



EMPLOYMENT TRIBUNALS

Claimant: L Darby

Respondents: 1. The Chief Constable of Lancashire Constabulary
2. Richard Robertshaw

HELD AT: Manchester **ON:** 15-19, 22-26 May, 26 September 2023
(and in chambers: 8 November 2023,
26 January and 30 April 2024)

BEFORE: Employment Judge Batten
D Wilson
B Tirohl

REPRESENTATION:
For the Claimant: L Mensah, Counsel
For the Respondent: V von Wachter, Counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The complaint of a failure to make reasonable adjustments for disability is well-founded and succeeds;
2. The complaint of unfavourable treatment because of something arising in consequence of disability is well-founded and succeeds; and
3. The complaint of victimisation is well-founded and succeeds.

REASONS

1. By her first claim form presented on 16 April 2021, under case number 2402916/2021, the claimant presented complaints of disability discrimination, comprising discrimination arising from disability, a failure to make reasonable adjustments and victimisation. The first claim form named only the first respondent. On 3 June 2021, the first respondent submitted a response to the first claim.
2. A case management preliminary hearing took place on 13 July 2021 before Employment Judge Batten at which the complaints in the first claim were clarified and a list of issues drawn up.
3. On 14 April 2022, the claimant presented a second claim, under case number 2402660/2022, comprising complaints of disability discrimination against both the first and second respondent. On 21 June 2022, the respondents submitted a joint response to the second claim. A case management preliminary hearing was listed but postponed. The parties' representatives then co-operated to agree directions and an updated, agreed list of issues covering both claims, thus obviating the need for the case management preliminary hearing to be relisted.

Evidence

4. A bundle of documents comprising 2 full lever arch files, 1539 pages, together with a separate bundle of relevant policies and procedures, running to a further 349 pages, were presented at the commencement of the hearing in accordance with the case management Orders. A number of further documents were added to the bundle in the course of the hearing. References to page numbers in these Reasons are references to the page numbers in the bundle.
5. The claimant gave evidence herself by reference to a lengthy witness statement and also called her Police Federation representative, Clare Wall to give evidence in support.
6. The respondent called 6 witnesses, being: Sergeant Lindsay Brown, the claimant's line manager at Morecambe police station; Inspector James Martin, the claimant's second line manager at Morecambe; Superintendent Chris Hardy, who was the Chief Inspector responsible for policing delivery in Lancaster and Morecambe at the material time; Inspector Gemma Barr, the claimant's line manager at Blackpool police station; Chief Superintendent Richard Robertshaw, the second respondent, who dealt with the stage 2 appeal; and Joanne Kane, the respondent's senior employee relations

manager. All of the witnesses gave evidence from written witness statements and were subject to cross-examination.

7. In addition, the Tribunal was provided with a cast list and an agreed chronology.
8. The final hearing of the claims had been listed for 10 days. The oral evidence was completed only late in the afternoon of the tenth day. Further days were then listed for submissions and deliberations. However, a number of the days set aside for deliberations had to be cancelled by the Tribunal administration and re-listed. This led to a significant delay in the Tribunal completing its deliberations, for which the Tribunal apologises to the parties.

Issues to be determined

9. A list of issues had been prepared at the case management preliminary hearing on 13 July 2021. This was revised and agreed between the parties following the receipt of the second claim. At the outset of the hearing, the Tribunal discussed the list of issues with the parties. After amendment, it was agreed that the issues to be determined by the Tribunal were as follows:

Failure to make reasonable adjustments for disability – Sections 20/21 Equality Act 2020

1. **Does the Respondent have any of the following provisions, criteria or practices which put the Claimant at a substantial disadvantage in comparison with persons who are not disabled:**
 - a) **Requiring officers served with UPP/UAP papers to read them in presence of supervisors/managers serving the papers?**
 - b) **Applying the UPP/UAP without flexibility?**
 - c) **Requiring that her NPT role be undertaken at Lancaster and Morecambe Police Station?**
 - d) **Requiring that the Claimant remain in her NPT role? and/or**
 - e) **Providing laptops and other agile devices to those in agile roles?**
2. **If so, did the operation of the said PCPs put the Claimant at a substantial disadvantage compared to people who did not share the Claimant's disability?**
3. **If so, was the Respondent under a duty to make the following adjustments:**
 - a) **Allowing the Claimant to take the UPP/UAP papers away and so leave the meeting on 16 November 2020 and/or arranging for her to be accompanied at the meeting by a Police Federation companion?**

- b) Not taking the Claimant through an adversarial process (recommended by her counsellor, David Nia, of the Respondent's Occupational Health Department and recommended generally for people suffering from PTSD?
 - c) Allowing the Claimant work closer to home or a version of agile working partly from home rather than undertake an 80-mile round trip to and from work (as suggested by the FMA in reports dated 22 April and 18 November 2020)?
 - d) Redeploying the Claimant to a vacant settled suitable position closer to her home and if no such positions were vacant to swap her role with that of a non-disabled officer working closer to her home in a settled post? and/or
 - e) Providing a work laptop and/or mobile device to allow access to emails, Force intranet and study resources when at home?
4. If so, did the Respondent fail to make those/any of those adjustments?
5. Were those adjustments reasonable taking into account the size and resources of the Respondent?

Discrimination arising from disability – Section 15 Equality Act 2010

6. Did the Respondent (through managers) treat the Claimant unfavourably because of something arising in consequence of her disability by:
- a) Subjecting the Claimant to the stage 1 UPP/UAP meeting on 15 December 2020, the “something” being her sickness absence and/or inability to carry out the NPT Community Beat Manager role, which was unfavourable to the Claimant as it would inevitable damage her mental health and/or put her one step further along the attendance management process the end result of which could be dismissal?
 - b) Issuing the Claimant with the WIN of 22 December 2020, the “something” being her sickness absence and/or inability to carry out the NPT Community Beat Manager role, which was unfavourable as it put the Claimant one step further along the attendance management process, the end result of which could be dismissal?
 - c) Sgt Brown instructing the Claimant on 5 January 2021 to return to Morecambe to work, the “something” being her fatigue from long journeys and her inability to work in a noisy, busy office, which was unfavourable as it caused the Claimant significant anxiety and distress and a deterioration in her mental health condition? and/or
 - d) Inspector Martin commenting on 11 January 2021 during a telephone enquiry about the Claimant's welfare suggesting the Claimant would “have a problem with any white male who was [her] supervisor”, the “something” being the Claimant's anxiety and/or stress, which was unfavourable because it disregarded the genuine nature of the concerns the Claimant had about her supervisor and resulted in Inspector Martin dismissing those rather than taking appropriate action?

taking into account the following factors:

- a) The 16 January 2020 FMA report suggested it would take at least twelve months of Adjusted Duties before the Claimant would be able to resume full duties. The Respondent appears not to have taken this into account.
 - b) The WIN does not set out how the Respondent proposed to assist the Claimant but simply suggests an apparently arbitrary sickness absence target.
 - c) The Respondent's actions in failing to take appropriate account of the medical advice and failing to implement reasonable adjustments since 2019 have exacerbated the Claimant's illness and thus caused or at least contributed to her absence.
- 7 If so, was the above treatment because of the things arising from the Claimant's disability/disabilities? *The claimant says that the relevant things arising from her disability were prolonged absence and underperformance.*
- 8 If so, and the Claimant was unfavourably treated because of something arising in consequence of her disability, were the Respondent's actions a proportionate means of achieving the legitimate aims of:
- a) adequate attendance levels to enable the Respondent to serve and protect the public and ensure adequate resources are available? and/or
 - b) that publicly funded resources and funds are budgeted and considered with integrity?

Victimisation - Section 27 Equality Act 2010

9. The parties agree that the following were protected acts carried out by the Claimant:
- a) Bringing a grievance alleging disability discrimination on 23rd December 2020;
 - b) Bringing a claim for disability discrimination in April 2021 (under case number 2402916/2021);
 - c) Appealing against the outcome of the grievance referred to above, on 20 September 2021.
- 10 If so, was the Claimant victimised as a result, by the following acts:
- a) The comments by the Second Respondent on 3rd November 2021?
 - b) The comments by the Second Respondent in the appeal outcome that some events such as the Claimant's sickness absence were triggered by the fact that she was under Unsatisfactory Performance/Attendance procedures?

- c) The outcome of her grievance appeal as written by the second respondent, concluding that:
- i) The Force medical advisor had not recommended that the claimant be moved to another workplace,
 - ii) The Respondent had not failed to make a reasonable adjustment in omitting to move her,
 - iii) The Respondent had legitimately prioritised continue it in supervision and had robustly managed the Claimant's serious performance/attendance issues.
 - iv) It was not appropriate for the Claimant to work from home given her productivity and denied that she had been discriminated against on the grounds of disability.
 - v) the Claimant was undertaking an unfunded post carrying out largely administrative duties in which she rarely used her policing skills, which arrangement was "far from satisfactory in terms of value for money for the public of Lancashire".
 - vi) That the UPP/UAP process had only been "paused" by CI Stubbs and would but for the change in the Claimant's supervision have been resumed and potentially escalated by then, despite noting that the Claimant was classified as an 'Adjusted duties' officer.
 - vii) The claimant be moved to the Initial Investigation Unit on 22 November 2021 as a temporary attachment, and specifically mentioned the possibility of further UPP/UAP being taken against the Claimant in the future. This was despite the grievance outcome report of CI Stubbs (dated September 2021) indicating that the Written Improvement Notice had been in appropriate and his UAP/UPP appeal outcome letter of 6th July 2021 annulling the UAP/UPP proceedings together with the Written Improvement Notice.
 - viii) The Second Respondent failing to amend his outcome report to state the UAP/UPP proceedings had been paused, despite a request from the Claimant's Police Federation Representative?
11. If so, did such conduct amount to a detriment?
12. If so, was the Claimant subject⁰ to said detriment because she had done a protected act as set out at paragraph 1 above?
13. *The First Respondent does not intend to rely on the statutory defence in relation to the Second Respondent.*

Remedy – Section 124 Equality Act 2010

14. Compensation for unlawful acts upheld for (a) lost earnings incurred due to sick leave, a reduction in hours and pay and any ongoing losses including future losses that may be incurred such as those due to being ill health retired as a consequence of the alleged discrimination and (b) injury to feelings.

Findings of fact

10. The Tribunal made its findings of fact on the basis of the material before it, taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. The Tribunal resolved such conflicts of evidence as arose on the balance of probabilities. The Tribunal has taken into account its assessment of the credibility of witnesses and the consistency of their evidence with surrounding facts.
11. Having made findings of primary fact, the Tribunal considered what inferences it should draw from them for the purpose of making further findings of fact. The Tribunal has not simply considered each particular allegation, but has also stood back to look at the totality of the circumstances to consider whether, taken together, they may represent an ongoing regime of discrimination.
12. The findings of fact relevant to the issues which have been determined are as follows.
13. The claimant was employed by the respondent from 3 March 2003, as a Police Officer. The respondent concedes that the claimant is disabled within the meaning of the Equality Act 2010 ("EqA"), by reason of a mental health impairment, post-traumatic stress disorder, depression and anxiety. The claimant was formally diagnosed with PTSD, depression and anxiety in In August 2019.
14. On 5 June 2017, the claimant returned to service with the respondent, following a career break, which had commenced in September 2010. The claimant started on a phased return as her substantive job was as a frontline response officer and it had been agreed that she could not immediately return to frontline duties.
15. The respondent has a Limited Duties Policy, which appears in the policies bundle at pages 1-7 together with supporting procedures at pages 8-24. The Limited Duties Policy identifies 3 categories of limited duties as follows:
 - A: Recuperative duties, defined as following injury or accident or illness, whereby a police officer prepares for a return to full duties and the full hours for which they are paid, and is assessed to determine whether

that officer is capable of making such a return. Recuperative duties should normally last for 6 months or, in exceptional cases, be extended to 12 months;

B: Adjusted duties, defined as duties short of full deployment, where workplace adjustments (including reasonable adjustments under the Equality Act 2010) are made in order to overcome barriers to working. The officer concerned must be attending work regularly and working their full hours. Alternatively, the officer must have failed to recover to full duties following a period of recuperation, or has failed a fitness test, or be subject to medical review. Adjusted duties are subject to formal management review after 12 months, and annually thereafter. The possible outcome(s) of the review are listed as:

- a) the officer is considered for a return to full duties;
- b) some adjustments are no longer necessary and can be removed so that the officer may be more fully deployed;
- c) the officer remains in the role with existing adjustments in place;
- d) further adjustments are agreed to be reasonable and implemented;
- e) existing adjustments can no longer be accommodated as reasonable, in which case the force would invoke procedures for allocating the officer to a more appropriate role;
- f) the Unsatisfactory Performance Procedure (UPP) may be considered;
- g) the officer is considered for ill health retirement.

C: Management restricted duties, defined as when confidential information or intelligence suggests the officer may not be suitable for post or where serious concerns about the officer require management actions.

16. In the course of evidence, an issue arose about the difference between “Adjusted duties” under the respondent’s Limited Duties Policy and “adjusted duties” which were said to have been designed by the officers involved with the claimant from time to time regardless of the provisions of the respondent’s policy. The respondent placed much emphasis on the capitalisation, or not, of the term ‘adjusted duties’.
17. From 23 August 2017 to 13 November 2018, the claimant was signed off work, sick, following a domestic violence incident. The respondent encouraged the claimant to report this as a crime.
18. In October 2018, after the claimant had been off sick for 15 months, she was referred to occupational health (known as the Force Medical Advisor (“FMA”)) and, on 13 November 2018, the claimant returned to work to undertake

- adjusted duties, working 12 hours per week, in the respondent's HR department at the respondent's Headquarters, near Preston.
19. The FMA report, dated 20 November 2018, appears in the bundle at page 202 and recommends that, upon return to work, the claimant should be allowed to attend counselling during work hours, work at her own pace and be given time to settle in. The FMA reports that it is cautiously optimistic that, with time, the claimant will be able to resume normal duties as a police constable.
 20. On 12 February 2019, the claimant was reviewed by the FMA. The resulting report appears in the bundle at page 214 and says that a delay in the outside investigation had caused the claimant anxiety and stress, and also records that the claimant was planning to "... *gradually phase herself into resuming her normal duties at some point in time ...*".
 21. From 9 April 2019 to 6 May 2019, the claimant had a further period of sickness absence, lasting a month.
 22. On 14 May 2019, the FMA said that the claimant was "*fit to resume work in a recuperative role such as sedentary office-based duties*" – bundle page 216. As a result, the claimant moved to work in the respondent's 'Futures' department on a temporary basis.
 23. In the bundle at page 217 is a "Recuperative Duties Plan", to start on 21 May 2019, which notes that the claimant's GP had recommended, "Until further notice - Not front line operational and not force control room", while the FMA recommended office-based duties. The plan is set to be for 4 weeks, but it continued thereafter. The Plan was not signed off by any party.
 24. In August 2019, the claimant was formally diagnosed with PTSD, depression and anxiety.
 25. On 13 August 2019, the FMA indicated that they agreed with the respondent's suggestions that the claimant be put to work in the Lancaster and Morecambe area and to work at her own pace. An "Attendance Support Plan" was drawn up by HR but not signed off. HR recorded a suggestion of asking the FMA for a 'temporary limited duties assessment' under the Limited Duties Policy.
 26. On 17 September 2019, the claimant attended a meeting with Inspector Martin and Sergeant Brown at Lancaster police station, to discuss the recuperative plan and about a move to Morecambe police station – see bundle pages 1008-1009. Inspector Martin told the claimant that he wanted to provide clear job objectives, stable line management and a comprehensive training and development plan. The claimant's aspirations are recorded as a return to fully operational front line policing duties.

27. On 18 September 2019, the claimant went to work in the Crime Management Unit (“CMU”) at Morecambe police station, under Sergeant Brown, working 12 hours per week, for a minimum 4 hours per day. The claimant was, at the time, living in North Yorkshire, close to Morecambe and the work location suited her. The Tribunal noted Sergeant Brown’s admission that throughout this process he did not read the Limited Duties Policy and did not do so until the Tribunal proceedings were underway.
28. The claimant had the benefit of a return-to-work ‘recuperative/support plan’ which appears in the bundle at page 804-810. This plan was prepared for the purpose of supporting the claimant to return to work and full operational duties, and also to provide support to maximise her attendance. The intention was for the claimant to be fully operational by 29 June 2020. The plan was put in place whereby the claimant worked 3 days per week of 6 hours per day. The claimant was anxious about the next stage of the recuperative plan, but Sergeant Brown did not make enquiries about the provisions of the Equality Act 2010. The Tribunal found that Sergeant Brown’s intentions were good, but he did not know how to implement the plan for the claimant, and he was not supported by HR at this critical time. Inspector Martin said that he believed a full return to work was possible although the basis for this suggestion was entirely unclear especially as the Tribunal were informed that training was not readily available if an employee was not working full-time.
29. On 23 October 2019, the claimant submitted a request for flexible working, seeking to work a child-friendly pattern of day shifts. The claimant’s request was approved by Inspector Martin.
30. On 17 December 2019, the claimant had a meeting with Inspector Martin and Sergeant Brown. This was called the third support meeting and notes of it appear in the bundle at pages 1031 – 1032. In the course of the meeting, the claimant expressed a reluctance to progress through the recuperative plan. The meeting acknowledged the FMA advice of 14 May 2019 and 13 August 2019, namely that the claimant should work at her own pace. The respondent suggested that the claimant was making a high level of progress and had good attendance. However, there was absolutely no evidence to suggest that this was in fact the case, particularly as the claimant herself was saying she did not feel ready to progress. Ultimately, it was agreed that the claimant would stay in the CMU at Morecambe until 1 February 2020.
31. The Tribunal found that, in 2020, a number of occupational health reports recommended adjusted duties and also recommended that the claimant did not work in a public-facing role.

32. An FMA report dated 16 January 2020, said in clear terms that the claimant was not fit to resume frontline duties or immediate response duties, and it recommended a period of adjusted duties, to be reviewed after 12 months. Importantly, this report stated that the claimant had “by no means recovered” and that her symptoms were consistent with PTSD – see bundle pages 234-235. However, it was unclear that the respondent or any of its officers had read this report or took heed of the FMA recommendations. Again, there was no evidence of HR support to those trying to manage the claimant. The result was that the claimant was not formally put on Adjusted duties. The absence of such consideration and/or decision had significant consequences.
33. The respondent’s personnel had agreed, at the third support meeting, that the claimant’s progression through the recoupment plan should be made cautiously and be subject to regular review and that any refinement should be made in conjunction with FMA support and guidance. However, the Tribunal considered that the respondent’s officers did not understand PTSD. In his witness statement at paragraph 6, and under cross-examination, Superintendent Hardy attempted to explain PTSD by likening it to having a broken leg! This was completely inappropriate and displayed a lack of insight or understanding of mental health issues. The respondent’s officers therefore floundered around in their dealings with the claimant; they simply did not know what to do with her and had no support from HR. At the same time, the claimant was saying she wanted to return to frontline duties. In the circumstances, and in light of the numerous FMA reports and recommendations, this was a completely unrealistic objective, but nobody was telling the claimant this clearly or at all, and therefore she was not satisfied with the working arrangements which the respondent offered her.
34. On 23 March 2020, the COVID Lockdown was announced by the UK Govt. The claimant was on sick leave in March 2020 and, by April 2020, the claimant had moved to Lytham St Annes to live with a relative, because the claimant’s house had been flooded, and also so the claimant could provide support to her grandmother during Lockdown. As a result, in April 2020, the claimant requested to work from home or at a police station nearer to her new home in Lytham St Annes.
35. On 22 April 2020, the FMA recommended that the claimant undergo a phased return to work following her sickness absence and also confirmed that FMA previous advice, from 16 January 2020, remained the position. In addition, the FMA recommended homeworking for the claimant, but this was never actioned, and no explanation given by the respondent at the time. The Tribunal considered that the matter was simply overlooked in the early days of the pandemic/Lockdown when the respondent’s managers were extremely busy trying to deal with operational matters and issues arising from the pandemic restrictions. At the Tribunal hearing, the respondent’s witnesses sought to

- raise an issue of whether IT was available for the claimant to work from home albeit there was no evidence that this was an issue raised at the time.
36. On 24 April 2020, Inspector Martin emailed HR about having a meeting to discuss the claimant – see bundle page 1053. Inspector Martin reported that the claimant was making slow progress through the recuperative plan and was reluctant to leave the CMU and move on. He also raised an issue with the claimant’s attendance record, suggesting that it was “actionable”, and he sought advice about managing the claimant through the respondent’s attendance procedures. At the time, the respondent should have held a management review under 3.1 and/or 3.2 of the Limited Duties Policy supporting procedures, but this did not happen.
 37. On 7 May 2020, the claimant returned to work from sick leave.
 38. Around this time, the respondent announced that the CMU was moving to the respondent’s divisional headquarters in Blackpool. The respondent’s position was that the claimant could not apply for a ‘budgeted post’ because she was not on Adjusted Duties under the Limited Duties Policy. However, it was unclear what the claimant’s options were. In any event, had the claimant been placed on ‘Adjusted duties’ under the Limited Duties Policy, the Tribunal was told that she could have applied for a budgeted post in the CMU or elsewhere.
 39. On 19 May 2020, a fourth support meeting took place. A support meeting scheduled for February 2020 had been cancelled due to the claimant’s sickness absence. Notes appear in the bundle at pages 1059-1060. The claimant was told about the impending changes to and move of the CMU which meant that the claimant would no longer work in that department unless she made a successful application for a budgeted post. At the meeting, the claimant requested to remain based at Morecambe police station as her childcare had been shifted to the Lancaster area and that working from the Blackpool HQ was not an option for her because her ex-partner worked at Blackpool. The notes of the meeting record that, once the CMU moves there would be a need to find the claimant “meaningful work” for at least 7 months.
 40. Inspector Martin gave evidence about the possibility of the claimant moving to Adjusted duties. He said the claimant was also eligible to remain under the recoupment plan and that the adjustments made by that plan were sufficient, in his view. The Tribunal found this view to have been given with hindsight, in an attempt to explain away the fact that the claimant was not moved to Adjusted duties as she should have been, under the Limited Duties Policy. Inspector Martin was unable to explain the difference between “recuperative” and “restricted” duties nor could he say if the claimant was effectively subject to permanent reasonable adjustments – see bundle page 1060. However, in evidence, Inspector Martin gave his view that, if the claimant could not do

frontline duties, it would be the end of the claimant's career. In addition, he said that HR had too much to do and was overloaded, to the effect that it had been difficult to work in consultation with HR. However, the Tribunal found no evidence of any collaboration with HR or attempts at such beyond Inspector Martin's email to HR of 24 April 2020 – see paragraph 36 above.

41. In the bundle at page 1061, is an email sent late on 20 May 2020, from Superintendent Hardy to HR, copying in Sergeant Brown and Inspector Martin in which Superintendent Hardy shares his feelings of frustration, "... any ideas as this cannot go on like this!?!? I can't even offer her meaningful work on the team as she can't be public facing??"
42. Shortly after the above email, on 20 May 2020, Inspector Martin sent an email to Superintendent Hardy and Lindsey Aspinall of HR (bundle page 1062) about looking at options for placing the claimant and he lists what is ruled out. He writes that any role the claimant undertakes is very much restricted to internal office administration and, as a result, he asks about escalating the matter, for advice. Under cross-examination, Superintendent Hardy said he could not recall the granular detail of FMA advice in this period nor generally the evidence on FMA advice and admitted that he had relied on Sergeant Brown, Inspector Martin and HR for advice in respect of the FMA reports; that is to say, what was in those reports. The Tribunal considered that Inspector Hardy often answered questions under cross-examination by using the passive voice and not taking ownership, for example: "it would have been done" and by not including himself in references to those responsible, thereby seeking to distance himself from any errors.
43. On 17 June 2020, the FMA recommended that the claimant undertake a longer period of adjusted duties, in a substantive post for up to 2 years – see bundle pages 531-2.
44. A further support meeting with the claimant was arranged for 8 July 2020. Prior to that meeting, the respondent's managers held an "inclusion meeting", without the claimant despite its title. The result was that the managers drew up a list of 4 options for the claimant, as follows: -
 - 44.1. Neighbourhood policing duties at either Morecambe or Blackpool;
 - 44.2. A career break;
 - 44.3. A police staff role (which would require resignation as a police officer);
 - or
 - 44.4. Ill-health pension, subject to FMA advice on suitability.
45. Sergeant Brown was asked in evidence about where these 4 choices came from, and he suggested they came "from the organisation". The Tribunal

considered that the 4 options were arrived at because the claimant was unable to apply for a budgeted post as she had not been placed on Adjusted duties under the Limited Duties Policy.

46. On 8 July 2020, the claimant's support meeting took place, attended by HR and Sergeant Brown. The claimant attended with her Police Federation representative. The 4 options were discussed – see the notes at bundle page 1101. The meeting and options have been described by the claimant's representative as presenting the claimant with "Hobsons choice" a description with which the Tribunal agreed.
47. On 21 July 2020, Sergeant Brown wrote to the claimant to say that a move to Blackpool was not possible. His letter appears in the bundle at page 1103, and he describes the claimant as being on a "performance/recuperative plan" and so should remain at your substantive location". The suggestion of a "performance/recuperative plan" is plainly wrong as an employee cannot be on both.
48. On 4 August 2020, the FMA reported that the claimant was not fit to resume front line duties or immediate response duties and that this was likely to be the case for the foreseeable future. In those circumstances the FMA recommended "permanent adjusted duties" until further notice – see bundle page 537.
49. On 3 September 2020, the FMA provided a further report which appears in the bundle at page 540, and which says the claimant is "... currently on adjusted duties and waiting for a suitable substantive post. Fit to continue with adjusted duties (as previously recommended) in the meantime." Sergeant Brown gave evidence to the effect that he considered the FMA advice had change – see his witness statement paragraph 37. As a result, the first respondent organised a further "inclusion meeting" on 21 October 2020, which this time involved a Police Federation representative but not the claimant. The 'case discussion' resulted in a decision that the claimant be placed on adjusted duties, however, the discussion also involved the claimant's "actionable attendance" and a perception of her inability to perform the duties of a police officer with emphasis on advice as to whether the Unsatisfactory Performance Procedures should be instigated.
50. Shortly afterwards, on 25 October 2020, Sergeant Brown sent an email to Inspector Martin (bundle page 1130) to say: "I can't believe we would have to do another plan." The Tribunal considered, from the surrounding evidence and this remark, that Sergeant Brown had no idea what he was doing or what was required, noting the lack of any evidence of HR support and guidance.

51. On 2 November 2020, the claimant commenced a period of self-isolating due to COVID requirements, due to her daughter having had close contact with a pupil who had tested positive. The claimant was given special leave for this.
52. On 3 November 2020, a meeting took place under the respondent's Limited Duties Policy – see proforma in the bundle at page 546 - to inform the claimant that she was placed on Adjusted duties and so could be referred to the respondent's Corporate Resourcing Panel for consideration of alternative employment. The claimant was given until 6 November 2020, to inform Superintendent Hardy whether she wished to take up a role offered in Morecambe. However, the claimant did not contact Superintendent Hardy as required albeit she had a conversation with Linsey Aspinall of HR who advised the claimant that the UPP may be considered if her attendance was not sustained – see bundle page 1140.
53. On 12 November 2020, the claimant emailed Superintendent Hardy to accept a place which had been offered to her on the respondent's Neighbourhood Policing Team, based at Morecambe. In her email, the claimant requested not to travel to work if travel was not necessary, citing another colleague as an example.
54. On 16 November 2020, the claimant returned to work from special leave/self-isolation. That day, the respondent compiled a letter to the claimant under its 'Unsatisfactory Performance and Attendance Procedures'. The letter appears in the bundle at page 552-554 and sets out the claimant's absence record, with a first stage meeting arranged for 3 December 2020.
55. On 18 November 2020, the claimant was called to an office by Sergeant Brown and given a copy of the letter written under the respondent's Unsatisfactory Performance and Attendance Procedures ("UPP") The claimant was told to read the letter in the presence of Sergeant Brown and Inspector Martin. In his investigation report, in the bundle at page 842, CI Stubbs recorded that the claimant had been asked if she wanted anybody present with her and that she had said that she did not, and also that the claimant was told that she could have as much time to read the papers as she required and that she could discuss the contents with the officers present. The claimant felt deeply uncomfortable at the way the delivery of the UPP letter was handled.
56. On 18 November 2020, the FMA report suggested that the respondent should consider a work location closer to the claimant's home due to the fatigue of travelling a long distance to work and also advised that the Equality Act 2010 was likely to apply to the claimant's mental health condition such that the respondent should consider agile working for the claimant – bundle pages 558-559.

57. On 30 November 2020, Superintendent CI Hardy sent an email to the claimant, at 16:43, about moving her posting to Blackpool police station – bundle page 1196. The claimant was told to report there the next day. In addition, the claimant was told that, from 1 December 2020, her working hours would be reduced to 12 hours per week.
58. On 7 December 2020, the claimant presented a grievance about her treatment, alleging bullying and harassments, discrimination and unfair working practices and indicating that she considered herself to have a disability. The grievance appears in the bundle at pages 572-5. The grievance included an allegation that advice on reasonable adjustments had been ignored or met with a misunderstanding of her mental health condition.
59. On 15 December 2020, the respondent conducted a Stage 1 meeting under the UPP and UAP with the claimant. The minutes appear in the bundle at pages 576-588. The outcome of the meeting was that the claimant was given a “written improvement notice” (“WIN”) dated 22 December 2020, for 12 months. The WIN appears in the bundle at pages 595-596. Sergeant Brown then refused to issue a laptop to the claimant on welfare grounds.
60. On 16 December 2020, the claimant made a flexible working request, to assist with her daughter’s health and also for managing the claimant’s own PTSD.
61. On 22 December 2020, the WIN was issued to the claimant. The dates in the WIN were wrong in 2 places, so the specified period for improvement was stated to end on 14 March 2020 whilst the validity period, under which the WIN was live, was 12 months from the issue date of 22 December 2020. The WIN was therefore meaningless in terms of expectations of improvement by a date that had long passed.
62. On 23 December 2020, the claimant submitted a second grievance about her treatment and raised disability discrimination. This grievance appears in the bundle at pages 600-604 and is relied upon by the claimant as a protected act, for the purposes of her victimisation complaint – see the list of issues above, section 9 (a).
63. On 5 January 2021, the claimant reported for work at Blackpool police station. She was subsequently instructed to go back to work at Morecambe police station but, on the way to work at Morecambe, on 7 January 2021, the claimant suffered a mental breakdown and was signed off work sick.
64. On 8 January 2021, Inspector Martin telephoned the claimant to conduct a welfare call, following her absence on 7 January 2021 – see his account, in the bundle page 1284. In the course of this meeting, Inspector Martin asked the claimant if she was going to have a problem with white male supervisors. Under

- cross-examination., Inspector Martin failed to understand how that remark might be offensive. The Tribunal were concerned that the remark included a reference to colour of skin which was in any event not relevant or necessary; it trivialised the claimant's position and her mental health issues and demonstrated an inability to understand the claimant's experiences or their effect, and instead suggests that Inspector Martin viewed the claimant as presenting excuses to avoid work. His account of the conversation includes mention of him questioning the claimant about what he describes as "her true reasons for not attending work".
65. On 12 January 2021, the claimant was signed off work, sick, and on 13 January 2021, the claimant appealed against the WIN. Her appeal appears in the bundle at pages 611-614.
 66. On 4 February 2021, the claimant commenced a period of ACAS early conciliation which ended on 18 March 2021.
 67. On 12 February 2021, Inspector Martin emailed Sergeant Brown about the claimant's return to work and her UPP appeal. Inspector Martin informed Sergeant Brown that he would be handling the appeal and he asked Sergeant Brown to prepare an improvement plan for the claimant, covering 5 areas, in the event that the appeal was not upheld – see bundle page 1318.
 68. On 30 March 2021, Chief Inspector Stubbs took charge of the investigation into the claimant's grievance. He met with the claimant on 9 April 2021, along with her Police Federation representative, Ms Wall, to discuss the grievance and to consider a potential for her return to work. A number of proposals were put to the claimant in that regard – see bundle page 1359.
 69. Chief Inspector Stubbs' investigation report appears in the bundle, starting at page 838. In his report CI Stubbs points out that the claimant was not on a recuperative plan; that aspect had ended in January – see bundle page 846. He also concluded that the first respondent had not met the various FMA recommendations – see bundle page 847 – and recommended that the area of UPP be discontinued and that reasonable adjustments should be addressed in the UAP appeal whilst he also identified a number of opportunities for organisational learning – see bundle page 852.
 70. On 16 April 2021, the claimant presented her first claim to the Tribunal, under case number 2402916/2021. This claim is relied upon by the claimant as a protected act, for the purposes of her victimisation complaint – see the list of issues above, section 9 (b).
 71. On 29 June 2021, a grievance hearing was conducted by Chief Inspector Stubbs, under Stage 1 of the respondent's UPP and UAP procedures. As a

- result, on 6 July 2021, the claimant's WIN was revoked by Chief Inspector Stubbs. The letter confirming revocation of the WIN is in the bundle at page 635. The Tribunal was concerned to hear from Superintendent Hardy that he thought that the WIN had been suspended but not revoked.
72. On 20 September 2021, the claimant appealed the grievance outcome, specifically against the findings of no disability discrimination and no failure to implement reasonable adjustments by the claimant's managers. The appeal is relied upon by the claimant as a protected act, for the purposes of her victimisation complaint – see the list of issues above, section 9 (c).
 73. On 21 October 2021, a grievance appeal hearing was conducted by Chief Superintendent Robertshaw, the second respondent.
 74. In the course of a meeting on 3 November 2021, Chief Superintendent Robertshaw made comments about the claimant being a challenging individual and difficult to deal with. The Tribunal reviewed the evidence on this aspect carefully and considered that Chief Superintendent Robertshaw had formed a view of the claimant prior to dealing with the matter. He said in evidence that the claimant was "well-known" and that her name would come up in HR meetings. As a result, the Tribunal considered that he had pre-formed his views, which were prejudicial of the claimant. In his witness statement at paragraph 29, CI Robertshaw describes the grievance allegations in terms of there being "very little prospect of matters reaching a satisfactory value for money conclusion" for both the claimant and the first respondent.
 75. On 18 November 2021, shortly before CI Robertshaw sent the claimant the outcome of the appeal, he emailed his comments to officers Aspinall, Brown, Martin and Hardy. The email appears in the bundle at page 1421 and include his personal view of the claimant as "a challenging individual to manage" and that he did not agree with the claimant's assessment of the circumstances as disability discrimination.
 76. Later, on 18 November 2021, the claimant was sent a letter from the second respondent turning down her appeal, including the conclusions of his review of the grievance. The review report appears in the bundle at pages 859-864.
 77. On 16 December 2021, the FMA provided an opinion on the claimant's state of health to the effect that the claimant could not remain in a policing environment – see bundle pages 661-663. As a result, in January 2022, the claimant applied for ill-health early retirement. Her application was supported by the FMA, on 8 March 2022, when the FMA recommended that the claimant be considered for ill health retirement.

78. On 4 February 2022, the claimant commenced a second period of ACAS early conciliation which ended on 18 March 2022. Thereafter, on 14 April 2022, the claimant presented her second claim, under case number 2402660/2022. This claim included, as second respondent, Chief Superintendent Robertshaw.
79. In August 2022, the claimant took ill-health early retirement and left the employ of the first respondent.

The applicable law

80. A concise statement of the applicable law is as follows.

Disability discrimination

81. The complaint of disability discrimination is brought under the Equality Act 2010 (“EqA”). Disability is a relevant protected characteristic as set out in section 6 and schedule 1 EqA.
82. Section 39(2) EqA prohibits discrimination by an employer against an employee by subjecting her to a detriment. By section 109(1) EqA an employer is liable for the actions of its employees in the course of employment.
83. The EqA provides for a shifting burden of proof. Section 136(2) and (3) so far as is material provides as follows:
- (2) If there are facts from which the Court could decide in the absence of any other explanation that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred.*
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.*
84. Consequently, it is for a claimant to establish facts from which the Tribunal can reasonably conclude that there has been a contravention of the EqA. If the claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention by, for example, identifying a different reason for the treatment.
85. In *Hewage v Grampian Health Board [2012] IRLR 870* the Supreme Court approved guidance previously given by the Court of Appeal on how the burden of proof provision should apply. That guidance appears in *Igen Limited v Wong [2005] ICR 931* and was supplemented in *Madarassy v Nomura International plc [2007] ICR 867*. Although the concept of the shifting burden of proof

involves a two-stage process, that analysis should only be conducted once the Tribunal has heard all the evidence, including any explanation offered by the employer for the treatment in question. However, if in practice the Tribunal is able to make a firm finding as to the reason why a decision or action was taken, the burden of proof provision is unlikely to be material.

Discrimination arising from disability

86. The prohibition of discrimination arising from disability is found in section 15 EqA. Section 15(1) provides:

- (1) *A person (A) discriminates against a disabled person (B) if –*
 - (a) *A treats B unfavourably because of something arising in consequence of B's disability and*
 - (b) *A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*

87. The proper approach to causation under section 15 was explained by the Employment Appeal Tribunal in paragraph 31 of Pnaiser v NHS England and Coventry City Council EAT /0137/15 as follows:

- (a) *A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.*
- (b) *The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.*
- (c) *Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant*
- (d) *The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's*

disability". That expression 'arising in consequence of' could describe a range of causal links ...[and] may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

- (e) *..... However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.*
- (f) *This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.*
- (g) *.....*
- (h) *Moreover, the statutory language of section 15(2) makes clear that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so.*

88. In City of York Council v Grosset [2018] WLR(D) 296 the Court of Appeal confirmed the point made in paragraph (h) in the above extract from Pnaiser: there is no requirement in section 15(1)(a) that the alleged discriminator be aware that the "something" arises in consequence of the disability. That is an objective test.

Reasonable adjustments

89. The duty to make reasonable adjustments, in section 20 EqA, arises where:
- (a) the employer applies a provision criterion or practice which places a disabled employee at a substantial disadvantage in comparison with persons who are not disabled; and
 - (b) the employer knows or could reasonably be expected to know of the disabled person's disability and that it has the effect in question.
90. As to whether a "provision, criterion or practice" ("PCP") can be identified, the Equality and Human Rights Commission Code of Practice in Employment ("the EHRC Code") paragraph 6.10 says the phrase is not defined by EqA but "*should be construed widely so as to include for example any formal or informal policy, rules, practices, arrangements or qualifications including one-off decisions and actions*".

91. As to whether a disadvantage resulting from a provision, criterion or practice is substantial, section 212(1) EqA defines substantial as being “*more than minor or trivial*”. In the case of Griffiths v DWP [2015] EWCA Civ 1265 it was held that if a PCP bites harder on the disabled employee than it does on the able-bodied employee, then the substantial disadvantage test is met for the purposes of a reasonable adjustments claim.
92. The duty is to take such steps as it is reasonable, in all the circumstances, to take to avoid the provision criterion or practice having that effect. The duty is considered in the EHRC Code. A list of factors which might be taken into account appears at paragraph 6.28, but (as paragraph 6.29 makes clear) ultimately the test of reasonableness of any step is an objective one depending on the circumstances of the case. An adjustment cannot be a reasonable adjustment unless it alleviates the substantial disadvantage resulting from the PCP – there must be the prospect of the adjustment making a difference.
93. Under section 136 EqA, it is for an employer to show that it was not reasonable for them to implement a potential reasonable adjustment.

Victimisation

94. Section 27 EqA provides that 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 B has done or may do a protected act.*
95. A protected act includes making an allegation (whether or not express) that A or another person has contravened the Act.
96. In Martin v Devonshires Solicitors UKEAT/0086/10 Mr. Justice Underhill analysed the previous similar provisions as follows:

“The question in any claim of victimisation is what was the “reason” that the respondent did the act complained of: If it was, wholly or in substantial part, that the claimant had done a protected act, he is liable for victimisation; and if not, not. In our view there will in principle be cases where an employer has dismissed an employee (or subjected him to some other detriment) in response to the doing of a protected act (say, a complaint of discrimination) but where he can, as a matter of common sense and common justice, say that the reason for the dismissal was not the complaint as such but some feature of it which can properly be treated as separable. The most straightforward example is where the reason relied on is the manner of the complaint.”

97. A claim of victimisation does not require any comparison. Answering the question of the 'reason why' involves consideration of the mental processes (whether conscious or subconscious) of the alleged discriminator to see whether the protected act had any material influence on the detrimental treatment; see for example *Amnesty International v Ahmed* [2009] IRLR 884.
98. In the course of submissions, the Tribunal was referred to a number of cases by the parties' representatives, as follows:

Barclays Bank plc v Kapur and others (no. 2) [1995] IRLR 87
Nagarajan v London Regional Transport [1999] ICR 877
O'Donoghue v Redcar & Cleveland Borough Council [2001] EWCA Civ 701
Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337
Archibald v Fife Council [2004] UKHL 32
Collins v Royal National Theatre Board Ltd [2004] EWCA Civ 144
Smith v Churchills Stairlifts plc [2005] EWCA 1220
Southampton City College v Randall [2006] IRLR 18
Romec v Rudham [2007] All ER (D) 206
Camden London Borough v Price-Job [2007] All ER (D) 259
O'Hanlon v HMRC [2007] ICR 1359
Environment Agency v Rowan [2008] ICR 218
Loxley v BAE [2008] ICR 1348
Kraft Food UK Ltd v Hastie [2010] ICR 1355
L B Waltham Forest v Martin UKEAT/0069/11
Cordell v Foreign and Commonwealth Office [2012] ICR 280
Wade v Sheffield Hallam University UKEAT/0194/12
Gallop v Newport City Council [2013] EWCA Civ 1583
Carranza v General Dynamics Information Technology Ltd [2015] ICR 169
Buchanan v Commissioner of Police for the Metropolis [2016] IRLR 918
Chief Constable of Gwent Police v Parsons and Roberts UKEAT/0143/18
Habib v Dave Whelan Sports Limited [2023] EAT 113

The Tribunal took these cases as guidance but not in substitution for the statutory provisions.

Submissions

99. Counsel for the claimant presented written closing submissions and made a number of detailed oral submissions which the Tribunal has considered with care but does not rehearse in full here. In essence it was asserted that:- from January 2020, the FMA was saying that the claimant did not have the skills to reintegrate as a police officer or without the correct accommodations; that the

respondent's stated position and evidence was tendered with the benefit of hindsight, recognising the weaknesses in its position and actions; the respondent failed to follow its FMA advice; the respondent sought to retrospectively justify its actions by suggesting that managers in effect followed the Limited Duties Policy anyway even if not officially putting the claimant on "Adjusted duties" and instead describing matters as "adjusted duties"; that the claimant's line managers gave no consideration to their duties under the Equality Act 2010 and fell into error because they did not see the claimant as potentially disabled, displaying at best a misunderstanding of mental health issues; the claimant sought stability and security with flexibility in her working arrangements due to her disability and the respondent failed to consider her needs; that the meeting on 8 July 2020 presented the claimant with 'Hobson's choice' and that she accepted the recuperative plan as the only option; the UPP process and WIN were inappropriate as confirmed by CI Stubbs' investigation and subsequent revocation of the WIN; that the second respondent's approach to the claimant's grievance appeal was tainted by a negative view of the claimant's behaviour and sickness absence, which was disability related; and that the second respondent was motivated to shore up the respondent against the grievance and these proceedings.

100. Counsel for the respondent also presented written closing submissions and also made a number of detailed submissions which the Tribunal has considered with care but does not rehearse in full here. In essence it was asserted that:- the claimant's condition meant that she was unlikely ever to be reintegrated into the first respondent's organisation and that the managers' desire to do the right thing in an effort to assist the claimant's return to work overrode pragmatics; that the first respondent was at all times responsive to the claimant's needs; that there were limited options to provide 'meaningful work' for the claimant to do and/or resources particularly during the COVID pandemic when resources were scarce and all personnel were under particular pressures; that Morecambe initially suited the claimant and that Blackpool was not suitable for the reasonable adjustments the claimant required; that managers' words were said out of frustration and, put in context, were not inappropriate nor discriminatory; the first respondent made allowances for the claimant's commute and fatigue; the claimant's requirements changed because she moved house; the UPP process was appropriate due to the level of the claimant's absence and the WIN was a consequence of the UPP process; that nothing bad resulted from the protected acts contended for; and that the second respondent did not subject the claimant to any detriment.

Conclusions (including where appropriate any additional findings of fact)

101. The Tribunal has applied its relevant findings of fact and the applicable law to determine the issues in the following way.

Failure to make reasonable adjustments - PCPs

102. The Tribunal addressed the list of issues in turn and first considered the PCPs contended for.
103. There was no evidence of any requirement for officers served with UPP/UAP papers to read them in the presence of supervisors/managers serving the papers. The Tribunal considered that this arrangement was set up for the claimant because the respondent was concerned to ensure the claimant did read the papers and that, if she reacted adversely, a Police Federation representative was available in a nearby room. The representative in attendance was not the claimant's official representative, nor were they known to the claimant, but a Police Federation representative was nevertheless available to support the claimant if required.
104. Likewise, there was no evidence that the respondent applied its UPP/UAP without flexibility and, in respect of the claimant's attendance record in the years immediately following her return to service after a career break, the respondent took significant time before challenging the claimant on her record.
105. The Tribunal found that the respondent did require that the claimant's NPT role was undertaken at Lancaster and Morecambe Police Station. When other locations were put to the respondent's witnesses, they provided a number of reasonable explanations for not moving the claimant and/or not allowing her to move location.
106. The respondent did require the Claimant to remain in her NPT role – see paragraph 53 above - because this meant that the claimant had to come into work in order to fulfil her substantive post and not work from home.
107. The respondent also had a PCP of providing laptops and other agile devices to those in agile roles. Hence, the claimant was denied a laptop for working from home when her disability would have been assisted by this as a reasonable adjustment. However, the Tribunal noted that there were only a very limited number of such devices available and that this issue arose during the pandemic/lockdown(s) when the demand for the respondent's laptops/agile devices was very high. The Tribunal accepted the respondent's justification for its approach, namely that resources were limited and under pressure which meant that the respondent reasonably decided that agile devices should be allocated across the force by giving priority to full-time staff and/or officers who were working more hours than the claimant and/or who were engaged on frontline duties. There were simply not enough devices to go round, and the claimant was towards the back of a very long queue.

The adjustments contended for

108. The Tribunal accepted that the PCPs found above, items 1(c) and (d) in the list of issues, did put the Claimant at a substantial disadvantage when compared to people who did not share the Claimant's disability.
109. In terms of the adjustments contended for, at 3(c) and (d) in the list of issues, the Tribunal considered that the respondent should have allowed the claimant to work closer to her home or to adopt a version of agile working including partially working from home rather than effectively requiring the claimant to undertake an 80-mile round trip to and from work. In this regard, the Tribunal noted that working from home and/or agile working had been suggested in the FMA in reports dated 22 April 2020 and 18 November 2020. The Tribunal considered that the respondent was treating the claimant as an ordinary police officer and without regard for the fact that she is also a disabled person. The respondent also had several FMA reports which said that the claimant should cut down on driving. These were routinely ignored by the respondent. The Tribunal was concerned to hear an argument advanced by the claimant's managers that facilitating the claimant to transfer divisions would be "too difficult" without explaining that judgment beyond reference to the administrative procedures around a transfer. Such an argument simply does not stack up in a large respondent police force employing 1000s. Witnesses also opined that there was an issue about the claimant being able to undertake "meaningful work", a phrase which was regularly mentioned but never properly explained beyond a suggestion that it related to the NPT role and so justified leaving the claimant in that role at Morecambe.
110. On the issue of redeploying the claimant to a vacant settled suitable position closer to her home or, if no such positions were vacant, to swap the claimant's role with that of a non-disabled officer working closer to the claimant's home in a settled post, per *Archibald v Fife Council [2004] UKHL 32*, the respondent presented no basis to suggest that such an adjustment was not available. Indeed, CI Stubbs, had recognised that a refusal of a move to Blackpool could not be fully justified and that "the recommendation could have and should have been honoured" a point that was highlighted in the second respondent's appeal outcome, albeit that the second respondent disagreed with CI Stubbs' view.
111. The Tribunal considered that it should have been obvious to the respondent's managers that they were dealing with a disabled officer who required reasonable adjustments as for example envisaged in the Adjusted duties pathway. The second respondent accepted as much in his appeal outcome, stating that "it was likely that a judge would decide that [the claimant] is covered by the Equality Act." Nevertheless, the claimant was side-lined, effectively ignored and so remained in her NPT role. In any event, the Tribunal were told that one of the reasons why redeployment never happened, nor could it

happen, was simply because the claimant was not placed on 'Adjusted duties' under the Limited Duties Policy. An additional adverse result of this treatment of the claimant was that she moved further along the attendance procedures.

112. The Tribunal has found that the respondent failed to make adjustments which were reasonable, taking into account the size and resources of the respondent. In particular, in respect of the possibility of redeployment and vacancies nearer to the claimant's home, there was little evidence of what the respondent did, if anything, to explore options at the material time. Rather, in evidence, the respondent's managers focussed on explaining why it was that they could not make any or any reasonable adjustments for the claimant.
113. Accordingly, the claimant of a failure to make reasonable adjustments succeeds in relation to the adjustments numbered 3 (c) and (d) in the list of issues.

Discrimination arising from disability – unfavourable treatment

114. The Tribunal found the following to be unfavourable treatment:
 - 114.1. subjecting the claimant to the stage 1 UPP/UAP meeting on 15 December 2020 was unfavourable to the claimant. The Tribunal found this to be an adversarial meeting and it was foreseeable that this could damage the claimant's mental health and/or put her one step further along the attendance management process, the end result of which could be dismissal;
 - 114.2. likewise, issuing the Claimant with the WIN of 22 December 2020 was unfavourable as it put the Claimant one step further along the attendance management process, the end result of which could be dismissal – the Tribunal here noted that the WIN does not set out how the Respondent proposed to assist the Claimant but simply suggests an arbitrary sickness absence target; and
 - 114.3. Inspector Martin's comments, on or around 11 January 2021, during a telephone enquiry about the Claimant's welfare, suggesting the Claimant would "have a problem with any white male who was [her] supervisor", was unfavourable because it displayed a disregard for the concerns which the Claimant raised. The Tribunal considered that Inspector Martin effectively dismissed those concerns rather than addressing them.
115. The Tribunal considered that the allegation that Sergeant Brown "instructed" the Claimant on 5 January 2021 to return to Morecambe to work, was not made out and did not amount to unfavourable treatment because a return to

Morecambe had previously been discussed and agreed. Sergeant Brown's email to the claimant that day regarding her whereabouts appears in the Bundle at page 1255. Its contents are enquiring about support for the claimant in getting to work and not directing nor instructing her as alleged, and the Tribunal considered the email to be gentle in its tone.

116. The Tribunal then considered whether the above unfavourable treatment was because of the things arising from the Claimant's disability, namely because of the claimant's prolonged sickness absence and/or underperformance, - her inability to carry out the NPT Community Beat Manager role. In this regard, the Tribunal determined that the unfavourable treatment was because of those things. In particular, the Tribunal found that that embarking on the UPP/UAP process leading to the issue of a WIN, for the reasons given by the first respondent, was because of the claimant's attendance and her sickness absence record. The comments of Inspector Martin arose in the course of a welfare call and discussion about the claimant's attendance and performance including obstructions to the claimant attending work – see paragraph 64.

The respondent's aims and justification

117. As the Tribunal has found that the claimant was unfavourably treated because of something arising in consequence of her disability, the Tribunal then looked at the issue of whether the Respondent's actions were a proportionate means of achieving a legitimate aim.
118. The Tribunal accepted that both of the respondent's stated aims were legitimate aims for any public service body, namely:
- a) adequate attendance levels to enable the Respondent to serve and protect the public and ensure adequate resources are available; and
 - b) that publicly funded resources and funds are budgeted and considered with integrity.
119. However, the Tribunal did not consider that the justification defence was made out for the following reasons.
120. The Tribunal noted the timing of the imposition of the UPP/UAP on the claimant and calling her to the meeting on 15 December 2020, resulting in the WIN. It had been 7 months since the claimant had last been off work, sick, with anxiety, returning to work on 6 May 2020. In the interim, in early November the claimant attended a meeting under the Limited Duties Policy to be told that she was being placed on Adjusted duties. Such a lengthy delay in addressing the claimant's sickness absence, coupled with the timing of commencing the UPP/UAP was never explained nor justified beyond a suggestion that the

pandemic had meant personnel were too busy to do anything sooner. Indeed, the Tribunal noted that the letter inviting the claimant to the UPP/UAP meeting refers to the fact that the claimant had been on “informal recuperative duties” for a period of 2 years and that “the development required has not been satisfactory” without explaining what that meant.

121. Inspector Martin’s comments were insensitive and unjustifiable – his explanation was that it was said in response to the claimant suggesting that Sergeant Brown was a ‘trigger’ for her PTSD. The Tribunal considered that Inspector Martin did not understand what the claimant meant by this and viewed the claimant as putting obstacles in the way of coming to work. He had her attendance in mind and went on to ask her if she would be reporting sick the next day. The Tribunal considered his comments to be disproportionate and outwith the aim of ensuring adequate attendance by the claimant.
122. In light of all the above, the Tribunal determined that the claimant had been subjected to unfavourable treatment because of something arising in consequence of disability and that the respondent has failed to establish justification for its actions.

Victimisation

123. The parties have agreed that the protected acts carried out by the claimant are as identified in the list of issues at paragraph 9a), b) and c), namely: the grievance alleging disability discrimination on 23rd December 2020; the Tribunal claim of disability discrimination in April 2021 (case number 2402916/2021); and the appeal against the outcome of the grievance, on 20 September 2021.
124. The Tribunal considered that the claimant suffered detrimental treatment by the following acts:
 - 124.1. The comments by the second respondent on 3rd November 2021 were clearly prejudicial of the claimant – see paragraph 74.
 - 124.2. The comment by the second respondent in the appeal outcome that some events, such as the claimant’s sickness absence, were triggered by the fact that she was under or about to be subject to Unsatisfactory Performance/Attendance procedures. The implication was that the claimant was not truly ill and not believed, without any foundation for that view. In cross-examination, the second respondent effectively avoided answering questions about such, from which the Tribunal considered on a balance of probabilities that he knew this comment was prejudicial.

124.3. The outcome of the claimant's grievance appeal as written by the second respondent, and the particular conclusions in it as follows:

- 124.3.1. That the respondent had legitimately prioritised continuing with the UPP in supervision and had robustly managed what were described as the claimant's serious performance / attendance issues. This simply ignored the fact that CI Stubbs had revoked the WIN;
- 124.3.2. That it was not appropriate for the claimant to work from home given her productivity and denying that she had been discriminated against on the grounds of disability. The Tribunal noted that this was stated despite FMA advice to allow the claimant to work at her own pace. The bald denial of any discrimination without foundation amounted to the subjective and self-serving view of the second respondent whom the Tribunal considered had embarked on a damage limitation exercise on behalf of the first respondent;
- 124.3.3. The statement that the claimant was undertaking an "unfunded post" carrying out "largely administrative duties" in which she "rarely used her policing skills", which arrangement was "far from satisfactory in terms of value for money for the public of Lancashire". The Tribunal found the references to finance and value for money to be unsubstantiated - when challenged on that aspect, the respondent's witnesses struggled to identify any assessment of the financial impact of the claimant's role or output;
- 124.3.4. That the UPP/UAP process had only been "paused" by CI Stubbs and would, but for the change in the claimant's supervision, have been resumed and potentially escalated by then, despite noting that the claimant was classified as an 'Adjusted duties' officer. Again, this simply ignored the fact that CI Stubbs had revoked the WIN and demonstrates the fact that the respondents did not have any regard for the claimant's situation or state of health;
- 124.3.5. The direction that the claimant be moved to the Initial Investigation Unit on 22 November 2021 as a temporary attachment, and the specific mention of the possibility of further UPP/UAP procedures being taken against the Claimant in the future. This was despite the grievance outcome report of CI Stubbs in September 2021, indicating that the WIN had been inappropriate and also CI Stubbs' UAP/UPP appeal outcome

letter of 6 July 2021, annulling the UAP/UPP proceedings together with the WIN. Put into context, the reference to the possibility of further UPP/UAP procedures in future reads as a threat to the claimant and ignores the fact that the claimant's attendance could improve in any event.

- 124.4. Further, the second respondent failed to amend his outcome report to state that the UAP/UPP proceedings had been paused, despite a request from the claimant's Police Federation Representative. There was nothing to suggest he had paused to consider the request. From this, the Tribunal concluded that the second respondent had closed his mind to any outcome other than that upon which he was determined, adverse to the claimant. In reaching this conclusion, the Tribunal took account of the fact that, in conducting his appeal/review, the second respondent said in evidence that he had conducted a number of meetings with the managers/officers involved in the claimant's case. Despite this he was unable to produce any record of such meetings, or any of them and admitted that he had not made records or kept minutes. The Tribunal considered on a balance of probabilities that this lack of records reflected the cursory approach taken – a serious and/or thorough review would have been properly recorded by any police officer. In addition, the Tribunal took account of the fact that the second respondent appeared not to have read or alternatively had not understood the outcome of CI Stubbs' review – see 127.3.1, 127.3.4 and 127.3.5 above.
125. On the question of whether the claimant was subject to the detriments above because she had done a protected act(s), the Tribunal had no hesitation in concluding that she was. In reaching this conclusion, the Tribunal took into account the numerous comments and references by the second respondent, and others, in the contemporaneous documents, expressing a view that the claimant had embarked upon a course of litigation which would end up in a Tribunal. It was apparent to the Tribunal that the respondents' personal became focussed on this future possibility, as a result of her grievance and the first Tribunal claim, and thereafter they operated with it in mind. This approach led to the second respondent producing an appeal outcome report that was inaccurate, which attempted to change facts (see for example the WIN which was revoked by CI Stubbs but declared by the second respondent to have only been "suspended") or to deny what had happened and to steer things against the claimant. It was intended to be, as the claimant submitted, a damage limitation exercise and an attempt to deny that any discrimination had taken place.
126. In light of the above, the Tribunal concluded that the first respondent and the second respondent had victimised the claimant.

Remedy

127. As the claimant's complaints all succeed, a remedy hearing shall be listed on a date to be notified in due course.

Employment Judge Batten

Date: 22 August 2024

JUDGMENT SENT TO THE PARTIES ON:

27 August 2024

FOR THE TRIBUNAL OFFICE