



Police Service
of Northern Ireland

Operation FUSTIC

Review by the Police

Service of Northern Ireland

Mark Hamilton

Deputy Chief Constable

Police Service of Northern Ireland

Version 1.1

Dated: 13-04-22

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Redactions to this document, including the removal of appendices A to E, are made in terms of sections 38(1)(b) and 35(1)(g)&2(b) of FOI(S)A.

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Introduction

On the 4th October 2021 the Employment Tribunal of Scotland (“Tribunal”) handed down a decision in the case of Rhona Malone (“the Claimant”) v Chief Constable of the Police Service of Scotland (“the Respondent”). The Tribunal found that the Claimant had been victimised under Section 27 of the Equality Act 2010 by Alan Findlay, Keith Warhurst, Linda Russell, Alasdair Muir, Michaela McLean and Andrew McDowell between 2018 and 2020.

The evidence presented to the court identified a culture of sexism within the Armed Policing Unit, a failure by the Respondent to follow Standard Operating Procedures and breaches of standards of professional behaviour.

At the request of the Chief Constable of the Police Service of Scotland, the Police Service of Northern Ireland has considered the judgement and sets out its review herewith. Professional Standards Department and Employment Law Branch of Legal Services have undertaken the review. Part 1 of the review sets out the issues identified within the judgement, while Part 2 makes recommendations in areas for future consideration by Police Scotland. In undertaking this review the following has been considered by Police Service of Northern Ireland:

- Tribunal Judgement 4112618/18
- Police Service of Scotland (Conduct) Regulations 2014 (the “Regulations”)
- Grievance Standard Operating Procedure
- Standards of Professional Behaviour
- Equality, Diversity and Dignity Standard Operating Procedure
- Police Service of Scotland (Performance) Regulations 2014
- Disciplinary Standard Operating Procedure

The report analyses the conduct of each of the individuals that the Tribunal determined victimised the Claimant, whether their conduct was in accordance with the Respondent’s processes and procedures, and the learnings from each of these. Additionally, the report seeks to identify themes and areas of learning arising from the judgement.

Part 1

1.0 - The Issues

The issues arising from the case relate to the conduct of a number of the Respondent's witnesses. The report focuses on the following issues:

- A. T/Inspector Warhurst's email of 10 January 2018
- B. Interference in the grievance process by Area Commander Russell
- C. Mediation with untrained mediator
- D. Re-opening of grievance matters by Area Commander Russell
- E. Failure to objectively and impartially consider the grievance
- F. Requirement for production of GP fit note
- G. Knowledge of "boys club" culture in Armed Policing
- H. Detriment by failing to accept second grievance
- I. Failure to progress IHR application
- J. Attempt to downplay Inspector Warhurst's email by T/Inspector Findlay

Each of these issues will now be taken in turn.

A. T/Inspector Warhurst's email of 10 January 2018

Whilst the Tribunal found no discrimination in respect of the email, this was only as a result of the swift follow up by more senior managers. The content of the email is wholly inappropriate.

The fact Inspector Warhurst specifically states:

"I am going to plunge in with both feet and open myself up to being accused of being sexist."

in some way acknowledges that the comment in itself is not appropriate, yet he continues to set out the direction.

Comments such as this are not becoming of police officers, let alone senior management. If the order had been actioned, the Tribunal's finding in respect of the

claim for sex discrimination would have been entirely different i.e. it would have been found to be direct discrimination.

Notwithstanding the Tribunal's determination on the claim of sex discrimination, one would have expected action to have been taken in respect of this inciting email at the time. It is not apparent from the Tribunal judgement as to whether this occurred. If no further action was taken, it should have been, as the conduct is not in accordance with the following Standards of Professional Behaviours:

Standard 3.7 - Duties and Responsibilities

Para 3.7.7- Police supervisors, managers and leaders, should take all reasonable steps to ensure that their staff carry out their professional duties correctly.

Para 3.7.8 - Police supervisors, managers and leaders, have a specific responsibility to promote and maintain professional standards through their timely use of advice, remedial or other relevant informal or formal action;

Standard 3.11 - Challenging and Reporting Improper Conduct

Para 3.11.2 - Police officers are expected to uphold the standards of professional behaviour in the police service by taking appropriate action if they come across the conduct of a colleague which has fallen below these standards. They never ignore such conduct.

Para 3.11.2 - Police officers are expected to uphold the standards of professional behaviour in the police service by taking appropriate action if they come across the conduct of a colleague which has fallen below these standards. They never ignore such conduct.

The content of the email is raised by the Claimant as part of her grievance. As such, there is a requirement within the scope of para 5.3 (a) of the Grievance Standard Operating Procedure that:

“Where it appears to a manager, at any stage of the procedure, that alleged behaviour could constitute a disciplinary or misconduct matter, they must seek advice from HR or the Professional Standards Department (PSD) as appropriate. If the issue is a conduct/ disciplinary matter then the line manager should progress the case under the Disciplinary SOP / Misconduct SOP.”

Once again, it is not apparent as to whether the content of the email was referred to HR and/or PSD for advice.

Regulation 3.2.3¹ and Standard 3.3.7² state:

'Police officers use appropriate language and behaviour in their dealings with their colleagues and the public. They do not use any language or behave in a way that is offensive or is likely to cause offence.'

Standard 3.3.4 states:

'police officers do not harass or bully colleagues or members of the public'

This email further breaches Standard 3.4 Diversity and Equality Para 3.4.4:

'Police officers pay due regard to the need to eliminate unlawful discrimination and promote equality of opportunity and good relations between persons of different groups.'

It is apparent the email itself has been the root cause of the problems emanating from this case. Its content demonstrates the lack of respect towards female colleagues. Moreover, it sets the wrong example to other colleagues within the Unit. Finally it is in contravention of the organisation's legal obligations and internal policies.

As a result of the aforementioned, the recommended courses of action following circulation of the email are:

- Consider whether referral to PSD/HR appropriate (see recommendations of PSD of Police Service of Northern Ireland set out in the Appendices A to E).
- If the Claimant had continued to remain within force, an opportunity for the parties to meet to discuss the ill-feeling caused and ways to move forward.
- Refresher of Diversity and Inclusion training for T/Inspector Warhurst.
- Refresher of Standards of Professional Behaviour training of senior management.
- Refresher training on the Grievance Standard Operating Procedure.

¹ Police Service of Scotland (Conduct) Regulations 2014

² Standards of Professional Behaviour

- Reminder that a failure to comply with these procedures may lead to disciplinary/misconduct action up to dismissal.

B. Interference in the grievance process by Area Commander Russell

The Claimant submitted her first grievance on the 2nd February 2018 and a senior HR advisor emailed Chief Superintendent Matt Richards advising that it would be beneficial to appoint a Chief Inspector (as the grievance was against an Inspector) outside of Armed Policing to investigate and deal with the grievance, leading to Chief Inspector Scobbie being appointed.

In an email dated 19th February 2018, Area Commander Russell stated:

“At this stage, it would not be advisable, in my opinion, for CI Scobbie to attempt to progress the grievance without allowing her own line managers to resolve at an informal stage. Both myself and T/Inspector Findlay will maintain regular, appropriate contact with Rhona throughout her period of absence.”

From the information available it appears the Claimant’s actual line manager, Sergeant Guy Sinclair, was not provided an opportunity to informally resolve the grievance³. Moreover, T/Inspector Findlay had prior to this date held an impromptu meeting with the Claimant and T/Inspector Warhurst in which he attempted (as found by the Tribunal) to defend the sexist email, and as the meeting deteriorated, threatened to remove the Claimant’s firearms licence. To therefore suggest T/Inspector Findlay be the *‘regular, appropriate contact’* not only presents a conflict of interest but lacks impartiality.

Area Commander Russell then reallocated the grievance to herself. This reallocation was contrary to the advice of a senior member of HR i.e. someone out with Armed Policing should consider the grievance and of Chief Inspector rank – Area Commander Russell was neither. Notably, this was the first grievance Area Commander Russell had dealt with in her career with Police Scotland.

³ Para 4.1.b of the Grievance Standard Operating Procedure states, “Individuals should, in all possible circumstances, aim to settle grievances informally with their line manager without unreasonable delay”.

In the absence of experience and knowledge of the grievance process it would have been appropriate for Area Commander Russell to follow HR advice and/or applied the Grievance SOP. In doing so, this may have avoided the further issues that arose and led to the matter being dealt with appropriately. Unfortunately, her insistence in dealing with the grievance herself caused only further issues for the Respondent. Not only that, Area Commander Russell suggested permanent transfer of the Claimant to another unit for '*welfare reasons*' was made without the benefit of advice. It is not surprising that the Tribunal determined that these '*welfare reasons*' resulted in the Claimant being off work from stress and lodging of the grievance.

The Tribunal decided that the handling of the grievance by Area Commander Russell amounted to a detriment. In determining if the reason for the detriment was due to a protected act, the Tribunal gave regard to their observation on the evidence, that Area Commander Russell did not want her final years with the Respondent to be overshadowed by a grievance of sexism. Further, the Tribunal accepted the evidence of Mr White, stating that Area Commander Russell had described the grievance as '*petty*.' It was not considered necessary by the Tribunal to consider shifting the burden of proof, therefore the Claimant succeeded in her claim that she had been victimised by the handling of her grievance.

Moreover, the Tribunal found in fact that at the grievance meeting a proposal was made by Area Commander Russell for the Claimant to move to Stirling/Maddiston, when the purpose of the meeting was to discuss the grievance. The Tribunal found that at least in part this proposal was adjudged to have been made because the Claimant had submitted a grievance, therefore amounting to a detriment. The Tribunal did not find it necessary to revert to s136⁴ and shift the burden of proof, as it decided that the Claimant was victimised at the meeting on the 28th February 2018.

There is a distinct lack of knowledge and understanding of the Grievance SOP, as well as complete disregard for the advice of HR. Mechanisms should be in place for HR to escalate their concerns when advice is ignored.

The recommended courses of action are:

⁴ Section 136 of the Equality Act 2010

- Training of the Grievance SOP.
- Escalation by HR to appropriate senior management when the Grievance SOP has been breached, and advice of HR ignored with a potential detrimental outcome.
- Education of managers that when welfare reasons are cited they must be supported/followed up with medical evidence.

C. Mediation with untrained mediator

In the circumstances it was fortunate the mediation was a success notwithstanding the process was conducted by someone with no mediation training. Had an appropriate mediator been appointed this may have circumvented the actions that followed, the continuation of the grievance process by Area Commander Russell.

On this point, the Tribunal concluded that at the mediation meeting on 2nd March 2018 a *'mutually agreeable solution to resolve'* had been achieved in terms of the Grievance SOP, and therefore this should have concluded the Claimant's grievance process with a communication in accordance with para 4.4⁵.

It should be made clear to individuals engaging in the mediation process that these are to be conducted by qualified personnel, who will ensure the process is conducted within the scope of the Respondent's SOP's. From our experience, the education of individuals involved in the mediation process is paramount to its success.

There has been distinct lack of an appetite to engage as a result of a lack of knowledge. It is not apparent from the Tribunal judgement as to whether the process was explained to all parties. Although given it was undertaken by an unqualified mediator, if it was explained, it may not have been done as thoroughly as if by a trained mediator.

Mediation is an underutilised process which has many advantages, and which it seemed at face value had resolved matters between the parties in this case. There is

⁵ Paragraph 4.4 of the Grievance Policy

no guarantee, but this is another pivotal point in the Claimant's complaints that may not have continued were it not for the actions of Area Commander Russell.

The recommended courses of action are:

- Ensure mediation is conducted only by trained mediators.
- Educate those engaged in the grievance process about the prospects of resolution by way of mediation.
- Training on the differences between Grievance SOP and mediation.

D. Re-opening of grievance matters by Area Commander Russell

The grievance process should not have been reignited by Area Commander Russell. It had been resolved. There are a number of failings that arise in relation to the handling of the grievance by Area Commander Russell, they are as follows:

- Area Commander Russell was not the Claimant's line manager and should not have been dealing with the grievance (para 4.4.b of the Grievance SOP).
- The Claimant was not informed of the continuation of the process nor in fairness was T/Inspector Warhurst (para 4.4.d of the Grievance SOP).
- There were four versions of the grievance outcome with the final version produced four months later which was out with the SOP's timescales (para 3.5.a and 3.5.c of the Grievance SOP).
- Failure to avail of the option to extend time to resolve the grievance (para 5.1 of the Grievance SOP).

The Tribunal recorded that at no point did any of the four versions of the grievance report acknowledge that the email sent on 10th January 2018 was sexist and discriminatory.

The Grievance SOP para 4.4.2 provides that,

"those responsible for dealing with grievances should bear in mind that the procedure is not aimed at establishing innocence or guilt and must be proportionate."

As such, it would have been prudent for Area Commander Russell to allow for the suspension of the grievance investigation and to contact HR or PSD to investigate potential misconduct/disciplinary issues. Instead, she did not address the claims but apportioned blame to the Claimant by stating:

“Both T/Inspector Warhurst and Constable Malone agreed to communicate with each other in a more appropriate and respectful way.”

The Grievance SOP provides that in some cases additional enquiries may be required to gather more information and/or establish more facts or perceptions⁶. It is unclear from the information provided if Area Commander Russell did source the view of others, such as Superintendent Irvine who while giving evidence stated he was furious with the email, which he considered to be ‘*overtly sexist*’, and Sergeant Coates who also stated she was ‘*angry and horrified*’.

There were enough findings in fact by the Tribunal for it to reach the conclusion that the handling of the grievance by Area Commander Russell amounted to detriment. In determining if the reason for the detriment was due to a protected act, the Tribunal gave regard to the evidence of Area Commander Russell that she did not want her final years with the Respondent to be overshadowed by a grievance of sexism. Further, the Tribunal accepted the evidence of Sergeant White, stating that Area Commander Russell had described the grievance as ‘*petty*.’ It was not considered necessary by the Tribunal to consider shifting the burden of proof, therefore the Claimant succeeded in her claim that she had been victimised in the handling of her grievance.

It is imperative senior management lead by example - making comments such as the aforementioned are wholly inappropriate. Whilst it is not appropriate in all cases to accept responsibility and apologise, this would have been an opportune time to do so in respect of the email sent by T/Inspector Warhurst. Furthermore, it would have been appropriate at this stage to initiate a referral to Professional Standards for consideration. It is important to remember at this time the only reason the email was not deemed discriminatory by the Tribunal was because of the swift action taken by

⁶ Para 4.4.2 of Grievance Standard Operating Procedure

senior management. Notwithstanding this, the response proffered by Area Commander Russell and lack of reference to the email makes light of the situation.

The recommended courses of action are:

- Roll out of training in relation to the Grievance SOP.
- Sanctions for failure to comply with the Grievance SOP.
- Refresher/Roll out of equality and diversity training as set out in the Equality, Diversity and Dignity SOP.

E. Failure to objectively and impartially consider the grievance

This arises as a result of the insistence of Area Commander Russell hearing the grievance. Not only did she manage the mediation process she continued to address the grievance. It is apparent from her findings as referenced above that she did not consider the grievance of much importance. Regardless of her own opinion this should not have been aired, nor should her own views of the severity of the complaints overshadow the views of the Claimant.

Following the flippant comment and the apportioning of blame, it is difficult to consider that the Grievance SOP was applied objectively and impartially. There appears to be a vested interest by Area Commander Russell in its conclusion, which unfortunately only led to the complaints of victimisation that ensued.

F. Requirement for production of GP fit note

The protected act in respect of the above was deemed to be the Claimant's first grievance on the 2nd February 2018. The Tribunal found that the requirement for a GP report would delay the Claimant's return to full duties. In doing so this resulted in a lack of confidence and a feeling of isolation for the Claimant, which was considered to amount to a detriment.

T/Inspector Warhurst was not the Claimant's line manager at the material time and it was found that this was the first time he had requested a GP report in cases such as the Claimant's. Further, Optima informed the Claimant that there was no need for a referral to her GP. Despite this, there were other routes available to obtain medical

information quicker, such as referring the Claimant to Optima itself or to the Respondent's Chief Medical Examiner.

The explanation offered by the Respondent, namely that a GP report had to be commissioned for accountability purposes, was not accepted. Therefore the burden of proof was not discharged and the Tribunal found that the Claimant was victimised in respect of the referral to her GP via Optima in March 2018.

The key learning point from this finding is that consistency in application of process is crucial. There is no apparent reason for the difference in treatment of the Claimant to others, which is what led to the Tribunal's finding that this was because the Claimant had raised a grievance.

G. Knowledge of "boys club" culture in Armed Policing

It was heard during the course of the Tribunal that the culture experienced within Armed Policing was described as, '*absolute boys club*' and '*horrific*'. What is of particular relevance is the derogatory comments made regarding female officers within ARV. On one occasion T/Inspector Warhurst, when referring to a female colleague Constable Taylor, stated to a male officer, '*you are going to end up f***ng that*'. On the second occasion he referred to a colleague's pregnant wife as '*a right fat b**ch – a f***ing fat **tch*'. Further to this, two male colleagues gave evidence that T/Inspector Warhurst posted images of topless females into a work group chat containing fellow Sergeants.

These actions breach Standard 3.3 - Authority, Respect and Courtesy:

Para 3.3.1; police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

In addition, Standard 3.4 Equality and Diversity is contravened:

Para 3.4.1 police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly and also Para 3.4.4 police officers pay due regard to the need to eliminate unlawful discrimination and promote equality of opportunity and good relations between persons of different groups.

The Police Service of Scotland (“the Regulations”), in particular regulations 3.2.1 and 3.2.2 state:

‘police officers are honest, act with integrity and do not compromise or abuse their position,’ and ‘police officers act with integrity and are open and truthful in their dealings with the public and their colleagues so that confidence in the police service is secured and maintained.’

Standard 3.10 - Discreditable Conduct of Standards of Professional Behaviour which states:

‘police officers behave in a manner which does not discredit the police service or undermine public confidence, whether on or off duty.’

Contrary to this, the Tribunal found that the evidence given by T/Inspector Warhurst under oath was contradictory, confusing and ultimately incredible. He repeatedly failed to provide clear answers to questions, and insofar denied saying derogatory comments and sending inappropriate images. It is worthy of note however, his answer to the questions posed on this point changed from being, *‘fairly confident’* to *‘categorically did not send’*, which led to the Tribunal preferring the evidence from the Claimant’s witnesses.

T/Inspector Warhurst provided evidence that was misleading, dishonest and discriminatory, as well as being found to have circulated offensive material and express behaviour which may bring the organisation into disrepute. These actions may cause reputational harm to the organisation and arguably did so by virtue of these proceedings, therefore breaching Regulation 3.10.1 which provides:

“Police officers behave in a manner which does not discredit or undermine public confidence, whether on or off duty”.

[REDACTED]

[REDACTED]

[REDACTED]

In terms of addressing the departmental cultural issue, consideration should be given to the following:

- Identifying the reasons why females are underrepresented; including the review of selection criteria so as to understand any barriers to women joining the Firearms Unit.
- Review the criteria for postings in the team.
- Educate the organisation about the Unit to encourage interest.
- Consider mentoring/transfers into unit.
- Train the whole team on acceptable conduct within the organisation.
- Set out the sanctions for failing to comply with same.
- Encourage reporting of inappropriate behaviour.

Undertaking these tasks will by no means necessarily resolve the culture (which may be that of only a few); however failing to appropriately address the issues may only result in further criticism should they arise again in similar cases.

H. Detriment by failing to accept second grievance

On the 18th June 2018 the Claimant submitted a second grievance. On the 4th July 2018, Michaela McLean, a HR Business Partner, informed the Claimant that the second grievance was not, in her opinion, a competent grievance, stating:

“The recent submission provided by PC Malone reiterates the matters raised during her original grievance, which has already been addressed”

Michaela McLean suggested instead that the Claimant refer to PSD.

This statement does not align with the Grievance SOP. The second grievance was found by the Tribunal to contain 22 new complaints based on the issue of the handling of the first grievance by Area Commander Russell, therefore the rejection ultimately precluded the Claimant from following the Grievance SOP.

Further to this Michaela McLean informed the Claimant she was outside the timescale to appeal the first grievance, as provided by the Grievance SOP. The issue the Tribunal found was that no reason was provided for the delay in the grievance reports prepared by Area Commander Russell. No consideration was given to extending the period for appeal by the Claimant. Equally no reasonable explanation was provided as to why the second grievance did not proceed. These actions ultimately led to the

Tribunal concluding that by preventing the Claimant from exercising their right under an organisational produced Grievance SOP constituted as a detriment.

Once again there is a clear lack of understanding of the application of the Grievance SOP. Those who advise others on the application of the SOP should be well educated on the process. It may have been appropriate in this case to have sought advice/guidance from Legal if there was any doubt as to appropriate measures to deal with the matter.

I. Failure to progress IHR application

On the 23rd May 2019 the Claimant applied for Ill Health retirement (IHR). On the 25th October 2019 at a postings panel meeting the Claimant's application for IHR was considered. The postings panel is responsible for determining if an individual meets the criteria for IHR. From the evidence presented the Claimant did meet this criteria, as she was in possession of two unequivocal medical reports which ultimately determined that the Claimant was medically unable to return to work.

The application was not however progressed. Mr Muir's explanation for same was that it was because he had a '*general feeling of unease*' which was determined to be because of the Tribunal proceedings.

Further to this, the reasons provided by Mr Muir for the lack of progress was that further information should be considered by Dr Watt, and that consideration should also be given to commissioning an independent psychiatric report. The Tribunal found he neither provided such further information for consideration by Dr Watt nor did he instruct an independent psychiatric report.

Mr Muir provided a contradictory statement to the Claimant's legal representation in regards to the position/progress of the application for IHR, compared to the explanation given to Superintendent David Pettigrew to which the Tribunal found the actions to '*be neither honest nor reasonable*'.

It is evidently clear that the actions displayed by Mr Muir are unbecoming of an employee under the authority of Police Scotland and of an individual at senior level within the organisation. It is not the role of HR to impede an application for IHR through

as defined by the Tribunal, inappropriate, unreasonable and dishonest means that were pre-meditated and non-accidental.

J. Attempt to down play T/Inspector Warhurst's email by Inspector Findlay

The Tribunal found that T/Inspector Findlay's conduct during the impromptu meeting with the Claimant and T/Inspector Warhurst was defensive of the sexist email. The meeting deteriorated further leading to the threat to remove the Claimant's firearms licence.

Notwithstanding the content of T/Inspector Warhurst's email, the attempt to in some way defend its content is completely unacceptable. In doing so, it is entirely conceivable that such behaviour led the Claimant to react in the way in which she did at the meeting. By failing to acknowledge the discriminatory and sexist nature of the email, Inspector Findlay failed to comply with (the "Regulations") in particular:

Regulation 3.11.1:

"Police officers report, challenge or take action against the conduct of colleagues which has fallen below the standards of professional behaviour expected"

Regulation 3.11.2:

"police officers are expected to uphold the standards of professional behaviour in the police service by taking appropriate action if they come across the conduct of a colleague which has fallen below these standards. They never ignore such conduct."

Moreover, para 3.4.1 of The Standards of Professional Behaviour states:

"police officers act with fairness and impartiality, they do not discriminate unlawfully or unfairly."

Given the findings of the Tribunal T/Inspector Findlay's conduct would not fall within the scope of the aforementioned requirements. It was determined he did not remain impartial and subjective. In failing to do so he may be considered to be in contravention of Regulation 3.1.5 which states:

“those entrusted to supervise manage and lead others are role models for delivering a professional, impartial and effective policing service. They have a particular responsibility to maintain standards of professional behaviour by demonstrating strong leadership and by dealing with conduct which has fallen below these standards in an appropriate way.”

It is worthy of note that T/Inspector Findlay was not the Claimant’s direct line manager. It is unclear from the Tribunal’s decision as to why T/Inspector Findlay sought to engage with the Claimant and Inspector Warhurst. Once again it is conceivable that had due process been followed i.e. the Claimant’s line manager addressed the matter with the benefit of HR advice/support matters may not have progressed as they did.

Part 2

2.0 - Review by Professional Standards Department

PSD have already undertaken a review of the conduct and behaviours of the witnesses concerned in this case which have already been presented. For completeness, the reviews are included at Appendix A to E.

3.0 - Engagement with Witnesses by Legal

It has been noted that some witnesses felt they were ill-prepared in advance of the hearing. As such measures should be put in place to ensure witnesses are informed and supported throughout the process by the Employment Team.

The following measures should be considered:

Consultation 1

- Claim form circulated to all witnesses for instructions and service of any relevant discovery.
- Meeting arranged by employment solicitor with witnesses following submission of the defence.
- Introduce the Legal team and explain its role.
- Offer support and assistance to witnesses.
- Explain the next steps in the Tribunal process from submission of defence to witness statement preparation.
- Remind all witnesses if they have any queries re the case or process to contact any member of employment team for assistance.

Consultation 2

- Usually with counsel present.
- Discussion about Claimant's witness statement(s).
- Instructions from witnesses about their response to Claimant's statement.
- Guidance provided to witnesses to assist them in writing their statements.

Consultation 3

- Held approximately 2-3 weeks prior to Tribunal hearing.
- Tribunal process explained to witnesses to include but not be limited to:
 - Room layout
 - Giving evidence
 - Panel
 - How to address the panel
 - Tell the truth
 - If you cannot remember what happened it is okay to respond accordingly.
 - Preparation – know the Claimant’s statement, know your own statement and all supporting paperwork.
- Discuss witness timetable and availability.

During the course of the hearing the witnesses should either be emailed or phoned (as appropriate) to advise of evidence presented by Claimant’s side and progress with the case⁷. In addition, where the case is progressing more quickly or there has been slippage, engagement with the witnesses should take place to ascertain if there is any scope for them to attend earlier/later.

Prior to giving evidence efforts should be made to have some time set aside with counsel on the day. This is to allow the witnesses to ask any questions and for counsel to raise any matters of importance with the witness.

Consultation 4 (optional)

- Lessons learned following Tribunal outcome.
- Employment Team and/or counsel identify Lessons Learned.
- Meet with the relevant witnesses provide feedback in relation to the judgement and if appropriate on other matters that have arisen through the full Tribunal process.
- Provide suggested solutions to the foregoing.

⁷ Please note pre-COVID our witnesses would have attended in person to hear the Claimant’s evidence. It is hoped this will be facilitated again in the future.

- Engage with departments where recommendations need to be made e.g. HR re process application and need for training – making it clear it is not for Legal to lead with these but to support where appropriate.

Consultation 5 (or Email)

- Request feedback from witnesses in respect of engagement with Employment Team and seek any suggestions for improvement.
- This may be included as part of consultation 4 if all witnesses are in attendance.

4.0 - Continued Case Review

To avoid a feeling amongst witnesses that the Employment Team are not fully engaged with them, continued case reviews and contact with parties is recommended e.g. to update parties that a case has been settled before a hearing. This will help witnesses feel that they have not unnecessarily spent time working on a case that is not to proceed.

The Employment Team should assess a case based on; the claim, defence, discovery and instructions received, in a continuing process. Applications for Deposit Hearings should be made where there are weaknesses identified early in the process. In the event these are unsuccessful, costs warning letters should be issued, where appropriate.

An early opinion from counsel should be sought to gauge prospects of success. As information is collated via the discovery and additional information process, further assessment of the merits in the case should be considered by the Employment Team. This conduct should continue through to the drafting of witness statements and ultimately until commencement of the hearing.

The introduction of this process may lead to the defence of a number of cases, withdrawal by the Claimants and fewer cases being settled. Keeping witnesses informed of the process should have a fundamental difference to the engagement and relationships between the parties for the better.

5.0 – Advice and Recommendations

Training

This may be an opportune time for HR to review the Grievance SOP to establish if it is up to date and fit for purpose in advance of rolling out any training

The training should be rolled out to any officer or staff member who may undertake the grievance process. It is accepted this is a substantial undertaking which will be time consuming task and would recommend considering this is undertaken externally. We would suggested that your HR consider the use of junior barrister to undertake this. Not only could the barrister draft the training but they could also deliver it in-person.

In addition, training should also be rolled out to all officers and staff on Equality and Diversity. There are identifiable individuals who are in need of this training although it would do no harm to refresh all. It is recommended training is firstly rolled out to those teams where there is a perceived “men’s club” culture, with a clear message where the SOP is contravened this may give rise to disciplinary or misconduct referrals.

Advice

At various stages throughout this case there were opportunities to restrict exposure of the organisation further, however these were not availed of. The profile of HR and Legal within the organisation is not known, however it would be a benefit to officers and staff to know more about these departments, their role and the service provided. This can be done in a variety of ways e.g. email, Webex introduction or in person presentations. Not only will this enhance the profile of the department it may lead to earlier engagement by individuals who may be guided through processes or cases by an appropriate team, thereby improving outcomes and prospects of successfully defending proceedings.

Surveys

In order to move forward it is important to understand the perceptions of not only those within those departments, but others out with the departments, of the culture of these

departments. The questions should be tailored in such a way that allows information to be gathered on:

- Views of others in the organisation.
- Why these views exist.
- Perceived barriers to entering these teams.
- Are there any other teams/departments with similar cultures/barriers.
- Own experience.
- Suggested solutions.

In conjunction with a cultural survey the views of officers and staff in relation to sexual misconduct in the workplace should also be canvassed. As part of this review due thought should be given to the need to review historic cases in which allegations of sexual misconduct were advanced, to ensure they were appropriately addressed

Firearms Unit

We strongly recommend that the structures, recruitment, selection processes pertaining to Firearms Unit are reviewed, to ensure that they are fully compatible with equality legislation and that any barriers to selection are addressed.

Moving Forward

Following review of the recommendations consideration will need to be given to the order of priority. HR need to arrange for training to be developed and rolled out in respect of the Grievance SOP and Equality and Diversity as soon as possible. Measures will need to be enforced to ensure that refresher training is rolled out in the future as frequently as is necessary e.g. at least annually for those frequently dealing with grievances. If an individual is new to reviewing grievances, then refresher training should be offered in advance of commencement of the grievance review.

To further assist with improving the grievance process there should be an HR presence at meetings with the purpose to not only take verbatim notes, but to provide HR advice as and when required to the individual hearing the grievance. Additionally, HR must be fully trained on the SOP.

Both HR and Legal need to develop and implement a strategy to enhance their profiles within the organisation. Legal should take particular care to ensure the boundaries between the role of HR and Legal are clear to ensure queries are directed to the appropriate department.

The surveys should be drafted by both PSD and HR with, where necessary, legal input. Once issued project teams should be set up to address the outpouring from the surveys and to facilitate implementation.

Finally, a definitive message should be issued by the Senior Executive team to the organisation immediately promoting the organisation's views on equality and diversity in the workplace with a no tolerance to any conduct to the contrary. This communication can set out the steps as mentioned above that will be taken in the very near future to combat the existing issues going so far as to say any conduct contravening these values may be subject to disciplinary/misconduct review.

6.0 - Conclusion

It is apparent from the review that there were opportunities whereby had procedure been followed at the time it may have had a bearing not only on the outcome of the Tribunal proceedings but whether the Claimant would have progressed the matter to that stage.

Greater engagement by the individuals concerned with HR and Legal (employment) is more than likely to have ensured due processes were followed; albeit it is noted that the advice of a senior HR officer was ignored by the Area Commander. Notwithstanding this, individuals within the organisation should be aware that HR and Legal are available to advise in these processes. Not only does this limit the incorrect application of policies and procedures it also puts cases on the radar of these functions in the event anything further arises.

It is not clear from the judgement as to whether the failure to follow advice from the senior member of HR was escalated. This failure to follow HR advice would have warranted escalation. The outcome of the process may have been different had this been followed. As such, HR need to be confident in their advice and where necessary flag concerns to more senior team members to endeavour to address the issues.

Based on the information available there is a gap in training in a number of respects in this case. The key areas for training are in relation to Equality Diversity and Dignity SOP's as well as the Grievance SOP. With regards to Equality, Diversity and Dignity training this should be rolled out to everyone within the team initially and if not, already done, organisationally. It is imperative that it is made clear that breach of this training and the Standards of Professional Behaviour will not be tolerated and may lead to misconduct/disciplinary sanction including but not limited to dismissal.

The Equality, Diversity and Dignity training should have particular focus on branches within policing where there is a "boys club" culture. To effectively train individuals on this subject matter consideration should be given to using examples of the type of conduct that is not tolerated. This would be key, as the conduct is often wrongly labelled as "banter" and not given the attention it warrants. Every individual within a

team should be treated with the same degree of respect and courtesy as others, with no exceptions.

In addition, Grievance training should be undertaken and it is the recommendation that this is done in person for a number of reasons. The grievance process is not straightforward. Timescales set out in the SOP are to be adhered to and where this has not occurred other than for good reason there must be consequences for failing to meet same. From experience, part of the reason timescales are not adhered to is the degree of scrutiny by the individual hearing the grievance. Where this is a police officer, again from experience, the quality of investigation, whilst invaluable for instructions in litigation, is way beyond that required in the "employment process". It would not be possible in our view to "train" individuals on this very unique point in policing by way of an online course or paper based exercise.

Of use in any training is examples of cases there has been failure to apply SOP's, disregard for the SOP's and procedures and outdated/no training. It would be recommended using judgements from other forces and emergency services as examples rather those of any Police Scotland cases. This will preclude any complaints from previous Claimants. Any training should be refreshed on a regular basis to ensure recipients are up to date with process and procedure.

We make mention of the "boys club culture" briefly above in relation to training needs. There are further considerations that need to be explored in relation to this alleged culture. If there are fewer/no females in the departments what are the reasons for this – is the selection criteria preventing females from applying, is the culture preventing females applying. These are all areas that need to be explored in removing this culture from the organisation.

In summary, to ensure the Respondent is protected as much as possible significant training needs to be either rolled out or refreshed in a number of subject areas. The training in itself will not preclude staff and/or officers breaching these policies, it may however give the Respondent a stronger defence in future proceedings by allowing it to demonstrate the conduct is not condoned nor about which they were trained. In addition, it should lay stronger foundations for disciplinary/misconduct when it can be demonstrated training has been undertaken. Notwithstanding this, it is the individual

who is responsible for their own actions, it is for the Respondent to demonstrate all necessary measures have been taken to preclude such behaviour to separate the actions of individuals from being considered as those of the Respondent.