



EMPLOYMENT TRIBUNALS

Claimant: Mr Matthew Hill

Respondent: The Chief Constable of Derbyshire Police

Heard at: Nottingham

On: 15 – 19 January 2024
22 – 26 January 2024

Before: Employment Judge Victoria Butler

Members: Ms J Bonser
Mr J Purkis

Representation

Claimant: Ms R Mellor, Counsel

Respondent: Mr R Stubbs, Counsel

RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is:-

1. The Claimant's claim of discrimination arising from disability fails and is dismissed.
2. The Claimant's claim that the Respondent failed to make reasonable adjustments fails and is dismissed.

REASONS

Background

1. The Claimant presented his claim to the Employment Tribunal on 13 March 2022 following a period of early conciliation between 7 January 2022 and 17 February 2022.
2. The claims arise from the Claimant's absence from work due to complex PTSD and the Respondent's management of his absence through its Unsatisfactory

Performance and Attendance procedures. The Claimant was not dismissed in consequence of this procedure but was medically retired. However, he says that its application amounted to discrimination arising from disability and that the Respondent failed to make reasonable adjustments for him.

3. The Respondent lodged its defence on 9 May 2022. It conceded that the Claimant was a disabled person at the material time but resists the claims.
4. The parties attended a preliminary hearing by telephone on 18 August 2022 at which case management orders were issued in readiness for this hearing.
5. On 20 December 2022, the Claimant withdrew a claim of indirect discrimination.

The issues

6. The issues agreed by the parties for determination were:

Failure to make reasonable adjustments

- 6.1 *The Respondent accepts that the application of the Police Performance Regulations 2020 via the UAP including the implementation of the formal Stages and the use of Written Improvement Notices (WIN) and final Written Improvement Notices amounts to a PCP.*
- 6.2 *Was the Claimant at a substantial in relation to its application in comparison with persons who are not disabled?*
- 6.3 *What was the substantial disadvantage?*
- 6.4 *If the Claimant was put to a substantial disadvantage by the application of the PCP, did the Respondent know, or could it reasonably have been expected to know of the substantial disadvantage?*
- 6.5 *If the Respondent knew of any substantial disadvantage caused to the Claimant by the application of the PCP, were the following reasonable steps that the Respondent failed to take:*
 - i. *Entirely avoiding the instigation of the formal UAP process:*
 - ii. *Delaying the instigation of the formal UAP process:*
 - iii. *Disregarding periods of disability related absence; and*
 - iv. *Imposing absence targets without imposing the WIN or final WIN?*

Discrimination arising from disability

- 6.6 *Did the Respondent:*
 - i. *Instigate the UAP Stage 1 process on 11 November 2020:*

- ii. Impose a WIN on 30 November 2020:*
- iii. Instigate the UAP Stage 2 process on 12 May 2021:*
- iv. Impose a WIN on 19 May 2021:*
- v. Instigate the UAP Stage 2 on 23 September 2021:*
- vi. Impose a final WIN on 8 October 2021; and*
- vii. Reject the Claimant's appeal against the FWIN on 3 November 2021?*

6.7 *If so, was this unfavourable treatment?*

6.8 *If so, was this because of the Claimant's sickness absence record and/or his inability to return to work because of his disability?*

6.9 *Can the Respondent objectively justify any unfavourable treatment: The Respondent claims that the legitimate aims of the UAP and its stages are addressing attendance, supporting employees back to work, meeting and understanding the needs of those absent to support and facilitate a return to work and meeting the operational needs of the Respondent*

6.10 *Were the steps taken in the Claimant's case a proportionate means of achieving its legitimate aims?*

The hearing

- 7. Prior to the hearing, the parties provided an agreed list of issues, a chronology, a reading list, agreed bundles and witness statements. Additional documents were produced during the hearing to which there was no objection from either party and they were placed at the rear of the existing bundle.
- 8. The hearing commenced on 15 January 2024 which was a reading day for the Tribunal. We heard evidence and submissions over the following six days and reserved our decision.
- 9. At the start of submissions on 30 January 2024, Mr Stubbs helpfully clarified that the Respondent took no issue with jurisdiction and accepted that the matters relied on by the Claimant amounted to conduct continuing over a period.
- 10. References to page numbers in these Reasons are references to the page numbers in the bundles.

The evidence

- 11. We heard evidence from the Claimant and for the Respondent we heard evidence from:
 - Inspector John Troup
 - Chief Inspector Stephen Johnson

- Superintendent Johnathan Clark
 - Ms Gemma Johnson, HR Manager and Senior HR Manager at the time.
12. In assessing the oral evidence, we have treated the Claimant's evidence with some caution albeit do not question his honesty or integrity. We have no doubt in his belief that he was treated poorly by the Respondent.
13. However, we agree with the Respondent that his perception of the treatment is difficult to reconcile with the reality of what happened in fact. This might be consequent of his illness, but we make no specific finding of that. By way of examples, i.) he is adamant that the Respondent failed to do anything to support him and "left him" for six months before taking and steps to help but this was not the case as we explain below. ii.) he blames the Respondent for 'allowing him to go to the very place [the Longley Centre] which was one of the reasons I was struggling with my mental health" (para 93) yet he was referred to the Longley Centre by his GP, not the Respondent iii.) he insisted that his therapist had requested the Respondent to fund a further six therapy sessions in the face of clear documentary evidence that she had asked for three.
14. We were satisfied that the Respondent's witnesses were honest, credible and they made concessions as appropriate. Their evidence accorded with the contemporaneous documents where they existed.

The facts

15. We made our findings of fact based on the material before us, taking into account the contemporaneous documents where they existed and the oral evidence of all the witnesses. We resolved any conflicts of evidence on the balance of probabilities.

The Police (Performance) Regulations 2020

16. The Respondent is a police force. Unsatisfactory attendance is managed in accordance with the Police (Performance) Regulations 2020 ("the Regulations"). The Regulations provide for a three-stage process which can ultimately lead to dismissal with notice.

Home Office Guidance - Police Officer Misconduct, Unsatisfactory Performance and Management Procedures

17. The Regulations are supplemented by comprehensive Home Office Guidance which explain that "*performance and attendance management in the police service are intended to be positive and supportive processes, with the aim being to improve performance or attendance*" (page 559).
18. Paragraph 3.48 provides:

"Managing sickness absence is vitally important both in terms of demonstrating a supportive attitude towards police officers and for the efficiency of the organisation. Managing attendance is about creating a

culture where all parties take ownership of the policy and act reasonably in the operation of the scheme with managers being proactive in managing sickness”.

19. Paragraph 3.49 provides:

“The primary aim of the procedures is to improve attendance in the police service. It is envisaged that supportive action will in most cases achieve the desired effect of improving and maintaining a police officer's attendance to an acceptable level”.

20. Paragraph 3.246 provides:

“Some cases of unsatisfactory attendance may raise the need to consider whether the police officer is permanently disabled within the meaning of the Police Pension Regulations 1987 or 2006. In such cases, this guidance should be read in conjunction with the PNB Joint Guidance on Improving the Management of Ill-health.”

21. Paragraph 3.247 provides:

“Where a police officer is referred to the SMP for consideration of permanent disablement under the police pension regulations, no action shall be commenced or continued under the performance regulations with regard to the unsatisfactory attendance of a police officer until the issue of permanent disablement has been considered and the reports of the SMP has been received by the local policing body.”

22. Paragraph 4.50 provides:

“There will be occasions where the medical condition causing the absence will be very serious and potentially with a permanent effect. In such cases the issues of whether the officer is permanently disabled within the definition used in ill-health retirement guidance, will need to be considered.”

Home Office Statutory Guidance on Professional Standards and Integrity in Policing

23. The Regulations are also supplemented by comprehensive statutory guidance on performance and attendance procedures.

24. Paragraph 14.1 provides:

“..... The underlying principle of the procedures is to provide a fair, open and proportionate method of dealing with performance and attendance issues and to encourage a culture of learning and development for individuals and the organisation. Where it is appropriate to take informal action, line managers are encouraged to do so.”

25. Paragraph 14.3 provides:

“The aim of the procedures is to improve performance and attendance in the police service and they are intended to be positive and supportive. All such procedures should be dealt with in a timely manner, by maintaining confidence in the procedures.....”

26. Paragraph 14.8 provides:

“Informal action

..... Where a line manager considers that a police officer's performance or attendance shows signs that it might begin to be below the satisfactory standard expected, they should act swiftly and informally to discuss and understand the causes and how support might be introduced to help improve the performance or attendance through a normal line manager meeting or discussion. This action should be undertaken as soon as possible..... this should be done before moving to formal channels.”

27. Paragraph 14.9 provides:

“Informal action would usually be through a meeting arranged with the officer concerned. That meeting should be a positive and informal discussion aimed at highlighting and exploring the perceived shortcomings in performance, relating to specific incidents or omissions which have occurred.....”

28. Paragraph 14.14 provides:

“Initiating the formal stages of the Performance Regulations is in the discretion of the police officer's line manager [regulation 15]. Before commencing the procedure, at any stage, the line manager should actively consider whether they should apply their discretion to do so. If the police force concerned knows that the police officer is disabled within the meaning of s.6 of the Equality Act 2010 (or considers that the officer may be) than active consideration should be given to whether to commence the formal stages of the unsatisfactory performance procedures (UPP) at all.”

29. Paragraph 14.15 provides:

“Particular consideration should be given to the nature and circumstances of the police officer's disability and an individual assessment made as to whether the officer's treatment is justified and proportionate.... The line manager should consider whether the formal procedures will be beneficial and assist a person with a disability. At all times, the manager should be conscious of the methods by which improvement is achieved under the Performance Regulations, and the time limits set for achieving such improvement. The line manager should consider whether it is fair to apply the formal procedures to an officer with a disability.”

30. Paragraph 14.16 provides:

“In many cases, however, it will be appropriate to initiate the UPP in respect of an officer with a disability. Yet, even where initiating the procedure is appropriate, the use of the formal procedures and the methods used to seek to improve performance or attendance should be kept under review in light of the officer’s disability.”

The Respondent’s UPP policy (referred to as UAP)

31. The Respondent has a formal unsatisfactory performance and attendance procedure incorporating the three-stage procedure as directed by the Regulations (pages 656 – 661). There is no formal requirement for matters to be dealt with informally in the first instance save line managers are asked *“have you undertaken all of your line manager supportive actions for absence?”*
32. The supportive actions include considering measures such maintaining regular contact with the employee, risk assessments, referrals to occupational health, reasonable adjustments and rehabilitative return to work plans. It also provides details of support services available to employees.
33. Under the heading *“When supportive action does not work”* it provides:

“If, despite the supportive action you have taken, you still have concerns about the absence record of your member of staff you have the option of instigating formal unsatisfactory performance and attendance procedures or progressing to the next stage if that process has already been started.”

Recruitment when officers are on long-term sick

34. The Respondent cannot recruit to fill a position whilst the incumbent remains employed albeit on long-term sick. Their role is covered by drafting in an officer of equivalent rank or by another officer acting up. In consequence, those officers’ roles also require cover.
35. The setting of return-to-work dates under the UAP allows the Respondent to plan its workforce considering these dates to ensure sufficient and safe manning of shifts with the knowledge of when the incumbent might return, and when those covering/acting up can return to their substantive role.

The Claimant’s employment

36. The Claimant commenced employment as a police officer with Greater Manchester Police (“GMP”) in 2009. He was ambitious and wanted to become a Sergeant and then Inspector, with the ultimate goal of retiring as a Superintendent. Whilst at GMP, he secured a role in CID.
37. In 2011, the Claimant’s son was born which had a profound effect on him and heightened his awareness of his own mortality. There were also a number of traumatic incidents during his time at GMP which ultimately led to a diagnosis of complex PTSD in December 2021.

38. In 2013, the Claimant transferred to South Yorkshire Police (SYP¹) but felt that there was a lack of promotion opportunity and wanted to be closer to his family. On 4 February 2019, he transferred to the Respondent and was based at Buxton CID.
39. In 2019, the Claimant secured a temporary promotion to Sergeant and was over the moon. If he successfully completed a work-based assessment (“WBA”) over the following twelve months he would attain a permanent promotion to that role. He was moved to Clay Cross Police station to commence the WBA and his line manager at the time was Inspector Bowns.

The Claimant’s first period of absence

40. By this time, the Claimant was struggling with his mental health and began self-harming. He describes in his witness statement that he hated a busy room yet hated being on his own. However, he had not confided in anyone at the Respondent because he was afraid of the stigma attached to mental ill health and wanted to avoid embarrassment.
41. On 12 August 2019, the Claimant reported sick with sickness and diarrhoea.
42. On 16 August 2020, he texted Insp Bowns to explain that he had been suffering with stress, anxiety and depression for a number of years. He had been to see his GP who had signed him off for a period of four weeks with ‘*work related stress*’ (page 685).
43. On 18 August 2020, two days later, Insp Bowns prepared a referral to occupational health and sent it to the Claimant for review. The referral confirmed that the Claimant was aware of the support options available to him provided by the Respondent.
44. On 20 August 2020, Insp Bowns tried to contact the Claimant by phone to discuss the referral but got answer. He submitted it to occupational health and the Claimant met with the occupational health nurse, on 1 September 2020. The Claimant confirmed to her that he had a follow up GP appointment on 28 August 2020 and further occupational health review was arranged for 6 October 2020
45. The nurse’s subsequent report recorded that:

“it would appear that he is suffering from anxiety and possibly ptsd. As a result of this he is under the care of his GP and is in the early stages of treatment. Support and advice has been offered to PC Hill including contact details for Health Assured¹ counselling. At present he remains in the early stages of his recovery and is likely to require further talking therapy through his GP.... It is anticipated over the coming weeks with medication and talking therapy PC Hill will start to develop coping skills and strategies to assist with his rehabilitation back to work” (pages 80 –

¹ An Employee Assistance programme

84).

46. On 28 September 2020 whilst off sick, the Claimant was transferred to Matlock police station because it was a quieter station with typically less-demanding incidents to deal with. This was done by way of an adjustment to support him. His new line manager was Insp Troup who was keen to assist him return to work.
47. On 6 October, the Claimant attended a second occupational health appointment. The nurse recorded that he was still under the care of his GP who continued to prescribe medications and had referred him to Single Point of Access ("SPA") who in turn referred him to Health Assured. However, Health Assured was unable to assist because it was felt that the Claimant required more than six sessions of counselling. The nurse confirmed he was still unfit for work until he commenced talking therapy which may require EMDR for possible PTSD. His next occupational health review was arranged for 10am on 17 November 2020 (pages 91 – 93).
48. On 19 October 2022, Insp Troup called the Claimant to stay in touch. The Claimant explained that he would be receiving REM treatment albeit did not know when it would commence. Insp Troup gave the Claimant his personal phone number and advised him to make contact if he needed any further support. He also advised the Claimant that he could come into the station socially at any point to become familiarised with his colleagues. Insp Troup confirmed that he would make contact again in two weeks (page 493).
49. On 4 November 2020, Insp Troup contacted the Claimant as agreed. He explored a possible return to work on a recuperative plan, but the Claimant confirmed that he could not consider returning. The Claimant also confirmed he was going to try and speed up REM therapy which currently had a waiting list of 8 months. Insp Troup warned the Claimant that it would be necessary to commence the UAP within the next few weeks given his length of absence. Insp Troup recorded in the Gateway (the Respondent's employee management system) that:

"I understand that this might cause Matt further anxiety but as we approach an absence of 3 months with no end in sight it is reasonable to manage his absence through formal attendance procedures. Matt has my personal phone number and knows that he can contact me at any time if required. I will speak to him again next week for an update following his doctor's appointment" (page 483).
50. On 11 November 2020, Insp Troup telephoned the Claimant as agreed and confirmed that he had submitted a third occupational health referral. He also explored adjusted duties and hours, but the Claimant confirmed that he was not fit to return in any capacity. Insp Troup warned him that the UAP paperwork was on the way, so it did not arrive out of the blue (page 493). The Claimant asked to meet away from the station for the Stage 1 meeting to which Insp Troup readily agreed.

51. During these calls, Insp Troup found it difficult to engage with the Claimant. He recorded in the Gateway, that *“I have explained that without talking about the issues it is difficult to move forward, the conversations I have had with Matthew so far are very one sided and when asked questions about his health and triggers causing the anxiety and depression, Matthew tends to either go quiet on the line or say that he does not know, I do realise that this may be because he is unwell but I am finding that this is stopping any attempts to identify what the problems are and work towards resolving them....”* (page 494).
52. The invite to the Stage 1 meeting was posted that day for a meeting on 23 November 2020 (page 95). It advised the Claimant that the maximum possible outcome was a written improvement notice (“WIN”) and that he had the right to be represented by a Federation representative or work colleague. As such, the Claimant was fully aware that the formal procedure had been instigated.
53. At the time of instigating Stage 1 of the UAP, Insp Troup’s knowledge of the Claimant’s absence was that he had been absent from work with an upset stomach and work-related stress as per the fit notes. He had attempted an informal supportive approach to assist the Claimant back to work without success and, because of the Claimant’s lack of engagement, considered that the UAP process would assist in understanding how best to support him. Insp Troup had not considered whether the Claimant was a disabled person but, if he had, would have instigated the procedure anyway to prompt engagement.
54. The third occupational health referral from Insp Troup explained that due to the length of the waiting list for treatment, the Claimant may be absent from work for twelve months and he asked if a business case could be made to fund treatment to help the Claimant in his recovery and return to work (page 105).
55. On 13 November 2020, Insp Troup attended the North Inspectors’ meeting with HR and asked for the Claimant’s case to be allocated for HR support because of his lack of engagement so far (page 97).
56. On 18 November, the Claimant attended the third occupational health appointment. The report recorded that he was still under the care of his GP. Due to the severity of his symptoms he had been referred to SPA for REM therapy, but the waiting time was circa eight to nine months. Occupational health had spoken to Health Assured directly and a business case was being put together to approve funding for support in the meantime. The report also confirmed that the Claimant was likely to be disabled for the purposes of the Equality Act 2010 (page 108).

The first Stage 1 meeting

57. On 23 November 2020, the Claimant messaged Insp Troup to say that he would not be driving to meet him for the Stage 1 meeting. Insp Troup called him, and during the conversation the Claimant if the meeting could be held at home. Insp Troup said it was not possible because of covid restrictions in place at the time. Insp Troup also explained to the Claimant that he was disappointed he had not attended the meeting because he needed to explore and understand the

barriers preventing him from returning to work in any capacity. Insp Troup did not say he was disappointed in the Claimant. During this call the Claimant also alleged that the occupational nurse had told him he would be out of a job if he did not return (page 494).

The second Stage 1 meeting

58. On 23 November 2020, Insp Troup sent the Claimant a letter re-scheduling the Stage 1 meeting to 30 November 2020 and advising him of the right to be represented (page 117). He had agreed to meet the Claimant in a pub car park. On the day itself, the car park was cordoned off, so they met across the road and sat in Insp Troup's car and had an honest and productive discussion.

59. Insp Troup's meeting notes on the Gateway recorded that:

"This frank discussion has given me a good understanding of what some of the issues are affecting Matt's attendance and I am confident that with the right level of support Matt will be able to return to work and move on from this. Matt has made it clear that he is keen to complete his Sgt's work-based assessment and to move through the ranks in the future.....The move to Derbyshire Dales is to give Matt the opportunity to return to a slower paced environment whilst he recovers and should not be seen as any suggestion that he is unable to cope, this was and still is a purely supportive move. There is no stigma at all attached to having to take time off work due to illness and Matt will be welcomed back to work by all of his colleagues as well as given the support he needs.....Matt knows that he can speak to me at any time about any concerns that he has and I do feel that our meeting today was a very positive step forward....."

60. It was agreed that the Claimant would return to work on 11 January 2021 on a phased basis on station duties alongside Insp Troup and a WIN was issued that day (page 123). Insp Troup also recorded that:

"we will review this on a weekly basis and make any necessary reasonable adjustments however Matt will need to return as agreed and maintain a satisfactory level of attendance over the 12 months of this improvement notice which is no more than 3 occasions of sickness totalling no more than 14 days. The date of Matt's return to full Sergeant's duties will be decided at a later date considering the advice of his GP and occupational health" (pages 120 – 122).

61. On 3 December 2020, HR approved funding for the Claimant to have twelve CBT sessions through Health Assured.

62. On 11 January 2021, the Claimant texted Insp Troup to say that he did not feel well enough to come in. He also missed a scheduled occupational health appointment, presumably due to a miscommunication somewhere along the way and we apportion no blame in this regard.

63. On 12 January 2021, the Claimant was informed that his sick pay would be

reduced to half pay with effect from 5 February 2021 in accordance with the Regulations thereby giving him plenty of advance notice (page 126).

64. The Claimant was not responding to text messages from Insp Troup, so on 14 January 2021 he phoned him instead. During the call, the Claimant explained that he had been notified about a reduction in his pay which would add to the stress he was under. They agreed a new return to work date of 18 January 2021 (page 494).

The Claimant's return to work and next period of absence

65. The Claimant attended work on 18 January 2021 on adjusted duties and Insp Troup completed a return-to-work interview. However, the Claimant went off sick again on 25 January 2021 and submitted a fit note citing '*stress related illness*'.
66. On 5 February 2021, the Claimant attended a fourth occupational health appointment. The subsequent report recorded that the Claimant was waiting for EMDR treatment via the NHS and that a business case for CBT in the meantime had been submitted. The Claimant remained unfit for work and a review was proposed in a further six weeks (pages 142 – 145).
67. On 15 February 2021, the Claimant commenced CBT.
68. Insp Troup remained in regular contact with the Claimant via text and phone calls. During a call on 22 February 2021, the Claimant confirmed that he had had his third CBT session and would be starting EMDR therapy that week. Insp Troup recorded in the Gateway that "*Matt sees this as a positive step forward and is hopefully (sic) this will provide the help that he needs*" (page 495).

The Claimant's second return to work and next period of absence

69. On 5 March 2021, the Claimant called Insp Troup and said he wanted to come back to work. Insp Troup recorded in the Gateway that:

"I have spoken to Matt today and he has asked to come back to work as he feels that he is now ready to begin a phased return. I have explained to Matt that I am happy for him to do this provided that it is not to the detriment of his health and done in a controlled way with regular check ins along the way. Matt says that he feels he has moved forward with the counselling sessions and he has not felt depressed for over a week now, he is hopeful that the continued sessions will see this improve further. Matt has said he would like to return to working alongside his shift on reduced hours increasing each week over a three-week period until back to full duties. I have agreed that he can return to work next Wednesday 10th March and I will meet with him to formalise a return to work plan. Matt does not need anything further from me at this time" (page 495).

70. Insp Troup took the Claimant's word that he was well enough to come back. The Claimant returned on 6 March 2021 undertaking front-line duties at his request.

71. On 23 April 2021, the Claimant commenced a further period of sickness absence from which he never returned.
72. On 28 April 2021 and 30 April 2021, Insp Troup messaged the Claimant but received no reply (page 495).
73. On 5 May 2021, the Claimant contacted Insp Troup with a query about applying for assistance from the Police Treatment Centre to which he responded with advice (page 496).

The first Stage 2 meeting

74. On 12 May 2021, the Claimant was invited to a Stage 2 meeting on 19 May 2021 at which he had the right to be represented. The meeting would be chaired by Chief Inspector Johnson (“CI Johnson”) who added to the standard template letter “*Matt – just ring me if there are any issues with the date, we’ll sort another*” (page 179). The letter confirmed that the maximum possible outcome of the meeting was a final WIN. By this stage, the Claimant had been absent for a total of 217 days.
75. The Claimant had also been invited to a fifth occupational appointment on 17 May 2021. The Claimant asked for this to be rearranged to the following week, after the Stage 2 meeting, because he felt he could not attend two meetings in one week (page 181). In a subsequent call with Insp Troup, he commented that he thought the appointment was a “*ticky box*” exercise to ‘*rubber stamp things*’. He also asked to see a different nurse claiming again that the nurse at a previous appointment had told him he would be out of a job in nine months (page 196).
76. On 16 May 2021, the Claimant e-mailed Insp Troup and CI Johnson copying in his union rep and HR with the heading “*Stage 2 documents to be relied on*” (pages 182 – 191). One of the attachments was a letter outlining the circumstances and events leading up to the Stage 2 meeting. In closing, he referred to the contents of the letter as a grievance but said he hoped it would be taken in to account. All participants, including the Claimant’s representative, understood that it was intended for use at the Stage 2 meeting rather than instigating a grievance under the grievance procedure. The thrust of the letter was how, in the Claimant’s view, the Respondent had consistently “*kicked [him] whilst [he] was down rather than providing support*”. CI Johnson did not have opportunity to read it prior to the Stage 2 because he was on rest days immediately prior.
77. The Stage 2 meeting took place on 19 May 2021 by which point the Claimant had been off sick for 226 days. The Claimant was represented by his Federation representative and Ms Gemma Johnson, Senior HR Advisor, and Insp Troup were also present.
78. The Claimant was given full opportunity to describe the events leading up to the Stage 2 meeting. He explained that front-line policing made him poorly and his return to those duties had contributed to him feeling depressed again. Insp

Troup commented that the Claimant's return was of his own instigation, which served to highlight an ongoing communication issue, and that it had been hard to understand the Claimant's needs.

79. The Claimant explained that he had exhausted his treatment funded by the Respondent but had not yet started any NHS treatment. Ms Johnson committed to liaising with occupational health to determine if any further treatment could be made available.
80. Ultimately, CI Johnson, decided not to progress to Stage 2. A further return-to-work date of 1 September 2021 was agreed, some three-and-a-half months later. It was also agreed Claimant would keep in touch with Insp Troup fortnightly to maintain engagement.
81. In addition, CI Johnson asked the Claimant to give some thought to whether he wanted to defer his WBA until he felt better and committed to finding out whether this was possible. It was widely understood, including by the Claimant and his managers, that it had to be completed within twelve months.
82. The outcome of the Stage 2 meeting was confirmed in a letter dated 24 May 2021(pages 204 – 206).
83. On 24 May 2021, CI Johnson commenced enquiries about deferring the Claimant's promotion (page 210).
84. On 24 May 2021, occupational health wrote to the Claimant seeking consent to contact Health Assured regarding further treatment (page 212). The Claimant gave consent on 1 June 2021 (page 214).
85. On 8 June 2021, Health Assured contacted occupational health to confirm that the Claimant would benefit from three further treatments. The request for three sessions, not six, had been made by the Claimant's counsellor (page 227). This was actioned by the Respondent the same day and approved the subsequent day (pages 219 – 222).
86. On 12 August 2021, Insp Troup made a sixth referral to occupational health and the Claimant attended an appointment on 19 August 2021. The report confirmed that he was still unfit for duties and waiting for further referrals for specialist help from his GP. Occupational health referred him for bereavement counselling due to his exposure to traumatic events concerning death (pages 250 – 257).
87. The Claimant did not return to work on 1 September 2021.
88. On 13 September 2021, the Claimant's wife e-mailed the Chief Officers to complain about the Claimant's treatment (pages 281 – 283). CI Barnett, who had no prior involvement with the Claimant's absence, escalated those concerns to senior HR members for a review of his case to date (page 285).
89. On 16 September 2021, the Respondent authorised half pay for a further month because the Claimant was due to reduce to nil pay with effect from 8 October 2021 (pages 286 and 291).

90. On 23 September 2021, Insp Troup spoke with the Claimant who confirmed that he did not have a formal diagnosis of PTSD and agreed to a psychiatric assessment (page 297).

The second Stage 2 meeting

91. On 23 September 2021, the Claimant was invited to a second Stage 2 meeting on 4 October 2021 chaired by CI Johnson. He was informed that the maximum possible outcome was a final WIN and that he had the right to be represented (page 298).
92. On 3 October 2021, the Claimant submitted a grievance letter complaining about his treatment by the Respondent for use at the Stage 2 meeting. He alleged that he had waited six months for the Respondent to help and support him and confirmed that he would not be attending the second Stage 2 meeting. He finished by saying *"I welcome you to have the meeting in my absence and discuss amongst yourselves, the absolute failings and dismantling of a human being"* (page 303 – 310).
93. The meeting proceeded in the Claimant's absence, but his Federation representative attended on his behalf and Ms Johnson attended in her capacity of Senior HR Advisor. CI Johnson noted that the Claimant had been absent for a total of 357 days. He also identified thirteen issues raised by the Claimant in his letter but concluded that they did not materially affect the matters to be discussed at the meeting. However, he would respond to it directly after seeking clarification from occupational health and HR.
94. CI Johnson acknowledged that the delay in accessing NHS treatment may have had a detrimental effect on the Claimant's health. A new return to work date of 10 January 2022 was set and he would return in a non-supervisory, non-public facing role on a phased basis (pages 347 – 348). The outcome of the meeting was that the Claimant was issued with a final WIN which was issued on 8 October 2021. A condition of the WIN was that the Claimant maintained fortnightly contact with Insp Troup. The notice also advised that if the Claimant failed to improve in accordance with its terms, he would be required to attend a Stage 3 meeting (page 353).
95. On 2 October 2021, CI Johnson diligently began his investigations into the matters raised by the Claimant in his letter dated 3 October 2021. He contacted occupational health and HR to answer specific concerns within their remit (pages 364A – 364D, 366 -375).
96. On 13 October 2021, the Claimant was notified that funding had been secured for a psychiatric assessment and he would be referred by no later than 20 October 2021 (pages 358 and 365)
97. On 18 October 2021, the Claimant appealed the final WIN on three grounds, namely that there was a breach of the Regulations, the terms of the WIN were unreasonable and that the finding of unsatisfactory performance was also unreasonable (pages 359 – 364).

98. On 27 October 2021, CI Johnson provided a comprehensive reply to the Claimant's letter of 3 October 2021 (pages 384 – 389).
99. On 3 November 2021, the Claimant attended a hearing to discuss his appeal against the final WIN chaired by Superintendent Jon Clark. The Claimant was represented by his Federation representative and Ms A Lissaman attended from HR. By the time of the hearing, the Claimant had been absent for a total of 393 days. After careful consideration of the appeal, Superintendent Clark concluded:

“For me there is no doubt that from an early stage Matt should've been treated as having a disability..... This failure to record that Matt is potentially suffering with a disability doesn't however automatically mean that he has not been treated appropriately.....Para 3.48 in the Home Office Guidance talks about demonstrating a supportive attitude towards police officers, and goes on in para 3.49 to say that the primary aim of the procedures is to improve attendance. I said to the attendees at this meeting that whilst these processes may be referred to as 'unsatisfactory attendance' in my opinion the use of the framework remains around trying to support staff to return to work with the means to support staff to return to work and providing them an environment where they can continue to undertake meaningful duties.....

On speaking to Matt during this meeting he admits that he rushed his return when in actual fact he probably wasn't fit for a return to work. In other areas of this appeal it has been suggested that the UAP process with arbitrary dates set an unrealistic pressure on Matt forcing him into certain actions. In relation to this period whilst I accept Matt was subject to a Stage 1 WIN I can find no evidence to suggest that he was being pressured to return to work. Insp Troup even records that he discussed with Matt whether the return would be detrimental to his health. I'm led to conclude Matt made this decision to return convincing Insp Troup, and perhaps himself in the process, that he was ready. A further visit to OH prior to Matt's return would have ensured an independent assessment and would have provided both Matt and the Organisation a level of reassurance that Matt was fit for a return, however this doesn't appear to have been considered.....

.....Firstly, as part of the appeal it has been challenged that UAP is not an appropriate mechanism with which to deal with a case like this. I have to disagree. These procedures are the framework set down for the management of attendance by the Home Office. The spirit of these regulations is that they focus on supporting attendance and I will answer below whether I am satisfied this case has been handled within that spirit.

It has also been suggested that there are other avenues available such as the medical retirement procedure, or H1 for short. I don't disagree that there are other avenues but remain convinced that the UAP is the correct process with other solutions such as H1 coming out of this.

Matt has been absent for extended periods of time that if purely based

on the length of absence I would have no hesitation in considering as unsatisfactory. This of course isn't that simple and I consider it necessary to reassure myself that the Organisation has met its obligations to Matt in terms of treating him as disabled and subsequently providing sufficient reasonable adjustments as required under the Equality Act.....

In reviewing this case I am struggling to suggest what more could have been done to take a supportive approach to Matt that encouraged, or encourages, attendance.

Whilst I accept that setting dates could have a detrimental effect on Matt, increasing perceived pressure as the date approaches for example. In my view there has to be a target. What is important in this case however has been the flexibility shown in those dates - all RTW dates have subsequently been reviewed and extended and there has been no immediate move to the next stage when a target hasn't been met. This for me is a fundamental aspect of this case and had dates been set that resulted in action being taken without further review then I could understand how this would be considered unfair. This hasn't been the case. As I have stated above the Organisation also has commitments to all staff and the public and needs to be able to plan appropriate staffing and have a plan in place around resources. It is unrealistic to expect an open-ended period of absence without appropriate targets being set.

The use of the UAP framework in relation to Matt's absence has in my opinion been appropriate and managed fairly. I have closely looked at the issues around Disablement, Equality Act and Reasonable Adjustments and am of the opinion that the Organisation has put in place reasonable adjustments and made efforts to cater for Matt's disability in an effort to support a return to work and then an environment where he can remain..... The setting of targets within the UAP process is necessary otherwise it would become an open-ended process which would hamper the ability of all to plan the next stage. The flexibility in these targets I believe has been inherently fair and shown that managers are prepared to use their discretion for the benefit of all, which includes Matt. The current RTW of 10th January 2022 allows sufficient time to review current treatment options and consider a prognosis going forward. During this Matt must ensure he is in contact with his own mental health services as it cannot solely be the responsibility of the Organisation to manage his treatment. I have sympathy with Matt for the position in which he finds himself and really do wish him well in his recovery. I repeat my thanks for his participation and candour in our meeting. I hope that Matt can recover and be in a position to take up the Sergeant's post that he so desperately wants to do in the not too distant future" (pages 396 – 401).

100. On 12 November 2021, the Claimant was notified that a decision had been made to allow him to remain on half pay until 10 January 2022 (page 414).
101. On 3 December 2021, the psychiatrist produced his report and confirmed that

the Claimant was suffering with PTSD with a poor prognosis. He would be unable to return to frontline work but may be able to return to office work after significant therapy (pages 415 – 430).

102. On 30 December 2021, the Claimant was referred for medical retirement which is what he wanted by this stage (page 445). After assessment, he was retired with effect from 14 July 2022 (pages 488 & 492).

The law

Failure to make reasonable adjustments

103. Section 20 of the EQA provides:

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

.....

104. Section 21 EQA provides:

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

Discrimination arising from disability

105. S.15 EQA 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.

(2) Subsection (1) 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.

106. We have had regard to the following cases: O’Hanlon v Revenue & Customs Comrs [2007] ICR 1359: RBS v Ashton [2011] ICR 632: Doran v DWP UKEATS/0017/14/SM: Buchanan v Comr of Police of the Metropolis [2017] ICR 184: Trustees of Swansea Uni Pension Scheme v Williams [2019] ICR 230: Ishola v Transport for London [2020] ICR 1204: Gestmin v Credit Suisse [2020] 1 CLC 428: Cowie v Scottish Fire & Rescue [2022] ICR 1693: Pnaiser v NHS England [2016] IRLR 170: Nagarajan V London Regional Transport [1999] IRLR 572: Williams v Trustees of Swansea Uni Pension Scheme [2018] UKSC 65: Scott v Ralli EA-2019-000772-VP: DWP v Boyers UKEAT/0282/19/AT: Griffiths v The Secretary of State for Work and Pensions [2015] EWCA Civ 1265: Martin v City and County of Swansea UKEAT/0253/20/AT; and The Home Office (UK Visas & Immigration) v Kuranchie UKEAT/0202/16/BA.

Submissions

107. We had the benefit of written submissions from both Counsel which were supplemented by oral submissions. Whilst they are not set out in full, we have considered all the points made and all the authorities relied on where appropriate, even when no specific reference is made to them.
108. We refer to relevant parts of those submissions as appropriate below.

CONCLUSIONS

109. We have limited our deliberations to the matters set out in the list of issues.

Failure to make reasonable adjustments

110. The Respondent does not dispute that the application of the Police (Performance) Regulations 2020 via the UAP, including the implementation of the formal stages and the use of WINs, amounts to a PCP.
111. However, it does dispute that the PCP placed the Claimant at a substantial disadvantage compared to persons who are not disabled. A substantial disadvantage is one that is more than minor or trivial – s.121(2) EQA. The threshold is low. We add here that both parties rely on broadly the same submissions for substantial disadvantage as they do for unfavourable treatment.
112. The Claimant says that the substantial disadvantages were “*i) that he was more likely than a non-disabled person to be absent from work for extended periods ii) he was unable to comply with the specified periods in the WINs and therefore iii) at greater risk of dismissal. Further disadvantage is caused by the process being stressful adding to his symptoms*”. He says that to avoid the

disadvantages the UAP should not have been applied and his absence should have been managed informally.

113. The Claimant also submitted that we must examine each step in the UAP process, starting with the decision to implement it, and decide whether each step placed him at a substantial disadvantage.
114. The Respondent says the Claimant's approach is wrong in law and the question of disadvantage must be viewed through the operation of the UAP as a whole - **Cowie** and **Williams**. Whilst these cases dealt with s.15 EQA claims, the same rationale applies. The UAP is designed to avoid dismissal and was actually advantageous to the Claimant because it resulted in him being medically retired which was financially beneficial compared to dismissal.
115. We accept that the Claimant was more likely to be absent from work and subject to the UAP by virtue of his disability. However, it does not automatically follow that he would be unable to comply with the terms of the WIN and, therefore, at greater risk of dismissal.
116. We have had regard to the stated purpose of the UAP which is "*to improve performance and attendance in the police service and they are intended to be positive and supportive*". Furthermore, "*it is envisaged that supportive action will in most cases achieve the desired effect of improving and maintaining a police officer's attendance to an acceptable level*". The Claimant himself agreed in evidence that i) a process was needed to manage a return to work ii) to assist somebody back to work requires meeting and discussing progress, often with medical advice iii) the overarching aim of the UAP is supportive and positive iv) his best interests were served by helping him get back to work at the material time and v) that the majority of UAP cases did not result in dismissal. As such, the outcome is not inevitably dismissal, and the purpose is to help officers back to work.
117. The Claimant commenced his first period of sickness absence on 12 August 2020 citing sickness and diarrhoea. However, on 16 August 2022, he texted his manager at the time, Insp Bowns, and explained that he was suffering with stress, anxiety and depression. We are satisfied that Insp Bowns acted promptly by referring the Claimant to occupational health two days later and making him aware of the Respondent's available support options.
118. The Claimant was transferred to Matlock by way of an adjustment which was a quieter station under the management of Insp Troup. We find that Insp Troup did his utmost to engage with the Claimant who did not reciprocate, and we accept his entries on the Gateway to be an accurate reflection of their discussions. Insp Troup was in a position where he had offered as much informal support as he could to facilitate the Claimant's return to work but the Claimant was not engaging in return.
119. On approaching the three-month absence point, Insp Troup warned the Claimant that he would have to commence the UAP because there was no return to work in sight despite his attempts to provide support.

120. Insp Troup instigated the UAP with support from HR in order to prompt engagement and help the Claimant. The UAP itself does not require an informal meeting to be undertaken before commencing the procedure and we are satisfied that Insp Troup had exhausted '*supportive actions*', namely referrals to occupational health, regular attempts at contact, offering him his personal phone number and support, attempts to discuss a return to work and the opportunity to visit the station socially to facilitate such return.
121. In taking those supportive actions, Insp Troup also complied with the Home Office guidance which provides that he should "*act swiftly and informally to discuss and understand the causes and how support might be introduced to help improve the performance or attendance through a normal line manager meeting or discussion. This action should be undertaken as soon as possible..... this should be done before moving to formal channels.*"
122. The Claimant argued that the Respondent failed to consider paragraphs 14.14 and 14.15 in that it did not consider whether it should not apply the UAP at all or whether it was fair to apply it. However, we find that Insp Troup could do no more to assist the Claimant without applying it and, furthermore, we have had regard to paragraph 14.16 which provides that "*in many cases, however, it will be appropriate to initiate the UPP in respect of an officer with a disability*". On the facts, we consider the Respondent acted appropriately in doing so.
123. Insp Troup did not consider if the Claimant has a disability at the point of instigating the UAP because his sick notes referred to sickness and diarrhoea and work-related stress. However, we accept his evidence that even if he had put his mind to the question, he would still have instigated the procedure to prompt engagement from the Claimant. We are satisfied, therefore, that there was no breach of the UAP as alleged by the Claimant in commencing Stage 1.
124. The Claimant was invited to a Stage 1 meeting which, in the end took, place on 23 November 2020. He gave evidence that he was not aware that the first meeting with Insp Troup was under the UAP. However, we are satisfied that he was fully aware because he was warned by Insp Troup in advance that the invite to Stage 1 was on its way and the invite itself was explicit that it was a Stage 1 meeting.
125. The result of Stage 1 was a WIN with a return-to-work date of 11 January 2021 on a phased return with adjusted duties. We accept Insp Troup's evidence that this was agreed with the Claimant who wanted to return to work and complete his WBA and that instigating Stage 1 resulted in that agreement.
126. The Claimant did not return to work on the agreed date and no further action was taken under the UAP. Rather, Insp Troup agreed with the Claimant that he would return a week later, on the same terms.
127. The Claimant remained at work on adjusted duties for a week before going off sick again. Stage 2 was not commenced immediately thereafter. Rather, Insp Troup stayed in contact with the Claimant to receive updates on treatment.

128. On 5 March 2021, the Claimant asked to return to work on frontline duties. This was not prompted by Insp Troup. No occupational referral was arranged because Insp Troup simply took the Claimant at his word that he was not feeling depressed and wanted to come back and agreed to the Claimant's terms for doing so.
129. The Claimant was able to work until 23 April 2021 when he was certified as unfit to work again and never returned.
130. It was only on 12 May 2021, that the Claimant was invited to a Stage 2 meeting after a total of 226 days' absence. At this stage, the Claimant was still wanting to return to work and undergoing treatment.
131. The outcome of the Stage 2 meeting was that he would remain at Stage 1, the Respondent having given serious consideration to the Claimant's representations. There was no intention on the part of the Respondent to rush through the process and it demonstrated flexibility in its approach. The Claimant was given a further three and a half months to return to work and asked if he wanted to defer his WBA until he felt better.
132. The Claimant did not progress to a second Stage 2 meeting until October 2021 by which time he had had 357 days' absence. The Claimant was issued with a final WIN and a new return to work date on adjusted duties. CI Johnson also investigated the matters raised in the Claimant's letter dated 3 October 2021 and provided a comprehensive reply.
133. The Claimant appealed the WIN. Superintendent Clark did not uphold the appeal but provided him with a thorough and honest outcome admitting fault as appropriate but concluding in essence that he struggled *"to suggest what more could have been done to take a supportive approach to [the Claimant] that encouraged, or encourages, attendance"*.
134. Thereafter, the Claimant was referred for a psychiatric assessment and was medically retired with effect from 14 July 2022. He did not progress to Stage 3 of the UAP as per paragraph 3.247 of the Home office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Management Procedures.
135. The Claimant argues that he was put to a substantial disadvantage because he was subject to return dates which set him up to fail and saw him escalate through the process. We do not agree that the return dates set him up to fail. The Claimant wanted to return to work and the return dates, which were generous and allowed time for treatment, were set with his agreement to support his ambition of returning. It was not until the Claimant underwent a psychiatric assessment at the end of 2021 that it became clear that he could not return to frontline duties.
136. We are satisfied that the UAP was not applied rigidly. The Respondent exercised its discretion favourably in waiting three months before instigating it and not progressing to Stage 2 until 4 October 2021, some ten months later. The Respondent also made adjustments for the Claimant within the procedure

including funding for CBT, opportunities to return to work on terms agreed with him, generous extensions of return-to-work dates, an extension of sick pay and funding for a psychiatric assessment.

137. Under the UAP, the Respondent could not move to dismissing the Claimant without considering medical retirement which was to the Claimant's advantage. The ultimate outcome for him in being medically retired was, therefore, favourable in the face of his inability to return to his duties.
138. The Claimant also says that a further substantial disadvantage suffered was the process being stressful and adding to his symptoms and, further, it should have been obvious to the Respondent that the application of the UAP would place him at a substantial disadvantage compared to those who are not disabled. The Respondent's witnesses accepted that the process might cause him added anxiety, but we are satisfied that the Claimant has not established that such stress/anxiety would not be felt by persons who are not disabled.
139. Furthermore, the Respondent says it could not have known of the substantial disadvantage because the UAP is perceived to be supportive and resulted in favourable/advantageous treatment for him. We consider this to be a fair submission.
140. We agree with the Respondent's submission that the question of disadvantage must be viewed through the operation of the UAP as a whole and it would be an artificial exercise to extract the parts the Claimant says were unfavourable given the eventual outcome. Taking this approach, we are satisfied that commencing the UAP and implementing the stages within it did not place the Claimant at a substantial disadvantage compared to persons who are not disabled because he achieved a favourable outcome. Accordingly, the claim fails at this stage.
141. For completeness, we address the Claimant's submission that we should examine each step in the UAP process, starting with the decision to implement it. He argued that each stage was not to his advantage, but that is not the test – it is a test of substantial disadvantage compared to persons who are not disabled, not whether his treatment could have been more advantageous.
142. In any event, we are satisfied that each stage did not place him at a substantial disadvantage. Insp Troup was supportive from the outset despite never having met the Claimant. He kept in touch as promised, reminded him of the available support networks, offered personal support and invited him to the station on a purely social basis. However, he was met with a lack of engagement and the only way Insp Troup could encourage the Claimant to engage was to instigate the UAP which was in his view a supportive measure to help him back to work. Each step in the process was exercised fairly and flexibly as we describe above, and the Respondent adhered to the guidance by not progressing to Stage 3 pending consideration of medical retirement. Overall, the UAP facilitated the Claimant's return to work on two occasions, the funding of treatment, extensions to sick pay and medical retirement which is what he wanted after being diagnosed as unable to return to frontline duties. The ultimate outcome was,

therefore, advantageous to him.

143. The Claimant also argued that **Cowie** and **Williams** can be distinguished because the steps taken by the Respondent could have been taken outside the UAP. We disagree on the facts because we accept that the Claimant was not engaging with Insp Troup. Absent engagement, the Respondent was not able to support the Claimant and it was the application of the UAP that instigated engagement. Additionally, we accept that the Respondent could not allow the Claimant to remain off sick indefinitely without taking steps to support him and this was achieved through the UAP.
144. Finally, we are satisfied that ultimately any adjustments would not have alleviated the disadvantage complained of because the Claimant was not able to return to work which he admitted during cross examination. The requirement to make reasonable adjustments extends to alleviating the alleged disadvantage and given the psychiatrist's poor diagnosis, not applying or delaying the UAP would not have alleviated his eventual prognosis of not being able to return to work nor would disregarding periods of disability related absence or imposing targets without imposing a WIN.

Discrimination arising

145. The Claimant relies on the application of the UAP and the Respondent's failure to uphold the Claimant's appeal as the unfavourable treatment. We observe at this stage that neither party has addressed the appeal point in their submissions and it appears to us to be a minor point in the context of the application of the UAP more generally.
146. We are satisfied that all treatment relied on happened and the Respondent does not seek to argue otherwise.
147. In deliberating whether that treatment was unfavourable, we arrive at the same conclusion as that for substantial disadvantage, namely, that in the circumstances the outcome of the UAP was favourable to the Claimant and resulted in medical retirement as opposed to dismissal. Again, it would be an artificial exercise to extract the parts of the procedure that he says were unfavourable when the outcome was favourable. As such, the claim fails at this stage.
148. The Claimant argues again that we should assess each stage of the procedure and relies on **Buchanan** but we agree with the Respondent that the Claimant's case can be distinguished on the facts. The Claimant in **Buchanan** was never able to return to work. Furthermore, the WINs had shorter timescales for a return to work and were held to be '*artificial*' given the Claimant's inability to return to work. In the Claimant's case, i) he wanted to return to work and did so on two occasions once the UAP was implemented, ii) the WINs gave generous return to work dates, and iii) the Claimant continued to express a desire to return until his psychiatric diagnosis at the end of 2021.
149. Even if we had found that the treatment relied on was unfavourable, we are

satisfied that the Respondent had the legitimate aims of addressing attendance, supporting employees back to work, meeting and understanding the needs of absent employees to support and facilitate a return to work and meeting its operational needs. The Claimant accepts that these are legitimate aims, save meeting operational needs which he says that the UAP was not a vehicle for meeting those needs.

150. In terms of meeting operational needs, we accept the Respondent's evidence that it cannot recruit to fill a position whilst the incumbent is on long-term sick. The Claimant's role had to be covered by a Sergeant drafted in or by another officer acting up thereby leaving a gap elsewhere that had to be filled. The setting of return-to-work dates under the UAP allowed the Respondent to undertake workforce planning in light of these dates to ensure sufficient and safe manning of shifts with the knowledge of when the Claimant might return and when those covering/acting up could return to their substantive role.
151. We are also satisfied that the Respondent acted proportionately in meeting those aims. In terms of applying the UAP, it did not start the process until some three months after the Claimant reported absent, it made adjustments to facilitate the Claimant's return it funded treatment to bridge the gap whilst waiting for NHS treatment, extended his sick pay and funded the report that led to his medical retirement. It also applied the UAP flexibly and generously as we detail above.
152. The Claimant argues that those aims could have been met outside the UAP, but we disagree. As above, the Claimant was not engaging with Insp Troup and that engagement was only instigated with the UAP. It was also the application of the UAP that facilitated medical retirement (which was what the Claimant wanted at that stage) and avoided his dismissal. As such, the claim would have failed for these reasons.

Employment Judge Victoria Butler

Date: 27 March 2024

JUDGMENT SENT TO THE PARTIES ON

28th March 2024

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FOR THE TRIBUNAL OFFICE

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