 December 2020 James Phipson wrote to Commissioner Ian Dyson in an email seeking a resolution of the situation with Mr Miller as follows:

"I have just been informed that ASCO are proposing to take disciplinary action against him (related to the circumstances outlined in my e-mail of 23rd June) and I further understand that Gloucestershire may be taking formal action against both him and Peter Fitzgerald for the vexatious complaint filed with their PSD last year against their SC Chief Officer (and now ASCO Chair) David Pendrick-Friend.

He continues to refuse to answer to myself, my SLT or other Special (and often regular) managers. He is actively undermining our new role within transform (which is a huge improvement on the status quo). I have had no response from PSD regarding the various matters that have been passed to them, and very little recent contact with Ian himself. Nevertheless, I understand that he is seeking national publicity for the training role he and SC Watson claim to have undertaken (this is a significant issue, as per my e-mail to you on 10th June); that various complaints were made during the summer by regular managers (i.e. Ch. Sup. James Morgan) who witnessed his disregard of instructions and disruption of planned duties; that he was disciplined for a driving offence; and has been working with the AC on the Corporate Plan. He also continues to work through proxies: Peter Fitzgerald made an extraordinary allegation that Dai's recommendation that there can only be one Chief Officer is a breach of employment law in regard to Ian, and I have had repeated and obtuse/obscure reporting requests from PAB that I believe can only originate from Ian's unsubstantiated and fantastical allegations to James Thomson (that both Darren and myself were misreporting SC numbers and duty statistics to the force).

Whilst we await a resolution, can we not request that some basic ground rules are insisted upon? Namely that any activity within the City must be undertaken with authorisation from the appropriate member of my SLT on each and every occasion, which will not unreasonably be withheld. This would at least enable my team to undertake their roles in a more normal fashion whilst reassuring them that the chain of command and they are respected, that Ian is actually accountable to someone, and that issues of this volume and severity are taken seriously.

It is now 14 months since the first resignations were tendered and you first intervened in this situation. We have embraced the ensuing review, but Dai's key recommendation in this regard remains unresolved. Please don't underestimate how corrosive this issue is: Morale remains very low in my SLT and amongst the supervisors whose role is to manage Ian on an operational basis. Chris Fisher Wight has just submitted his resignation (on hold at my request, on the basis that a resolution is imminent) and you are aware that Darren Sevket will resign if this is not resolved. On a personal basis, I feel traduced and that this issue increasingly compromises me, my authority, and the entire Reserve Project.

You know I will do everything I can to help you resolve this, but please can we resolve it soon?

Resignation of Dr Edwards

119. On 25 April 2021 Dr Sylvia Edwards, Special Sergeant, submitted a resignation to Mr Wall after 16 years of service as a special officer. In that resignation she stated that she was unable to continue to volunteer under the current command. She was critical of Mr Phipps and alleged that there was a culture of misogyny.
120. Alongside a three page resignation letter she submitted a 29 page resignation report. This report was a critique of quite a large number of aspects of the then leadership of CLSC, making a range of allegations of misogyny, bullying and poor management. It included her own version of events in relation to the silver statuette. Her position was as chair of the Centenary Committee. Her perspective was that Mr Phipson had continued to commission and pursue the production of the silver statuette when it had been decided that such a commission was not financially viable. She characterised it as his "unauthorised vanity project".

Investigation

121. The resignation of Dr Edwards was treated as a complaint by the Professional Standards Directorate, alongside complaints of Messrs Wall and FitzGerald and another [name redacted] and investigated by Nicola Guy, a detective constable, who produced a 54 page investigation report. The nature of this investigation report is to list a substantial amount of evidence relevant to the allegations raised by Dr Edwards.

122. On the final section she came to nine recommendations in respect of the various allegations. In summary, in relation to 7 of those recommendations she did not find that there was enough evidence to support the terms of reference, whereas in relation to two others she believed that there was.
123. In relation to the silver statuette she came to this conclusion:
- “Silver statuette; Special Commander PHIPSON did not undermine EDWARDS in her role of Chair of HAC Detachment Centenary Arrangements. However, a new TOR will need to be served for Authority, Respect and Courtesy and Honesty and Integrity. Specifically; Special Cmdr PHIPSON orchestrated the production of a silver statuette bearing his resemblance and undermined the Commander of the Detachment Peter FITZGERALD and the Deputy Commander of the Detachment Jeremy WALL in regards to its production. Special Cmdr PHIPSON was dishonest in his account regarding the production when challenged by the Commander of the Detachment Peter FITZGERALD and the Deputy Commander of the Detachment Jeremy WALL. IN regards to these two standards of factional behaviour, I believe there is sufficient material to support the breach for each.”
124. In other words in relation to the silver statuette Ms Guy came to a different conclusion to than that come to by Ms Creswell who investigated some three years earlier.
125. Following on from Ms Guy’s recommendation the matter was reviewed by the “Appropriate Authority” Mr Kettle (a Temporary Detective Chief Inspector). The Appropriate Authority is the person to whom the Chief Constable has delegated decision making authority regarding whether disciplinary action or prosecution is warranted by the conduct of a police officer.
126. Mr Kettle’s assessment was that the evidence in relation to the silver statuette did not suggest a conclusive finding of dishonesty. In particular he referenced exhibit PFG/19, an email from Mr Phipson to Peter FitzGerald and Jeremy Wall in which Mr Phipson asked:
- “I ask you directly... why did you and Jeremy ignore continued and consistent requests for action or responses on this matter?”
127. That document did not appear in the agreed bundle for the Tribunal hearing, but it seems to the Tribunal likely that this refers to the emails where Mr Phipson was trying to pass responsibility back to the Messrs FitzGerald and Wall, exhorting them to take control of the procurement process.
128. Mr Kettle also made reference to the minute of the meeting on 3 March 2019, which was a document that Ms Creswell thought was significant, since it suggested that the HAC expected the statuette to be financed by a combination of donation and HAC money.

129. Mr Kettle came to the conclusion that although the statue may not have been what was intended, the expenditure of the money was nonetheless not dishonest. He noted that there have not been any complaints from the HAC.

Claimant's email of 11.9.21

130. On 11 September 2021, the Claimant emailed the Third Respondent James Thomson after a meeting about his concerns regarding the COLP. This was in Mr Thomson's role as Chair of the PAB.
131. In that email he suggested that his efforts to try to get officers back to work was being thwarted by a small "faction" supported from the top. He highlighted that to his knowledge there had been eight alleged victims of bullying of whom six were female and also flagged that there was only one female officer at Sergeant rank or above.
132. Mr Thomson forwarded Claimant's email of 11 September 2021 to the Commissioner Ian Dyson. In that email he flagged up the lengthy resignation report from Sylvie Edwards described by her as a whistleblowing report which referred to alleged lack of procedural justice. He also referenced Dai Evan's report of December 2019 which he said he had not received until 17 August 2021.
133. In that email he wrote:
- "There is a huge amount of noise around the Specials, but I am not aware of any plan to address it. Given the nature of the issues raised, I am particularly concerned."

Commissioner Dyson meeting – "creating noise"

134. On 14 October 2021 Commissioner Ian Dyson and the Claimant had a meeting regarding the Claimant's email to James Thomson dated 11 September 2021.
135. Part of this conversation was about the data that the Claimant had drawn to the attention of Mr Thomson. Mr Dyson's position was that the Claimant had used data that was inaccurate or out of date. There is a dispute between the parties about the extent of the inaccuracy or how much the use by the Claimant of out of date data was conceded by him. The Claimant conceded that some of the data used was out of date, specifically about the percentage of special officers at a higher rank. His case is that there were some other data which he stood by in that meeting.
136. Mr Dyson followed up the meeting in an email the following month highlighting five inaccuracies and asking whether the Claimant had emailed Mr Thomson to correct them.
137. It is common ground that during this conversation Mr Dyson asked the Claimant to stop "creating noise" about the Special Constabulary. Mr Dyson explained in his witness statement what he meant by noise.

22. ... I did not mean, as I understand he suggests, that he was to stop voicing any concerns to senior leadership. Rather, I meant that it was not appropriate to use conjecture and opinion to seek to undermine Mr Phipson without evidence or supporting data. In my view, he had not accepted that he was no longer in charge of the Special Constabulary and wanted to replace Mr Phipson. I considered that to be the 'noise' which he was inappropriately creating as a means of regaining the role he had relinquished when he embarked on a secondment at the College of Policing in 2016. At no point did I seek to discourage him from voicing legitimate concerns.

138. This was consistent with Mr Dyson's oral evidence and the Tribunal accepted his evidence on this point.

Driving restriction - Dyson

139. Also in the 14 October discussion there was a discussion about "tasking" i.e. the operational duties assigned to officers including the Claimant. At that time "taskings" directed high visibility patrols of Bishopsgate Corridor and Broadgate Estate. The Claimant suggested during the meeting that members of CLSC were 'boycotting' the taskings. Mr Dyson told the Claimant that he should complete these taskings and not to make use of police fleet between now and Christmas. In response the Claimant stated that he would therefore not be completing duties of this type. It was agreed that there would be a review of the CLSC taskings.
140. Mr Dyson's evidence is that this represented nothing more than confirmation to the Claimant of the tasking and restrictions placed on all special officers, not simply the Claimant. This is supported in part by a communication from Chris Fisher-Wight in the email entitled New Sector Policing Model - Dispelling the Rumours dated 11 September 2020 mentioned above, in which he said that following a recent "Peel Review" the First Respondent had been scored low by the community for visibility as a result of which there was a deliberate move from the majority of officers driving to more officers patrolling on foot. In that communication however this was not a blanket direction and it was made clear that there would still be opportunities to drive.

Threat to MBE

141. The Claimant alleges that there was a conversation on or around 20 November 2022 in which James Phipson stated to Mr FitzGerald that he was working with Commissioner Dyson to "destroy his life, have his MBE rescinded, and have him placed on the College of Policing Barred List."
142. The Tribunal had the benefit of hearing evidence from the Claimant, Mr Phipson, Mr Dyson and Mr FitzGerald in relation to this allegation. We prefer the Respondents' witnesses' evidence to the extent that there is a conflict.

143. The Claimant himself was not party to any discussion between Mr Dyson and Mr Phipson nor between Mr FitzGerald and Mr Phipson. His evidence as to what Mr Phipson actually said to Mr FitzGerald is hearsay. He has identified the wrong year. There was a discussion on 2021 not 2022. Mr FitzGerald is confident that it was 2021 since it was during Commissioner Dyson's tenure.
144. The allegation made by the Claimant is in hyperbolic terms, which we did not find convincing. We find it implausible that any stage Mr Phipson or Mr Dyson talked about destroying the Claimant's life.
145. As to the timing, we are not satisfied, as the Claimant appears to be suggesting, that Mr FitzGerald waited until November 2022 before telling him a version of the conversation. We find that Mr FitzGerald mentioned this conversation at the time, i.e. in approximately November 2021.
146. We find that Mr Phipson did relay concerns about the Claimant's line management and conduct which in his view were worthy of disciplinary action. We find that he was talking about those concerns to Mr FitzGerald in November 2021. The nature of his concerns about the Claimant is contained in the content of his letter of resignation dated 21 June 2022 in which he mentioned various matters, including questionable conduct by the Claimant in relation to female colleagues. The underlying tone of that resignation document was frustration at the lack of action against Mr Miller.
147. This Tribunal has not made findings on the substance of the allegations about the Claimant mentioned by Mr Phipson, nor have we heard evidence on those allegations such that we could make findings.
148. We accepted Mr Dyson's evidence that there was never any allegation that would have been gross misconduct on the part of the Claimant. We accept that neither Mr Phipson nor Mr Dyson would have had the power to rescind an MBE, nor did they believe that they had such a power.

Letter from Claimant's solicitor

149. On 17 December 2021 a firm of solicitors, Mishcon de Reya wrote on behalf to the Claimant to Commissioner Dyson alleging whistleblowing detriment. That letter focused on four alleged protected disclosures:
 - 149.1. (1) unauthorised procurement/silver statuette, which it stated that Mr Miller had been aware of during March 2019, which he raised orally with Assistant Commissioner Sutherland in June 2020 and in writing in September 2021;

[The Tribunal concludes that the 2020 and 2021 dates given in this letter must be wrong. In fact both oral and written disclosures were made to AC Sutherland in 2019 and were therefore over 2 years old at the time that this letter was written.]
 - 149.2. (2) performance of Special Constabulary;

149.3. (3) leadership management failings, such as alleged irregularities in the promotion process and improper selection of officers for recognition effects, failure to pay council tax rebates and inaccurate and incorrect information being disseminated;

149.4. (4) what is described as “bullying and egregious behaviour” which it is said that the Claimant reported with the Professional Standards Department after receiving reports himself in relation to this conduct on 10 September 2021.

Ms Creswell’s briefing

150. Following on from the resignation of Sylvie Edwards, Ms Creswell provided a briefing document for the incoming Assistant Commissioner Paul Betts on 27 January 2022. The report identifies the Claimant as someone who had asserted whistleblower status. This was review of what had gone before not a reinvestigation. The report was written to assist with decision making.

151. Five suggested options (subject to taking legal advice) are given at the conclusion of the 11 page report:

1) Consider redundancy of the rank of Special Commander

Risk- there is a risk of ET linked to a perceived detriment. However, it is noted that this was suggested by IM in his meeting with ex Commissioner Dyson on 14/10/22.

2) Re-advertise the Special Commander role so that only one officer holds it in the future, this could be as a direct result of the CCU recommendations linked to the SE report.

Risk- IM may still see this as an attempt to cause him detriment due to his whistleblower status and there remains a risk of ET.

3) Restructure the whole of the SC reviewing their rank structure and bringing them under the management of local policing. This will allow clear reporting lines and ensures that their tasking is managed by the duty response team to support operational and tasking requirements

Risk- this may disenfranchise a number of SC who hold a senior rank and could lead to resignations and the loss of skills from the SC

4) Manage both commanders through a performance management process

Risk- this is likely to be time consuming and wont make immediate changes to the situation

5) Wait until the next possible misconduct matter that can be dealt with by PSD and deal with swiftly and robustly

Risk- there is no guarantee another matter will be referred to PSD and be appropriate to deal with through high level sanctions. In addition there will be continued difficulty in managing the SC with two Commandants who do not get along.

Meeting AC Betts & withdrawal of complaint

152. On 2 March 2022 Mr Betts the new Assistant Commissioner met with the Claimant in the presence of Robert Dimmick, Head of HR and Kelly Stevenson, Mr Bett's executive assistant, who took detailed minutes.
153. We do not accept the Claimant's case that Mr Betts agreed to reinvestigate the Silver Statuette complaint and threats made by Mr Phipson. The detailed minute taken at that meeting records as follows:

"PB confirmed that many of those issues have been looked at and dealt with already by PSD [Police Standards Directorate] before he arrived in force."
154. Mr Betts reassured the Claimant that no one was trying to remove from the force nor was anyone trying to take his MBE away. The Claimant stated in response that he had been reassured he would speak to solicitors to withdraw the legal complaint. The Claimant confirmed that he had advised his solicitor that matters have been resolved and that was confirmed in an email dated 4 March 2022.
155. Mr Betts himself felt that the meeting had gone well.
156. One of the things discussed in that meeting was that Mr Betts wanted the Claimant and Mr Phipson to work together on a plan for the future of the Special Constabulary. Mr Betts was surprised that the Claimant approached Mr Phipson within hours to explain that he was going to create a plan for the Special Constabulary going forward, without Mr Betts having first prepared the ground with Mr Phipson.

Betts/Phipson

157. Mr Betts met Mr Phipson on 8 March 2022, and apologised for the Claimant approaching him without Mr Betts having discussed the matter with Mr Phipson first.
158. Mr Betts discovered the extent of the allegations and counter allegations and resentment between the Claimant and Mr Phipson during the course of the two meetings in early March 2022.

Meeting Mr Phipson

159. The Claimant met Mr Phipson on 15 March 2022. Mr Phipson arrived late; he says having taken a taxi which turned out to take a long time because of traffic. He apologised for arriving late.
160. Mr Phipson says that the meeting was amicable. The Claimant says that subsequently Mr Phipson did not carry out the tasks agreed to be undertaken by him during the course of the meeting, despite raising this with Mr Betts.

Letter from Claimant's solicitor

161. On 17 March 2022 the Claimant's solicitor Mishcon de Reya wrote to Commissioner Dyson and AC Betts noting that the deadline for an employment tribunal claim is 21 March 2022 but matters had been resolved to the Claimant's satisfaction and he had instructed them not to submit a claim.

Claimant's performance paper

162. On 9 June 2022 the Claimant produced a paper for the June Meeting of the Chief Officer Team, setting out how his suggestions as to how the First Respondent's performance could be addressed. That paper had been sent for comment to Mr Phipson.
163. The Claimant says that notwithstanding the line in the paper "input from James Phipson", in fact there was no such have input.
164. Mr Betts accepts that he did not send this paper to his Chief Officer Team. What he did instead was to provide a copy of this paper and the Claimant's report into the Wiltshire police to Commander Umer Khan, who had been Commander for Security and Operation since March 2022.

Resignation of Commander Phipson

165. On 21 June 2022 Mr Phipson resigned as Chief Officer. His resignation letter was 5 pages of close type. It is clear that he felt angry about the conduct of the Claimant and the failure of the senior management team within the First Respondent deal with him.
166. In doing so explained the reasons for his resignation as follows:

This is because I no longer believe that either the Force or your Chief Officer Team ("COT") are prepared to give either myself or the Specials and Volunteers in our force the support, recognition and long-term commitment necessary to perform our role effectively, with integrity, or pleasure.

....

...

Mr Miller

I was appointed Chief Officer following an open and public recruitment exercise, and the secondment of my predecessor (Ian Miller) to the College of Policing. Mr Miller has consistently sought to undermine my command through insubordination, defamation, misrepresentation and malign insinuation. These issues are extensively documented in grievances submitted by myself, my SLT and other SCs to your predecessor, PSD and Mr Evans, in writing and in person. I know that various measures were taken to investigate these allegations and manage Mr Miller and understand that the issues raised include:

- that he has been proven to have lied outright to the previous AC (Mr Sutherland), Mr Evans and your predecessor;
- a meeting between him and your predecessor to manage his operational interaction with the CLSC and wider CoLP resulted in him accusing your predecessor of age discrimination;
- **defamatory allegations that I had misappropriated funds from the HAC have been comprehensively investigated and disproved;**
- a review undertaken by Mr Evans concluded there should be only one commander/Chief Officer (a conclusion never implemented);
- constant (and continuing) insinuations that my SLT have fabricated or misrepresented performance statistics have been audited by Mr Evans and comprehensively disproved;
- he has (mis)represented grievances and reports of poor morale from unidentified third parties;
- his relationships with ASCO (which he chaired), the College of Policing (where he was seconded) both ended in acrimony and/or threats of litigation, and resulted in at least one formal complaint to your predecessor from another force;
- his allegations of poor morale have been made so frequently, widely and unaccountably that they have become self-perpetuating; and – most importantly -
- consistent and long-term incidents and allegations of sexual impropriety. These have included forcibly embracing a young female special late at night in his car (for which he was formally disciplined); continuing to drive lone female specials home late at night; ironing a female special's uniform and polishing her shoes without her knowledge before a parade; and almost solely selecting female specials to accompany him in patrol cars. A female member of the public was also permitted to attend a briefing and a ride along without authorisation or appropriate checks. This has been raised again and again, with your

predecessor(s), PSD and others, but no effective action or sanction has been taken – either formal or informal.

Suffice it to say that in 2018 and 2019 (the last comparable pre-pandemic years) saw the best CLSC officer numbers and duty statistics ever recorded – in total and per officer; a comprehensive staff survey demonstrated high levels of satisfaction and morale; we delivered the leading volunteer programme in the country; and I have never been reprimanded in any formal or informal respect and understand that my leadership has been exemplary.

The last communication from the previous CoT on this subject was that he would be dismissed or demoted. At no time was I informed that this position had changed until I received an e-mail in error from Mr Miller following his meeting with (and prior to my first meeting with) Mr Betts

.....

Summary

In summary, the force has failed to support or protect me or my SLT against a rogue and unaccountable individual. I have been consistently unsupported and denied the basic duty of care you owe to any employee, let alone a volunteer. The past few years have felt like a daily vote of confidence, and have been distracting, demoralising and demotivating. Warnings, complaints and grievances have been met again and again with promises of action that has not materialised and increasingly hostile scrutiny of myself and the wider CLSC. This has compromised and led to a loss of faith not only in my command and that of my managers, but also in the effectiveness and integrity of the CoT, PSD and the wider force. Members of the previous CoT have apologised to me for their ineffectual handling of this matter, however the situation has deteriorated significantly since you abdicated your management responsibility to resolve this conflict (and thereby your duty of care to me), and your AC pre-engineered the reinstatement of Mr Miller without consultation, integrity or clarity. This has irretrievably undermined my confidence in you and your Chief Officer Team, and I feel I have no option but to resign from a role to which I have devoted 28 years of my life.

....

I would suggest that you do not impose a similarly poisoned chalice on my successor or reimpose Mr Miller on the CLSC. On a without prejudice basis at present I would suggest that you consider making both Special Commanders redundant and open recruitment for a new individual (potentially at a reduced rank commensurate with the CLSCs actual role in the organisation) capable of taking the CLSC forward during what will be a very difficult few years, rather than default to a divisive and toxic

incumbent who has done so much damage to the organisation he purports to wish to serve.

[emphasis added]

Clash of personalities – Mr FitzGerald’s view

167. In his oral evidence, the Claimant’s witness Mr FitzGerald suggested that he felt he had been placed in an uncomfortable situation by being called as a witness. He characterised the dispute between the Claimant and Mr Phipson as a “clash of personalities which resulted in various different disputes of a minor nature”. In his view this should have been dealt with by management action.

168. In terms of his own relationship with Mr Phipson, Mr FitzGerald said that it had been

“very good before [Mr Phipson] became chief officer, but it soured gradually over time. It was difficult to see a turning point.”

That was not particularly helpful to the Claimant’s case on causation and Mr FitzGerald then added:

“The silver statuette was one of them.”

“Appointment” of Phil Nastri

169. After his resignation, the Mr Phipson appointed Phil Nastri, then a Special Superintendent, to the role of acting Chief Officer of the Special Constabulary. He says that he was cognisant of the fact that the organisation could appoint whoever they wanted after my departure given that ‘acting Chief Officer’ is not a formal role.

Khan review & consultation

170. In July 2022 Commander Umer Khan was instructed to undertake a review of the Special Constabulary.

171. Mr Khan joined the First Respondent in March 2022, approaching two and a half years after the alleged protected disclosure. He became aware of the issue between the Claimant and Mr Phipson in relation to the silver statuette as a historic issue, although he not understand that the Claimant had made this as an allegation of fraud. He was not aware of the other alleged protected disclosures at all.

172. PC Alex McAlpine, the staff officer to Commander Khan, who was also involved in the process of restructuring, contacted Mr Miller in July 2022. Mr Miller said that would provide input, but did not do so despite being chased by telephone.

173. Mr Khan's oral evidence was that management within the Special Constabulary was top heavy and that externally trust had been eroded.
174. On 30 August 2022 Mr Khan's produced an initial report on the Special Constabulary proposing a restructure. He originally proposed get rid of all supervisory ranks within the special constabulary.

Consultation & senior officer pre-briefing

175. There was a consultation meeting to discuss the proposed new structure in September 2022.
176. On 26 September, the three most senior officers receive the benefit of a pre-briefing, namely the Claimant, Mr Phipson and Mr Nastri. The Claimant lost his temper and became angry, calling the process leading to the proposals "amateurish". He suggested that it the new structure was not going to work and offered to carry out the restructure himself.
177. Ms Kelly Glazebook's evidence, which the Tribunal accepted, was that the Claimant's conduct in this meeting was very unpleasant. She confirmed orally that he spoke over Messrs Betts and Khan and dismissed the restructure as "rubbish". Generally she said that the Claimant was not happy because he was not in control of the process and attempted to undermine it throughout.
178. Mr Miller sent an email to Mr Betts the morning after, on 27 September, in which he included the following:

"I would have expected prior notice and, probably, the right to be legally represented" and also

I raised the action for whistleblower detriment because of the way I was being treated by the previous Commissioner and by James Phipson. I withdrew the claim and paid the legal expenses personally because I believe that threat against me have been removed, and the leadership issues in the CLSC were going to be addressed with my being involved in developing plan. I also expected that the threats made by James Phipson against me would be investigated and resolved.

...

I believe that the whistle blowing detriment that I suffered last year has continued."

Claimant's written feedback

179. The Claimant provided feedback on the proposals which Mr Betts acknowledged and fed into the collected feedback to be considered by Mr Khan. Mr Khan confirmed that he received this. For example the Claimant's third paper feedback was a report he had submitted to the Wiltshire Constabulary in 2008.

Consultation

180. There were four different consultation meetings. Through an outlook diary item the Claimant declined to attend a Special Constabulary in person briefing which took place on 20 October 2022.
181. The Claimant attended a consultation meeting held at the HAC in October.
182. It was during this period that the Claimant suggested to Mr Betts that he should “pause” the review and allow the Claimant to run the review before retiring at the end of it. Mr Betts did not choose that course of action but allowed Mr Khan to complete the review.

AC Betts meets Claimant

183. On 16 November 2022 AC Betts indicated he was happy to meet the claimant but Mr Khan was away. The Claimant said he would be “flexible”.
184. A Microsoft Teams meeting was set up for 16:00-16:30 on 24 November 2022 between the Claimant, Messrs Khan and Betts.

Khan final report

185. On 5 December 2022 Mr Khan produced a final report regarding the restructure of the Special Constabulary.
186. The structure actually implemented did retain some supervisory ranks albeit with the most senior ranks deleted. This represented a compromise and a change from Mr Khan’s originally plan.

Senior officers’ presentation

187. On 6 December 2022 an email was written on behalf of Mr Khan to the Claimant noting that he had not attended the pre-brief for the senior leadership team held the previous day, offering him a private briefing. The Claimant did not take up this offer.
188. On 7 December 2022 an email was sent to all Special Constabulary Officers regarding the restructure.

Betts’ alleged assurance of a new role

189. The Claimant claims that in December 2022 Mr Betts assured him that he would be given a position in City of London Police appropriate to his experience and seniority and on that basis, the Claimant did not apply for a position in the structure.
190. An email from the Claimant sent the following month on 8 January 2023 to James Thomson suggests that if there was any assurance from Mr Betts it was an involvement in the change programme rather than a senior substantive role at the end of it. The Claimant wrote:

“I was promised in an email from Paul Betts that I would be involved in the change programme, and he promised to meet and discuss that role”

191. These words suggest a role in the change programme, not a substantive role afterward in the new structure.
192. We accept Mr Bett’s evidence that he did not tell the Claimant that he did not need to apply for a role. It was open to the Claimant to apply for one of the senior roles in the new structure and he did not.

Nastri substantive promotion

193. On 12 January 2023 Mr Phil Nastri was announced as the new leader of the Special Constabulary. He was the only applicant for this position. His rank was now at the lower rank of Chief Inspector rather than Special Commander, the rank previously enjoyed by the Claimant and Mr Phipson.
194. Mr Nastri’s oral evidence to the Tribunal was that he felt that the Claimant had been difficult and obstructive on numerous occasions, talked behind his back and that he had tried to undermine his leadership at every opportunity. The Tribunal accepted that this was Mr Nastri’s genuine impression of the way that the Claimant operated.
195. In his oral evidence Mr Bett’s assessment of the Claimant was that he would “either invoke control or undermine”. Again we found that this was his genuine perception.

Khan’s post-restructure options for Claimant

196. On Sunday 22 January 2023 there was a discussion by telephone between the Claimant and Mr Khan about the latter’s options post-restructure. The Claimant explained that he was especially keen to retain his current rank of Special Commander until the end year (i.e. 31 December 2023) to enable his attendance at a conference in the USA as a guest speaker.
197. The Claimant says that in this discussion he mentioned the commitment by Mr Betts to providing him with a suitable role at his rank and Commander Khan committed to investigating that. Our finding (above) is that Mr Betts had made no such undertaking.
198. In response to the Claimant’s query about retaining his rank for the US conference, on 29 January 2023 Mr Khan emailed the Claimant suggesting that it could be agreed that the claimant described himself as “Former Special Commander”. There was a brief telephone conversation on that day.
199. In relation to the Claimant’s options moving forward, Mr Khan confirmed:
 - “1. Remain within the CLSC as a Special Constable
 2. Seek a role in an alternative Special Constabulary on transfer

3. Work with me to arrange a retirement or exit from CLSC.”

200. We accept Mr Khan’s evidence that these were the options being given to other senior officers. This was confirmed by Mr Phipson.

Options reiterated to Claimant

201. On 7 February 2023 Mr Khan again emailed the Claimant about his options. In that email he explained that the cut-off date would be 1 March 2023 and reiterated that the options were: first, revert to rank of Special Constable; second commence a transfer or third retire. The first option was the default in the event that the Claimant did not indicate a preference.
202. The Claimant complains that Mr Phipson and Mr FitzGerald enjoyed an extended period at their existing rank, and eventually left on 31 March 2024. This must be seen in context. We accept Mr Khan’s evidence that officers who indicated that they would transfer by the deadline were allowed to retain their rank pending transfer in an inactive and non-operational role. This was the basis that both Mr Phipson and Mr FitzGerald temporarily retained their rank.

Claimant’s grievance

203. On 8 February 2023 the Claimant wrote to Mr Khan to raise a formal grievance about Mr Khan’s treatment which he alleged was bullying and discriminatory in relation to the differential treatment he alleged he had received by comparison with other senior officers who were seeking to transfer. He stated that this was part of the “evidence base” for his claim of whistleblower detriment and amounted to bullying and harassment. The Claimant stated that another senior officer told him that he had not been given a deadline for arranging a transfer, although he had been told he could not continue indefinitely but in a reasonable amount of time would be allowed for him to seek a transfer.

Options for other officers

204. Peter FitzGerald informed Commander Khan in January 2023 (i.e. before the March deadline) that he was intending to transfer to the Metropolitan Police at his current rank. He was allowed to retain his rank on the First Respondent’s system pending transfer but not carry out front-line duties wearing that insignia. There was then a somewhat convoluted subsequent history in the case of Mr FitzGerald, in which his application to transfer to the Metropolitan Police was ultimately refused and instead he decided to pursue a transfer to the Kent Police. The detail of this history is not material.
205. James Phipson was in a similar situation to Peter FitzGerald. Commander Khan spoke with him on 19 January 2023. He informed Commander Khan that he arranged a transfer to the National Crime Agency. He then retained his rank dormant on the system until it was clarified whether he was to hold a rank when at the National Crime Agency. As it transpired, he did not need it and the rank was removed from the system.

206. Mr Wall's treatment appears to have been the same as the treatment of Mr Miller the Claimant. In other words he did not apply for a rank and was demoted the same as the Claimant.
207. It was Mr Khan's unchallenged evidence that Patrick Matthew Green, asked to remain a Special Sergeant for a further 18 months to reach 30 years of voluntary service and said he would then resign. That request was refused and he chose to leave. He was not given extra time to decide.

Outcome of Dr Edward's complaint

208. The documents relating to Dr Edward's complaint were not in the agreed bundle. The Claimant made an application for specific disclosure in respect of this document, which was opposed by the Respondent but granted by the Tribunal during the course of the hearing.
209. Following on from the investigation of DC Nicola Guy, the evidence was considered by the "appropriate authority", namely (Temporary) Detective Chief Inspector Kettle following Dr Edward's complaint.
210. On 22 February 2023 Mr Kettle, decided that having considered the investigation report of Ms Guy, that there should be no disciplinary proceedings arising, nor any referral to the Director of Public Prosecutions.
211. The Claimant was critical of Ms Creswell in his cross examination of her on the basis that the later investigation of Ms Guy demonstrated that Mr Phipson had been dishonest and there were reasons to take this forward for further investigation. He said that Ms Guy's investigation clearly contrasted to Ms Creswell's conclusion that there was no case to answer. However, we note that of the nine elements of the Terms of Reference, Ms Guy only found that one and part of another of the terms of reference had sufficient evidence to be taken forward. In any event Ms Guy's work represented an investigation not a conclusion.
212. We also note that the investigation of Ms Guy covered a variety of other allegations which might be summarised as relating to Mr Phipson's communication and management style and allegations of misogyny which were not within the scope of the complaints originally made by the Claimant. In other words it was a different investigation with a wider scope. There was limited overlap with matters considered by Ms Creswell.
213. The Claimant was also critical of the decision of Mr Kettle the appropriate authority, hypothesising that as a close colleague he must have been pressurised into coming to a similar conclusion to save embarrassment. We do not have evidence to support that contention.
214. In viewing the documents from the investigation of the Dr Edwards report, we have reminded ourselves that this investigation was carried out several years after the Claimant's alleged protected disclosures in August/September 2019. It has been important for us as part of our deliberations to focus on what the

Claimant knew at the time that he made his alleged protected disclosure, rather than matters which formed part of any subsequent investigation.

New structure implemented

215. The new structure was implemented on 1 March 2023.
216. Given that the Claimant had failed to state a preference in relation to the options put forward by Mr Khan his rank reverted to Special Constable.

THE LAW

PROTECTED DISCLOSURE LEGISLATION

Protected disclosure detriment ("whistleblowing")

217. The Employment Rights Act 1996 contains the following provisions:

43B Disclosures qualifying for protection.

(1) In this Part a "qualifying disclosure" means 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-

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

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

47B Protected disclosures.

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

48.— Complaints to employment tribunals

(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.

On a complaint under subsection ... (1A) ... it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

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

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

218. The burden of proving each of the elements of a protected disclosure is on a claimant (**Western Union Payment Services UK Ltd v Anastasiou**, 13 February 2014 per HHJ Eady QC at [44]).

219. Guidance given by the Court of Appeal in the case of **Croydon Health Services NHS Trust v Beatt** [2017] ICR 1240 per Underhill LJ is as follows at paragraph 94:

“... it is all too easy for an employer to allow its view of a whistleblower as a difficult colleague or an awkward personality (as whistleblowers sometimes are) to cloud its judgment about whether the disclosures in question do in fact have a reasonable basis or are made (under the old law) in good faith or (under the new law) in the public interest. Those questions will ultimately be judged by a tribunal, and if the employer proceeds to dismiss it takes the risk that the tribunal will take a different view about them. I appreciate that this state of affairs might be thought to place a heavy burden on employers; but Parliament has quite deliberately, and for understandable policy reasons, conferred a high level of protection on whistleblowers. ...”

Tends to show

220. “Tends to show” imposes a relatively light burden on a Claimant (**Babula v Waltham Forest College** [2007] ICR 1026 per Wall LJ at para 79; **Arjomand-Sissan v East Sussex Healthcare NHS Trust** UKEAT/0122/17/BA per Soole J para 26).

221. In **Soh v Imperial College of Science, Technology and Medicine** EAT 0350/14, the EAT highlighted the distinction between saying, ‘I believe X is true’ and ‘I believe that this information tends to show X is true’. There will be circumstances in which a worker passes on to an employer information provided by a third party that the worker is not in a position to assess. As long

as the worker reasonably believes that the information tends to show a state of affairs identified in S.43B(1), the disclosure will be a qualifying disclosure for the purposes of that provision even if the information does not in the end stand up to scrutiny.

Disclosure

222. In **Kilraine v London Borough of Wandsworth** [2018] ICR 1850 the Court of Appeal held that a sharp distinction between “allegations” and “disclosures” which appeared to have been identified in earlier authorities was a false dichotomy, given that an allegation might also contain information tending to show, in the reasonable belief of the maker, a relevant failure. At [35], Sales LJ said:

“In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a **sufficient factual content and specificity** such as is capable of tending to show one of the matters listed in subsection (1).”

[emphasis added]

Reasonable belief in relevant failure

223. Whether a belief is reasonable is to be assessed by reference to “what a person in their position would reasonably believe to be wrongdoing”: **Korashi v Abertawe Bro Morgannwg University Local Health Board** [2012] IRLR 4 per Judge McMullen QC at [62]. In that case Mr Korashi was a specialist medical consultant and an assessment of what was reasonable needed to be by reference to what someone in that position would reasonably believe. HHJ McMullen QC said this:

“61 There seems to be no dispute in this case that the material for the purposes of s.43B(1)(a)–(e) would as a matter of content satisfy the section. In our view it is a fairly low threshold. The words 'tend to show' and the absence of a requirement as to naming the person against whom a matter is alleged put it in a more general context. What is required is a belief. Belief seems to us to be entirely centred upon a subjective consideration of what was in the mind of the discloser. That again seems to be a fairly low threshold. No doubt because of that Parliament inserted a filter which is the word 'reasonable'.

62 This filter appears in many areas of the law. It requires consideration of the personal circumstances facing the relevant person at the time. Bringing it into our own case, it requires consideration of what a staff grade O&G doctor knows and ought to know about the circumstances of the matters disclosed. To take a simple example: a healthy young man who is taken into hospital for an orthopaedic athletic injury should not die on the operating table. A whistleblower who says that that tends to show a breach of duty is required to demonstrate that such belief is reasonable.

On the other hand, a surgeon who knows the risk of such procedure and possibly the results of meta-analysis of such procedure is in a good position to evaluate whether there has been such a breach. While it might be reasonable for our lay observer to believe that such death from a simple procedure was the product of a breach of duty, an experienced surgeon might take an entirely different view of what was reasonable given what further information he or she knows about what happened at the table. So in our judgment what is reasonable in s.43B involves of course an objective standard – that is the whole point of the use of the adjective reasonable – and its application to the personal circumstances of the discloser. It works both ways. Our lay observer must expect to be tested on the reasonableness of his belief that some surgical procedure has gone wrong is a breach of duty. Our consultant surgeon is entitled to respect for his view, knowing what he does from his experience and training, but **is expected to look at all the material including the records before making such a disclosure.** To bring this back to our own case, many whistleblowers are insiders. That means that they are so much more informed about the goings-on of the organisation of which they make complaint than outsiders, and that that insight entitles their views to respect. **Since the test is their 'reasonable' belief, that belief must be subject to what a person in their position would reasonably believe to be wrong-doing."**

Burden of proof causation

224. There is an initial burden of proof on a claimant to show (in effect) a *prima facie* case that she has been subject to a detriment on the grounds that she made a protected disclosure. If so, the burden passes to a respondent to prove that any alleged protected disclosure played no part whatever in the claimant's alleged treatment, but rather what was the reason for that alleged treatment. Simply because the respondent fails to prove the reason does not act as a default mechanism so that the claimant succeeds. The tribunal is concerned with the reason for the treatment and not a quasi-reversal of proof and deemed finding of discrimination i.e. there is no mandatory adverse inference mechanism (**Dahou v Serco Ltd** [2017] IRLR 81, CA).

Public interest

225. The Court of Appeal in **Chesterton Global Ltd & Anor v Nurmohamed & Anor** [2017] EWCA Civ 979 confirmed that public interest does not need to relate to the population at large, but might relate to a subset, in that case a category of managers whose bonus calculation was negatively affected. It seems that it cannot relate solely to the interest of the person making the disclosure. The following guidance was given on that case as to reasonable belief in the public interest, per Underhill LJ:

"27. First, and at the risk of stating the obvious, the words added by the 2013 Act fit into the structure of section 43B as expounded

in Babula (see para. 8 above). The tribunal thus has to ask (a) whether the worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable.

28. Second, and hardly moving much further from the obvious, element (b) in that exercise requires the tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest; and that is perhaps particularly so given that that question is of its nature so broad-textured. The parties in their oral submissions referred both to the "range of reasonable responses" approach applied in considering whether a dismissal is unfair under Part X of the 1996 Act and to "the Wednesbury approach" employed in (some) public law cases. Of course we are in essentially the same territory, but I do not believe that resort to tests formulated in different contexts is helpful. **All that matters is that the Tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the tribunal to form its own view on that question, as part of its thinking – that is indeed often difficult to avoid – but only that that view is not as such determinative.**

29. Third, the necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, **in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable.**

30. Fourth, while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, **that does not have to be his or her predominant motive in making it: otherwise, as pointed out at para. 17 above, the new sections 49 (6A) and 103 (6A) would have no role. I am inclined to think that the belief does not in fact have to form any part of the worker's motivation – the phrase "in the belief" is not the same as "motivated by the belief"; but it is hard to see that the point will arise in practice, since where a worker believes**

that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it.”

[emphasis added]

Knowledge

226. The Respondent emphasised in submissions that the law on knowledge is different in protected disclosure dismissal and detriment cases.
227. In **William v Lewisham & Greenwich NHS Trust** [2024] EAT 58 Bourne J sitting in the EAT confirmed that applied the decision of the EAT in **Malik v Centros Securities plc** EAT/0100/17 is not inconsistent with **Royal Mail Group v Jhuti** [2019] UKSC 55, [2020] ICR 731.
228. In **Malik Choudhury P** held that, in a detriment claim under section 47B of the Employment Rights Act 1996, if an individual who makes a decision which inflicts a detriment did not know of protected disclosures and therefore could not have been materially influenced by them, the knowledge and motivation of another individual who influenced the decision maker cannot be ascribed to the decision maker. Part of the rationale is that the new section 47A(1A) provides a separate remedy against the alleged manipulator.
229. By contrast, in **Jhuti** (a dismissal rather than detriment claim) the Supreme Court held that a dismissal should be ruled unfair under section 103A of the Employment Rights Act 1996 where a person superior to the claimant in the hierarchy of the organisation determined that they should be dismissed because they had made one or more protected disclosures but hid this behind an invented reason, and the decision maker, unaware of that motivation, adopted the invented reason.
230. The effect of **William** is that attributing the unlawful motivation of another to an “innocent” decision maker does not apply in the case of detriments because of a protected disclosure.

Causation

231. The causation test for *detriment* is whether the alleged protected disclosure played more than a trivial part in the Claimant’s treatment (**Fecitt v NHS Manchester (Public Concern at Work intervening)** [2012] ICR 372, CA).

Fraud Act

232. Sections 2 and 4 of the Fraud Act 2006 provides as follows:
- 2 Fraud by false representation
- (1) A person is in breach of this section if he—
- (a) dishonestly makes a false representation, and

- (b) intends, by making the representation—
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- (2) A representation is false if—
 - (a) it is untrue or misleading, and
 - (b) the person making it knows that it is, or might be, untrue or misleading.

4 Fraud by abuse of position

- (1) A person is in breach of this section if he—
 - (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,
 - (b) dishonestly abuses that position, and
 - (c) intends, by means of the abuse of that position—
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- (2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

5 “Gain” and “loss”

- (1) The references to gain and loss in sections 2 to 4 are to be read in accordance with this section.
- (2) “Gain” and “loss”—
 - (a) extend only to gain or loss in money or other property;
 - (b) include any such gain or loss whether temporary or permanent; and “property” means any property whether real or personal (including things in action and other intangible property).
- (3) “Gain” includes a gain by keeping what one has, as well as a gain by getting what one does not have.
- (4) “Loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has.

233. Dishonesty for the purposes of criminal guilt requires both an objective and subjective element. Objectively, would the conduct be thought dishonest by the standards of ordinary, decent people? Subjectively, was the perpetrator of the dishonest action aware that their action was dishonest?

Police Reform and Social Responsibility Act 2011

234. Section 35 of the Police Reform and Social Responsibility Act 2011 provides as follows:

35 Value for money

- (1) In exercising functions, a chief officer of police must secure that good value for money is obtained.
- (2) That includes securing that the persons under the direction and control of the chief officer of police obtain good value for money in exercising their functions.

CONCLUSIONS

235. The Tribunal's decision has been taken by reference to a list of issues (appended at the end of these written reasons).

1. Time limits

1.1 Were the claimant's complaints of detriment each made within the 3-month time limit in section 48(3)(a) of the Employment Rights Act 1996 the Tribunal will decide:

Were the claims made to the Tribunal within three months (plus any early conciliation extension) of the act to which the complaint relates?

236. It is not in dispute that parts of the claims are in time. We find that parts of the claim are out of time.

If not, was there conduct extending over a period in relation to the complaints made in each of the two claims?

Claim 1

237. We find that alleged detriments 1, 2 and 3 are out of time and not part of a series of acts.
238. We do not find that detriment 1 (Mr Dyson "creating noise" comment in September/October 2021), alleged detriment 2 (restricted duties 11 October 2021) and alleged detriment 3 (Phipson threatening to "destroy" Claimant's life and rescind MBE, November 2021 rather than 2022) were part of a series of acts connected with the next detriment in the chronology.

239. The next alleged detriment was detriment 6 on 12 August 2022 alleged to have been caused by the Second Respondent Paul Betts, who had only started in that role on 4 January 2022. A substantial period of time had elapsed, approximately 9 months, in the context of a limitation period of 3 months and in any event different individuals were involved.

Claim 2

240. Alleged detriments 11 and 12 are described in the list of issues as having occurred on 3 April 2023. The Claimant's witness statement at paragraph 33 states that this happened on 1 March 2023. Claim 2 was presented out of time in relation to these allegations.

If so, were the claims made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

241. An ACAS Early Conciliation period ran from 19 December 2022 until 30 January 2023. The Claimant presented his first claim on 27 February 2023.
242. There was a further ACAS Early Conciliation period from 23 June 2023 until 26 June 2023. The Claimant presented his second claim on 28 July 2023.

If not, was it reasonably practicable for the claims to be made to the Tribunal within the 3-month time limit?

243. The burden would be on the Claimant to show that it was not reasonably practicable to present his claim in time. He has not advanced any evidence that he was unable to present his claim either because of poor health, or ignorance of his rights. In fact he took legal advice from the department of a well known firm of solicitors specialising in employment law, which wrote to the Respondent on his behalf.
244. In the particulars of claim (paragraphs 7-8) the Claimant referred to a notification from a third-party on 10 April 2023 about two of the acts of detriment, which are Detriments 13 & 14 in the list of issues. There is no evidence of this from the Claimant either in his witness statement, nor any documentary evidence. We have not been able to make findings of fact about this nor conclude that this happened on the balance of probabilities.

If it was not reasonably practicable for the claims to be made to the Tribunal within the time limit, were they made within a reasonable period?

245. This does not apply in view of our findings above.
246. Time is not extended in relation to any of claim 2.

1. Protected disclosures

247. (2.1) Did the claimant make one or more protected disclosures as defined in section 43B of the Employment Rights Act 1996?

In particular:

Procurement of a statuette

(2.2) Did the claimant say to Assistant Commissioner Alistair Sutherland in late August 2019 that “a fraudulent act had been committed” regarding the procurement of a statuette by Special Commander James Phipson?

248. AC Sutherland does not recall the Claimant suggesting fraud when they met in late August 2024 but the Respondents are, realistically, prepared to accept that he may well have done.
249. We find that the matters raised on approximately 22 August 2019 were consistent with the written disclosure made by email and attached paper on 4 September 2019. In that paper the Claimant did not state in terms “a fraudulent act had been committed”, see the discussion below.
250. The considerations as to whether this oral disclosure amounted to a protected disclosure are identical to those in relation to the written disclosure in the paper, discussed below.

(2.3) Did the claimant send an email to Assistant Commissioner Alistair Sutherland on 9th September 2019 regarding the procurement of a statuette by Special Commander James Phipson?

251. This communication, an email and paper which was actually sent on 4 (not 9) September 2019 related to the procurement of the silver statuette.
252. In that paper the Claimant did not state in terms “a fraudulent act had been committed”. The suggestion of potential fraud was significantly more tentative. The Claimant did not assert that fraud had been committed. Rather he expressed a concern about the actions of Mr Phipson, which he said “*may*” represent a range of different interpretations, with “serious breach of the code of ethics” at one end and “fraud by misrepresentation or fraud by abuse of position” at the other end.

(2.4) If so, did what the claimant said and/or wrote amount to a disclosure of information?

253. The circumstances of the ordering of the silver statuette in 2019 set out above amounted to a disclosure of information. The information related to the procurement process and Mr Phipson’s role in it.

(2.5) Did the claimant believe the disclosure of information was made in the public interest?

254. We have reminded ourselves that following **Chesterton**, the public interest need not be the motivation of the Claimant making the disclosure. There may be an ulterior motive. Nevertheless in order to be a protected disclosure a

Claimant must believe that it was in the public interest for the matter to be raised. For these purposes “public” need not be the public at large, but may simply be a grouping of people which might be colleagues (**Chesterton**).

255. Ms Chudleigh for the Respondents put to Mr Miller squarely in cross examination that the allegation of fraud was purely related to his own self-interest, with no belief in public interest at all.
256. The Tribunal accepts that the Claimant’s motivation was ulterior. He wanted Mr Phipson out of the role of chief officer of the Special Constabulary. His communication of 24 September 2019 to James Thomson illustrated his lack of respect for Mr Phipson and his (civilian) management experience. He saw Mr Phipson as a problem which the statuette allegation would “fix” to use Mr Miller’s own word. That email clearly linked together the Claimant’s negative view of Mr Phipson and his abilities with a strategy to remove him, starting with the PSD enquiry arising from the statuette and if that failed a referral to the IOPC (Independent Office for Police Conduct).
257. The Tribunal has considered that it is possible for a claimant to have an ulterior motive but also nevertheless believe that a disclosure was made in the public interest. We also have reminded ourselves that “public interest” is a fairly low threshold to clear.
258. The Tribunal finds that the Claimant did not believe that that the disclosure of information was made in the public interest. Our finding is that there was solely an ulterior motive which was the Claimant’s personal agenda to remove Mr Phipson. This was an internal, personal dispute and rivalry between the two men and we find the Claimant did not have any belief that it was in the public interest to make this disclosure.

(2.6) Was that belief reasonable?

259. Given our finding that there was no belief, it is unnecessary to continue on to reasonableness, but in case we are wrong about the Claimant’s subjective belief, we have gone on to consider reasonableness. The Tribunal rejects the Claimant’s case that it was reasonable to believe that the disclosure was made in the public interest.
260. In making that assessment we have taken account of the information that the Claimant had in his possession at the time of making the disclosure, not simply the one-sided version of events that appeared in the narrative of the disclosure.
261. By the time that the Claimant made disclosures in late August and early September 2019 he was in possession of Mr Phipson’s email dated 13 June 2019 which set out the sequence of communications between Mr Phipson and Messrs Wall and FitzGerald, the HAC detachment leadership about the procurement of the silver statuette.
262. While it might be concluded that Mr Phipson had initially overstated his ability to fundraise for the silver statuette project, it was quite clear by the end of April 2019 that he had put Messrs Wall and FitzGerald on notice of the reality

regarding funding and was actively inviting them in several emails to take over control of procurement. In other words from the end of April 2019 either Mr Wall or Mr FitzGerald could have taken action directly with Mr Parsons in clear terms to stop the project proceeding.

263. The Claimant also knew that the HAC confirmed that they would cover the silversmith's invoice, less the money raised by Mr Phipson. This was confirmed by Secretary David Freeman and Chief Executive Mr Crane. While Mr Crane had noted "confusion in the commissioning process", HAC, which was to be the source of the majority of the funding did not consider that there was an unresolved problem. There was no suggestion at any stage that Mr Phipson was to benefit financially from these matters.
264. The Claimant misleadingly stated as part of the disclosure that as of June 2019 the work on the statuette continued without the knowledge of the Detachment. The leadership of the Detachment had received a series of emails from Mr Phipson from March 2019 onward. It cannot have been the case that they had no knowledge of it and the Claimant had evidence of the communication on the topic. The Claimant cannot have reasonably believed that it was in the public interest to put forward a disclosure containing materially inaccurate information.
265. It might be thought, objectively, that raising criminal conduct on the part of a senior police officer would be a matter of public interest. For the reasons we have set out below however we find the Claimant did not have a reasonable belief that Mr Phipson had committed a criminal offence, so it does not follow that for this reason it was reasonable to believe that the matter was being raised in the public interest.
266. We do not find that it was objectively reasonable to believe that it was in the public interest to raise Mr Phipson's conduct with senior management within the First Respondent as a matter that needed investigation.

(2.7) Did he believe it tended to show that a criminal offence had been committed, namely fraud under section 4 of the Fraud Act 2006?

267. The list of issues was framed by reference to section 4 of the Fraud Act 2006, which is fraud by abuse of position. The Claimant's witness evidence also refers to section 2, which is fraud by false representation. Both require dishonesty. We have considered both.
268. We have borne in mind that a belief may be genuinely held but mistaken. We have also reminded ourselves that the relevant belief for these purposes is that the disclosure tended to show a criminal offence, rather than the Claimant actually believed that a criminal offence had occurred.

Majority decision

269. The majority of the Employment Tribunal (Ms Breslin, Ms Plummer) finds that the Claimant did not believe that the disclosure tended to show that a criminal offence had been committed for the following reasons. The Claimant was tentative in his assertion "*may represent fraud... .. at worst*" (emphasis added).

This is more tentative than “tended to show” that a criminal offence had occurred and suggests doubt even on the fact of the document.

270. It seems from the other documentation sent with the disclosure that the Claimant believed that lessons could be learned with regard to the procurement process relating to the silver statuette which represented a breach of internal control. That is a significantly milder conclusion than that fraud, i.e. a criminal offence, requiring dishonesty had occurred. That there were lessons to be learned does not in itself suggest criminal conduct.
271. The majority does not find that the Claimant genuinely believed that the disclosure tended to show criminal conduct on the part of Mr Phipson. The majority reiterates that the Claimant’s motivation in making his disclosure was a entirely a personal agenda to remove Mr Phipson from his post rather than a genuine belief that paper 1 tended to show fraud.

Minority decision

272. Employment Judge Adkin in the minority finds that the Claimant did believe that the disclosure tended to show that a criminal offence had been committed.
273. Taken at its highest, the narrative of the disclosure suggests that Mr Phipson had been told by Mr FitzGerald that even meeting half of the cost of the silver statuette would be unaffordable (for the HAC detachment), but nevertheless Mr Phipson instructed the silversmith Mr Parsons on 27 March 2019 as if Mr FitzGerald had given approval, but without Mr Fitzgerald’s knowledge. Given that Mr FitzGerald had not given approval, Mr Phipson was acting without authority and it follows that it was dishonest to represent to the silversmith that he did have such authority. Within the terms of section 2 of the Fraud Act 2006, that would be a false representation, which would expose the HAC detachment to a risk of loss. (By contrast, it is not clear to me that the terms of section 4 were satisfied). Assuming as stated that Mr FitzGerald had told Mr Phipson that there was insufficient funding, then Mr Phipson would know that his representation to the silversmith was untrue or misleading, which is dishonest.
274. As Mr Miller points out, at a later stage Detective Constable Nicola Guy came to the conclusion in her investigation that there was evidence which might support fraud. In other words, the Claimant was not completely out on a limb with this assertion.
275. The Tribunal found that the narrative in the disclosure was one-sided and omitted relevant information which would have given a more balanced description of what had occurred. I have doubts about whether the Claimant actually believed that a criminal offence had been committed, but that is not the test to be applied regarding belief.
276. I have had regard to the guidance of the Employment Appeal Tribunal in the case of **Soh** and consider that nature of Mr Miller’s disclosures had some similarity. He was relaying in part what he had been told by others, and his disclosure therefore was not solely about matters that were within his knowledge.

277. Based on the content of the disclosure alone, however I find that the Claimant did believe that it tended to show (a light threshold on the Claimant following **Babula**) that a criminal offence had been committed.

(2.8) Was that belief reasonable?

278. Was it reasonable for the Claimant to believe that the disclosure he made tended to show criminal conduct? Was there a basis to think that Mr Phipson's conduct as described would be thought dishonest by the standards of ordinary, decent people and that he was aware that his action was dishonest?

279. A belief may be reasonable yet wrong. It may be possible for there to be two reasonable but competing conclusions arising from the same set of evidence.

280. The Tribunal should not in the circumstances substitute our view about whether or not we consider that a criminal offence had been committed at all or based on the content of the disclosure.

281. The decision of the majority (Ms Breslin, Ms Plummer) is that the Claimant did not believe that the information in the disclosure did tend to show that a criminal offence had been committed. It follows that based on the majority view there is no belief to assess for reasonableness.

282. In case the majority is wrong on that point, we have gone on to consider reasonableness.

283. Following **Korashi** the Tribunal must consider what someone in the Claimant's position knows and ought to know, which following the guidance of the EAT in the case of Dr Korashi would involve looking at all of the material, including the medical records before making a disclosure. By analogy in this case, this should have involved the Claimant considering the information provided by Mr Phipson in his email and the email correspondence which the Claimant had to hand. We note that the Claimant chose not to take up Mr Phipson's offer to discuss the matter.

284. We have concluded that, whatever his subjective belief, it was not reasonable to believe that the disclosure tended to show criminal conduct in the circumstances in which the Claimant gave a one-sided version of events in the disclosure, omitting Mr Phipson's version of the communication that had occurred and on one point respected materially misrepresented the extent of knowledge of the HAC leadership.

Managing the Special Constabulary

(2.9) Did the claimant say to Assistant Commissioner Alistair Sutherland at the meeting in late August 2019 that he could provide information to show that Mr Sutherland's concerns regarding the performance of the Special Constabulary were justified?

285. There is a difference of recollection between the two men. Ultimately it is not essential for the Tribunal to resolve this dispute of fact. Whether or not Mr

Sutherland had express concerns about the Special Constabulary is not central to whether or not this was a protected disclosure. We find that the Claimant did offer data on performance and that Mr Sutherland agreed to look at it.

(2.10) Did the claimant email reports to Assistant Commissioner Alistair Sutherland on 9th September 2019 saying:

(i) How the numbers of special Constables had fallen consistently since Special Commander James Phipson took over the Chief Officer role. Hours per officers had declined dramatically, diversity had got significantly worse, and productivity had also deteriorated markedly; and

286. The Claimant's paper to Mr Sutherland contained a disclosure in these terms.

(ii) That Special Commander James Phipson cancelled payments of an externally funded grant to Special Constables to conceal a deterioration in performance?

287. The Claimant's paper to Mr Sutherland contained a disclosure in these terms.

(2.11) If so, did what the claimant said and/or wrote amount to a disclosure of information?

288. These were disclosure of information.

(2.12) Did the claimant believe the disclosure of information was made in the public interest?

289. The Tribunal accepts that the Claimant believed that the disclosure of information was made in the public interest. This went wider than his own interest. Other officers as he saw it were affected. The First Respondent is a public body.

(2.13) Was that belief reasonable?

290. Based on the information disclosed by the Claimant we find that it was reasonable to believe that this was in the public interest.

(2.14) Did the claimant believe it tended to show a person had failed, was failing or was likely to fail to comply with a legal obligation namely an obligation under section 35 of the Police Reform and Social Responsibility Act 2011 to manage the organisation to get good value for money?

291. We find that the Claimant believed that there was underperformance within the Special Constabulary of the First Respondent. It was not expressed in terms of a legal obligation in the paper in which he raised it. To the extent that the Claimant now relies on section 35 of the Police Reform and Social Responsibility Act 2011 (PRSA) that is a *post-facto* rationalisation. It is not a requirement however that an employee raising a protected disclosure based on a breach of legal obligation can pinpoint at the time of making the disclosure the specific legal obligation, provided that he believes that the disclosure tends to show a breach of legal obligation and such an obligation does exist.

292. Did the Claimant have a belief that the disclosure tended to show a failure in legal obligation at all? The specific legal obligation now relied upon was not referenced in the Claimant's paper in September 2019, his email about performance concerns in May 2020 nor in the letter from his solicitor dated 17 December 2021, which referred in general terms to "various failures contemplated in section 43(B)(I) of the ERA. The first time that the PRSA was referred to was at paragraph 8 of the particulars of claim provided with the claim form.
293. This is not a situation in which the legal obligation now relied upon was so obvious that it must have been in the Claimant's mind. The concerns raised by the Claimant at the time were in terms of leadership failings and performance and were directed at James Phipson and his senior leadership team. On balance we do not find that the Claimant conceived of this as a breach of legal obligation until a much later stage, probably at the time that he was preparing to put in the claim form to this Tribunal.

(2.15) Was that belief reasonable?

294. Given our conclusion that the Claimant did not believe that there had been a breach of legal obligation, there is no belief to analyse in respect of reasonableness.

Conclusion: protected disclosure

295. Our unanimous conclusion is that the Claimant did not raise any disclosure which fully satisfied the definition of a qualifying protected disclosure within the meaning of section 43B of the Employment Rights Act 1996.
296. In case we are wrong about that we have nevertheless gone on to consider whether the treatment received by the Claimant was detrimental and whether this was, to more than a trivial extent, because of the disclosures made by him.

2. Detriment (Employment Rights Act 1996 section 48)

297. (3.1) Did the respondent subject the claimant to detriment on the ground that he made a protected disclosure?
298. In particular:

Claim 1

(Detriment 1) Did Commissioner Ian Dyson tell the claimant on 20th September 2021 and 11th October 2021 to stop "creating noise" about the Special Constabulary on the ground that he made a protected disclosure?

(Detriment 2) On 11th October 2021 were the claimant's duties dramatically restricted in that he was told he could not use a vehicle for patrol despite being

the only qualified response driver in the Special Constabulary and contributed to the Force's response capability when he did his regular operational duties, and that he was restricted to foot patrol in only three streets in the City of London, on the ground that he made a protected disclosure?

299. It is convenient to deal with both of these allegations together since they occurred at the same time.
300. Given that there are no further alleged detriments between November 2021 (detriment 3 below) until the second part of 2022, we do not find that this formed part of a continuing act (similar acts or failure) such as to bring it in time.
301. We do not find that it was not reasonably practicable to present this in time. The Claimant has not led evidence to prove this.
302. These allegations were out of time and there is no basis to extend time.

(Detriment 3) In November 2022, did Special Commander James Phipson state that he was working with Commissioner Ian Dyson to "destroy Ian Miller's life" and to have his MBE honour removed on the ground that he made a protected disclosure? The claimant says he learnt of this on or around 20th November 2022, when he was advised of it by Special Superintendent Peter FitzGerald.

303. There are several respects in which the Claimant has failed to make out this allegation. The Claimant is mistaken as to the timing. No such conversation took place in November 2022. There was a conversation between Mr FitzGerald and Mr Phipson in or around November 2021 (as to timing see paragraph 52 of Peter FitzGerald's witness statement).
304. Given that there are no further alleged detriments between November 2021 until the second part of 2022, we do not find that this formed part of a continuing act (similar acts or failure) such as to bring it in time.
305. We do not find that it was not reasonably practicable to present this in time. The Claimant has not led evidence to prove this. To the extent that there may have been a delay between the conversation between Mr FitzGerald and Mr Phipson and the contents being relayed to the Claimant, the Claimant has failed to prove this.
306. These allegations were out of time and there is no basis to extend time.
307. It is not necessary for us to deal with the substance of this allegation. Nevertheless we have heard evidence and make the following observations. The Claimant has characterised this as a confected plot involving Commissioner Ian Dyson to remove the Claimant's MBE.
308. To the extent that there was a dispute on this point we accepted Mr Phipson's evidence. We did not accept that Mr Phipson said in terms that he was seeking to destroy Ian Miller's life. He discussed with Mr FitzGerald some apparently questionable conduct the part of the Claimant which might have led to disciplinary action against the Claimant with possible consequences for him. We do not have an evidence basis to make findings

on the underlying allegations about the Claimant raised by Mr Phipson, nor is it part of the claim. We have no reason to believe that the discussion between Mr Phipson and Mr FitzGerald was other than in good faith. We formed the impression that these concerns were genuine and had been raised by others to Mr Phipson.

(Detriment 4) Did the second respondent fail to consult with the claimant in June and July 2022 before appointing Special Superintendent Nastri as acting Chief Officer on the ground that he made a protected disclosure?

309. This allegation was withdrawn on day 6.

(Detriment 5) Did the second respondent fail to appoint the claimant as acting Chief Officer on 1st July 2022 on the ground that he made a protected disclosure?

310. This allegation was withdrawn on day 6.

Allegations re: Second Respondent, AC Betts (detriments 6, 7, 8 & 9)

311. These observations apply to detriments 6, 7, 8 and 9 below.

312. The alleged protected disclosures were made by the Claimant in August and September 2019. Mr Betts joined the First Respondent on 4 January 2022. In other words the protected disclosures were already over 2 years old when Mr Betts joined. From his point of view they were historic.

313. The disclosures could not have been seen as a criticism of Mr Betts personally. The contemporaneous evidence suggests that there was respectful and appropriate communication between Mr Betts and the Claimant in 2022. Mr Betts plainly had regard to the fact that the Claimant was an officer of significant service, experience and rank and who had previously led the Special Constabulary. He discovered during the course of his meetings with the Claimant and Mr Phipson the extent of the animosity between them. Nevertheless he felt that his interactions with the Claimant had gone well and thought that he might be able to encourage the Claimant and Mr Phipson to work together.

(Detriment 6) Did the second respondent refuse to submit a plan the claimant had produced to a Chief Officer Team Meeting on 12 August 2022 on the ground that he made a protected disclosure?

314. To characterise Mr Betts' decision not to submit the Claimant's plan to the Chief Officer Team Meeting as a "refusal" mischaracterised what occurred.

315. Papers from the Claimant were submitted to be considered as part of the consultation process.

316. The Tribunal accepts Mr Paul Betts' explanation that Mr Umer Khan was dealing with the reorganisation and therefore it would not have been appropriate to submit the Claimant's paper to the Chief Officer Team Meeting

on 12 August 2022. To the extent that the Claimant may have expected this paper to be submitted to the senior team, this was overtaken by events.

317. We do not find that this was because of the Claimant's alleged protected disclosure.

(Detriment 7) After 24 November 2022 did the second respondent fail to respond to requests in writing by the claimant for meetings to discuss a re-structure of the Special Constabulary on the ground that he made a protected disclosure?

318. The Tribunal accepts the Mr Betts' explanation that he was expecting the Claimant to deal directly with Mr Khan (see paragraph 42 of Mr Betts' witness statement). Mr Betts was a very senior officer who had delegated the restructure to Commander Khan. Although the Claimant had a senior rank within the special constabulary he did not at this stage have a senior management role. We cannot see that there should have been any reasonable expectation that he could have an ongoing personal dialogue with the Assistant Commissioner when Commander Khan was dealing with it. Mr Betts did not have day-to-day responsibility for the restructure which was being carried out by Mr Khan.
319. We accept Mr Betts' evidence that he did make himself available to the Claimant on some occasions but also redirected on other occasions to Mr Khan.
320. We do not find that this calls for an explanation nor did it amount to a detriment.

(Detriment 8) In December 2022, did the second respondent announce a new structure for the Special Constabulary having failed to consult the claimant or tell him if that decision would adversely and detrimentally affect him on the ground that he made a protected disclosure?

321. Given our findings of fact we do not accept that there was a failure to consult the Claimant. There were four consultations that he could have attended. There is evidence that he attended a consultation at the HAC and declined another one.
322. We accepted Kelly Glazebrook's about the Claimant's poor and unprofessional behaviour at the meeting in September 2022. The Claimant sent an email of complaint about the meeting the following day. The Claimant had been given the courtesy of a pre-briefing. In short there was no question that the Claimant had been consulted.
323. Mr Khan offered the Claimant an individual discussion in December 2022 after the Claimant missed a pre-briefing for senior officers.
324. In short the Claimant has failed to make out this alleged detriment.

(Detriment 9) Did the second respondent ignore the claimant's request for a meeting with him made in December 2022 on the ground that he made a protected disclosure?

325. This allegation is similar to detriment 7 above and similar considerations apply to both.
326. A Microsoft Teams meeting was set up for 16:00-16:30 on 24 November 2022 between the Claimant, Messrs Khan and Betts.
327. It was Mr Khan who was dealing day-to-day with the restructure. The Claimant failed to respond to an invitation on 6 December 2022 to a private meeting.
328. The Claimant did subsequently meet with Mr Khan on some occasions but also redirected on other occasions to Mr Khan.
329. We do not find that this calls for an explanation nor did it amount to a detriment.

(Detriment 10) Did the claimant receive an email from Commander Khan on 7 February 2023, advising him that he had three options to choose from by 1 March 2022: retire; transfer to another Force; or be reduced to the rank of Special Constable on the ground that he made a protected disclosure?

330. Mr Khan made himself available to discuss the options on two consecutive Sundays 22 and 29 January 2022.
331. The Claimant was given the three options by Mr Khan, which were then reiterated by him. We find that these were the same options that were being given to other senior officers, as Mr Khan expressly stated in the email to the Claimant. There was a deadline of 1 March 2023 to make a decision. The Claimant failed to make an election and did not for example state that he had started the process of making a transfer. He accepted in his oral evidence that he failed to tell Mr Khan of the possibility of transferring to the Kent police, which he now says was an offer he had available to him in January 2023.
332. The Tribunal accepted Mr Khan's evidence that once individuals had made a decision (unlike the Claimant who communicated no decision and was therefore demoted by default), his response was tailored to their situation.
333. As to the deadline, the Claimant alleges he was given this deadline despite others being affected by the rank changes namely:

(a) Special Superintendent Peter FitzGerald was told in a meeting with Commander Khan that 30 June 2022 would be a reasonable deadline for agreeing his transfer out of the Force but retained his rank until 31 March 2024;

334. Mr FitzGerald's circumstances do not represent a disparity of treatment as compared with the Claimant, since their circumstances differed in crucial respects. The essential difference between the circumstances is that Mr FitzGerald notified Mr Khan of an intention to transfer before the deadline. The Claimant did not do this.

(b) On James Phipson, Jeremy Wall and Matthew Green were given a deadline of 31st May but Mr Phipson was allowed to retain his rank until 31 March 2024; and

335. Mr Phipson's circumstances were different to the Claimant's. He notified Mr Khan of his intention to transfer before the deadline, by contrast with the Claimant. He retained his rank dormant on the system.
336. Mr Wall's treatment was the same as the claimant and therefore is not a comparison illustrating a disparity of treatment.
337. Mr Green's treatment supports the Respondents' case and undermines the Claimant's case. There is no evidence that Mr Green was connected to a protected disclosure and nevertheless no special treatment was afforded to him despite his lengthy service.

(d) Patrick Rarden had not been forced to make a decision as at 13 October 2023.

338. It was Mr Khan's unchallenged evidence that Patrick Rarden was a Special Inspector who worked in economic crime as an advisor and trainer and had no supervisory duties. He was unhappy with the indication that he would lose his rank were he not to apply for a role in the new structure. Following a meeting with Commander Khan who reiterated the standard options, he agreed to remain in the Special Constabulary as a Special Constable but subsequently resigned.

Commander Khan's knowledge & causation

339. Mr Khan's awareness of the alleged protected disclosures was limited. To reiterate our finding of fact above, he became aware of the issue between the Claimant and Mr Phipson in relation to the silver statuette as a historic issue, although he not understand that the Claimant had made this as an allegation of fraud. He was not aware of the other alleged protected disclosures at all.
340. The Tribunal accepted Mr Khan's evidence that there was problem caused by two distinct groups of senior officers: those at Bishopsgate and those in the HAC detachment. There was a problem in the HAC group believing that they did not report to the others. We found that was his genuine perception and represented a reason why organisational change was needed.
341. We did not find that Mr Khan's actions in the restructure were influenced by the Claimant's making of the alleged protected disclosures.

Claim 2

(Detriment 11) On 3rd April 2023, was the claimant made to return his dress uniform and not issued with a new dress uniform on the ground that he made a protected disclosure?

342. This allegation is out of time and that there has been no extension of time.

343. In case we are wrong about that, we have considered this allegation on its substantive merits.
344. We did not find that the Claimant had established detrimental treatment. Given his reduction in rank needed a different uniform. The Claimant did not seem to be clear as to whether the police tailor told him he was not going to receive the uniform or whether the tailor had not been told to issue him with one. These are not the same thing. One suggests a deliberate action, the other simply suggests the absence of an instruction.
345. We accepted the Respondents' case which was that ceremonial tunic uniforms needed to be ordered using the NUMs ("National Uniform Managed Service") online system. The Claimant was adamant that this should not apply to him. The Tribunal accepted Mr Nastri's evidence that this system applied and that the in-house tailor service was gradually being wound down with the anticipated retirement of the tailor, in favour of an external supplier. We formed the impression that the Claimant was somewhat out of date on his understanding as to the ordering process with regard to new uniforms using this system.
346. In any event, we were not satisfied that we received evidence that the way that the Claimant was dealt with in relation to his new uniforms had in any way been influenced by the making by him of the alleged protected disclosures. Based on the evidence we received it seemed that the events relating to uniform naturally flowed from the change in the Claimant's rank.

(Detriment 12) On 3rd April 2023, was the claimant issued with new uniform badges that were different to those worn by every other Special Constabulary officer for the next three months on the ground that he made a protected disclosure

347. While we found that this allegation was out of time, in case we are wrong about that, we have dealt with this allegation on the substantive merits.
348. We accept that being issued with a new uniform badge happened to everyone front line who had a change in rank. Mr Nastri's said in his witness statement:
- "6. For anyone whose rank changed in stature during the restructure and had a frontline policing role and were not in the process of transferring in rank, their insignia was changed. I previously held the rank of Superintendent and my rank became that of Chief Inspector. Chief Inspector is a lower rank than Superintendent. I was provided with new badges, like Mr Miller, following the restructure. Myself, Mr O'Clee and Mr Sevkett were presented with those badges on 1 March 2023. The other six individuals appointed as Sergeants were also given their new badges around that time. It is therefore inaccurate to say that he was the only individual given these new badges.
349. Mr Nastri was questioned about this and gave oral evidence consistent with his witness statement. We accept the Respondent's evidence that other

individuals, named at paragraph 6 of Mr Natri's witness statement received badges reflecting their new roles in the structure.

350. It is true to say that the Claimant was issued with a new Constable badge. This was as a result of being demoted to this rank given that he did not apply as part of the restructure for any other rank.

351. The Claimant has not demonstrated to the Tribunal treatment which calls for an explanation. In any event we are not satisfied that the protected disclosures made in 2019 are a reason for any of the matters relating to his uniform in 2023.

(Detriment 13) Did the claimant raise complaints in a solicitors' letter to the first respondent on 17 December 2021 that (1) no investigation had taken place into his complaints of threats by James Phipson to work with City of London Police to create a case against him to justify him being dismissed from the Force; (2) place him on the Police Barred List; and (3) withdraw his MBE which the first respondent undertook to investigate?

If so, did the second respondent fail to investigate those complaints on the ground that the claimant had made a protected disclosure?

The claimant says that he was made aware of this alleged detriment by ex-Special Sergeant Sylvie Edwards and Special Superintendent Peter FitzGerald on about 10th April 2023.

(Detriment 14) Did the second respondent reinvestigate the claimant's first alleged protected disclosure and propose in or around March 2022 to take no further action against Mr Phipson without allowing the claimant appeal on the ground that he made a protected disclosure?

The claimant says that he was made aware of this alleged detriment by ex-Special Sergeant Sylvie Edwards on or about 10th April 2023.

352. It is convenient to take these allegations together since the same consideration leads us to reject this claim.

353. As set out above the claim is presented out of time in relation to these alleged detriments. The claimant did not provide evidence to demonstrate that he had been notified about these alleged detriments on or about 10 April 2023.

Employment Judge Adkin

Date 11 October 2024

JUDGMENT SENT TO THE PARTIES ON

.....11 October 2024.....

.....

APPENDIX

LIST OF ISSUES

1 Time limits

1.1 Were the claimant's complaints of detriment each made within the 3-month time limit in section 48(3)(a) of the Employment Rights Act 1996 the Tribunal will decide:

- 1) Were the claims made to the Tribunal within three months (plus any early conciliation extension) of the act to which the complaint relates?
- 2) If not, was there conduct extending over a period in relation to the complaints made in each of the two claims?
- 3) If so, were the claims made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
- 4) If not, was it reasonably practicable for the claims to be made to the Tribunal within the 3-month time limit?
- 5) If it was not reasonably practicable for the claims to be made to the Tribunal within the time limit, were they made within a reasonable period?

2 Protected disclosures

2.1 Did the claimant make one or more protected disclosures as defined in section 43B of the Employment Rights Act 1996? In particular:

Procurement of a statuette

2.2 Did the claimant say to Assistant Commissioner Alistair Sutherland in late August 2019 that "a fraudulent act had been committed" regarding the procurement of a statuette by Special Commander James Phipson?

2.3 Did the claimant send an email to Assistant Commissioner Alistair Sutherland on 9th September 2019 regarding the procurement of a statuette by Special Commander James Phipson?

2.4 If so, did what the claimant said and/or wrote amount to a disclosure of information?

2.5 Did the claimant believe the disclosure of information was made in the public interest?

2.6 Was that belief reasonable?

2.7 Did he believe it tended to show that a criminal offence had been committed, namely fraud under section 4 of the Fraud Act 2006?

2.8 Was that belief reasonable?

Managing the Special Constabulary

- 2.9 Did the claimant say to Assistant Commissioner Alistair Sutherland at the meeting in late August 2019 that he could provide information to show that Mr Sutherland's concerns regarding the performance of the Special Constabulary were justified?
- 2.10 Did the claimant email reports to Assistant Commissioner Alistair Sutherland on 9th September 2019 saying:
- (1) How the numbers of special Constables had fallen consistently since Special Commander James Phipson took over the Chief Officer role. Hours per officers had declined dramatically, diversity had got significantly worse, and productivity had also deteriorated markedly; and
 - (2) That Special Commander James Phipson cancelled payments of an externally funded grant to Special Constables to conceal a deterioration in performance?
- 2.11 If so, did what the claimant said and/or wrote amount to a disclosure of information?
- 2.12 Did the claimant believe the disclosure of information was made in the public interest?
- 2.13 Was that belief reasonable?
- 2.14 Did the claimant believe it tended to show a person had failed, was failing or was likely to fail to comply with a legal obligation namely an obligation under section 35 of the Police Reform and Social Responsibility Act 2011 to manage the organisation to get good value for money?
- 2.15 Was that belief reasonable?

3 Detriment (Employment Rights Act 1996 section 48)

- 3.1 Did the respondent subject the claimant to detriment on the ground that he made a protected disclosure? In particular:

Claim 1

- 1) Did Commissioner Ian Dyson tell the claimant on 20th September 2021 and 11th October 2021 to stop "creating noise" about the Special Constabulary on the ground that he made a protected disclosure?
- 2) On 11th October 2021 were the claimant's duties dramatically restricted in that he was told he could not use a vehicle for patrol despite being the only qualified response driver in the Special Constabulary and contributed to the Force's response capability when he did his regular operational duties, and that he was restricted to foot patrol in only three streets in the City of London, on the ground that he made a protected disclosure?

- 3) In November 2022, did Special Commander James Phipson state that he was working with Commissioner Ian Dyson to "destroy Ian Miller's life" and to have his MBE honour removed on the ground that he made a protected disclosure? The claimant says he learnt of this on or around 20th November 2022, when he was advised of it by Special Superintendent Peter FitzGerald.
- 4) Did the second respondent fail to consult with the claimant in June and July 2022 before appointing Special Superintendent Nastri as acting Chief Officer on the ground that he made a protected disclosure?
- 5) Did the second respondent fail to appoint the claimant as acting Chief Officer on 1st July 2022 on the ground that he made a protected disclosure?
- 6) Did the second respondent refuse to submit a plan the claimant had produced to a Chief Officer Team Meeting on 12 August 2022 on the ground that he made a protected disclosure?
- 7) After 24 November 2022 did the second respondent fail to respond to requests in writing by the claimant for meetings to discuss a re-structure of the Special Constabulary on the ground that he made a protected disclosure?
- 8) In December 2022, did the second respondent announce a new structure for the Special Constabulary having failed to consult the claimant or tell him if that decision would adversely and detrimentally affect him on the ground that he made a protected disclosure?
- 9) Did the second respondent ignore the claimant's request for a meeting with him made in December 2022 on the ground that he made a protected disclosure?
- 10) Did the claimant receive an email from Commander Khan on 7 February 2023, advising him that he had three options to choose from by 1 March 2022: retire; transfer to another Force; or be reduced to the rank of Special Constable on the ground that he made a protected disclosure? The claimant alleges he was given this deadline despite others being affected by the rank changes namely:
 - a) Special Superintendent Peter FitzGerald was told in a meeting with Commander Khan that 30 June 2022 would be a reasonable deadline for agreeing his transfer out of the Force but retained his rank until 31 March 2024;
 - b) On James Phipson, Jeremy Wall and Matthew Green were given a deadline of 31st May but Mr Phipson was allowed to retain his rank until 31 March 2024; and
 - c) Patrick Rarden had not been forced to make a decision as at 13 October 2023.

Claim 2

- 11) On 3rd April 2023, was the claimant made to return his dress uniform and not issued with a new dress uniform on the ground that he made a protected disclosure? The claimant says he was the only police officer in the City of London Police not to have a dress uniform.
- 12) On 3rd April 2023, was the claimant issued with new uniform badges that were different to those worn by every other Special Constabulary officer for the next three months on the ground that he made a protected disclosure?
- 13) Did the claimant raise complaints in a solicitors' letter to the first respondent on 17 December 2021 that (1) no investigation had taken place into his complaints of threats by James Phipson to work with City of London Police to create a case against him to justify him being dismissed from the Force; (2) place him on the Police Barred List; and (3) withdraw his MBE which the first respondent undertook to investigate? If so, did the second respondent fail to investigate those complaints on the ground that the claimant had made a protected disclosure? The claimant says that he was made aware of this alleged detriment by ex-Special Sergeant Sylvie Edwards and Special Superintendent Peter FitzGerald on about 10th April 2023.
- 14) Did the second respondent reinvestigate the claimant's first alleged protected disclosure and propose in or around March 2022 to take no further action against Mr Phipson without allowing the claimant appeal on the ground that he made a protected disclosure? The claimant says that he was made aware of this alleged detriment by ex-Special Sergeant Sylvie Edwards on or about 10th April 2023.

4 Remedy for Protected Disclosure Detriment

- 4.1 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?
- 4.2 Were any protected disclosures made in good faith?
- 4.3 If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?
- 4.4 Did the claimant cause or contribute to the detrimental treatment by his actions and if so, would it be just and equitable to reduce the claimant's compensation? By what proportion?
- 4.5 What award (if any) should be awarded against the second and third respondents?