



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. R Adams

**Respondent:** The Commissioner of Police of the Metropolis

**Heard at:** London South Hearing Centre (by Cloud Video Platform  
and in person)

**On** 2/3/4/5/6/9/10/11 August 2021 (in chambers 14/15 October  
2021)

**Before:** Employment Judge McLaren  
**Members:** Ms. G Mitchell  
Mrs. F Whiting

**Representation**  
Claimant: In Person  
Respondent: Ms. K Loraine, Counsel

## JUDGMENT

The unanimous decision of the tribunal is that:-

1. The respondent did not contravene s13 of the Equality Act in relation to the protected characteristic of age by
  - a) Failing to appoint the Claimant to the Safer Neighbourhood Role in January and September 2018.
  - b) Blocking the Claimant's attachment to Leading for London on 19 September and 3 October 2018
  - c) Failing to adjust the Claimant's shifts in line with medical recommendations to enable him to remain in the workplace between June and August 2018
2. The respondent did not contravene s13 of the Equality Act in relation to the protected characteristic of sex by refusing to create a role to accommodate the Claimant's medical needs at the time when a role was created for a female Inspector, Inspector LM.

3. The respondent had knowledge that the claimant was disabled by reason of depression and anxiety with insomnia and poor concentration from 7 August 2018.
4. The respondent did not contravene s15 of the Equality Act by threatening to and/or reducing his pay.
5. The respondent did not contravene s 19 of the Equality Act in relation to the protected characteristic of disability by
  - ii. Requiring Inspectors and/or 'young Inspectors' to work shift patterns; and
  - iii. Requiring Inspectors and/or 'young Inspectors' to work late shifts.
6. The respondent did contravene s 19 of the Equality Act in relation to the protected characteristic of disability by requiring an Inspector to work at Sutton Police station only.
7. The respondent did not contravene s 20/21 Equality Act by
  - i. Amending his work pattern to non-shift work prior to May 2018;.
  - ii. Not allowing the Claimant to work from home in May 2018;
  - iii. Ensuring there was sufficient cover to enable the Claimant to work regular shift patterns in May 2018;.
  - iv. Not allowing the Claimant to work flexible hours to enable him to attend counselling prior to September 2018
  - v. Not carrying out a risk assessment in June 2018.
8. The respondent did contravene s 20/21 Equality Act by
  - i. Not allowing the Claimant to work at Bromley station prior to October 2018;
  - ii. Not allowing the Claimant to work from home in October 2018;
9. The respondent did not contravene s 26 Equality Act by
  - i. That on 2 May 2018, Supt Wright said that the Claimant's disabilities were 'self-inflicted'..
  - ii. That on 2 May 2018, Supt Wright told the Claimant: 'you are a young inspector and you get paid to do a job', with the inference to stop complaining and 'get on with it'.
  - iii. That on 23 May 2018, CI Haynes told the Claimant to 'go and get sleeping tablets'.
  - xi. That on 14 September 2018 CI Haynes instructed the Claimant not to amend his own shifts on CARMS;

**10. The respondent did contravene s 26 Equality Act by**

- vi. That on 17 October, Inspector Toby Noar told the Claimant that 'everybody suffers with insomnia';**
- vii. That on 25 October 2018, CI Hagley said that the Claimant's reputation with senior management was 'very poor' because he had been unwell and issued a grievance;**
- viii. That on 26 October 2018, CI Hagley told the Claimant 'you have got what you wanted' in response to the outcome of his appeal of the BCU posting;**
- ix. That on 19 September 2018, CI Haynes told the Claimant, 'you are not in the right frame of mind to look after people' and 'you are not resilient';**
- x. That on 25 October 2018, CI Hagley told the Claimant that he has to 'prove himself';**
- xi. That on 11 October 2018, Supt Wright told the Claimant: 'some people are very clever in how they get OH to say what they want'.**
- xii. That on 4 October 2018 CI Haynes contacted the Claimant after he had asked her not to do so;**

**11. The respondent did not contravene s 27 Equality Act by**

- i. A change in his Professional Standards role from a permanent to temporary (over-hold) post on 17 October 2018.**
- ii. Blocking his attachment to the Leading for London role on 19 September and 3 October 2018**
- iii. Rejecting his request to work from Bromley station on 10 September 2018.**
- iv. Forcing him to work unreasonable hours at Sutton station from May 2018 and**
- v. Refusing to permit him to work non-shift patterns, between May and August 2018.**
- vi. Sending the 80-day sickness absence and pay information letter on 1 August 2018**

# **REASONS**

## Background

1. We heard evidence from the claimant on his own account and from six individuals on behalf of the respondent. These were Julie Froud, CI Julian Hagley, CI Haynes, Supt Tamsin Jones, Supt Mark Lawrence Wright, and Inspector Toby Noar.
2. We were provided with an electronic bundle of over 1,545 pages. We accepted the late addition of a further policy, that on adjusted duties. In

reaching our decision we took account of the pages to which we were referred, the witness evidence and the parties helpful submissions.

### Issues

3. The issues in this matter were agreed as follows.

### JURISDICTION

1. Noting that the Claimant commenced EC on 8 October 2018, the EC certificate was issued on 17 October 2018 and the ET1 was presented on 15 November 2018;
2. Are any of the Claimant's claims out of time as:
  - a. They occurred more than 3 months before on or before 8 July 2018; and
  - b. They do not form part of a continuing act or state of affairs; and
  - c. It is not just and equitable to extend time

### CLAIMS

#### Direct Age Discrimination(s13 Equality Act 2010)

3. Did the Respondent treat the Claimant in the following ways as alleged:
  - a. Failing to appoint him to the Safer Neighbourhood Role in January and September 2018.
  - b. Blocking the Claimant's attachment to Leading for London on 19 September and 3 October 2018
  - c. Failing to adjust the Claimant's shifts in line with medical recommendations to enable him to remain in the workplace between June and August 2018.
4. In respect of each alleged act, did this constitute less favourable treatment?
5. If yes, was the less favourable treatment because of the Claimant's age?
6. In respect of each act, who is the comparator relied on or does the Claimant rely on a hypothetical comparator?
  - a. In respect of the failure to appoint him to the Safer Neighbourhood role in January and September 2018, the Claimant contends that he was treated less favourably than Inspector CR (Chris Riggs) and/or Inspector DW (Dean Willis) or a hypothetical comparator despite being the highest scoring Inspector in the assessment.
  - b. The Claimant has referred to the Respondent blocking his attachment to Leading for London and treating him less favourably than Inspector JC (James Carrington) who despite having had the benefit of undertaking the attachment, was permitted to remain after his tenure finished. Failing that, the Claimant would rely on a hypothetical comparator.

- c. The Claimant has referred to Inspectors CM and/or Inspector DH having their hours adjusted by CI Clair Haynes and medical recommendations adopted to support them in the workplace. Failing that, the Claimant would rely on a hypothetical comparator.
7. Can the Respondent show the treatment of the Claimant to be a proportionate means of achieving a legitimate aim?
- a. In respect of the failure to appoint the Claimant, the Respondent contends that her legitimate aim was to conduct a fair recruitment process for the Safer Neighbourhood Role in January 2018 in respect of all the candidates who applied.
- b. In respect of the refusal of the Claimant's attachment to Leading for London, the Respondent's legitimate aim was her operational need to ensure that the BCU had sufficient staff resources to fulfil the necessary roles and resilience due to the BCU merger taking place, which meant that all requests for attachments were refused
- c. In respect of the alleged failure to adjust the Claimant's shift patterns, the Respondent relies on the operational needs of the Inspector role which required shift working to ensure that she maintains sufficient resource to provide 24/7 cover and provide this service to the public. To remove an Inspector from late or night shift duties requires additional cover to be provided which results in additional costs and alternative Inspectors being abstracted from their roles, which reduces the level of service provided in those areas.

#### Direct Sex Discrimination (s13 Equality Act 2010)

8. Did the Respondent treat the Claimant in the following ways as alleged:
- a. That the Respondent refused to create a role to accommodate the Claimant's medical needs at the time when a role was created for a female Inspector, Inspector LM.
9. Did this alleged act constitute less favourable treatment?
10. If yes, was the less favourable treatment because of the Claimant's sex?
- a. The actual comparator identified is Inspector LM. Failing that, the Claimant relies on a hypothetical comparator.

#### Disability Discrimination

11. Is the Claimant disabled as defined within section 6 and Schedule 1 of the Equality Act 2010 as a result of his diagnosis of 'depression, anxiety, with resulting insomnia, poor concentration'?
- It is now conceded that the Claimant does satisfy the S.6 definition, however, the date from which he satisfied that definition, and the Respondent's knowledge of it are issues for the Tribunal to determine.
12. Claimant to confirm for each condition relied on:
- a. When he began to suffer from the condition;
- The Claimant states in his ET1 that he has been suffering from these conditions since October 2017
- b. When it was diagnosed;

The Claimant states that these conditions were diagnosed on 31 May 2018.

- c. Have these impairments affected the Claimant's ability to carry out normal day-to-day activities?

The Claimant refers to:

- i. Physical exhaustion;
  - ii. Emotional imbalance;
  - iii. Irritability and lack of patience;
  - iv. Chronic insomnia and irregular sleep pattern if he is able to fall asleep;
  - v. Panic attacks;
  - vi. Inability to socialise with others;
  - vii. Inability to go to work sometimes;
  - viii. Inability to leave the house easily;
  - ix. Inability to drive; and
  - x. Inability to cook and clean on many occasions, resulting in missing meals;
- Items (i)- (v) and ( vii) are accepted.

Discrimination arising from disability (s15 Equality Act 2010)

13. For each condition relied on, from what date did the Respondent know, or could she reasonably have been expected to know that the Claimant was disabled?

14. The Claimant states that the Respondent had knowledge of the Claimant's conditions (depression and anxiety) before his diagnosis, and that he provided his GP Report to CI Clair Haynes on 1 June 2018 which stated his diagnosis.

The Respondent agrees she had knowledge of the Claimant's diagnosis from 1 June 2018 (which was a new diagnosis) and sufficient knowledge that the Claimant's condition was likely to be considered a disability from 7 August 2018.

15. Did the Respondent treat the Claimant unfavourably because of something arising in consequence of the Claimant's disability?

16. The 'something arising' relied on by the Claimant is his sickness absence.

17. What was the unfavourable treatment the Respondent threatening to and/or reducing his pay?

The Respondent denies that the Claimant was moved or threatened to be moved to half pay. The Claimant was informed, on 1 August 2018, of the date that his salary would be reduced to half pay in accordance with the Police Regulations (Regulation 28) and the Respondent's policy. The Claimant had returned to work before this time and his pay was not reduced.

18. Can the Respondent show that such treatment was a proportionate means of achieving a legitimate aim?

19. The Respondent submits that her legitimate aim was to manage the attendance of her officers which is important to ensure the efficiency and resilience of the police service and to provide its service to the public at a proportionate cost to the public.

If it is found that the Respondent had treated the Claimant unfavourably, the Respondent submits that this treatment was a proportionate means of

achieving her legitimate aim, to ensure the efficiency and resilience of the police service at a proportionate cost to the public.

Indirect Disability Discrimination (s19 Equality Act 2010)

20. Did the Respondent apply a provision, criterion or practice (PCP) which was discriminatory in relation to the Claimant's disability?
21. What is the PCP or PCPs that the Claimant relies upon?
  - i. Requiring an Inspector to work at Sutton Police station only;
  - iii. Requiring Inspectors and/or 'young Inspectors' to work shift patterns; and
  - iv. Requiring Inspectors and/or 'young Inspectors' to work late shifts.
22. Did or would the Respondent apply such PCP(s) to other persons with whom the Claimant does not share the characteristic (disability)?
23. Did or would such PCP(s) put persons who share the same protected characteristic as the Claimant at a particular disadvantage when compared with persons with whom the Claimant does not share that characteristic?
24. Did such PCP(s) put the Claimant at a substantial disadvantage?
25. The Claimant states that this put him at the particular disadvantage of accumulating high sickness absences due to his inability to consistently work the required shift patterns, work late shifts and/or work at Sutton Police Station. He also alleges that his health was at risk as the requirements and expectations caused him undue stress and anxiety, worsening his condition.
26. Can the Respondent show that the PCP(s) were a proportionate means of achieving a legitimate aim so objectively justified?
27. The Respondent submits that her legitimate aim was to ensure sufficient cover of Inspectors, in order to maintain the efficiency and resilience of the police service. The Respondent also had an operational need for the requirement for all Inspectors to work shift patterns to provide a 24/7 level of service to the public. Requiring officers to work at designated stations is also necessary for operational requirements and to ensure consistent supervisory presence. The Respondent submits that was carried out in a proportionate manner.

Failure to make Reasonable Adjustments (s20 and s39(5) Equality Act 2010)

28. Did the Respondent apply a provision, criterion or practice (PCP) to the Claimant?
29. What are the PCPs that the Claimant relies upon?
  - i. Requiring an Inspector to work at Sutton Police station only;
  - ii. Requiring Inspectors and/or 'young Inspectors' to work shift patterns; and
  - iii. Requiring Inspectors and/or 'young Inspectors' to work late shifts.
30. If so, did the PCP(s) put the Claimant at a substantial disadvantage in comparison to persons who are not disabled? What is the disadvantage?
31. The Claimant states that this put him at the particular disadvantage of accumulating high sickness absences due to his inability to consistently work the required shift patterns, work late shifts and/or work at Sutton

Police Station. He also alleges that his health was at risk as the requirements and expectations caused him undue stress and anxiety, worsening his condition.

32. At the time the PCP was applied, for each condition relied on, did the Respondent know or could reasonably have been expected to know that the Claimant had a disability and was likely to be placed at that disadvantage by the PCP?

33. The Claimant states that the Respondent had knowledge of the Claimant's conditions (depression and anxiety) before his diagnosis, and that he provided his GP Report to CI Clair Haynes on 1 June 2018 which stated his diagnosis.

34. What steps did the Respondent take to avoid that disadvantage?

35. The Respondent relies on the following steps:

- i. Referring the Claimant to Occupational Health on 3 April and 25 May 2018;
- ii. Adjustments to the Claimant's shift pattern upon his return to work on 23 April 2018 including removal from night duties, and subsequent removal from late shifts from September 2018;
- iii. The Claimant was allowed time off during work to attend private counselling sessions from September 2018;
- iv. The Claimant was permitted to work office hours (8:00am to 4:00pm) from September 2018;
- v. The Claimant was permitted to work from Bromley and/or Croydon Police Station from 15 October 2018.
- vi. The Claimant was appointed to a permanent role in the Professional Standards Unit (PSU) on 25 October 2018 working office hours Monday to Friday.

36. What reasonable steps does the Claimant allege the Respondent should have taken and did not?

- vii. Amending his work pattern to non-shift work prior to May 2018 and/or;
- ix. Allowing the Claimant to work at Bromley station prior to October 2018 and/or;
- x. Allowing the Claimant to work from home in May and October 2018 and/or;
- xi. Ensuring there was sufficient cover to enable the Claimant to work regular shift patterns in May 2018 and/or;
- xii. Allowing the Claimant to work flexible hours to enable him to attend counselling prior to September 2018.
- xiii. Carrying out a risk assessment in June 2018

37. Were such steps reasonable and if so, when did it become reasonable to take any such step?

#### Harassment

38. Was the Claimant subjected to the following conduct:

- i. That on 2 May 2018, Supt Wright said that the Claimant's disabilities were 'self-inflicted'
- ii. That on 2 May 2018, Supt Wright told the Claimant: 'you are a young inspector and you get paid to do a job', with the inference to stop complaining and 'get on with it'.
- iii. That on 23 May 2018, CI Haynes told the Claimant to 'go and get sleeping tablets'



- iv. That on 17 October, Inspector Toby Noar told the Claimant that 'everybody suffers with insomnia';
- v. That on 25 October 2018, CI Hagley said that the Claimant's reputation with senior management was 'very poor' because he had been unwell and issued a grievance;
- vi. That on 26 October 2018, CI Hagley in told the Claimant 'you have got what you wanted' in response to the outcome of his appeal of the BCU posting;
- vii. That on 19 September 2018, CI Haynes told the Claimant, 'you are not in the right frame of mind to look after people' and 'you are not resilient';
- viii. That on 25 October 2018, CI Hagley told the Claimant that he has to 'prove himself'; and
- ix. That on 11 October 2018, Supt Wright told the Claimant: 'some people are very clever in how they get OH to say what they want'.
- x. That on 4 October 2018 CI Haynes contacted the Claimant after he had asked her not to do so;
- xi. That on 14 September 2018 CI Haynes instructed the Claimant not to amend his own shifts on CARMS;

39. If the Claimant was subjected to the conduct set out above, was it: Unwanted conduct related to his disability; and did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

40. If so, was it reasonable for the conduct to have that effect having regard to the matters referred at 26(4) EA 2010?

### Victimisation

41. Did the Claimant do a protected act within the meaning of EA 2010?

The Claimant states that the following amount to protected acts

- a. The submission of his grievance on 17 September 2018 (informal) and 5 October 2018 (formal) and/or;
- b. The appeal against the provisional posting under the BCU model on 26 September 2018.

42. If so, was the Claimant subjected to detriment(s) because he did any or all of those protected acts or because the Respondent believed he had done protected act(s)?

43. The Claimant relies on the following alleged detriments:

- ii. A change in his Professional Standards role from a permanent to temporary (over-hold) post on 17 October 2018.
- iii. Blocking his attachment to the Leading for London role on 19 September and 3 October 2018
- iv. Rejecting his request to work from Bromley station on 10 September 2018.
- v. Forcing him to work unreasonable hours at Sutton station from May 2018 and
- vii. Refusing to permit him to work non-shift patterns, between May and August 2018.
- vi. Sending the 80-day sickness absence and pay information letter on 1 August 2018

Preliminary matters

Application by the claimant to strike out the respondent's case.

4. The claimant submitted that he was prejudiced, and the respondent had abused process by serving the witness statements only a week before the hearing instead of 3 weeks before. He requested that evidence be provided for the reason for the delay. He also submitted that the application by the respondent on 29 July was an abuse and prejudicial because he had insufficient time to consider a 62-page bundle and complex application.
5. The respondent submitted that the delay in exchanging statements was a result of an earlier agreed change to the timetable to accommodate the claimant's ill-health. This had meant that the statements were prepared during holiday season. They were prepared as quickly as possible. As to the late application, only 7 new pages were introduced, the majority of the 62 page bundle being documents from the main bundle and the timing was dictated by the time that statements were exchanged.
6. We considered this application in the light of the overriding objective to deal with cases fairly and justly, which requires as far as is practicable to ensure the parties are on an equal footing, dealing with cases in ways which are proportionate to the complexity and importance of the issues, avoiding unnecessary formality, seeking flexibility in proceedings, avoiding delay as far as is compatible with proper consideration of the issues, and saving expense.
7. We concluded that considering the overriding objective, the just and fair thing to the parties is to continue the case. The claimant has had an opportunity to consider the witness statements and will have an additional day to read the last 2 as the tribunal also needs a reading day. There is little or no prejudice to the claimant in continuing, but there would be considerable prejudice to the respondent if it is prevented from defending a case where it has prepared to do so. For these reasons we reject the claimant's application.

Respondent's application to strike out certain paragraphs of the claimant's witness statement.

8. Upon reviewing the claimant's witness statement, the respondent became aware that it contains a very large number of factual allegations which are not pleaded in the ET1/Grounds of Complaint. These matters are, for the most part, phrased as allegations of discrimination. In addition, two matters which are pleaded in the Grounds of Complaint, but which were not identified as legal claims/allegations in the Grounds of Complaint or List of Issues, were also phrased in this way.
9. The claimant confirmed by email dated 28 July 2021 that he does not seek to amend his claim to add any new allegations not pleaded but did want to add the two pleaded matters to the List of Issues.
10. The respondent agreed to add the additional pleaded matters to the List of Issues, but this originally left approximately 60 paragraphs of new/un-pleaded factual allegations that the claimant states he intends to rely on as background to 'prove' his case. This was how matters stood at the outset of the hearing.
11. We discussed the first of these contested paragraphs and the claimant explained that he had not had the claim form or agreed issue list front of mind when he was drafting the statement. We agreed to adjourn to allow him to

consider the position. Having done so, he provided an amended witness statement and the respondent confirmed it objected only to the inclusion of 6 paragraphs.

12. These were paragraphs 76,77,186 and 191, which relate to matters before the ET1 was filed, and paragraphs 202 and 203, which relate to matters after the ET3 was filed.
13. The respondent submitted that allegations which post-date the ET1 were the subject of an application for permission to amend made by the Claimant which was refused by the Tribunal on 11 June 2021. There has been no appeal against that decision. They were not relevant and so should not be permitted.
14. The allegations that relate to the period January 2018 to Oct 2018 were possibly relevant, but additional evidence would be required which would add to the time and costs of the hearing in a manner that would be wholly disproportionate. The respondent invited the Tribunal to consider the overriding objective when determining whether, and to what extent, to allow or exclude this evidence with particular regard to the desirability of concluding the case within the allocated hearing time.
15. We were directed to HSBC Asia Holdings BV and anor v Gillespie in which it was held that 'evidence may be, "logically" or "theoretically" relevant but nevertheless too marginal, or otherwise unlikely to assist the court, for its admission to be justified'. Tribunals have a discretion not to admit evidence that is only marginally relevant or unnecessarily repetitive. This discretion is a manifestation of the tribunal's general power to regulate its own proceedings in the furtherance of the overriding objective (rule 2).
16. We considered the matter and concluded that all the paragraphs in dispute were potentially relevant. We went on to consider the overriding objective and the possible additional time evidence on these may involve. We concluded this would be on the lower end of the scale. We also concluded that the 8-day listing was already inadequate for the evidence, as it did not permit sufficient time for deliberations or remedy. It was likely that the case would be part heard in any event, or at the least have the decision reserved.
17. Taking all these factors into account we determined that the paragraphs should remain in and that the balancing act between relevance and the time/cost implications of the additional evidence was not disproportionate and allowing these to be addressed met the overriding objective.

### Finding of facts

#### Duties

18. The claimant was posted on promotion to the role of Inspector in the Response team in Sutton on 3 July 2017. His line manager was CI Hagley. The role included managing a team of approximately 22 officers, being responsible for their day-to-day performance, welfare issues and resource issues.
19. The shift pattern was 2 early shifts, 2 late shifts, 2-night shifts followed by 3 or 4 rest days. This was a corporate shift pattern and was worked by all the response teams with team inspectors working the same pattern as their team. CI Hagley explained this was for consistency of the team's leadership and was required for operational reasons to ensure the response teams had sufficient resilience to provide cover 24/7. The aim is to ensure that the public

are served as the teams are first responders to 999 calls. We accept these are legitimate reasons for the shift patterns.

20. The claimant's appointment was as a TOWBAR inspector. This means that he needed to undertake a work-based assessment in order to complete the promotion.

#### Contractual terms and policies

21. The claimant was subject to a number of policies. The bundle included a document Sickness Absence Management: What you need to know- Police Officer. We were taken to a number of pages, in particular pages 142, 143, 144 and 146. We note that at page 142 the policy provides that there is no legal requirement for employers to take notice of the GP suggestions unless the individual is covered by the Equality Act 2010. Any suggestions made by a GP may form part of a recuperative duties programme set and authorised by occupational health and not the GP.
22. The policy also identifies, at page 142, that after 40 days of sickness absence the individual would be entitled to a case conference. This is a check on the progress individuals are making towards recovery and on their progress returning to work.
23. Page 143 contains a reference to ill-health retirement and states that if health does not improve enough for an individual to return to work and occupational health confirms that, a manager may want to consider whether they are eligible for ill-health retirement. Page 144, under the heading return to work, again specifies that a manager does not have to take GP's advice. Consideration will be given to their recommendations but recognising that the majority of the statements will be completed by GPs with little or no formal training in occupational health.
24. The same page also specifies that if an individual thinks they may have a disability, this should be raised with the manager, and they can explore whether it falls into the definition of disability, seeking advice from occupational health when needed. Under the heading occupational health, still on page 144, the policy specifies that it is for management to decide if any adjustments recommended by occupational health are reasonable and can be accommodated. We accept that the respondent's policies subordinates GPs advice to the expertise of occupational health.
25. The respondent places importance on attendance and this is reflected at page 146 of the policy under the heading "attendance management selection criteria". This specifies that in making some business decisions, for example, promotion selection, the respondent needed to be confident that people had a consistently high level of attendance to demonstrate their performance. Three years of sickness data were therefore required for promotion selection, although disability related absence can be considered with a 20-25% leeway being considered.
26. The Health in the Workplace What You Need to Know – Police Officer Policy contained advice in relation to reasonable adjustments at page 119. It also identified, at page 193, that where an individual is identified as suffering from stress, the obligation fell on the line manager to conduct a stress risk assessment to identify whether anything could be done to support them at work. This applied also to non-work-related stress. The policy also specified that while stress itself is not a diagnosed medical or psychiatric condition, if it is prolonged and develops into a diagnosed condition, such as anxiety or depression, those conditions may legally be considered a disability.

27. The “Health and the Workplace Manager’s Guide – Police Officer”, repeated this at page 203 and again provided that if an individual reported symptoms of stress, they should undertake a stress risk assessment. More detail of this is given at page 206 which set out the steps a manager should take for a team member because they are stressed, which included considering carrying out a formal individual stress risk assessment. How to do that was then set out at page 209 in some detail.
28. There was some uncertainty as to whether the stress advice and the need for a risk assessment was set out in such detail in 2018. We heard from CI Hagley, who was responsible for health and safety, that there was some guidance on this available. He confirmed that the information at page 358 was in place at the time. This explains when individual risk assessments might be required which included on recuperative/restricted duties.
29. We find that managers would reasonably be expected to understand the need for such assessments where an individual had raised the question of stress or depression and anxiety. They had sufficient information on how to complete them. We find that one was expected in the claimant’s circumstances, particularly when one was requested, and this did not occur.
30. We were provided separately to the bundle with the adjusted duties policy. It explained that adjusted duties are implemented if the individual is unable to complete normal duties in the workplace. The policy states that a line manager or occupational health may decide to recommend adjusted duties in a number of circumstances, including if an individual struggled to recover to fulfil full duties following a period of recuperation. This does not therefore always require occupational health intervention but is a decision a manager can take on their own.
31. To start the occupational health process where that applies, management may refer an officer to occupational health at any time if it is clear they are not going to make a recovery to full duties after a period of recuperative duties. Upon receipt of the referral, an individual would be given an appointment for assessment with an occupational health specialist. A recommendation would then be sent to the manager and its terms should be implemented.
32. We find that this is a formal process and the decision to declare an officer for “adjusted duties” lies solely with occupational health. We find that there is no time limit before the referral can be made, as the policy simply refers to it being clear that the individual is not going to make a recovery to full duties after the period of recuperative duties for an extended period.
33. A number of witnesses explained that the process of being designated as an adjusted duties officer was a lengthy one. It was suggested that an individual would not generally be sent for such an assessment until they had done recuperative duties for some 3 to 6 months. The claimant did not dispute this. We find it likely that this reference to a lengthy period would be some months rather than weeks and accept that it would be usual for recuperative duties to be tried for a number of months before any referral to consider permanent adjustments. We find that line managers would be aware of this likely time scale and would expect recuperative duties to be followed for some months

#### Safer Neighbourhood (‘SN’) vacancy

34. In January 2018 there was a selection process for a Safer Neighbourhoods Inspector because the incumbent was retiring. This was a day-based role and was not on a shift pattern because it had responsibility for a number of small local community teams. Each team had a different shift pattern, so it was

- considered more appropriate for the Inspector to work a Monday to Friday pattern. Nonetheless, the role required some flexibility and could involve occasional early and late shifts and some weekend working.
35. Three individuals expressed an interest in this role, including the claimant. In his application the claimant made reference to what he would bring to the role but made no reference to any welfare or health issues. He explained that he did not do so because he knew that CI Hagley was already aware of his welfare issues, and because he wanted to obtain the post on his own merits.
  36. One of the other candidates, Inspector Riggs, also made reference to what he would bring to the role, but included information that he was interested in the role for reasons connected with family life.
  37. CI Hagley confirmed that he was already aware that all three applicants had an interest in the security which this role provided to allow them to come off shift work. He confirmed that he was aware of the claimant's personal circumstances, that is that his partner had experienced work-related stress as this had been raised in an email to CI Hagley on 4 November 2017. CI Hagley was also aware that Inspector Willis had concerns about seeing his children and that Inspector Riggs was going through a separation and struggled to find time for his children whilst on shifts. Supt Lawrence was less aware of the details of the welfare issues, but broadly understood that all three candidates had some issues.
  38. It was agreed that the claimant was the highest scoring of all three candidates in the interview process and the decision-makers had determined to offer the role to the claimant. They decided to inform the unsuccessful candidates first and they therefore had a meeting with Inspector Riggs and informed him that he had not been successful.
  39. Supt Lawrence was taken aback by Inspector Riggs' reaction. He described it as a volcano of emotion coming out and felt that he was provided with entirely new information. CI Hagley confirmed that Inspector Riggs told him that he felt he had "done his time" and deserved the neighbourhood role because he had contributed a number of years as an inspector. He also said the increased ability to manage his hours would take pressure from him with regards to his children.
  40. Both interviewers concluded that this was individual at crisis point with a pressing welfare need. Supt Lawrence explained that he therefore decided to abandon the carefully thought-out selection process that had identified the claimant as the best candidate and to change the basis on which a decision was made. The decision-makers therefore reconsidered the position and decided to appoint Inspector Riggs.
  41. Both CI Hagley and Supt Lawrence gave evidence that their decision was not based on the age of any of the candidates, the main deciding factor was welfare grounds. Both agreed that when they met with the claimant to tell him he was not getting the job, had the claimant provided the same level of emotional information that Inspector Riggs had done, they might have had to rethink the decision again. With hindsight both accepted that it might have been best to go back to all three candidates and ask them for the same information. We find that having started by running a fair recruitment process, they then deviated from this which undermined the legitimacy of the recruitment exercise.
  42. In his statement Supt Lawrence suggested that both the other candidates had more experience than the claimant. He accepted in his evidence that this was not the case. Mr Riggs had been an inspector for longer, but the other candidate had been in an inspector role around the same length of time as

the claimant. Supt Lawrence explained that by experience he meant experience relevant to the role and that this was not linked to length of service and therefore age.

43. CI Hagley's evidence was that having discussed the way the recruitment exercise had turned out, they both agreed that in future an expression of interest process would not be open to inspectors who were yet to complete the work-based assessment. We understand that this means that roles would not be available to newly promoted TOWBAR inspectors. Supt Lawrence gave slightly different evidence. He confirmed that they had discussed this and described it as a pause for thought. He accepted, however, that he could not remember clearly and did not dispute CI Hagley's account. We find that this was a settled decision which could mean in future recruitment exercises undertaken at a local level would not be open to inspectors who had not completed their work-based assessment.
44. It is not disputed that the claimant had been the high-scoring candidate, nor is it disputed that those interviewing had at the time felt the criteria being tested were the appropriate ones to carry out the role. We find that their decision to appoint Inspector Riggs was not just on welfare grounds, but also on grounds of experience. We reach this conclusion because CI Hagley and Supt Lawrence determined to place greater weight on experience going forward. We conclude that they would not have done so had experience not played some part in the decision-making on this occasion. Further, both witnesses have accepted that they were aware that all three candidates had welfare issues. On the balance of probabilities, we conclude that if welfare was the sole factor, they would have made additional enquiries of all candidates to weigh up whose was the greatest welfare need. We find that the decision-makers were influenced by Inspector Riggs' comment that he had "done his time" and contributed a number of years as an inspector. We find that the decision was in part based on experience and find that experience meant life experience and not relevant career experience as the claimant had scored higher than Riggs in the interview on relevant experience. The decision was therefore partly motivated by length of time in the job which is a factor of age.

Claimant's request for leave in 2017, sickness absence 27 March to 22 April 2018 and first occupational health referral. Knowledge of "disability"

45. On 4 November 2017, at page 522, the claimant emailed his line manager asking for Christmas leave. He disclosed highly personal information about his home life as an explanation for why he needed this leave. The claimant accepted that he was not saying that he was ill. He was in fact struggling with shift work but agrees that he did not declare it. The purpose of this email was to explain his reasons for needing leave. We accept that there was nothing to alert the respondent to any health issue at this point.
46. On 1 February the claimant emailed CI Hagley (p 688) to let him know that shift work was affecting his work/life balance and requested he be withdrawn from scheduled public order training to take place in March 2018. The claimant gave a lot of details about his personal life and its impact upon him, but also said that he was finding the physical and mental demands of shift work draining and that he frequently struggled with fatigue. He also stated that his stress levels were extremely high and that was a significant challenge when combined with the demands of shift work.
47. The claimant agreed that up until this point he had almost no sickness on his record. Further he agreed that when he joined Sutton there was no reason for

- anyone to have concerns about his mental health, as he himself had none at that stage. By 1 February, however, he felt his health was in decline and so sent the email at page 688.
48. The claimant had not been to a doctor at this point. He was using language of physical and mental demands rather than stress, but nonetheless the claimant considered it was clear from the email that his health was suffering. He does state that he has been testing the limits of his resilience for some months.
  49. CI Hagley's evidence is that at this stage he understood the claimant was under some personal stress at home and was struggling with shift work but did not understand this to be significantly beyond the usual difficulties that shift work can cause. He believed that the claimant was asking for what he needed at the time, that is the removal from public order training, which was accommodated. It is accepted that the claimant had had no time off sick at this point. He had not sought any medical advice for his fatigue. We find that the focus of the email, while it does raise the fact that he is struggling with pressures and that he is particularly struggling with fatigue, does not put the recipient on notice of any medical issue.
  50. On 6 February the claimant emailed CI Hagley and Supt Lawrence and, in this email, describes his partner as being at breaking point and stated he desperately needed a job with regular hours to provide stability and routine to his home life for his partner and family which was not possible on a shift pattern. The claimant again noted his professional and personal disappointment at not securing the safer neighbourhood teams' role, something he had also mentioned in the 1 February email. In this email he asked to be notified when any roles with regular hours became available.
  51. On 18 February the claimant emailed CI Hagley and said that he was going to go to his doctor about his health. The claimant gave more details and explained that he was suffering from insomnia, which he believed was the impact of 13 years of intense shift work. He asked if anything could be done to remove him from shift work.
  52. The claimant accepted that this was the first time he had indicated he was unwell, as the focus of previous emails had been difficulties that shift work was having on his personal life. As a result of this email CI Hagley made an occupational health referral for the claimant on 23 March. This assessment took place on 3 April.
  53. The claimant was signed off from work by his doctor from 27 March to 9 April and then again from 10 April to 23 April 2018. Both Fit Notes referred to stress at work. Neither made any recommendations and both identified the claimant as fit to return to work on the expiry of the statement, indicating that his fitness to return to work would not need to be assessed again at the end of the period. There is therefore nothing on these notes to suggest that the claimant is suffering from a condition that could be long term. The notes are at pages 700 and 701.
  54. CI Hagley kept a sickness log in relation to the claimant which was at page 699. This notes on 27 March that the claimant had been signed off work for two weeks with stress/depression/insomnia and has been referred for CBT by his GP.
  55. CI Hagley accepted the claimant's information that he was suffering from depression from 29 March, although that is not what the Fit Note said. While the claimant's line manager accepts that the claimant is in fact suffering from depression and not just stress from 29 March, we find that there was no reason for CI Hagley to consider the claimant was suffering from a long-term



condition. There was no indication that this was likely to be the case on the information provided by the GP, it had not occurred before and at this point this was the first absence the claimant had with this issue.

#### 3.4.2018 OH report

56. The occupational health report, at pages 693-698, recommended the claimant avoid night shifts for two months and recommended that his shifts finished by 10 PM at the latest. He should be referred back after 2 months to confirm his fitness for night shifts. In the general narrative the report refers to "I would support his return to work as guided by his doctor". The report refers again to "He will be guided by his doctor" as the answer to the question "When is a return to work likely?". The claimant gave evidence that he believed the report told the management that they were to be guided by the GP advice generally, not just on the date of return.
57. The report asks whether or not the claimant is likely be covered by the Equality Act and to answer that question asks a series of sub- questions. The questions and answers contain double negatives so that it is difficult to determine exactly what the report is saying. It is clear that the occupational health advisor has concluded that the condition has not lasted longer than 12 months and is not likely to last longer than 12 months. The claimant agrees with this. The claimant believes that the way the questions are answered means that the report concluded that it did have a significant impact on his ability to undertake normal daily activities without the benefit of treatment.
58. The claimant accepted, however, that the conclusion of these questions is that he was not disabled at this point, and he agrees that this was the case. In his view it was only because the condition had not lasted sufficient length of time at that point and that when it did so, the respondent would then be aware that he was covered by the Equality Act. We find that, while the answers are very confusing, the occupational health advisor expressly notes on page 697 that the claimant is not covered by the Equality Act and his condition is not impacting his normal daily living significantly.
59. CI Hagley received the report and concluded from it that the claimant had been very recently diagnosed with depression and anxiety and what was recommended was a recuperative shift pattern for two months, avoiding night shifts so that the claimant could build a healthy sleep pattern and recover sufficiently to return to full duties. He understood the report to create an expectation that the claimant would make a full recovery and he did not think there was any reason to believe that the claimant could not continue in his role as response team inspector. In looking at the report, in particular page 696, we note that the occupational health advisor appears to accept that the claimant was diagnosed with depression two weeks ago, that is in mid February 2018. We find that this supports what the claimant had told his line manager and the view that CI Hagley had formed that this was depression.
60. We find that, as of 3 April, there is no information available to the respondent which suggests that the claimant has an impairment which has a substantial adverse effect on his ability to carry out normal day-to-day duties or that it could well happen that the effect of any impairments would last another 12 months.
61. We also note, at page 697 of the report, that the occupational health advisor finds that the claimant is able to drive. The report makes two references to driving issues. It identifies that he reports shouting at other drivers and being

a little impatient and irritated. It also notes that he is worried about dropping off at the wheel on his way home from night shifts.

62. We find that driving was not an issue in general for the claimant at this point and he had not raised it because the concern was limited to driving after night shifts. As of April 2018, inability to drive was not an impact of the medical condition.

23 April 2018 return to work and change of line manager.

63. The claimant returned to work and for the period 23 April to 7 May CI Hagley continued to be his line manager but made the claimant aware that he could not make long-term decisions about his future working arrangements because of the imminent handover of line management.
64. During this period the claimant worked three early shifts and two late shifts. CI Hagley considered that he had therefore met the recommendations of the occupational health report and had taken the claimant off night shifts for this period. The claimant did not in fact work in line with the advice, as he did some shifts that finished after 10 PM, but he was content with this and accepted the need to be flexible.
65. On 7 May 2018 line management responsibility moved to CI Haynes. The claimant was uncertain of the exact date, but we accept the respondent's evidence on this point. This was a result of the merger of police command structure of three London boroughs to the borough command unit model.
66. On 23 May the claimant attended at his place of work and collected a laptop. He also provided his Fit Notes to CI Hagley. The claimant said from this point onwards he had the necessary technology to work from home if that was appropriate. This was not disputed by the respondent.

Creation of BCU structure

67. Supt Jones explained that within the 32 London boroughs there had been 32 separate policing command structures in place with separate resources and serving separate local priorities. In order to improve efficiency, reduce overheads and provide a more effective service to the public, the command structure of 23 neighbouring boroughs were merged together to form 12 borough command units across frontline policing for London.
68. This transformation process to form 12 borough command units started with a pilot across two areas. The boroughs of Croydon, Bromley and Sutton combined to form the south area borough command unit. This did not officially go live until 6 February 2019, but during 2018 transition work began in order to ensure a smooth pathway to full implementation of the merger. Part of this transition meant that CI Haynes took line management responsibility for all of the emergency response teams in Bromley, Croydon and Sutton.

Meeting on 2 May

69. On 1 May CI Haynes and Supt Wright attended the claimant's office at Sutton police station prior to his late shift briefing. They did so in order to meet his team. At that first meeting the claimant explained to them that he wanted to discuss his health with them and that he was under occupational health.
70. On the 2 May (p702) the claimant sent CI Haynes an email describing his condition as "burnt out" and explained that he did not think he would be signed back onto nights at the end of the month. He asked for a meeting in

this email in order to discuss his mental health, describing his anxiety and psychological trauma having been graded as severe. He identified that 2 doctors had advised a change of employer.

71. The claimant said that he had spoken to CI Hagley that day who told him that his email to CI Haynes had been viewed by both CI Haynes and Supt Wright. He was also made aware that both were in the building. As a result, once he finished duty, the claimant sought them out in order to seek a meeting. CI Haynes and Supt Wright told us that they had not in fact seen the email prior to the meeting. We accept that was the case. Both were in a senior leadership team meeting at the time the email was sent, and the claimant found them and his meeting with them began immediately as they were leaving the senior leadership team meeting. We find that Supt Wright didn't read the email even after the meeting. As far as he was concerned, welfare issues were the responsibility of the first line manager, CI Haynes. CI Haynes confirmed in her evidence she had read this email, although she was unable to recall when she had done so.
72. We find that such an email would put the recipient on notice of a possible mental health condition, but not that any such condition would be long-term. There is no information from the claimant to suggest that this is now an issue that is unlikely to resolve. He refers to not being likely to return at the end of the month to night duties but not to being unable to do so ever again.
73. This unscheduled meeting, which is not minuted, then took place between the claimant CI Haynes and Supt Wright. Neither had seen or reviewed the occupational health report at this point or taken any steps to do so. CI Haynes evidence was that as she was not the claimant's line manager there was no reason for her to obtain the report prior to her taking over management responsibilities. The claimant gave evidence, however, that such reports are always emailed to the line manager and that she could have asked CI Hagley to forward that report. He criticised both individuals' failure to do this and considered that he was not treated with respect or in line with policy.
74. CI Hagley told us that he would not routinely have emailed his copy of the report to CI Haynes or the Fit Note because to do would require the claimant's express permission. CI Haynes did not take any steps to get this permission, indeed it was her evidence that she had never read this particular occupational health report during her line management of the claimant. She relied instead on her level of confidence that CI Hagley would have dealt with matters appropriately and had told her all she needed to know in their handover. We find, as she agrees, that she managed the claimant's ill-health for the next six months without ever having taken the time to read the report herself. She was therefore unaware of its detail and aware only of the recoup shift pattern the claimant was on.
75. The Claimant accepted that both CI Haynes and Supt Wright listened to him while he explained his personal circumstances and his deteriorating mental health. It is agreed that the meeting lasted for one hour and it was agreed that he asked to be removed from shifts completely, not just night duties, because of the number of issues relating to his personal home life and his insomnia. He requested a role on regular hours with a routine to help his recovery.
76. Recollections of the conversation at this meeting beyond that differ. The claimant recalled that he did discuss his anxiety and depression, mentioned his counselling assessments and recalls explaining to Supt Wright some characteristics of depression. CI Haynes does not recall anxiety or depression being mentioned at this stage, only that the claimant could not switch off and get to sleep. It was her recollection that the conversation focused on issues

relating to the claimant's partner and home life, while the claimant's recollection is that the meeting, where he wanted to describe this in detail, equally focused on his mental health issues. Supt Wright had a similar recollection to CI Haynes.

77. We prefer the claimant's recollection of this meeting. We find that, on the balance of probabilities, it is more likely that the claimant had an accurate memory of what he raised because the matter was so important to him. We also find it highly unlikely that he would not raise mental health issues when he clearly flagged these in his email sent to these individuals that morning which he believed they had read. We find therefore that the claimant had mentioned anxiety and depression at this meeting and that this was not picked up by either his first- or second-line manager. His previous line manager and occupational health had already accepted that he was suffering from depression since the middle of February 2018.
78. We find that from this meeting, together with the email and the information that CI Haynes is likely to have been provided by CI Hagley i.e., claimant has depression, they were on notice that the claimant considered he was suffering from depression. We also find that they were on notice that the position had deteriorated since the occupational health report on 3 April. Nonetheless, we find that there is nothing at this time which puts the respondent on notice that any impairments are long-term.

"Self-inflicted" and other comments by Supt Wright

79. The claimant recalled that both CI Haynes and Supt Wright were dismissive towards him, and he recalled that Supt Wright had rolled his eyes when the claimant described his sleeping problems, told him that his mental health issues were "self-inflicted" and that as a "young inspector" he needed to get back to night shifts. He also recalled that Supt Wright said that he was being paid to do the job. In his evidence Supt Wright recalled making reference to him being paid to do the job.
80. Supt Wright also recalls making the comment that the claimant's issues appear to be self-inflicted. He meant by this that they related to his personal life and his partner, as opposed to external issues. His evidence was that he did not roll his eyes or make any comment about the claimant being a young inspector. We accept the evidence of both the claimant and Supt Wright that he made a comment that the claimant's issues appear to be self-inflicted. We have had the benefit of Supt Wright explaining in detail exactly why he said this, which the claimant did not. In the absence of such an explanation we find that the claimant was offended and upset by this comment and that it was reasonable for him to be distressed by it. We find that his dignity was violated by this comment, and it was reasonable for him to feel this as his mental health issues were being dismissed as in effect self-inflicted.
81. While Supt Wright denies that he made any reference to "young", we prefer the claimant's account. We do so because the claimant has been consistent throughout. On the balance of probabilities, given the importance of these meetings to him, it is more likely that he retained an accurate recollection of the events than those of line managers who dealt with many other staff and are recalling events that occurred three years ago. Further, we have found that Supt Wright's recollection of the meeting in relation to the mental health concerns the claimant raised is incorrect and we accordingly find that his recollection of the comments he made is also incorrect.

82. The claimant understood the comment about being young as being dismissive of his mental health issues and in effect meaning that he should stop complaining and get on with it. We can see no reason for the claimant's age being brought into this conversation other than the explanation the claimant has provided and we therefore accept that this is how the claimant understood it, that he was hurt and upset by this comment, that his dignity had been violated, and it was reasonable for him to be so because the comment was dismissive of what was a significant mental health issue from which he was suffering.
83. CI Haynes and Supt Wright both explained that as the claimant had only had a brief period of sickness absence at this stage, and there was a plan for recuperation back to full duty, it would be premature to make any decisions about his working arrangements. Short-term recuperative changes to shifts can be accommodated. There was no permanent 9-5 role that existed for a response team inspector.
84. Despite the comments at the meeting, and our finding that the claimant had mentioned anxiety and depression at this meeting and had already sent an email which described his psychological condition as severe, neither the first or second line manager took any further steps to address the claimant's health following this meeting. CI Hayne's evidence was that she was not responsible for the claimant until a few days later. She had a verbal handover about all those who were to be line managed by her, including the claimant and, while this was in very broad strokes, she was aware there had been an occupational health referral and that the claimant was on recuperative shifts although she believed that the removal from night duties was a local decision and not an occupational health advice. It was CI Haynes position that there was no such need. Her perspective was this was an individual who had only been on his recuperative pattern for a brief period since he returned to work on 23 April. While occupational health advised a two-month pattern on 3 April this did not start until his return to work and therefore she considered recuperative duties had not had much time to take effect.
85. She did accept that if there was an urgent need for further adjustments then, she was able to make these on a temporary basis. She would only need to consult to make changes on a permanent basis and therefore we find that she did have the authority to make changes to the claimant's recuperative shifts without reference to occupational health or HR if she had been persuaded of the need to do so. The respondent accepts that if it was aware of a need to do so then adjustments could be made.
86. We accept that, although the claimant is reporting a deteriorating condition, there is still nothing in front of the respondent that suggests the occupational health advisor advice of 3 April should be revised and the claimant is now suffering from a disability. It follows that we find that the respondent was not required to carry out any reasonable adjustments such as adjusting the claimant's work pattern to non-shift work as a result of 1 May meeting or 2 May email. We also find that there is no evidence that in making the decision not to adjust the shifts, CI Haynes was not influenced by Supt Wright's comments about age.

#### 15.5.2018 Claimant requests new OH referral

87. The claimant explained that May 2018 was a difficult time for him and that he had taken some shifts as annual leave because he could not cope. On 13 May (p706) the claimant emailed CI Haynes and asked if there was an office in

Bromley police station where he could work on his complaint reports and his work-based assessment. The claimant explained in his evidence that he needed to reduce his commute because of his exhaustion. He gives his reasons in the email for wanting to work in Bromley because he has complaints to finish off and the WBA work to complete. He doesn't explain the health issue to his manager.

88. CL Haynes agreed the short term working from Bromley but said in response ( p 706) that she did not want staff routinely working from home. The claimant did then work at Bromley for 2 days as he had asked, which he confirms in an email of 17 May p 708.
89. On 15 May the claimant emailed CI Haynes requesting a new occupational health referral. He expressly asked that the referral be to the chief medical officer. He explained that his insomnia was still disrupting his sleeping pattern, concentration, anxiety and mood which was unsustainable. He set out that working shifts in his current role was not helping him to recover mentally. CI Haynes considered this request but concluded that she wanted to speak to the claimant, occupational health and his former line manager to get a better picture to understand how best she could support the claimant with the occupational health referral by being able to post relevant questions, rather than making a generic referral. In this email we find the claimant provides details of impairments to his concentration.
90. The claimant emailed CI Haynes on 17 May ( p 708) to let her know that he had done a stress test on the Internet which gave a high score, and he believed he had been suffering from high stress since November 2017. He felt he could not continually carry out shift work and asked for a meeting the following week. This email also makes reference to the fact that he knows CI Haynes did not want him working from home but this was a practical solution as he could only concentrate on police work in short bursts.
91. CI Haynes explained her view on homeworking. Sutton was the claimant's place of work, he needed to stay connected to the workplace and the staff that he managed, other staff completing the WBA had not been afforded the ability to work remotely and consistency of approach was important. There was also limited senior leadership team presence at Bromley to provide support for the claimant and there were concerns raised by CI Hagley about the timing of the complaints reports the claimant was required to complete. CI Haynes considered it appropriate that the claimant attended at Sutton because of the management support and supervision that could be provided to him.
92. CI Haynes was out of the office on a course around 17 May. She emailed back that day to say she was not available, but that she would try to find time to speak with the claimant at an away day the following Thursday. She explained that, whilst she appreciated that the claimant felt his stress levels were high and he needed a change, it was not a simple as being able to find him a different role. She asked the claimant if he had explored other opportunities outside of Sutton or if there had been any change in circumstances outside of work which may be led to his increased stress. She confirmed that she would make an occupational health referral for him and there would then be discussion on the way forward.

#### Sleeping tablets comment

93. On 23 May the claimant and CI Haynes met to discuss his working pattern. The claimant says that in order to have this meeting he had to track his line

manager down and that she had not arranged to meet him to follow up on the serious points raised at their meeting on 2 May.

94. This was not a scheduled meeting, and no notes were taken. The claimant's recollection is that CI Haynes continued to be dismissive of his mental health and told him in a rude, direct and dismissive manner that he should go and get sleeping tablets. CI Haynes has a different recollection. She believes that she asked the claimant if he had asked his doctor about other avenues to help him with his sleeping and mood such as medication and/or sleeping tablets which may provide some relief while he was waiting for counselling and the next occupational health/chief medical officer referral. This is not, she says, advising him to get sleeping tablets. We prefer the claimant's account of this meeting and find that she did advise him to go to his GP to get sleeping tablets. We are supported in this view because the occupational health referral that she made at page 714 states that he has been advised to return to his GP to seek out a medication option to assist with his sleeping. We also note that the claimant on 1 June (page 720) tells her that the doctor will not prescribe sleeping tablets and in her response she asks for an explanation of this refusal. We find that this is consistent with what was in effect an instruction from her to obtain sleeping tablets from his GP. We find that this is a hostile comment and had the effect of creating a humiliating environment for the claimant.
95. CI Haynes explained again there were no permanent daytime roles the claimant could be offered, and that the claimant was able to work his current shift pattern. Following this meeting CI Haynes made an occupational health referral on 24 May, specifically requesting that he be seen by the chief medical officer.

#### Occupational health referral 23 May 2018

96. The terms of the referral are set out at pages 713-715 and ask for a decision if the claimant was fit to work and/or whether this is the right organisation for the claimant. This is not directly asking about ill-health retirement. The standard questions on the form ask whether the claimant was covered by the Equality Act but this was not answered expressly.
97. The cover email sending a copy of the referral to the claimant, made reference to considerations for adjustments and/or medical ill-health. CI Haynes explained that this reference to medical ill-health was part of the conversation that she wanted to have with occupational health. It was based on what the claimant had told her his GP had said that this job is not the right one for him. It was not a question of whether she did or did not agree that ill-health retirement was appropriate or a possible option, but she wanted advice on this. It will be a question for occupational health that was suitable and reference to this was not a reflection of her view.
98. We were told by Ms Froud that going to ill health retirement as an option would come after the adjusted duties process. The claimant considered this phrase "potential ill-health retirement" when he was only 35 years old with less than a month's absence from work in the previous decade indicated that CI Haynes had determined that his mental health condition was long-term. To his mind there is no other explanation as to why she would seek advice on this point. He believed that 3 April occupational health advice identified him as covered by the Equality Act other than his condition not being long term. He considered that as of 23 May the respondent therefore had all the pieces to identify that he was disabled under the meaning of the Equality Act from this

date. We have previously found that this was not the case and Occupational Health had not made this finding and had not found any substantial impact on his ability to carry out day to day activities previously

99. While we find that CI Haynes cover email does suggest a reference to medical ill-health, we find that the question she actually asks the chief medical officer is whether or not this is the right organisation for the officer due to his current circumstances and we find that this reflects what the claimant had said to her, namely that he had been advised to seek another employer. We find that CI Haynes was still considering the claimant as an officer who had not been on recuperative duties for very long and that she had no further information that the claimant was unlikely to recover. On his own account the condition had only been diagnosed in mid-February, that is some three months or so before this referral.
100. We find that at this date CI Haynes did have information that the claimant was suffering from mental impairments which had a significant impact on his ability to carry on day-to-day tasks because his depression caused insomnia which affected his concentration. We find, however, that there was no information before her or the respondent organisation which showed that, viewed at that time, it could well happen that the effects of the impairments would last for more than 12 months.

#### Comment in relation to shift to cover

101. On 31 May the claimant secured a GP appointment, and he was notified of an appointment with the chief medical officer on 30 July 2018.
102. On 1 June (p720) CI Haynes emailed the claimant and her email asked him to ensure that suitable cover on night duties was available as a sergeant had raised an issue about being left on his own to cover the duty officer and the sergeant role. The email stated it was clearly the claimant's responsibility to ensure the minimum requirement that any shortfalls are flagged up prior to the day. The claimant considered this was asking him to go to colleagues and get them to cover for him. The respondent had therefore not put appropriate cover in place to allow him to work his regular shift patterns in May 2018.
103. CI Haynes explained that this email did not require the claimant to ask colleagues to cover his shifts. It was a reminder that it was his responsibility to check with resourcing that the shifts had been assigned to others. She felt that this was his obligation as the leader of the unit. We find that on the face of the email she is asking the claimant to check generally that cover is available but is not asking him to find the colleagues who will cover. We find that the respondent had put cover in place to allow the claimant not to work night shifts in May 2018. We find that this is not on its face an offensive request, nor was it reasonable for the claimant to take it as such.

#### GP advice of 1 June

104. In response to the forwarding of the occupational health appointment email on 31 May, the claimant responded on 1 June. This email explained that he had an appointment with his doctor the previous day. His doctor had not prescribed sleeping tablets and the claimant provided a copy of the Fit Note which had been issued to him. The claimant set out in that email a summary of that Fit Note and explained the advice he received was to avoid shift work and work a regular pattern, ideally 9-5 or close equivalent. The claimant set out the impact of his condition, that is chronic insomnia, anxiety



issues and psychological trauma. He explained he was finding it hard to concentrate and that his cognitive ability was significantly impaired affecting his decision-making. He requested he be removed from his current role because of these impacts pending the next occupational health assessment. The claimant was off sick at the time he sent this email.

105. In cross examination CI Haynes confirmed that she had read the Fit Note. This Fit Note stated that the claimant was suffering from depression and anxiety resulting in insomnia and poor concentration. She told us that it did not, in her view, contain anything new as the claimant had already told her that he was suffering from depression and anxiety, and she confirmed that she was therefore aware that this was the position at some earlier point than 1 June. She had understood this to be the position from the claimant's conversations which preceded this Fit Note. We have already agreed this was the case and that the 3 April occupational health advice had said this. We find this Fit Note contained 2 new pieces of information from the GP. Firstly, that the claimant should avoid shift work altogether, this was an extension of the occupational advice in April which had only advised avoiding night shifts, and secondly information as to the likely effect of the depression on the claimant's ability to carry out day to day tasks because his concentration was poor. We have found CI Haynes was aware of the impairments from 23 May, prior to this note because the claimant had told her by email.
106. CI Haynes discussed this with Supt Wright, and both agreed that they should await the outcome of the occupational health referral and the chief medical officer's report. She explained that she appreciated his GP's advice, but that the claimant did not work for a nine – five organisation and that such roles for the most part no longer existed within the borough command unit. He would need to continue his recuperative pattern outlined by occupational health some two months earlier until he reached this next occupational health appointment. This was despite the fact that his situation had clearly worsened and there was different GP advice. Her evidence was that she saw no reason to adjust the claimant shifts further after this GP advice, because the occupational health referral had been made and there was an appointment at the end of the month. There was nothing else for her to change at that stage.
107. CI Haynes confirmed that, while she had told the claimant she would update her occupational health referral with this information from the GP, she did not in fact do so. This GP Fit Note was not sent to the chief medical officer or shared with HR.
108. We find that the GP note does not provide any information that the impairments are likely to last at least 12 months. The respondent has no reason at this point to consider that is likely. We accept that there is now some additional advice which would suggest the condition is getting worse and clarifying its impacts, but not that the condition is long-term.
109. We accept the evidence of other witnesses that had they been provided with this GP Fit Note and the claimant's information they would have accelerated a referral to occupational health and potentially have suspended the claimant from all shift work at that point. Nonetheless, while this may have been what most managers would have done, the obligation to do so only arises if the claimant was covered by the Equality Act at this point and we have found that he was not.
110. On 3 June the claimant experienced a panic attack and was on sick leave from the 3 to 5 June 2018. On 4 June claimant again texted his line manager and asked if the GP report could be adopted to help him recover. CI Haynes responded that she did not have any nine – five roles available. In her

view the GP's advice was simply that, advice. She saw no reason to adjust the shifts any further.

111. We find that nothing had altered between 1 June and the provision of the GP report and this exchange of emails to mean that CI Haynes reasonably had any further information which would allow her to conclude that the depression from which the claimant was suffering was now long term

#### Risk assessments

112. On 2 June the claimant texted CI Haynes and, having spoken with a Federation representative who is a specialist in mental health, asked for a copy of the risk assessment in relation to him working night shifts against his doctor's advice. The response was that she was off work and not at home that day so could not provide anything until Monday. The witness was referred to the guidance available from HR on stress risk assessments. Neither the claimant's first- or second-line manager were aware of this advice and guidance available on the Internet about how to handle stress matters and in particular the need to carry out stress risk assessments

113. No formal assessment was carried out, but in evidence CI Haynes said that her reply of 1 June was in effect a risk assessment that identified all the steps that had been put in place for the claimant. Several witnesses were asked for their professional expert view on this and concluded the email was not a risk assessment and we agree. We have already found that managers would reasonably be expected to understand the need for such assessments where an individual had raised the question of stress or depression and anxiety. They had sufficient information on how to complete them. We find that one was expected in the claimant's circumstances, particularly when one was requested, and this did not occur.

#### HR involvement

114. Julie Froud who provided the HR advice gave evidence. She confirmed that CI Haynes contacted her by telephone initially and she was not provided with any documents. She did not see the claimant's GP note or indeed the occupational health referral during the process of providing advice.

115. She clarified that a line manager could telephone, or email HR and she would provide support for the South region. However, a service request was expected to be completed if ongoing HR advice was required. While she started advising in June this request was not completed until September.

116. Ms Froud explained that the process of recuperation is different from that of adjusted duties. Recoup duties are short-term and temporary where an individual cannot work his normal hours because of illness or accident or injury. Typically, this can be three months and is generally not more than six and is set by occupational health. Exceptionally recoup duties can last up to 12 months. They can only be authorised by occupational health.

117. Adjusted duties arise if an individual cannot fulfil their occupational duties. They will be referred by the line manager for an occupational health capability process for a meaningful role to be considered. Only occupational health can agree adjusted duties. Ms Froud did accept, however, that a line manager and certainly an individual at the level of a CI could make temporary adjustments to work duties based on a GP's advice pending referral to occupational health. This accords with the policy and we accept her evidence

on this. We find that a manager could make temporary adjustments, but being categorised as an adjusted duties officer required occupational Health.

118. Ms Froud was taken to the email at page 712 which is the email to the claimant about the occupational health referral which refers to adjustments. She would have expected to be made aware where such a serious referral which asks about ill-health retirement was made. She described ill-health retirement as a very big decision and had no recollection about being asked to advise on this. Ms Froud also confirmed that adjusted duties would always be considered before ill-health retirement. This further supports our view that CI Haynes was not pursuing an ill-health retirement route as she had not taken HR advice. We find that she did take HR advice when things became complex and are satisfied that a formal application for ill-health retirement to the chief medical officer would have been such a complex matter.

Release on attachment.

119. On 5 June there was an exchange of texts between the claimant and the line manager. The claimant asked if he could be released on attachment for a couple of months, enabling him to fill a role around the hours recommended by his doctor. He asked specifically about the potential attachment to the Department of Professional Standards. CI Haynes accepted that she had been mistaken when she said in her witness statement that she had not discussed this with the claimant who had gone ahead and made enquiries without waiting for a response. She accepted that the text messages clearly show that she had agreed that he could proceed with his enquiry.
120. The claimant made enquiries and having done so emailed CI Haynes and Supt Wright on 5 June to ask about this attachment. The bundle contained an exchange of emails between CI Haynes and CI Hagley in which CI Haynes makes reference to this attachment and simply states that the claimant will be told no. There is no explanation set out as to why. In her evidence she explained that this was for operational reasons and that no attachments were being permitted because of the impending merger.

Claimant's sickness absence 13 June to 9 September

121. The claimant returned to work on 6 June, and it is accepted that no return-to-work interview was held or documented. Unfortunately, the claimant had a further breakdown at work on 12 June and was then off sick from 13 June for 28 days. This was covered by a GP note. On 19 June he informed his line manager that he been given antidepressants and was still waiting for counselling. He asked if on his return to work he could work reduced hours Monday to Friday in Bromley, Croydon or Sutton.
122. At the end of this initial period of absence the claimant contacted his line manager by text. The correct order of this exchange is p 1461,1462,1453,1451,then1446. They start on 9 July with the claimant indicating he was due to speak at the Sutton neighbourhood watch meeting tomorrow early evening and would very much like to do it. The claimant explained that he was going to the doctors that week, but he would be ready to come back to work in accordance with the doctors note in May with reduced hours.
123. CI Haynes replies that while he is off sick, he could not attend any meeting in a policing capacity. She asks him to let her know the date of his

GP's appointment and predicted return date and identifies that she would then be able to refer him to occupational health to discuss a weekly pattern until the CMO's appointment. Once that pattern had been agreed a decision would be made on an interim role pre-that appointment. We find that CI Haynes did suggest she would consider a change to his shift pattern before the CMO appointment and would take OH advice on this but did not do so because the claimant did not return before the CMO appointment.

124. The claimant replies that he is desperate to get back to work doing something useful and this would make him feel useful again. CI Haynes response is that it did not warrant him going in the circumstances. She identified that his certificate expired the following day, but on his own admission he was not looking to return to work until next week after a further GP's appointment. In his response the claimant appears to accept this. He is to be slotted into next year's AGM instead. As the claimant had told his line manager he was not looking to return until after this neighbourhood watch meeting, we accept that it was reasonable to refuse permission to attend, despite the claimant's expressed eagerness to return.

125. On 10 July, when he does return to his GP, he was signed off as unfit to work for a further 28 days due to anxiety. In a text to his line manager the claimant explained that his dosage of antidepressants had been increased which he felt was a setback and he was more unwell than he had admitted . The claimant suggests that he could have returned on the 9 July, but we find that this is at odds with his actions at the time when he indicated he would be going back to his GP. We find he was not able to return on 9 July but there was a possibility that his shifts could have been changed had he done so if occupational health had agreed.

Available alternative roles in July and August 2018 -disability discrimination and direct sex discrimination

126. It is the claimant's evidence that he wished to return to work and that there were at least three opportunities that would have allowed him to do so in the summer of 2018. He believes that he should have been made aware of all of these three and none were drawn his attention. He states that this was an interim role in the headquarters strand, safer neighbourhoods at Sutton and a safer neighbourhood role at Croydon.

127. The interim role in the headquarters strand was given to a female inspector, LM on 2 July. The claimant considers this to be an act of sex discrimination as a temporary role was created for her on office hours, but this was not done for him and the only difference between the two of them is gender.

128. Supt Jones told us that she established a principle that an officer who was already in a role would take priority over non-adjusted officers in the upcoming EOI process. She therefore determined that new inspectors, joining from July onwards, would be placed into interim roles so that they would not gain the advantage of incumbency. This principle was applied to LM.

129. We accept Supt Jones evidence on this point. LM was a newly promoted inspector, and this is why she was given a created interim role. It is correct that the hours of the temporary role were adjusted to suit the individual's particular needs. We find that this is not a comparable situation. This individual was a new joiner to the region, she needed to be found a role while the claimant was an existing member of the team and was off sick. The decision was not based on gender but on a need to find a newly promoted

inspector a role pending the reorganisation. The decision was taken by Supt Jones who was unaware of the claimant's condition or medical information.

130. The other two roles the claimant identified as vacancies arose because in the summer of 2018 Inspector Riggs, who had been given the safer neighbourhood role at Sutton over the claimant in January 2018, submitted his retirement papers. The claimant considered that Inspector Willis was then given the role without a further selection process. We find that this was not the case. There was no formal appointment. Instead in September 2019 Inspector Willis added the responsibilities of the Inspector Riggs role to his existing duties on a temporary basis. Inspector Willis was then given a role in safer neighbourhoods permanently from the EOI exercise because his substantive role in partnerships was due to come to an end, he expressed an interest in the safer neighbourhood role as part of the EOI and because he was already the incumbent in part of a safer neighbourhood role. The claimant had not expressed an interest in this role as part of the EOI exercise.

131. The claimant suggests he could have been given either the role from which Inspector Riggs retired, or the role Inspector Willis had been doing if Inspector Willis was moved to the Riggs' role to allow him to return to work. He would also have had the advantage of incumbency in a safer neighbourhood role if this had occurred. The claimant cites the failure to give him one of these roles on a temporary basis as an example of age discrimination as he says that the decision made by Supt Lawrence and CI Hagley that younger inspectors could not apply for roles was implemented. He believes that this policy was applied and so he was ruled out of consideration. We find that there was no recruitment exercise or application of any policy to the temporary appointment of Inspector Willis to the safer neighbourhood role in addition to his partnership role. No recruitment exercise was implemented to which any such policy, was applied. Instead, on a temporary basis, one colleague added the duties of another to his role. We find that the decision to appoint Willis was an expedient one because he was in work and was not connected to his age.

132. The claimant also complains that the existence of these roles was hidden from him and believes that he should have been advised of them. His complaint is there was a role he could have done and not offering it to him meant he wasn't able to return because his work pattern was not amended. He believes that this should have been made available to him to allow him to return to work as a reasonable adjustment. While there is confusion around the dates that the safer neighbourhoods role was available; we find that it must have been available before the EOI as by then Insp Willis is an incumbent. We find it was therefore a role on suitable hours that was available after the respondent was on notice the claimant was disabled, but before he in fact returned to work from sick leave.

#### Other comparators- age discrimination

133. The claimant has cited comparators in relation to other parts of his claim. He has identified two other inspectors, Chris Mackin and Dawn Haul as having had their hours adjusted by CI Haynes following medical recommendations to support them in the workplace. Information relating to the first individual is at page 518 of the bundle. This is occupational health advice that sets out a return-to-work plan. This is a recuperative plan, and it is accepted by all that the advice is followed. The occupational health advice considers that the individual is covered by the Equality Act.

134. It is agreed that the second individual was given maximum deployment within the confines of occupational health advice. The claimant says that for both individuals there is no period of limbo, they were both referred to OH in a timely fashion and he was not.
135. From the evidence that we have, we accept that these individuals were given work in line with their occupational health advice. We find that the claimant was also given work in line with his. His complaint is that he was not given work in line with his GP's advice on 31 May and/or that he was not re-referred to occupational health more quickly for them to give that advice that he should not do shift work.
136. There is no evidence that either of these two individuals were treated differently from the claimant, or, if they were, that it had anything to do with their age. We find that not adjusting the claimant's shifts in line with the GP advice between June and August 2018 was not connected with his age. It was because the respondent was waiting for occupational health advice and took his GP's letter as advice in accordance with its policy. We also note that CI Haynes indicated in the text exchange on 9 July that she would refer him to OH prior to the CMO appointment once she knew the claimant was returning. We find that there was some intention to provide an earlier OH referral as the claimant wanted.

#### August 2018 -Launch of EOI process

137. While the claimant was on sick leave the EOI, asking individuals to express their preferences for up to 3 roles in the new merged organisation, was launched.
138. The information set out in relation to this exercise identified that preference would be given to those in the role, as well as those who were designated as adjusted officers. It is agreed that this refers to those who have been given an official designation by the chief medical officer and it indicates that they are unable to continue their substantive duties and require adjustments to be made in order for them to carry out a function within the respondent organisation. It was common ground that the claimant was not designated in this way by the chief medical officer at the time of the expression of interest exercise.

#### Meeting with CMO and knowledge of disability

139. The meeting with the chief medical officer took place on 7 August. The recommendation was a change of direction, that the claimant be redeployed and working hours should be daytime based and predictable.
140. After he received the chief medical officer report, the claimant identified this need to his line manager. The respondent accepts it had knowledge that the claimant was disabled from 7 August 2018.
141. On 15 August CI Haynes sent the claimant a text which explained that she was due to meet with HR and the headquarter strand the following day to discuss the situation. The claimant therefore felt assured that his report would be provided to these strands prior to the September posting panel. It appears that this meeting did not occur. Supt Jones, CI Hagley and CI Haynes did not recollect it and Supt Jones was on annual leave. We find that the claimant's CMO report was not shared with anyone and the posting panel, as Supt Jones confirmed, were unaware of the advice given about what the claimant could do.

142. On 31 August the claimant was assessed by his GP again and signed off work for another month due to anxiety and depression. On 28 August the claimant emailed his line manager regarding a home visit that week as he had an urgent need to look forward with a view to getting back to work. He referred to the chief medical officer report and said that he felt he would recover quickly in the right circumstances.
143. In response CI Haynes stated that she would invite him to a case conference as part of the sickness process which would allow them the opportunity to discuss return to work, his role, and any welfare issues. She explained that it would not involve shifts, but that her view was that even following the chief medical officer report 7 August 2018, any role that he returned into to accommodate the recommendations would be temporary pending his choices at the Borough posting process.

### Posting Panel Decisions

144. The claimant completed the EOI and decided to apply for three roles, all which matched the recommendations of the chief medical officer.
145. This posting panel met regularly and included representatives of each strand. CI Haynes was the representative for the response unit's strand. These meetings were chaired by Supt Jones. Supt Jones explained that 1,270 officers were in scope, which included 23 inspectors. She led the expressions of interest and subsequent posting process. It was an operational exercise which involved considering officers posting preferences and skill sets and matching each individual to the role on the BCU following the posting principles.
146. These posting principles provided a priority order in which individuals would be given their preferences. Those on maternity leave and who had been designated as adjusted duties would be considered first. In order to identify who was on adjusted duties Supt Jones explained that they put a considerable amount of effort into ensuring that the HR system was up to date. Only those who had been formally acknowledged by the occupational health process as on adjusted duties were shown in the HR system with this designation and that was the sole information used to identify those in this category. The claimant was not in this category.
147. The principles then set out some other categories of priority and included those who were not shown on the HR systems to have adjusted duties but where there was local knowledge that this was incorrect. Supt Jones said that this did not refer to individuals who were on recoupment duties or had adjustments agreed with line managers. It only referred to those that had been left off the HR system having been formally designated as adjusted duties officers. It did not therefore include the claimant. We accept that to Supt Jones knowledge there were two inspectors who had adjusted duties.
148. It was common ground that the claimant had expressed interest in three roles in the process. A booklet was produced which detailed the roles and there were opportunities for those who were on site to attend meetings or to ask questions of various individuals. Supt Jones accepted that the claimant was off sick during this period and therefore did not have this opportunity. Supt Jones also identified that a couple of people did tell them about their circumstances and highlighted some information to the change team, but this did not happen for the claimant, and she had not been aware that he was off sick.

149. Five inspectors applied for the first position the claimant identified and the posting principles were applied. An officer who had close experience was posted to that role. The ops and business support role was filled by an adjusted duties officer who was prioritised in accordance with the posting principles.
150. The professional standards role had attracted five expressions of interest and Inspector Claire Robinson was appointed into the role. The claimant was not offered any of his 3 preferences and because Response was a high priority area, he was offered a posting back to lead a Response team.
151. CI Haynes confirmed that she was not in attendance on the day that the Inspector roles were discussed but asked to be taken through the rationale for these provisional appointments the following day. She was therefore aware in early September that the claimant had been appointed to his old role, that is a role he was unable to fulfil given his medical condition. She confirmed that she did not raise the claimant's medical condition or draw attention to the chief medical officer's report. She considered it was not appropriate to do so. She would have provided this information had she been invited to do so but was not.
152. Supt Jones witness statement said that she had considered every individual inspector in accordance with the Equality Act and employment law together with internal posting principles and it was unfortunate that she had not known about the claimant's circumstances. The claimant's disability was not considered by the posting panel.
153. We find that Supt Jones would have taken this into account had she been made aware. In the absence of this information being shared the claimant was therefore provisionally appointed to his old role to take effect from February 2019 and was not appointed to any of the three roles in which he had expressed an interest. As the respondent accepts it had knowledge that the claimant was disabled at the date of the posting panel it should have made reasonable adjustments and failed to do so. It did not follow the advice of the CMO.
154. The claimant was made aware of this decision in September. CI Haynes said that she did not warn the claimant this was happening, although she was aware, because nobody was told the outcome of the original posting until the official confirmation was provided to that person. The claimant was one of many people who were going through this exercise and were being appointed to roles that were not their first choice. The claimant appealed this decision on the basis it was discrimination based on disability .

1.8.2018 -80 day letter notifying Claimant of dates when pay would reduce

155. It is agreed that there is a statutory requirement for those within the respondent's service to be warned when their pay may be reduced to half pay. CI Haynes emailed the claimant this letter. The cover email specified that it was not intended to create fear or distress but was part of the HR process and she would be happy to discuss this with the claimant at his home visit in a few weeks' time.
156. As the standard letter, which is generated by the HR call centre, set out, there is a process whereby the reduction of pay can be considered. Ms Froud explained that to do this a line manager should initiate a service request to HR. In that way an HR officer can be assigned to the line manager



and the individual to work with them to prepare the individual's case. This did not happen, and CI Haynes made no such referral.

157. The bundle contained a later example completed by CI Hagley which the claimant accepted had been done correctly and it was confirmed by CI Hagley that he had made a service request.

158. We accept that the letter sent on 1 August was generated by the central HR function and that sending it was a statutory obligation. It is intended to give early warning of a potential impact on sick pay. While CI Haynes did not take steps to progress any appeal against this, the claimant returned to work before his pay was to be reduced.

#### Return to Work in September- working from Bromley

159. Prior to his return to work the claimant requested a phased return to work in the first week and to be allowed to work from Bromley on his return. In an exchange between the claimant and his line manager, CI Haynes agreed that the first week would be a phased return. No recommendation had been made in the medical report about the claimant's location or any limitation on driving and CI Haynes rejected his request to work from Bromley.

160. She did so because Sutton was his current place of work. She felt it was important for him to have a support network around him and the permanent senior leadership team, who could provide that additional support, were based at Sutton. She did consider his comments about his commute but felt that it was not particularly onerous and that working office hours meant that traffic was a by product.

161. The claimant had raised driving issues as early as April 2018 but had limited this to driving after a night shift because of exhaustion and insomnia. The GP note of 31 May 2019 refers to insomnia and lack of concentration. The CMO report of 7 August referred to short term degradation in memory and concentration. In the case conference in September (see below) the claimant did raise driving as an issue and linked this to length of commute caused by driving in rush hour traffic. We find that the claimant had always flagged driving difficulties as part of his condition. We find that an inability to drive for a long period was an impairment arising from the disability. We also found that the respondent was on notice of this and it was reasonable for an employer to recognise that a long drive in rush hour traffic was likely to be a concern where an individual suffers from lack of concentration.

#### 10.9.2018 -Case conference regarding Claimant's sickness absence and return to work

162. The case conference took place on 10 September at Croydon police station. Julie Froud was present, and the claimant took a police friend with him. The claimant's working hours were discussed, and he was permitted a movement from 8 AM to 4 PM but no further. CI Haynes believed that the claimant had a need for routine and early and late shifts were detrimental to his sleep and therefore she determined he should be working a pattern that allowed regular habits and that this pattern was appropriate.

163. The claimant's working hours were amended in September 2018, so he was no longer required to work shifts and he was granted flexibility to work office hours. It was also agreed that he could take time off during the working day to attend counselling sessions. The notes of the meeting are at p 1079-1083. The notes of the 10 September show the claimant had taken part in 4

counselling sessions which were planned to take place once a week. By an email ( p 932 ) 28 August the claimant says he is to have his first session on 30 August. We find that the first session was on this date because the claimant's email is more likely to be accurate on this than meeting notes.

164. The claimant returned to work from 11 -14 September at Sutton police station. The first time he returned after the CMO advice he was therefore working on a non-shift pattern. He noted that the shifts were not correct and therefore amended these to reflect the hours he had actually been working. On 14 September the claimant was instructed not to amend his shifts himself. The claimant considered that in issuing this instruction his line manager was removing the privilege of an inspector who is entitled to manage his own hours.
165. CI Haynes evidence on this point was that she had issued instructions because if the claimant made changes, it would cause issues of balancing his working days. For transparency he should not amend his own shifts. She also explained that while the claimant felt his shift pattern had not been updated on the system, the system would not have been changed until he had formally returned to work and because of the volume of changes they would not have been amended immediately.
166. We accept CI Haynes explanation on this point that she required changes to shifts to be made by the resource team to ensure they matched his appropriate working days.

19.9.2018 Return to work meeting and first Leading for London refusal.

167. The claimant was then off sick from 15 to 19 September . On the claimant's return a return-to-work meeting was held. He recalls that they discussed his panic attack which had occurred on the 14 September, the fact that he was now taking medication which made him drowsy and that they discussed his commute to work on the motorway. CI Haynes agreed that they did discuss this, and she was aware the claimant was suffering from mental health issues. She did not consider it was appropriate to refer him again to the chief medical officer as one could not do that for every circumstance.
168. In her witness statement she set out that they discussed the claimant statement that he intended to attend blue light champion training and she did not think this was appropriate. She accepted in cross examination that her recollection was incorrect, and this was not discussed at this time. She accepted the claimant's recollection that they were discussing his proposal that he tried to support others getting back into the workplace, that is those who are long-term sick. CI Haynes recollection is that she stated that he was not resilient and not in the right frame of mind to look after people. CI Haynes confirmed that she felt the claimant should focus on ensuring he was well first and it would not be a good idea for him to take on other people's emotional issues at this point. We prefer the claimant's account of this conversation because CI Haynes accepted she had not recollected it accurately and find she did not explain the context of her remarks. We find that they are offensive on their face and did offend the claimant.
169. It is agreed that in this meeting the Claimant raised the issue of applying for an attachment to Leading for London and was told it was unlikely to be supported.
170. CI Haynes accepted that no notes were taken of this meeting but considered that she had acted in accordance with policy because there is no requirement that notes be uploaded to the system anymore. She had taken

notes in her daybook, and she confirmed the output in emails at a later date. While this was not immediately after the meeting the policy did not specify when the individual has to have the written record of the meeting outcomes.

171. On 20 September the claimant emailed his line manager asking for a written record of the meeting and for explanation on a number of points. CI Haynes emailed her line manager, Supt Wright on the same day asking for his advice on the point and stating that "this is getting ridiculous". She was asked in cross-examination what she meant by this, and she said that she was referring to the fact that the claimant was continuously asking her for written records of meetings. It was not possible to document every encounter. She accepted, however, that this was only the second time the claimant had asked for written record, the previous occasion 23 May. She stated that that is not how it felt.
172. Supt Wright responded advising CI Haynes not to provide a written explanation because he considered the claimant might be trying to get evidence for an employment tribunal. He also directed her to check occupational health advice and advised that if the claimant saw the chief medical officer and was given adjusted status the circumstances could be reviewed. CI Haynes agreed that she had not sent her line manager the chief medical officer's report that had been prepared but said that she had verbally advised him that the chief medical officer had recommended a change of direction. On the balance of probabilities, we find that her recollection was incorrect, and she had not shared this report or its findings with her line manager verbally. We reach this conclusion because, if she had done so, it would be strange for Supt Wright to suggest as he did. Further CI Haynes agreed she had not shared it with the posting panel when it would have been highly relevant to do so, and we can see no logic in failing to share it then but briefing her manager.

#### Leading for London 3 October refusal and Comparator

173. On 2 October CI Haynes texted the claimant suggesting that they meet. The claimant replied and explained that again he had passed the leading for London assessment and thought this would be ideal for his long-term recovery. She was asked to reconsider releasing him.
174. CI Haynes response was because the BCU go live was imminent and that attachments across all strands were not being supported. This was an SLT decision and not an individual decision. We also heard evidence from Supt Jones that this was her decision, albeit supported by the rest of the SLT. She had decided that no attachments would be permitted because of the imminent reorganisation. They were already short of some inspectors and did not feel it appropriate to allow staff to move around at this point. Supt Wright supported CI Haynes' decision as she forwarded the claimant's email to him at page 1085.
175. Supt Jones explained that one individual (James Carrington) was already attached to Leading for London and she did not rescind his appointment. She explained that this individual was embedded in the work, and it would be disruptive to the programme to remove him. He had already been away from the BCU for some time, he was not on the uniform side and his absence did not have as much impact as the absence of an individual from the Response team would have. She was facing a situation when they were at least three inspector short, with two inspectors predicted to retire before or around the go live date and for these reasons she put all

attachments on hold. The claimant was not the only officer affected by the decision which is operational one because of the merger.

176. We accept Supt Jones explanation that she was the main decision-maker on the ban on attachments and this was not a decision of CI Haynes. We accept that CI Haynes, on both occasions when this was raised, was relaying an areawide instruction to the claimant when she refused his attachment to leading for London. We find that Mr Carrington's circumstances were different, this was not a new attachment but a decision not to revoke an existing one.
177. This exchange of texts at page 1471 – 1472 also set out that the claimant felt that CI Haynes in continually refusing to put matters in writing was not transparent. He had expected her to refuse his attachment, but her refusal to explain the decision was upsetting. He said he had no option but to lodge a formal bullying complaint as he was not being treated respectfully nor is it ethical. He also asked if she would consider giving him a different line manager as it was clear she had a personal issue with him.
178. CI Haynes response was that that was not the case, there was no personal issue with him. He was one of 15 inspectors that she managed the issues were solely operational.

#### Panic attack at work 4 October

179. The claimant read the email dated 3 October (p1096) on his arrival at the office on 4 October found it very distressing because it suggested he had acted without permission and as a result the claimant said he suffered a further panic attack
180. One of the matters the claimant found distressing in this email was CI Haynes statement that he had not been given permission to attend an assessment for LFL The claimant recollects that he was told to go on the assessment while CI Haynes recollects that she did not give permission to do this. She would not have done so because there were no attachments from the borough granted during the time of the impending restructure. We prefer the claimant's recollection and find he was given permission to complete the assessment. We do so because CI Haynes recollection of events has been incorrect on a number of occasions, which she has conceded in cross examination. This was very important to the claimant, and we consider he is more likely to recollect the details accurately than his line manger. We accept the claimant's evidence that this passage contributed to his panic attack.
181. The claimant was able to speak to Inspector Weston who advised him to go home. He also advised the claimant that he would contact CI Haynes and tell her that was okay, but she should not contact the claimant as he felt that his line manager was bullying him, and he needed some space. The bullying issue referred to the points the claimant had made in his texts to his line manager. Despite this, on his arrival home he became aware that CI Haynes was telephoning him. While the claimant did not answer the phone, she then left a voicemail and then sent an email.
182. Inspector Weston confirmed to the claimant later on that day that he had passed a message on to CI Haynes not to contact him, but that she had told him she was going to anyway. CI Haynes explained this in cross examination. She considered that she had a duty of care to the claimant, and it was important to her to tell the claimant how he had made her feel. She had been offended by his accusation of bullying and she felt that there were two of

them in the professional relationship and it was appropriate for her to explain her feelings at this point.

183. We accept that a line manager has a duty of care. We find, however, that on this occasion it was inappropriate for CI Haynes to contact the claimant. She had been made aware of the claimant's feelings on the subject and had been reassured of his safety. We find that she contacted the claimant because she wished to express their own feelings rather than out of any concern for him.

5.10.2018 Claimant has informal meeting with Supt Jones to discuss his grievance/concerns and then raises formal grievance

184. On 17 September the claimant had emailed Supt Jones to outline concerns he had regarding the treatment from his line manager and the management of his mental health. We find this is raised in relation to disability discrimination. He asked to meet to discuss this. Due to annual leave Supt Jones was not able to respond until 24 September. She asked if he would like to catch up and gave her next availability as 5 October. In this exchange prior to the meeting the claimant explained to Supt Jones that he had been posted to the Response team role but could not perform this due to health issues and the position was contrary to his chief medical officer report in August 2018. He was concerned that this report had not been presented to the posting panel or considered in terms of reasonable adjustments. He explained the impact on himself and his family as horrendous.
185. Having considered this Supt Jones advised the claimant that she thought the informal resolution process should be started which she discussed with him when they met. She explained it would also look into his concerns regarding his posting to Response.
186. They met on the 5 October and discussed the claimant's concerns in more detail, particularly about his working location and working patterns. Supt Jones explained that he had not been prioritised as an adjusted duties officer because he was on a temporary recuperative plan, she had no record of disability, and the chief medical officer and GP advice was not taken into account. The claimant's self-declaration of disability was the first time that Supt Jones had received this information. She encouraged him to appeal the posting on the basis of this information.
187. Supt Jones explained that she would also contact CI Haynes that afternoon and discussed the arrangements for contact between her and the claimant. She put in place that the claimant should contact the staff office each day rather than CI Haynes directly while they worked on a plan to take this forward. She elaborated on this in evidence before us and explained that her primary concern was the claimant's welfare. She was concerned as this meeting was on a Friday afternoon, she did not want him being anxious over a weekend but wanted him to have a place he could report to.
188. Supt Jones also discussed how to progress this informal resolution and mentioned that she had an experienced assessor on the borough, Inspector Toby Noar. This individual was line managed by CI Haynes. Supt Jones nonetheless felt that he was the right choice because this in her mind was the informal resolution procedure. The policy does not express any conflict-of-interest issues where the informal policy is being used. She felt that Toby Noar was the best qualified person for the role. The claimant, however, was concerned about his appointment and did not feel it was appropriate.

189. Supt Jones also explained that, because his posting might be causing some anxiety, an occupational health referral should be submitted for him to help moving forwards towards February 2019 and to provide an additional check on health and well-being. Page 1115.
190. On 12 October CI Haynes emailed Julie Froud, who had been at the meeting on 5 October, and was advised that she should raise an occupational health referral for the claimant. She did not do so.
191. The claimant returned to work on 8 October and, having then read the email of 4 October sent by CI Haynes, which outlined how deeply offensive she found it that he had mentioned she was being bullied, he decided to file an official grievance and did so that day. His grievance raises concerns of discrimination. He sent an email to Supt Jones on the same day to tell her that he had done so. She responded on 9 October stating she had met CI Haynes and Supt Wright and confirmed Supt Wright would be in contact shortly. She explained in her evidence before us that she felt the claimant had decided on a formal route and she therefore had no options. She had wanted to assist via an informal route, but this was no longer open to her.

#### 11.10.2018 Meeting between Claimant and Supt Wright

192. The claimant considered that it was inappropriate for Supt Wright to deal with a grievance as he was one of the individuals that he had complained about. Supt Wright explained that he was not intending to speak to the claimant directly about matters in the grievance and was not investigating it, but only planning to speak to him to address the concern highlighted that he was worried about working at Sutton police station.
193. The pair did meet on 10 October. This was not a planned or arranged meeting. During this meeting the claimant explained that the self-inflicted comments had been upsetting and Supt Wright explained in more detail what he had meant by them. He felt that the conversation, which lasted around an hour was more relaxed and open than previous interactions.
194. There are no notes of that meeting, but the claimant recalled that that Supt Wright said, 'some people are very clever in how they get OH to say what they want'. Supt Wright agreed that he had made the comment but explained that this was taken out of context. He simply meant that it could be difficult for line managers with a number of staff to get occupational health advice. Those who were clever enough to articulate proper questions to occupational health got a more accurate report. He was expressing frustration in the system that one had to ask specific questions in order to get a helpful report and his comment was that some people do a better job of this than others. We find that this context would not have reasonably been apparent to the claimant who was distressed by the comment, and it was reasonable to be so. It was related to his disability.
195. Following this discussion on the 10<sup>th</sup>, on 11 October Supt Wright emailed the claimant to explain that he had met with CI Haynes that morning and had agreed a way forward. When the claimant returned to work the following week, he could work out of Croydon instead of Sutton. He was asked to maintain regular contact with himself and CI Haynes and asked to ensure he got his WBA work submitted so that he could be signed off
196. The claimant responded appreciating the change of location and asking if Supt Wright was dealing with the grievance. He confirmed that he would not be doing so, but this would be dealt with by the grievance management team.

“overhold” position

197. On 11.10.2018 the claimant's posting appeal was upheld, and he was posted to Professional Standards (office hours) role. This role was described as a final posting. On 2 November the claimant emailed Supt Jones and CI Hagley asking for clarification on his posting as he had been told by Sgt Adkins the word overhold had been used regarding his role and Inspector Noar also mentioned this at the grievance meeting. This concern about what overhold means was not answered by either individual until Supt Jones provided clarification in March 2019.
198. The claimant became concerned about this being a temporary role rather than a permanent one following these two interactions and stated that its status changed from permanent to temporary on 17 October. He was supported in this view for a number of reasons. The role he was given had already been assigned to another inspector during the expressions of interest process. We were referred to page 488a which was the claimant's service record. This shows he's not in his permanent role until February 2019. The claimant also directed us to an email that was sent by CI Hagley to all members of the team except himself which provided that the other inspector was managing all the staff. He felt that these two things, that the email was not sent to him and that he was not given any staff to manage indicated his position was temporary. CI Hagley stated that the claimant's omission from the email was an oversight and that he had to select only one person to manage the staff for operational efficiency. It did not mean the claimant's posting was not a permanent one. We were also referred to page 1261 which refers to a home visit which took place on 30 December between CI Hagley and the claimant. This meeting referred to the requirement to consider the longer-term future and a reference to the chief medical officer. For these reasons the claimant was in a state of considerable anxiety that his role was not in fact a permanent one. This anxiety triggered his further absence and sick leave.
199. Supt Jones explained that the term overhold is no longer used. It did not denote temporary. The claimant was in a role that had a full cost code and was permanent. She explained that the central organisation produces a blueprint for each BCU which specifies the minimum number of staff in each unit. She had discretion to flex the number of staff she had in roles as she felt fit. Being aware of the large number of complaints in three separate areas that had come together following the merger, she took the view that she needed extra resource in professional standards. She therefore moved the claimant into professional standards role as this extra resource was needed on a permanent basis. The HR records to which the claimant referred do not show an accurate picture for anyone. The system simply put everybody into permanent roles from 6 February and did not record any early mobilisation into a permanent role.
200. The claimant also considered that his role was then advertised and as he was the only candidate for it, he was then given it on a permanent basis. Supt Jones told us that was not the case. It was known that Claire Robins was likely to retire and indeed did so. It was her role that was advertised as Supt Jones intended to have two inspectors permanently in this area. That did not happen and as there were no expressions of interest in this role the claimant remained as the only inspector on the unit. His role was not made permanent once Claire Robins left; it was always permanent.

201. We accept Supt Jones explanation and find that the claimant's job was permanent and always was from the date that he was put into it, following the appeal from the expression of interest exercise. Inspector Hagley's reference to the chief medical officer and the future is a reference to further reviews that may be needed because of the claimant's health, not because his job is not a permanent posting.
202. Nonetheless, we find that the position was very unclear and that nobody took the opportunity to reassure the claimant and provide him with an explanation leaving him in a state of considerable anxiety and confusion. We are clear, however, that there was no change in status in the role between the date he was given it following the appeal and the date on which he raised the grievance.

#### Interactions with Inspector Noar

203. Inspector Noar was at the time the deputy grievance single point of contact for the safer neighbourhood borough command unit. He was given details of the claimant's grievance and could see that it was a difficult issue for the claimant but was hopeful that a resolution could be found. He explained that he had initially intended to ask someone else in the single point of contact team to address the grievance, but the most suitable person had already been involved. He therefore decided that it was most appropriate that he took on this role himself in order to ensure that appropriately experienced officer was involved.
204. The grievance procedure at the first stage is an opportunity for matters to be resolved locally. If the individual feels this has not resolved matters, then they must set out their grievance in a written prescribed form and it is dealt with by the grievance resolution team.
205. On 17 October the claimant and Inspector Noar met to discuss his grievance concerns in more detail and progress the informal resolution. It was at this meeting that Inspector Noar informed the claimant that his posting appeal had been successful and the overhold position in professional standards was going to be available to him.
206. The claimant's evidence is that Inspector Noar dismissed the points he raised about his independence. His recollection is that he used the phrase "everyone suffers from insomnia". He found this to be patronising, mocking, and undermining.
207. Inspector Noar confirmed that he did say something similar to the claimant, but the context is misunderstood. He meant that general tiredness and sleeping issues are common with working shifts he was trying to find out if it was that or something more serious. We find that however this comment was made, it was reasonable for the claimant to hear it as patronising, mocking, and belittling. It had the effect of creating a humiliating environment and it was reasonable for the conduct to have that effect. It related to the claimant's disability.
208. Following the meeting on 17 October, Inspector Noar emailed confirming that he would undertake some actions by speaking to CI Haynes that the claimant would take on his new role with enthusiasm. This is a page 1156a -1156b of the bundle.
209. Inspector Noar emailed the grievance management team his report on the grievance on 16 January 2019. This was many months after the 10-day deadline had passed. The report is at page 1348. It concluded that there was no evidence of bullying and the application of the sickness policy was correct



and based on OH advice. It finished with the statement that as someone with extensive experience of grievance management, he believed the matter was concluded. Inspector Noar explained that because the claimant had got day shift work following his appeal, that really dealt with matters. He confirmed he had not done any in-depth investigation, for example had not considered that the sickness policy had not been followed because the meetings had not been held in a timely way. He had simply reached the conclusion that informal resolution had done all it could.

25.10.2018 Meeting between Claimant and CI Hagley (new line manager in Professional Standards role)

210. The claimant received official confirmation on 17 October that his posting appeal had been successful. He accordingly contacted CI Hagley as he was returning to his line management and arranged to meet on 25 October to discuss his new role in professional standards.
211. The claimant had hoped that the meeting would issue some form of apology as his disability had now been recognised, but felt that CI Hagley seemed annoyed with him throughout the meeting. The claimant raises 3 complaints about harassment from comments made in this meeting.
212. He recollected the CI Hagley opened the meeting by saying that the claimant had got what he wanted in relation to his posting. CI Hagley cannot recall making the comment that the claimant had got what he wanted. He does not believe that he did say that. If he did make the comment, it would be to congratulate the claimant in a positive way. As CI Hagley is not sure of what he said we prefer the claimant's recollection and find this comment was made as the claimant describes it. We find it relates to the claimant's disability, is perceived by the claimant as hostile in its effect and it was reasonable for the claimant to perceive it this way.
213. The claimant said he was told that his reputation with the senior leadership team was very poor because he had been unwell and raised a grievance. Inspector Hagley also said that he would not assert the claimant had a poor reputation because he had submitted a grievance but because he had been unwell or been absent from work. The context of this comment was that the work the claimant had been tasked with while working for CI Haynes was not completed to the standard that she had expected to see.
214. We find that the context of such a comment was based on the claimant's absence and problems at work because of his depression. We also find such a comment is not encouraging but creates an intimidating environment and it is reasonable of the claimant to perceive it in this way.
215. The claimant also complains he was told he had to prove himself. CI Hagley confirmed that they did have a conversation about the opportunity for the claimant to prove himself and to improve his reputation, which CI Hagley felt was an honest and encouraging conversation. We find that the context of such a comment was based on the claimant's absence and problems at work because of his depression. We also find such a comment is not encouraging but creates an intimidating environment and it is reasonable for the claimant to perceive it in this way.

Relevant Law/Submissions

Direct Discrimination

216. The claims include direct sex and age discrimination. S13 of the Equality Act ("EqA") provides "A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."
217. S.13 EqA focuses on whether an individual has been treated 'less favourably' because of a protected characteristic, the question that follows is, treated less favourably than whom? The words 'would treat others' makes it clear that it is possible to construct a purely hypothetical comparison.
218. Whether the comparator is actual or hypothetical, the comparison must help to shed light on the reason for the treatment. For this purpose, S.23(1) stipulates that there must be 'no material difference between the circumstances relating to each case' when determining whether the claimant has been treated less favourably than a comparator.
219. The unfavourable treatment must be "because of" the protected characteristic. The protected characteristic needs to be a cause of the less favourable treatment but does not need to be the only or even the main cause.

#### Justification

220. Unlike other strands of discrimination .S.13(2) EqA states that: 'If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.' The Supreme Court in Chief Constable of West Yorkshire Police and anor v Homer 2012 ICR 704, SC, has made it clear that, 'to be proportionate, a measure has to be both an appropriate means of achieving the legitimate aim and (reasonably) necessary in order to do so'. The legitimate aim need not have been articulated or even realised at the time the measure was first adopted.
221. The Supreme Court in Seldon v Clarkson Wright and Jakes (A Partnership) 2012 ICR 716, SC, held that direct discrimination can only be justified by reference to legitimate objectives of a public interest nature, rather than purely individual reasons particular to the employer's situation, such as cost reduction or improving competitiveness. The employer must then go on to show that it is legitimate in the particular circumstances of the employment concerned.

#### Indirect discrimination

222. S.19(1) of the EqA states that indirect discrimination occurs when a person (A) applies to another (B) a provision, criterion or practice (PCP) that is discriminatory in relation to a relevant protected characteristic of B's.
223. A PCP has this effect if the following four criteria are met:
- A applies, or would apply, the PCP to persons with whom B does not share the relevant protected characteristic (S.19(2)(a))
  - the PCP puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share the characteristic (S.19(2)(b))
  - the PCP puts, or would put, B at that disadvantage (S.19(2)(c)), and
  - A cannot show that the PCP is a proportionate means of achieving a legitimate aim (S.19(2)(d)).

Disability discrimination

224. Disability is defined as follows

- (1) A person (P) has a disability if-
  - (a) P has a physical or mental impairment, and
  - (b) The impairment has substantial long-term adverse effect on P's ability to carry out normal day-to-day activities. ...

225. Section 212(2) of the EqA provides that an effect is substantial if it is more than minor or trivial. Paragraph 2 of Schedule 1 to the EqA sets out the definition of "long-term" in this context. It provides:

- "(1) The effect of an impairment is long-term if –
  - (a) it has lasted for at least 12 months,
  - (b) it is likely to last for at least 12 months,
  - (c) it is likely to last for the rest of the life of the person affected.

- (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur..."

226. Counsel for the respondent in her submissions set out what we agree is settled law on disability discrimination, that is the tribunal must consider separately whether the claimant had an impairment, whether the impairment had a substantial (more than trivial) adverse effect on day-to-day activities and whether the substantial adverse effect of the impairment was long-term, in the sense that it had lasted or was likely to last 12 months or is likely to be occur.

227. We were referred to Seccombe v Reed in Partnership Ltd EA-2019-000478-OO which summarises the statutory provisions and leading authorities. We noted that the long-term requirement relates to the effect of the impairment, not the impairment itself, and is judged at the time of the alleged discrimination.

228. We were also referred to McDougall v Richmond Adult Community College 2008 ICR 431, CA, which clarifies that the key question is whether, as at the time of the alleged discrimination, the effect of an impairment has lasted or is likely to last at least 12 months.

229. In considering whether something is 'likely', it must be asked whether 'it could well happen'. That is to be assessed by reference to the facts and circumstances existing at that date and so the tribunal is not entitled to have regard to events occurring subsequently. The correct question is to consider what the effects of the impairments were at the material time, and to consider whether there was information before the ET which showed that, viewed at that time, it could well happen that the effects of the impairments would last for more than 12 months.

S 15 Discrimination arising from disability

230. Section 15 EqA, which is headed 'Discrimination arising from disability', provides that "a person (A) discriminates against a disabled person (B) if: A treats B unfavourably because of something arising in consequence of B's disability, and A cannot show that the treatment is a proportionate means of

achieving a legitimate aim. This does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.”

231. To establish causation under s15 the tribunal has to identify whether the claimant was treated unfavourably and by whom. It then has to determine what caused that treatment, focusing on the reason in the mind of the alleged discriminator, possibly requiring examination of the conscious or unconscious thought processes of that person, but keeping in mind that the actual motive of the alleged discriminator in acting as he or she did is irrelevant. The tribunal must then determine whether the reason was ‘something arising in consequence of the claimant’s disability’. This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.
232. Any allegation of discrimination arising from disability will only succeed if the employer (or other person against whom the allegation is made) is unable to show that the unfavourable treatment to which the claimant has been subjected is a proportionate means of achieving a legitimate aim.

### Reasonable adjustments

233. The duty to make adjustments comprises three discrete requirements, any one of which will trigger an obligation on the employer to make any adjustment that would be reasonable. A failure to comply with the requirement is a failure to make reasonable adjustments, and an employer will be regarded as having discriminated against the disabled person.
234. The first requirement which is relevant here, applies where a provision, criterion or practice (PCP) has been applied by the employer that puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled.
235. Counsel for the respondent referred us to Tarbuck v Sainsbury’s Supermarkets Ltd 2006 ILR 664 and HM Prison service v Johnson UKAEA/0420/06/MAA. The former identified that while it will always be good practice for an employer to consult, there is no separate and distinct duty on employer to consult with a disabled worker about steps that might be taken to ameliorate the disadvantage potentially suffered. The question is an objective one, has the employer complied with its obligation to make reasonable adjustments? In the latter it was stated that the tribunal must identify with some particularity what steps it is the employer failed to take in relation to the disabled employee.
236. We were also referred by the respondent’s counsel to O’Hanlon V Revenue and Customs Commissioners 2007 ICR 135. We accept that it is only in highly exceptional circumstances that it could be considered a reasonable adjustment to give the disabled person higher sick pay than will be payable to a nondisabled person who does not suffer the same disability - related absences. That would not be an appropriate adjustment. One of those exceptional circumstances may be where the employee’s sickness absence has been caused by the failure to make reasonable adjustments. The EHRC employment code reflects this distinction and identifies that if the reason for absence is due to the employer’s delay in implementing a reasonable adjustment that would allow the worker to attend the workplace, maintaining full pay would be a further reasonable adjustment for the employer to make.

### Victimisation

237. This is defined as follows: -

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

(a) B does a protected act, or

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

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

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

The employee needs to be able to establish a link between any detriment suffered and the doing of the 'protected act'.

### Harassment

238. Harassment is defined at s 26 EqA as:-

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

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

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

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

.....

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

age; disability; gender reassignment; race; religion or belief; sex, sexual orientation.

239. Harassment has 3 essential elements, unwanted conduct which has the prescribed effect, and which relates to a protected characteristic. It must be reasonable for the conduct to have that effect and in deciding this there is both a subjective and objective element. The subjective part involves the tribunal looking at the effect that the conduct of the alleged harasser has on the complainant. The claimant must actually have felt or perceived his or her dignity to have been violated or an adverse environment to have been created. If the claimant has experienced those feelings or perceptions, the tribunal must consider whether it was reasonable for him to do so. This requires the tribunal to ask itself whether it was reasonable for the claimant to claim that the alleged harassers conduct had that effect.

#### Burden of proof in discrimination

240. Igen v Wong Ltd [2005] EWCA Civ 142, [2005] ICR 931, CA. remains the leading case in this area. There, the Court of Appeal established that the correct approach for an employment tribunal to take to the burden of proof entails a two-stage analysis. At the first stage the claimant has to prove facts from which the tribunal could infer that discrimination has taken place. Only if such facts have been made out to the tribunal's satisfaction (i.e., on the balance of probabilities) is the second stage engaged, whereby the burden then 'shifts' to the respondent to prove — again on the balance of probabilities — that the treatment in question was 'in no sense whatsoever' on the protected ground.

241. The Supreme Court in Royal Mail Group v Efofi, considering s136(2) of the Equality Act confirmed that at the first stage of the two-stage test, all the evidence should be considered, not only evidence from the claimant.

242. The bare facts of a difference in treatment and a difference in status only indicate a possibility of discrimination, they are not 'without more' sufficient material from which a Tribunal can conclude that there has been discrimination, Madarassy v Nomura International [2007] IRLR246 CA para 54-57. Likewise, that the employer's behaviour calls for an explanation is insufficient to get to the second stage. There still has to be reason to believe that the explanation could be that the behaviour was "attributable (at least to a significant extent)" to the prohibited ground. Therefore 'something more' than a difference of treatment is required.

#### Jurisdiction-Limitation period

243. Section 123(3) EqA provides that a complaint may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the ET thinks is just and equitable. Conduct extending over a period is to be treated as done at the end of that period — S.123(3)(a) and a failure to do something is to be treated as done when the person in question decided on it S.123(3)(b). In the absence of evidence to the contrary, a person is taken to decide on failure to do something either when the person does an act inconsistent with deciding to do something or, if they do no inconsistent act, on the expiry of the period in which they might reasonably have been expected to do it — S.123(4).

244. Where there is a series of distinct acts, the time limit begins to run when each act is completed, whereas if there is continuing discrimination, time only begins to run when the last act is completed. In the case of Barclays Bank plc v Kapur and ors 1991 ICR 208, HL, a distinction was drawn between a continuing act and an act that has continuing consequences. It was held that where an employer operates a discriminatory regime, rule, practice or principle, then such a practice will amount to an act extending over a period. Where, however, there is no such regime, rule, practice or principle in operation, an act that affects an employee will not be treated as continuing, even though that act has ramifications which extend over a period of time.
245. In Commissioner of Police of the Metropolis v Hendricks 2003 ICR 530, CA, the Court of Appeal made it clear that it is not appropriate for employment tribunals to take too literal an approach to the question of what amounts to 'continuing acts' by focusing on whether the concepts of 'policy, rule, scheme, regime or practice' fit the facts of the particular case. The Court of Appeal in Lyfar v Brighton and Sussex University Hospitals Trust 2006 EWCA Civ 1548, CA, confirmed that the correct test in determining whether there is a continuing act of discrimination is that set out in Hendricks. Tribunals should look at the substance of the complaints in question, rather than the existence of a policy or regime and determine whether they can be said to be part of one continuing act by the employer.
246. In exercising their discretion to allow out-of-time claims to proceed, tribunals may also have regard to the length of, and reasons for, the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has cooperated with any requests for information; the promptness with which the individual acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action. A tribunal will err if a significant factor is left out of account, although it is not required to go through every factor.

### Conclusion

247. Applying the relevant law as we have set it out to our findings of fact we conclude as follows in relation to the issues we were asked to determine.

### Jurisdiction -Limitation period

248. The first issue to be determined is that of jurisdiction. The respondent submits that claims relating to facts and matters that occurred on or before 8 July 2018 are out of time, unless they are found to form part of a continuing act. The claimant submits that he was subjected to a course of conduct which continued throughout the period and therefore the matters of which he complains are continuing acts. In addition he states that he tried to take advice on 6 June 2018 from CI Hagley in relation to his treatment and he would not discuss these issues. The claimant considers he was blocked from trying to raise issues at this point and considers it would therefore be just and equitable to extend any time limits.
249. We have considered the claimant's argument in relation to a just and equitable extension, but conclude that there are no grounds for such an extension. The claimant was aware of internal complaint methods open to him as he pursued these at a later point in the process. Any failure by CI Hagley

to deal with matters that were raised on 6 June is not sufficient for the Tribunal to extend its discretion. The claimant could have raised these through the internal complaints process. His claim form was lodged in November 2018 and this complaint is therefore made significantly out of time. We conclude that on each occasion when a complaint is out of time it would not be just and equitable to extend that time limit for these reasons.

250. As there are many different complaints relating to 3 protected characteristics we will deal with the limitation point in relation to whether the complaints amount to ongoing acts as we address each head of claim.

#### Direct age discrimination

251. We are asked to determine whether the respondent treated the claimant less favourably because of his age in relation to 3 separate events. It was accepted that all of the events occurred. The first complaint relates to when he was not appointed to the safer neighbourhood role in January 2018. We conclude this was less favourable treatment than his comparators Riggs and Willis. We have found that the decision to appoint Inspector Riggs, although the claimant was the highest scoring candidate, was in part based on Inspector Riggs being older than the claimant and having greater life experience. Age was therefore a factor in the decision. We do not accept that the respondent had a legitimate aim as we have found that the recruitment process was not a fair one. Failure to be promoted is, however, a one-off act not a continuing act. The claimant suggested this was an ongoing act because a policy was created.

252. We have considered this, and found that a policy was then put in place after this event which effectively created an age bar to future promotion. However, we have found that no such act or policy was ever applied to the claimant. The creation of this policy does not therefore create a regime which continues to affect the claimant. The claim brought relates to a one off act in January 2018. The tribunal therefore has no jurisdiction to hear this claim as it is brought out of time and it would not be just and equitable to extend the time limit. This claim does not succeed on jurisdictional grounds.

253. We then went on to consider whether the failure to appoint the claimant to the safer neighbourhood role in September 2018 is an act of direct age discrimination either because a policy was applied or because the decision was influenced by age. We have found that no policy was applied because there was no recruitment exercise. We have also found that the decision was not age related. Based on our findings we conclude that this was not an act of age discrimination. We accept the respondent's explanation.

254. We have then considered whether the claimant's attachment to Leading for London being blocked on 9 September and 3 October 2018 were acts of direct age discrimination. We have concluded that the comparator upon whom the claimant relies is not a direct comparator. We have found that there was no less favourable treatment in relation to a hypothetical comparator because we have found that the reasons for the attachment being blocked were operational reasons and not based on age. Further, we would find that the respondent's actions were a proportionate means of achieving a legitimate aim, that is operational efficiency ahead of a reorganisation. This claim therefore fails.

255. Finally under this head of claim the claimant complains that failing to adjust his shifts in line with medical recommendations to enable him to remain in the workplace between June and August 2018 is an act of direct age



discrimination. Based on our conclusions on jurisdiction, any refusal after 8 July would be within time. The comparators named by the claimant are not relevant comparators based on age as we found that their treatment was based on their medical situation. We have considered if a hypothetical comparator would have been treated differently. There is no evidence that this is the case. In submissions the claimant explained that he drew a link between this refusal and the comment we have found was made by Supt Wright on 2 May about the claimant being a young inspector. He is submitting that there is a culture that older staff are more readily given day shifts. There was no evidence before us, however, that anyone other than CI Haynes made the decision not to adjust his shifts in line with the GP advice. While we have found that three other staff members did have a view on age, there is no evidence that CI Haynes had this in mind.

256. We are not satisfied that on this allegation the claimant has discharged the initial burden of proof, but in any event accept that the respondent's conduct was not attributable to the prohibited ground.

#### Direct sex discrimination

257. The respondent relies on the treatment of Inspector LM. Alternatively the claimant relies on hypothetical comparator. We have found that Inspector LM had different circumstances and that she was a new joiner to the unit who was attending work. She is not therefore an appropriate comparator. We have considered the treatment of a hypothetical comparator in like circumstances, who was also off work and an existing member of the team and conclude that the reason the claimant was not offered a temporary role was for operational reasons and not to do with gender. We conclude that no one in the circumstances, regardless of gender, would be offered such a role while off sick. This claim does not succeed.

#### Disability discrimination – date of knowledge

258. The respondent has conceded that the claimant meets the definition of disability under the Equality Act from 7 August 2018 due to the mental impairment of anxiety and depression with insomnia. The claimant submits that the respondent was on notice that this was the case from diagnosis on 31 May 2018. He further points to CI Haynes referral for consideration of ill health retirement.

259. We have found that the respondent was aware that the claimant was suffering from depression from March 2018 and that this was indeed noted in the occupation health report of 3 April. We've also found that there was insufficient information before the respondent prior to the 7 August 2018 for it to be aware the claimant was disabled. We conclude that from this date, the respondent had knowledge of the claimant's disability for anxiety and depression with resulting insomnia and poor concentration.

260. The respondent has accepted that the impairments affected his ability to carry out normal day-to-day activities that result in physical exhaustion, emotional imbalance, irritability and lack of patience, chronic insomnia and irregular sleep pattern, panic attacks and inability to go to work sometimes. It disputed that these impairments affected his ability to drive or to cook and clean, leave the house easily or socialise. We have made findings that his inability to concentrate did impact his ability to drive in rush hour for long periods. While we were not directed to any specific medical evidence, on the

balance of probabilities we find it likely that the anxiety and depression did make it hard for the claimant to leave the house easily, socialise with others and to cook and clean on many occasions.

Discrimination arising from disability

261. This relates to the respondent being informed on 1 August 2018 that his salary would be reduced to half pay in accordance with the police regulations and the respondent's policy. Based on our conclusion above, we have found the respondent was not on notice that the claimant was disabled until 7 August. This claim therefore cannot succeed on jurisdictional grounds.

262. In any event, we have found that the respondent's actions were merely to send a warning letter which it was obliged to do as a matter of law. We conclude that this was taking an administrative step and cannot amount to unfavourable treatment, pay was not reduced. The claim therefore does not succeed, both because it is out of time and because there was no unfavourable treatment. We therefore do not need to consider any legitimate aim.

Indirect disability discrimination

263. The claimant asked us to consider whether or not the respondent applied a PCP which was discriminatory in relation to disability by requiring (i) an inspector to work at Sutton police station only, (ii) requiring inspectors and/or young inspectors to work shift patterns and (iii) requiring inspectors and/or young inspectors to work late shifts. We accept that these PCP are continuous acts and so the tribunal has jurisdiction to hear them. The respondent has knowledge of the disability from 7 August 2018.

Requiring an inspector to work at Sutton police station only

264. The respondent accepts that prior to October 2018 it applied the PCP to the claimant, that his home station was Sutton and he should generally work from that station. It is denied that this placed the claimant at any substantial disadvantage. Requiring officers to work at designated stations is submitted by the respondent as being necessary for operational requirements and to ensure consistent supervisory presence.

265. The disadvantage the claimant identified was difficulty with undertaking long drives in rush hour which were required to attend at Sutton when there were places he could work closer to home and so with a shorter drive. This he said made his condition worse and was likely to lead to higher sickness absence. We conclude that this PCP applied to those with whom the claimant did not share the relevant protected characteristics in that staff are assigned to a police station based on their roles on operational needs, and not on their home address. We conclude that this PCP put persons with whom he did share that characteristic at a particular disadvantage when compared with others with whom he did not because we accept that someone with anxiety and insomnia with poor concentration will find a long drive more difficult and this may lead to greater absence. It can also lead to a deterioration in health.

266. On 29 August the claimant asked to work more locally, from Bromley, which was refused. We have found that his mental health was deteriorating and conclude that on the balance of probabilities the stress and anxiety caused by a lengthy commute in heavy traffic was likely to exacerbate his

condition and lead to increased future absence. We conclude he was put at a disadvantage because he was more likely to require future absence and his health was likely to deteriorate.

267. We accept that there is a legitimate aim in requiring officers to work at designated stations, but conclude that applying the requirement to the claimant from 29 August was not objectively proportionate because he was carrying out project work. The reasons given do not apply to the role he was carrying out. The reasons given for refusal focused on what was said to be the claimant's need to be supported at work and to be where the senior leadership were based. It was not to do with ensuring his supervisory presence. This part of the claim succeeds.

Requiring inspectors and/or young inspectors to work shift patterns.

268. We find that the claimant was subject to a PCP that inspectors, regardless of age, were required to work shift work, that this criteria did apply to those with whom the claimant did not share the relevant protect characteristic. We also conclude that it put those with whom he did share that characteristic at a particular disadvantage because shift patterns are likely to worsen insomnia and so cause more absence and worsen his condition and it put him at that disadvantage. His GP and the CMO both concluded the claimant needed to work a regular pattern and could not do shift work because of his health. We conclude the claimant was put a substantial disadvantage in that he had long absences because of this PCP and his health worsened.

269. In relation to the requirement for shiftwork, the respondent further relies on its legitimate aim to maintain efficiency and resilience of the police service, requiring inspectors to work shift patterns to provide 24/7 level of service to the public. We accept that the respondent had a legitimate aim to ensure the efficiency and resilience of the police service and an operational need to require inspectors to work shift patterns to provide a 24/7 level of service to the public. and the PCP was a proportionate means of achieving that aim. A response team has to be available at all times to the public

Requiring inspectors and/or young inspectors to work late shifts

270. We reach the same conclusions as above. We conclude that late shifts also disrupt the sleep pattern of those with insomnia and led to the same disadvantage for the claimant. Again we accept that the respondent had a legitimate aim and its means of achieving that were proportionate.

271. On this basis 2 of the claims for indirect disability discrimination do not succeed, the claim in relation to place of work does succeed.

Failure to make reasonable adjustments

272. The claimant relies on the same PCPs as above. We have concluded that all 3 provisions put the claimant at the disadvantage of being more likely to have sickness absence and of his condition worsening. The respondent was not aware of the claimant's disability and that he was therefore likely to be placed at a disadvantage until 7 August 2018.

273. The claimant alleges the respondent should have taken these steps

- I. Amending his work pattern to non-shift work prior to May 2018 and/or;

- II. Allowing the Claimant to work at Bromley station prior to October 2018 and/or;
- III. Allowing the Claimant to work from home in May and October 2018 and/or;
- IV. Ensuring there was sufficient cover to enable the Claimant to work regular shift patterns in May 2018 and/or;
- V. Allowing the Claimant to work flexible hours to enable him to attend counselling prior to September 2018.
- VI. Carrying out a risk assessment in June 2018

274. In considering an amendment to a shift pattern prior to May 2018, we conclude that a failure to adjust a shift pattern is an ongoing act. We conclude that the respondent should have amended the shift once it had knowledge of the claimant's disability. We have found that when he returns in September the respondent does adjust the shift pattern. This claim does not succeed. The adjustment was made.

275. The claimant alleges the respondent should have permitted him to work at Bromley station prior to October 2018. We conclude it would have been reasonable to do so from the request made on 29 August 2018. This claim succeeds. The reasonable adjustment was not made.

276. The claimant suggests that a reasonable adjustment would have been allowing him to work from home in May and October 2018. Any claim in relation to May does not succeed on jurisdictional grounds. We conclude that, as it was accepted he had the tools needed to work from home once he had collected a laptop, it would have been reasonable to allow this from the date of the claimant's return in September and so have removed any commute. This claim succeeds, the reasonable adjustment was not put in place.

277. The claimant said they had not ensured sufficient cover to enable him to work regular shift patterns in May 2018. We have found this was not the case and this claim therefore does not succeed on this basis. In any event, it predates the respondent's knowledge of the claimant's disability and so does not succeed.

278. Was it a reasonable adjustment to allow the claimant to work flexible hours to enable him to attend counselling prior to September 2018? We have found that his first appointment was not until 30 August 2018 when he was off sick and thereafter flexibility was given. This reasonable adjustment was therefore in place and so this claim does not succeed.

279. Finally the claimant says that it would have been a reasonable adjustment for a risk assessment to have been carried out in June 2018. We have made a finding that a risk assessment was not carried out and it would be in accordance with policy to do so. However, this was prior to the claimant's knowledge of disability and the claim accordingly fails on that basis.

### Harassment

280. There are 11 matters complained of under this head of claim.

- I. That on 2 May 2018, Supt Wright said that the Claimant's disabilities were 'self-inflicted'
- II. That on 2 May 2018, Supt Wright told the Claimant: 'you are a young inspector and you get paid to do a job', with the inference to stop complaining and 'get on with it'.

- III. That on 23 May 2018, CI Haynes told the Claimant to 'go and get sleeping tablets'
  - IV. That on 17 October, Inspector Toby Noar told the Claimant that 'everybody suffers with insomnia';
  - V. That on 25 October 2018, CI Hagley said that the Claimant's reputation with senior management was 'very poor' because he had been unwell and issued a grievance;
  - VI. That on 26 October 2018, CI Hagley in told the Claimant 'you have got what you wanted' in response to the outcome of his appeal of the BCU posting;
  - VII. That on 19 September 2018, CI Haynes told the Claimant, 'you are not in the right frame of mind to look after people' and 'you are not resilient';
  - VIII. That on 25 October 2018, CI Hagley told the Claimant that he has to 'prove himself'; and
  - IX. That on 11 October 2018, Supt Wright told the Claimant: 'some people are very clever in how they get OH to say what they want'.
  - X. That on 4 October 2018 CI Haynes contacted the Claimant after he had asked her not to do so;
  - XI. That on 14 September 2018 CI Haynes instructed the Claimant not to amend his own shifts on CARMS;
281. 2 May comment- self inflicted. We have found that the comment made by Supt Wright reasonably created an intimidating, hostile, degrading and offensive environment for the claimant. We find that while the comment was made in the context of "mental health" this is not enough to be related to the protected characteristic of disability .We conclude that using the phrase "mental health" does not necessarily mean a reference to a mental health condition that is a protected characteristic. This phrase is used in a wider context and so this claim does not succeed.
282. Young Inspector .We have found that have found that the comment made by Supt Wright reasonably created an intimidating, hostile, degrading and offensive environment for the claimant. It is clearly linked to the protected characteristic of age. The claim is ,however , out of time and so fails on jurisdictional grounds.
283. Getting sleeping tablets We have found that the comment made by CI Haynes reasonably created an intimidating, hostile, degrading and offensive environment for the claimant. We conclude that it is not related to a protected characteristic because any link to mental health is not sufficient to link it to disability.
284. 17 October-Toby Noar comment. We have made findings that this occurred and we made a finding that it had the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, and it was reasonable for this conduct to have that effect. We find this comment relates to the protected characteristic of disability as the respondent was aware this was a symptom of the claimant's disability. This succeeds.
285. 25 October reputation comment , prove yourself comment and 26 October" you have got what you wanted". We have made findings that these comments were made and we made a finding that they had the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, and it was reasonable for this conduct to have that effect. We found these comments related to the protected characteristic of disability. These succeed.

286. 19 September- Similarly, we have found that the comment made by CI Haynes on 19 September 2018 did create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. It is related to his characteristic of disability. This succeeds.
287. 11 October Supt Wright- We have made findings that these comments were made and we made a finding that they had the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, and it was reasonable for this conduct to have that effect. We found these comments related to the protected characteristic of disability. This succeeds.
288. 4 October Haynes contact –We have made findings that CI Haynes engaged in unwanted conduct by contacting the claimant which she did for her own benefit not his. It was reasonable for the claimant to be intimidated and humiliated by this contact and the contents of her email which are made during a period of absence. We conclude the contact and comments were related to the claimant’s disability .This succeeds
289. Instruction given by CI Haynes on 14 September not to amend his own shifts .We have made a finding that this instruction was given for legitimate operational reasons and was not unwanted conduct related to the claimant’s disability. This claim does not succeed.

#### Victimisation

290. The claimant relies on
- I. The submission of his grievance on 17 September 2018 (informal) and 5 October 2018 (formal) and/or;
  - II. The appeal against the provisional posting under the BCU model on 26 September 2018.
291. We find that in each of these the claimant made an allegation that the respondent had contravened the Equality Act and these matters amount to protected acts.
292. The Claimant relies on the following alleged detriments:
- I. A change in his Professional Standards role from a permanent to temporary (over-hold) post on 17 October 2018.
  - II. Blocking his attachment to the Leading for London role on 19 September and 3 October 2018
  - III. Rejecting his request to work from Bromley station on 10 September 2018.
  - IV. Forcing him to work unreasonable hours at Sutton station from May 2018 and
  - V. Refusing to permit him to work non-shift patterns, between May and August 2018.
  - VI. Sending the 80-day sickness absence and pay information letter on 1 August 2018
293. The issues set out at 111, IV, V and VI predate the protected acts and therefore cannot succeed.
294. He also relies on a change in his professional standards role for a permanent to a temporary overhold position on 17 October 2018. We have made a finding that the professional standards role status was not changed. It was granted as an overhold position which is a permanent one and remained so. This claim therefore fails.

295. The claimant relies on his attachment to the Leading London role being blocked on both 19 September and 3 October 2018. We have found that the reason for this was an operational one determined by Supt Jones and connected to the reorganisation of the respondent organisation. We conclude that it was not connected in any way with the protected acts

296. The claims for victimisation fail.

**Employment Judge McLaren**

**Date: 18.10.2021**

**SENT TO THE PARTIES ON**

**Date: 19.10.2021**

FOR EMPLOYMENT TRIBUNALS